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# ICPC Recommendation

## Recommendation No. 1

### Management of Redundant and Out-of-Service Cables

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**Note:** The presence of a Suffix letter after the Issue number indicates inclusion of updated peripheral information that does not change the wording of this Recommendation.

## Contact for Enquiries and Proposed Changes

If you have any questions regarding this document or suggestions for improving it, please send an email to the ICPC's [general.manager@iscpc.org](mailto:general.manager@iscpc.org)

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## 1. INTRODUCTION

This document provides the ICPC's recommendations in relation to a submarine cable system that is redundant or has been taken out of service, hereafter collectively referred to as an "OOS Cable". The recommendations are given in 3 parts as follows:

2. OOS Cables - Planning Considerations
3. OOS Cables - Removal Considerations
4. OOS Cables – Salvage Considerations

## 2. OOS CABLES - PLANNING CONSIDERATIONS

To promote best industry practice and facilitate a good working relationship with other seabed users it is recommended that:

- 2.1. the drafting of new construction and maintenance agreements provides for the recovery of limited lengths of the cable after it has been taken out of service.
- 2.2. when constructing a new cable following a route in the vicinity of an OOS Cable, the owners of the new cable shall, in agreement with the owners of the OOS Cable, arrange for the recovery of those sections of the OOS Cable that are required to clear the new route. *NB: A 1,000 metre wide corridor is typically required, but actual size will be dependent on local operational conditions.*
- 2.3. the above principle should be followed when approached by other seabed users who wish to install subsea plant or extract seabed material in the vicinity of an OOS Cable.
- 2.4. all cable recovery operations are planned to minimise future interference to other seabed users by leaving remaining cable, if possible, in no worse condition than it was prior to the recovery. This may be achieved by weighting the cable ends with clump weights or chains and lowering to the seabed on slip ropes while maintaining tension on the cable – attached diagram refers.

## 3. OOS CABLES - REMOVAL CONSIDERATIONS

Under UNCLOS and customary international law, there is no requirement for the removal of OOS Cables. If a coastal nation requires removal of undersea cables outside its territorial seas, cable owners should request the jurisdictional basis for such a requirement. In the absence of a valid jurisdictional basis, such a requirement is a violation of international law and may be challenged.

Because there is no international requirement, removal of OOS Cables beyond territorial seas is primarily a decision made by cable owners.

### 3.1. Pre-Decision Factors

Factors which cable owners should consider in deciding whether to remove an OOS Cable include the following:

- 3.1.1. The salvor has the complete responsibility of direct notification of the owners of cables impacted by the salvage operation. While details of recovery are responsibility of the owner or salvor, notification of the ICPC Secretariat is an efficient aid in communicating to the industry. Notification of ICPC

Secretariat does not absolve the interested party of the responsibility of negotiating impacts with infrastructure in the vicinity but can be a useful aid in ensuring sea bed users of information. Notification by the salvor should include verification that contact with owners has been completed (this is not the responsibility of the ICPC). Notification information should be passed to the ICPC at least four (4) weeks in advance of planned operations as a courtesy and prudent practise.

- 3.1.2. Any potential effect on the safety of surface navigation or other uses of the sea including a comparison of whether removal is reasonable or realistic given the presence of other manmade objects on the seabed such as shipwrecks, debris, and oil and gas structures and installations.
- 3.1.3. Present and possible future effects on the marine environment. If the cable is composed of material that is inert or environmentally benign, consideration should be given to leaving the cable in place.
- 3.1.4. The risk that the cable will significantly shift position at some future time.
- 3.1.5. The costs and technical feasibility associated with removal of cables.
- 3.1.6. The determination of a new use or other reasonable justification for allowing the cable or parts thereof to remain on the sea-bed.
- 3.1.7. The comparative environmental impact of leaving the cable in place compared to the disruption caused by attempting to remove the cable.
- 3.1.8. The management of out-of-service cables as part of the cable protection program.
- 3.1.9. The potential socio-economic & economic benefits of recovering the cable.
- 3.1.10. Any recovery operations in deep sea mining concessions awarded by the International Seabed Authority (ISA) should include express notification of both ISA and the mining contractor.

### **3.2. Post-Decision Factors**

If the decision is to retain a redundant cable for future use or to leave an out-of-service cable in place, cable owners should consider implementation of the following:

- 3.2.1. Notification to International & National charting authorities that the cable is no longer in service.
- 3.2.2. Notification to local fishermen and other seabed users of the change in status, and confirmation that any future claims for sacrificed fishing gear will be considered on their merits.
- 3.2.3. Confirmation that the cable owner remains responsible to any party by insurance cover or otherwise for the OOS Cable.
- 3.2.4. Consideration of alternative uses for the cable such as donation to a scientific research body.
- 3.2.5. Notify the ICPC Secretariat to allow updating of the cable database.

## 4. OOS CABLES - SALVAGE CONSIDERATIONS

Third party efforts to salvage OOS Cables have occurred. The major salvage motivation appears to be recovery of copper and other commercially valuable components. Cable owners considering salvage offers should be aware of applicable principles of maritime law.

The fact that a cable is OOS does not change the ownership responsibilities, rights, and obligations. Under maritime law, third party salvors have no title to the cable or rights to salvage cables without the permission of the legal owners of the cable system. Maritime courts have interpreted permission to be explicit and generally in writing - it is not lightly inferred. This requirement is especially rigid with respect to deep-stowed OOS military cables where the owner is a sovereign State.

Recovery of a cable by a third party without the owner's permission is conversion and any proceeds belong to the cable owners along with a claim for damages. Damages for negligent salvage include increased risk of the cable owners by unauthorized or incompetent salvors that have selectively picked easy to recover sections of a cable while leaving other sections with "bird cages" and cable displacement that exposes the cable owners to increased risk for indemnity claims for sacrificed anchors or fishing gear and/or damage to the marine seabed environment.

Cable owners who decide that salvage is warranted should carefully negotiate a salvage contract with a reputable salvor that ensures (1) proper equipment and trained crew are used, (2) any cable segments left on the seabed are carefully documented and properly capped or terminated with a clump weight, (3) all cable components are disposed of in an environmentally sound manner, (some cable owners are bound by state treaties which require specific environmental actions on the part of owners or salvors under certain circumstances) and (4) the salvor has marine salvage liability cover that lists the cable owner as an assured for third party claims caused by negligent salvage (Salvor's liability extension cover is normally part of the salvage vessel's hull and machinery or P&I marine insurance policies). Advice by experienced admiralty counsel before entering into salvage contracts is recommended because salvage law and marine insurance are not normally a core competence of many cable owners.

In the case of cables that may be abandoned – some telegraph cables, third parties may obtain title to the cables through an admiralty proceeding in a court of competent jurisdiction. The third party must demonstrate to the court that despite reasonable efforts, the owners of the cable are no longer in existence, not traceable or have explicitly renounced their interests in the cable. In many cases, however, historical review of even telegraph cables will determine that the interests of the original owners have been assumed by successor companies in current existence. If an admiralty court determines a cable is abandoned, title of the abandon cable is vested in the third party who can then proceed to recover the cable.

## 5. REFERENCES

Document Number	Title
137 Journal of Maritime Studies 22 (July/August 2004)	The Legal Status of Out-of-Service Submarine Cables
Schoenbaum	Admiralty and Maritime Law, 4 <sup>th</sup> Ed. (2001), Chapter 16 [Salvage] (General information on the laws of salvage and finds)
Submarine Cables: The Handbook of Law and Policy – Publishers: Chapter 8, Out-of-Service Cables Martinus Hijoff (2014)	

## 6. DEFINITIONS

The following words, acronyms and abbreviations are referred to in this document.

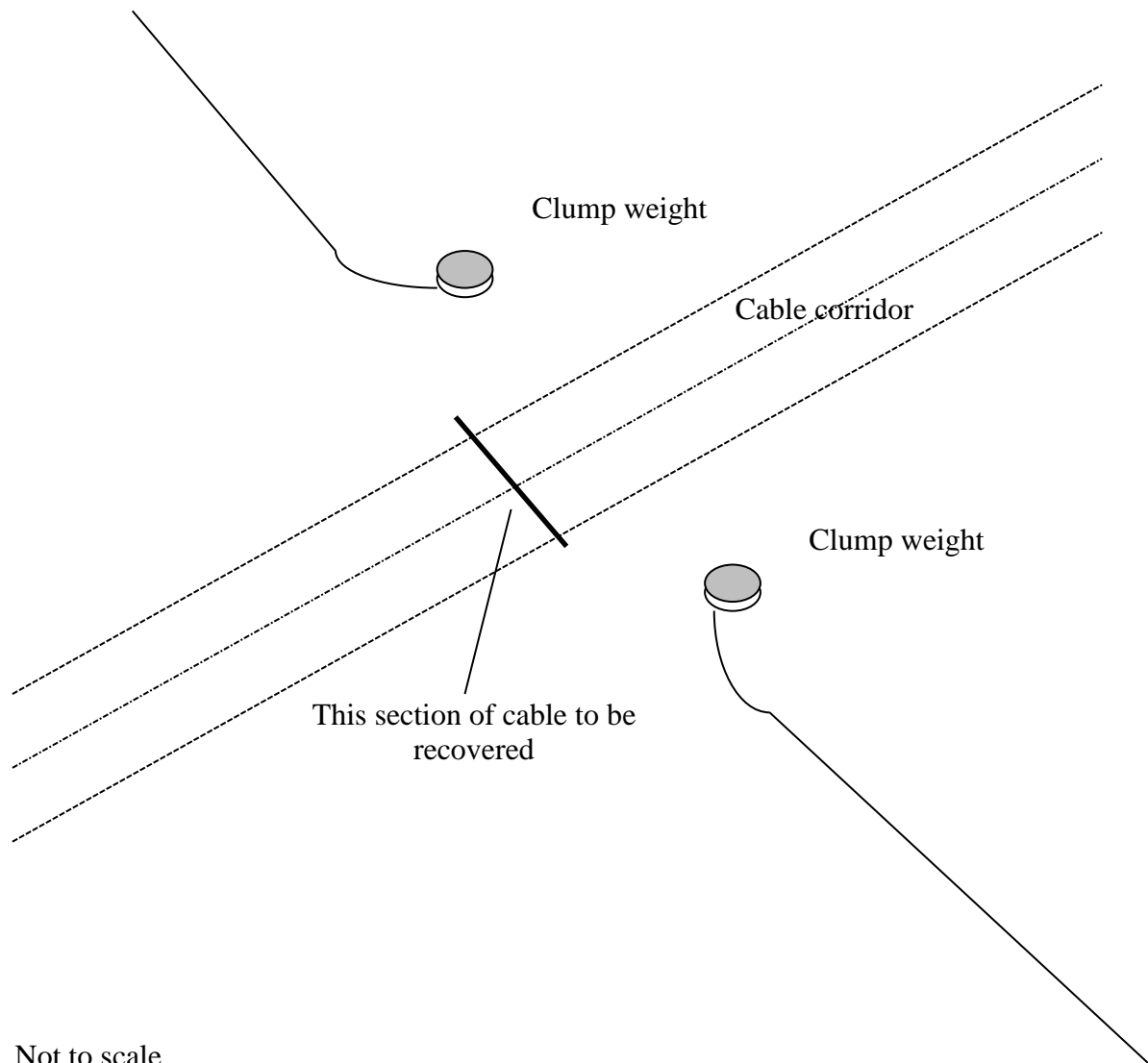
Term	Definition
<b>Bird Caging</b>	Bird caging is caused when an armoured cable is cut or damaged and the armour wiring is mechanically cut. The tightly wound armour wire is then released and spreads out to form a birdcage shape. Bird caging increases the risk of fishing gear snags. Bird caging is avoided by capping a cut cable or attaching clump weights following standard cable industry practices.
<b>Redundant Cable</b>	The status whereby a submarine cable is temporarily not in service, prior to re-use or eventual decommissioning.
<b>Hull &amp; Machinery Policy</b>	Marine insurance on the vessel and its machinery for loss, damage, salvage charges, collision, general average and expenses associated with these claims or their avoidance.
<b>Out-of-Service</b>	The status where a submarine cable is part of a decommissioned telecommunication or electrical transmission system and not required for future use as part of such a system.
<b>Protection and Indemnity (P&amp;I) policy</b>	Marine insurance for risks not covered by the hull & machinery policy including contractual liabilities and claims by third parties and their legal defence.
<b>UNCLOS</b>	The United Nations Law of the Sea Convention (1982) (Articles 21, 51, 58, 78, 79, 87, 112-115, and 297 deal with submarine cables)

## 7. ATTACHMENTS

Document Number	Title
-	Diagram

**DIAGRAM**

Treatment of cable ends when recovering sections of out-of-service cables for pipeline or cable crossing.



The clump weights shall be concrete discs, typically 0.5 metres diameter by 0.2 metres thick, or other thin sectioned weights, alternatively chain may be used. The object of the weight is to minimise risk of fastening to fishing gear.