



HULL FOULING CLAUSE FOR TIME CHARTER PARTIES 2019

CLAUSE TIME CHARTER BIOFOULING

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.

EXPLANATORY NOTES

Introduction

BIMCO's Hull Fouling Clause for Time Charter Parties was first developed in 2013 to transfer hull cleaning obligations to charterers where, as a result of their trading requirements and employment orders, a vessel is subject to a prolonged period of idling in port or at anchorage that results in fouling of the hull and underwater parts to an extent that may affect vessel performance.

These Explanatory Notes are an update of the original notes from 2013 to explain the changes made in 2019.

The Hull Fouling Clause has been revised in 2019 to address feedback on the use of the clause and to improve clarity.

BIMCO wishes to thank the following members of the subcommittee for their work in revising the clause:

- › Mr Peter Eckhardt, F. Laeisz (Chairman)
- › Ms Ann Shazell, Cargill Ocean Transportation
- › Mr Tim Howse, Gard P&I Club

Subclause (a) has been amended with additional words to clarify that the ship can remain not only within a port or alongside a berth, but also at any “place” including waiting areas outside port limits.

The revised wording now excludes any “shifting” of the ship during the waiting period that is not of sufficient speed and duration to remove any fouling that has happened during the wait. This means that allowing the ship to sail around the harbour or immediate vicinity for just a few hours at a reduced speed would not be enough to “reset” the clock for the suspension of the performance warranty.

The wording in subclause (a) has been expanded to clarify that it is the speed and duration of a sea passage and its effect on the removal of marine growth that will impact on the counting of aggregate waiting time.

Subclause (d) has been amended to refer to “inspecting and cleaning” instead of just “cleaning” as both are part of the process.

Biofouling

The subcommittee discussed the need for a free-standing biofouling clause, or an additional biofouling provision added to the Hull Fouling Clause. The initiative to address biofouling comes from recently implemented regulations in New Zealand which require ships entering their waters to be free of marine growth. If a ship is inspected and found to have marine growth it is refused entry and must be cleaned. There are no hull cleaning facilities in New Zealand. This may result in a ship having to find hull cleaning services elsewhere incurring delays and costs.

The subcommittee has concluded that it may not be beneficial to develop a biofouling provision at this time as there is no global application of a regulatory framework in place and it would be difficult to combine the two issues into the Hull Fouling Clause because the clause deals with vessel performance while biofouling regulations deal with environmental issues related to growths on the hull (which may be minor and may not affect performance).

In conclusion the subcommittee recommends that the issue is deferred to a later date when the industry has more experience of biofouling matters.

Background

At common law and under most standard forms of time charter party an owner is responsible for maintaining the vessel in a thoroughly efficient state throughout the charter period. This includes a requirement to keep the vessel's hull and other underwater parts free from fouling. If the owners fail to meet their obligations and, as a result, the vessel's performance is affected, they may be exposed to underperformance claims by the charterers. Hull fouling may occur where a vessel is required to wait in port or at anchorage – particularly in tropical waters and in other areas where seasonal blooms of marine biofouling occur.

Key features

The Hull Fouling Clause comprehensively sets out the circumstances and point in time when responsibility for cleaning hull fouling passes from the owners to the charterers. The clause distinguishes between idling in Tropical Zone/Seasonal Tropical Zone waters, where the rate of growth is generally highest, and idling outside such zones. Places which lie on the boundary of a Tropical Zone or Seasonal Tropical Zone (in season) are intended to be included that Zone. The parties are free to agree the number of days idling to apply in each area before the clause takes effect. If the parties fail to agree then 15 days will apply by default.

Once the agreed number of days has elapsed, the vessel's performance warranties relating to speed and consumption are suspended until such time as the vessel's underwater parts can be inspected and, if required, cleaned. The inspection will be for the charterers' account. If the hull is fouled then it is to be cleaned by the charterers at their cost and in their time, but in accordance with the paint manufacturers' recommendations and under the supervision of the Master. This acknowledges that hull coatings are very expensive, easily damaged and become less effective the more often they are cleaned.

It may well be that inspection and cleaning is not possible or permitted at the vessel's current port of call, or the charterers may wish to postpone cleaning. In such an event the warranties will remain suspended until cleaning has been completed.

If the owners refuse to give their permission for cleaning to be carried out, then the speed and consumption warranties will be reinstated from the time of the owners' refusal.

The intention is that, where required in accordance with the clause, cleaning should be undertaken before redelivery to the owners. However, if this cannot be done the parties should, before or at the latest on redelivery, agree a lump sum to cover the owners' costs and ancillary expenses in respect of cleaning.

Finally, if the agreed or the default number of days are exceeded the charterers will not be responsible for hull cleaning if they can show that the vessel is performing in accordance with charter party speed and consumption warranties.

Detailed provisions

Sub-clause (a) This Sub-clause sets out the mechanism triggering the provisions. If the vessel, on the charterers' orders, lies idle for a period exceeding the number of days agreed by the parties, the vessel's speed and consumption warranties will be suspended until inspection (which may cover all or certain underwater parts) and any necessary cleaning has been carried out. The parties are prompted to agree the number of days idling applicable in Tropical/Seasonal Tropical Zones and in other locations (since the tendency to foul will vary according to the sea area and seasonal conditions). If the parties don't agree the number of days idling, then 15 days will apply – so if a longer period is required then don't forget to state it clearly in your agreement.

Parties may wish to consider the following factors when negotiating the number of days of idling required to trigger the Clause: the quality and type of paint used on the vessel in question and number of days that the paint manufacturer will guarantee in respect of hull fouling; the vessel's intended trading area and the climate at that time of the year; and the fact that frequent and excessive cleaning is likely to reduce the effectiveness of the protective coating that prevents fouling.

Areas that are located on the border of a Tropical Zone or Seasonal Tropical Zone (in season), for example the Port of Santos in Brazil, should be considered as included in that Zone for the purposes of this Clause.

Sub-clause (b) Once the number of days in Sub-clause (a) have been exceeded, it is for one of the parties to call for an inspection of the vessel's underwater parts. Although both parties should cooperate in arranging the inspection, it is not a joint inspection and risk, cost, expense and time are for charterers' account.

Sub-clause (c) Following the inspection, either party may call for cleaning if the vessel's underwater parts are found to be fouled. Cleaning is to be carried out at the charterers' risk, cost, expense and time. However, as it is the owners' property that will undergo cleaning and because cleaning can damage the vessel's anti-fouling system, the owners must be consulted in respect of the cleaning procedure.

Sub-clause (c)(i) To set a standard for the cleaning procedure this Sub-clause states that the Master will supervise the cleaning; that it should be done in accordance with the paint manufacturers' guidelines for cleaning; and that it must be undertaken without damage to the vessel's underwater parts or its paint coating. Owners might want to consider requiring charterers to provide the ship's master with a formal report of the cleaning operation supported by photo and/or video evidence before and after cleaning has taken place.

Sub-clause (c)(ii) If cleaning is not permitted or possible, for example due to local restrictions, or postponed by charterers, speed and consumption warranties remain suspended until cleaning has eventually been completed.

Sub-clause (c)(iii) Should the owners for whatever reason refuse to permit cleaning despite the availability of suitable facilities, then the speed and consumption warranties will again be applicable from the time of such refusal.

Sub-clause (d) In order to resolve hull cleaning issues between the parties before the end of the contract period, this Sub-clause states that the vessel should be inspected and cleaned in accordance with the Clause prior to redelivery. However, if the charterers are prevented from inspecting and cleaning before redelivery the parties should agree on a lumpsum to cover the owners' costs and expenses for subsequent cleaning. This arrangement offers finality in terms of quantum and settlement while a failure to agree would have to be determined in accordance with the charter party dispute resolution procedure.

A lumpsum agreement may not always reflect the exact amount of the owners' costs and expenses as it will be based on quotes from cleaning companies as opposed to actual invoices. However, the alternative with payment against invoices for actual costs of subsequent cleaning could leave the owners unable to recover payments properly due.

Sub-clause (e) This Sub-clause provides the charterers with an opportunity to challenge the need for inspection and cleaning and is an exception to the presumption in subclause (a) that the inspection and cleaning provisions are triggered after a given number of days. Under this exception, if the charterers can demonstrate that the vessel's performance has remained within charter party limits, speed and consumption warranties will be reinstated at that point (not retroactively) and the inspection and cleaning provisions will cease to be applicable.

The timing and arrangements for demonstrating compliance are left to the parties to determine either by agreement or in accordance with the underlying charter party. By way of example, the charterers might demonstrate that the vessel is performing according to the charter party through the daily noon reports that the master sends to the charterers; through other means stipulated in the charter party; or by information from the ship's logbook.

[Bookmark page](#) [Print page](#) [Share page](#) [Save as PDF](#)

◀ [BACK TO: HOLD
CLEANING/RESIDUE DISPOSAL
CLAUSE FOR TIME CHARTER
PARTIES 2013](#)

[NEXT: ICE CLAUSE FOR TIME
CHARTER PARTIES 2005](#) ▶

Related Help & Advice

[Bills of lading advice](#)
[Time charter advice](#)
[Voyage charter advice](#)
[Booking notes](#)
[General average](#)
[Miscellaneous](#)

Create or edit a contract

BIMCO SMARTCON

The one-stop digital shop for all the standard maritime contracts and clauses you'll ever need.

[Find out more ▶](#)

LATEST RELATED NEWS

[Persian Gulf: War risks revisited](#)

21 June 2019

[Updated Hull Fouling Clause clarifies performance suspension trigger](#)

19 June 2019

[Ship arrest clauses focus on “sphere of responsibility”](#)

14 June 2019

[New Cyber Security Clause from BIMCO now available](#)


31 May 2019

[VIEW ALL NEWS](#)

RELATED TRAINING

Maritime Law Academy

 Cambridge

 08 July, 2019



BIMCO is proud to present for the first time the Maritime Law Academy. The academy covers cutting-edge issues of international maritime law and its relationship...

[MORE INFO](#)

ELSEWHERE ON BIMCO

[Holiday calendar](#)

BIMCO's Holiday Calendar covers general holidays in over 150 countries, plus local holidays and working hours in more than 680 ports around the world.

Find holidays in a country, state or port

e.g. France



[Learn about your cargo](#)

For general guidance and information on cargo-related queries.

e.g. Petroleum

GO

[More about cargo](#) ▶

Taxes, tariffs & charges

Access information on national, regional or port tariffs, taxes and charges.

Choose a port, state or country

e.g. Antwerp or Belgium

...

[Contact BIMCO](#)

[Privacy & cookies](#)

[Terms & conditions](#)

SOCIAL LINKS

