

Soundings

Stop the clock? BIMCO updates its Hull Fouling Clause

BIMCO has published an updated version of its widely used Hull Fouling Clause for Time Charter Parties.

The 2013 version of the clause provided that if the ship “remains at or shifts within a place, anchorage and/or berth for an aggregated period exceeding” a certain period of time, then the performance warranties will be suspended and the charterer may be liable for associated hull cleaning time costs.

It appears that charterers may, on occasion, seek to avoid liability under the clause by ordering an anchored ship to steam for a few hours in order to stop the clock counting. However, such short periods of steaming may not be sufficient to prevent or remove hull fouling.

The revised wording requires the ship to perform a sea passage of sufficient duration and speed to remove the hull fouling before the clock can be re-set. The new paragraph (a) reads as follows:

“(a) If, in accordance with Charterers’ orders, the Vessel remains at or shifts within or between waiting areas, ports, places, anchorages and/or berths, and does not in the interim undertake a sea passage with speed and duration sufficient to remove the marine growth from the Vessel’s underwater parts resulting from the Vessel’s waiting there, for an aggregated period exceeding: ...”

The suggested idling period remains at 15 days, purely as a default arrangement, but it is recommended that parties consider and agree on a suitable period for their particular circumstances.

The parties are left to determine what such sufficient duration and speed may be. This will differ according to factors such as the ship's age and condition. Although the paint manufacturer's recommendations may provide some guidance, expert advice may need to be sought on this.

The suggested idling period remains at 15 days, purely as a default arrangement, but it is recommended that parties consider and agree on a suitable period for their particular circumstances.

The only other amendment to the clause is the added reference to "inspection" as well as "cleaning" in sub-clause (d), which is to be carried out prior to redelivery.

BIMCO Hull Fouling Clause for Time Charter Parties 2019

(a) If, in accordance with Charterers' orders, the Vessel remains at or shifts within or between waiting areas, ports, places, anchorages and/or berths, and does not in the interim undertake a sea passage with speed and duration sufficient to remove the marine growth from the Vessel's underwater parts resulting from the Vessel's waiting there, for an aggregated period exceeding:

- (i) a period as the parties may agree in writing in a Tropical Zone or Seasonal Tropical Zone*; or
- (ii) a period as the parties may agree in writing outside such Zones*

any warranties concerning speed and consumption shall be suspended pending inspection of the Vessel's underwater parts including, but not limited to, the hull, sea chests, rudder and propeller.

** If no such periods are agreed the default periods shall be 15 days.*

(b) In accordance with sub-clause (a), either party may call for inspection which shall be arranged jointly by Owners and Charterers and undertaken at Charterers' risk, cost, expense and time.

(c) If, as a result of the inspection either party calls for cleaning of any of the underwater parts, such cleaning shall be undertaken by the Charterers at their risk, cost, expense and time in consultation with the Owners.

(i) Cleaning shall always be under the supervision of the Master and, in respect of the underwater hull coating, in accordance with the paint manufacturers' recommended guidelines on cleaning, if any. Such cleaning shall be carried out without damage to the Vessel's underwater parts or coating.

(ii) If, at the port or place of inspection, cleaning as required under this Sub-clause (c) is not permitted or possible, or if Charterers choose to postpone cleaning, speed and consumption warranties shall remain suspended until such cleaning has been completed.

(iii) If, despite the availability of suitable facilities and equipment, Owners nevertheless refuse to permit cleaning, the speed and consumption warranties shall be reinstated from the time of such refusal.

(d) Inspection and/or cleaning in accordance with this clause shall always be carried out prior to redelivery. If, nevertheless, Charterers are prevented from inspecting and/or cleaning, the parties shall, prior to but latest on redelivery, agree a lump sum payment in full and final settlement in lieu of inspecting and/or cleaning.

(e) If the time limits set out in Sub-clause (a) have been exceeded but the Charterers thereafter demonstrate that the Vessel's performance remains within the limits of this Charter Party the vessel's speed and consumption warranties will be subsequently reinstated and the charterers' obligations in respect of inspection and/or cleaning shall no longer be applicable.

Please contact the Managers for further advice in relation to any of the issues discussed above.

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