

Ageing offshore infrastructure: insuring decommissioning risks



Simon Jackson
Partner, Clyde & Co LLP
+44 20 7876 6173
simon.jackson@clydeco.com

In the next 30 years in the North Sea alone, more than 475 platforms, 10,000km of pipelines and 5,000 wells are expected to be decommissioned at an anticipated cost of over £40bn. How will risk in the decommissioning process be managed? Do standard market wordings provide sufficient coverage or is a bespoke solution required?

Simon Jackson, a Partner at Clyde & Co LLP in London specialising in Marine, Energy and P&I risks, gives guidance on decommissioning exposures and the insurance solutions available.

- Decommissioning is a multi-year, multi-phased technical process more akin to construction than operation.
- Various risks need to be taken into consideration from an insurance perspective, including damage to third-party property and liability exposures under both convention and contract.
- ‘Knock-for-Knock’ contracting makes for simple insurance solutions for all parties involved in a decommissioning project.
- A Decommissioning All Risks product has been developed that covers the decommissioning project and is designed to dovetail with both operator and contractor policies, including P&I.

The North Sea is a convenient region on which to focus, given its ageing infrastructure. The Department of Energy and Climate Change (DECC) regulates the decommissioning of offshore oil and gas installations and pipelines in the North Sea, and is responsible for ensuring projects comply with regulations prohibiting the abandonment of any offshore installations absent specific derogation¹.

What risks might the process of decommissioning entail?

The problem is that the majority of the installations in the North Sea are not designed for removal. As a multi-year, multi-phased and extremely technical process, there are various possible exposures to take into account in decommissioning, and these may be different to the types of risk encountered whilst the installation is operating. The decommissioning process will actually be akin to the construction process in the sense that there will be many contractors involved, all with different roles and bound contractually to the project.

However, in a Construction All Risk policy, a key component is the insurance and replacement of the project works following an insured peril, as the insured seeks to protect physical damage to an installation that is intended to be a profit-making asset. Decommissioning is different: leaving salvage values to one side, the result at the end of the project will be to leave the site in the condition it was in before construction started, and so there are no ‘insured works’ as such. Rather, the risks that will be of more importance to the operator will be damage to third-party property and liability exposures.

It is perhaps the latter that have the most potential for significant claims. The operator will face an appreciable risk of exposure to residual liabilities (including abandonment and environmental pollution) stemming from seepage, pollution and/or contamination as the platform is dismantled and removed.

¹ This includes (subject to individual application) concrete structures and the footing of large steel jackets weighing over 10,000 tonnes. No derogation is available to steel installations constructed after 9 February 1999 (being the date that OSPAR Decision 98/3 came into force).

Additional risks that both an insurer and operator should consider in regards to decommissioning therefore might include:

- liabilities under UK law and international conventions;
- removal of wreck or debris;
- damage to lost property and/or damage to property being removed (in particular where that property might have a salvage value);
- damage to existing property not intended for decommissioning and/or third-party property adjacent to the structures to be dismantled; and
- risks during heavy lifts.

In considering those risks, it is important to bear in mind that, notwithstanding the widespread use of 'knock-for-knock' agreements in offshore contracting, such liabilities can be undertaken not only as a matter of law, but also as part of the contractual arrangements for a decommissioning project.

Insurance solutions

The Standard Club's Offshore Forum held on 13 May 2015 heard from Jeremy Jiggins, the Head of Marine Liability at Marsh, in relation to market covers for insurance of decommissioning risk.

Jiggins explained that, since the infancy of decommissioning, contracts between the operators and contractors have typically been clear from a liability perspective. The point being that basic knock-for-knock contracting makes for simple insurance solutions for all parties and should continue to be preserved. With this in mind, the approach that Marsh has taken is to develop a Decommissioning All Risks (DAR) product which is designed to be a project policy covering all parties for the work they perform without high

deductibles and avoiding the need for contractors to seek additional policies. The DAR policy is intended to be complementary to, and not overlap with, operator's property and liability (including employers' liability) policies on the one hand, and contractors' hull, P&I and employers' liability policies on the other.

'Specialist operations' (heavy lift, etc.) can be insured within the decommissioning project insurance either excess of the limits obtained by the contractor via its P&I club or from the ground up, or these can remain entirely with the contractor's extended P&I coverage and excluded from the project insurance.

Typically, ownership of the decommissioned items remains with the operator until reaching land. Most have limited 'scrap' value only, meaning that the operator can choose to insure during lifting and transit operations without passing unnecessary contractual requirements onto the contractors.

In order to address the nature of decommissioning risk as 'liability led' not 'property led', the DAR policy is not treated as 'reverse construction' but rather needs to be considered as a new class of liability policy.

Conclusion

In summary, there are clearly different risks involved in decommissioning to construction or operation of offshore oil and gas installations. The developing risk profile of decommissioning, and the associated development of insurance coverage to manage that risk, is an area that demands close attention by all stakeholders over the next few years and beyond.