

Circular From STANDARD**Date: 2 September 2022**

Chinese courts say no to unsupported fish farm claims

Background

On 13 November 2019, the M/V 'INDUS TRIUMPH' entered a restricted area in Chinese waters to anchor in strong winds. Subsequently, the owner received claims from two local fish farmers who alleged that their scallop and oyster farms were damaged by the vessel. Both farms were unable to quantify their losses, nor did they have the required marine culture certificate and sea area use certificate.

In an attempt to prove their losses, the farmers prepared statements issued by the local village committee, fish farmer co-operative and other fish farmers. In addition, they had appointed a local surveying firm to issue a report, which asserted that 52 rafts of oysters in the sum of RMB1,621,726.14 (Farmer 1) and 52 rafts of scallops in the sum of RMB1,661,885.16 (Farmer 2) had been damaged by the member's ship. On the basis of the report, the two fish farmers filed claims against the shipowner in The Qingdao Maritime Court ('the QMC').

The shipowner's defence and the Chinese courts' judgments

In the first instance, the shipowner argued that the farms did not have the necessary certificates and that they had not adduced sufficient evidence confirming the boundaries of fish farms and their alleged farming activities.

The QMC, after oral hearings, accepted owners' defences. It held that the two fish farmers failed to prove their farming of oysters and scallops' activities in the alleged areas on the basis that the evidence they had submitted did not confirm any farm activities nor that they had suffered any losses.

The survey report submitted by the farmers in support of their position was found to be inadmissible by the QMC on the grounds that:

- The report did not have any description of how or where the measurements were taken, or how they were calculated.
- The sampling was unregulated, arbitrary, and unrepresentative.
 - There was only one sample point for both the oyster and the scallop farms.
 - It was unclear how many samples were taken.
- The report did not contain any details of the marine culture materials. As such, it was impossible to verify the conditions of marine culture materials alleged to have been damaged.
- No site survey was undertaken by the surveyors. The survey report was prepared based on interviews only.

The claims of both fish farmers were dismissed by the QMC at first instance, due to lack of evidence.

Appeal

The two fish farmers appealed to Shandong High People's Court ("the SHC"). The SHC upheld the judgment given at first instance on the grounds that:

- The two fish farmers had not submitted sufficient evidence to prove the alleged boundaries of the fish farms, or that they actually conducted farming activities in that area.
- Even if the alleged farming activities existed and that the possibility of damages caused by the vessel's entry could not be excluded, it was impossible to verify if, or to what extent the farms had suffered damages given that no survey was performed.

The two fish farmers' appeal was dismissed.

Comments

This case is one of numerous fish farm claims filed before Chinese maritime courts every year. There are a significant number of claims where the fish farmers do not have legitimate certificates for the use of sea area or farming activities, which means their fish farms are technically illegal. However, in practice, Chinese courts usually award the fish farms their claim costs, including rafts, seedlings, and reasonable recovery costs. Loss of income claims are generally dismissed due to fish farms' inability to provide legitimate certifications.

The positive outcome of this case shows that there is room for shipowners to successfully defend unsupported fish farm claims in China. Both the court in first instances and the appeal court held that the local oceanic and fishery bureau should be the only competent authority to provide evidence of sea area use.

Advice

When faced with unsubstantiated fish farm claims, members are recommended to take the following steps post instance and before litigation is commenced:

- The crew to be instructed to take photos of the accident scene in order to obtain a contemporaneous record of the conditions onsite. In particular, the crew should be advised to record whether there is any debris such as lines, nets or floats on the surface of the water?
- Relevant parts of the vessel, especially the propeller, should be checked to see if there are any fish farming materials.
- Record the incident in the ship's logbook and to make reference to weather forecast records before and after the accident.
- Notify your P&I Club so that a surveyor can be appointed to investigate the site where allegedly fish farms may have been damaged.

Under Chinese law, fish farmers are obliged to evidence their losses. If a fish farmer does not have legitimate certificates for sea area use and marine culture, Owners should insist therefore that the farms produce evidence that they proper certification to farm in the area of the alleged fish farm produce evidence supporting their losses. Evidence can be in the form of:

- seedling purchase vouchers
- marine culture ship hire contracts
- labour wage payment vouchers, etc. to prove they conduct farming activities in the alleged areas.

Unsupported claims should be rejected if fish farmers cannot provide sufficient evidence.

Source of Information: The Standard Club