

Polar Code implementation in Canada

Aldo Chircop

Canada Research Chair in Maritime Law &
Policy

Marine & Environmental Law Institute

Dalhousie University, Canada

Outline

Introduction

Canadian arctic governance
context

Inputs into PC development

PC implementation in Canada

Post-PC cooperation

Conclusion

1. Introduction

Arctic Marine Shipping Assessment, 2009:

Called for cooperation to develop Polar Code at the IMO

Called for harmonization of national regulations

PC adoption/implementation:

Tacit acceptance of SOLAS and MARPOL amendments

For most states, implementation started from a clean slate

For Canada (and RF), there was need to consider the impact on existing polar shipping regulation

Canadian implementation:

Arctic Shipping Safety and Pollution Prevention Regulations (effective 19 December 2017)

2. Canadian arctic governance context

AWPPA, 1970; UNCLOS III & LOSC, 1982/Article 234; MARPOL declaration

Canada Transportation Review & Act, 2016

Clarke statement on sovereignty over the waters of the Arctic archipelago, 1985

Canada-US Arctic Leaders' Summit, 2016 (indigenous interests, protection of last sea ice, corridors, etc) – leading to development of new Arctic Policy

Canada Shipping Act, 2001 & NORDREG, 2010; ASSPR, 2017; Harper 'use it or lose it' policy

Truth & Reconciliation Commission, UNDRIP & PM Trudeau's re-engagement with indigenous peoples

Work with IMO; major proponent of Arctic/Polar Guidelines & Polar Code, 2002-2015; ; work with Arctic Council since 1996

3. Inputs into Polar Code development

Canada had extensive experience in polar shipping regulation and thus played an active and facilitative role

Expected a code with standards close to Canadian standards

Use of Polar Guidelines (2009) as a starting point and to couch these into mandatory standards

A stand-alone code, integrated approach, building on existing instruments, but with certification/training best left to STCW

Strong focus on human factor and guidance for vessel operation

Canada submitted at MSC, MEPC, DE/SDC and HTW circa 30 proposal, commentary, discussion and information documents

Canada's opening position was set out in Proposed Framework for the Code for Ships Operating in Polar Waters submitted by Canada (DE 53/18/2, 2009)

Where Canadian expectations met?

Most expectations were met

Unmet expectations:

General: an approach that would capture all ships

Safety (especially human factor concerns):

Requirement for an ice navigator on board in addition to the crew, where there is no experienced ice navigator on board, with defined minimum certification and experience in actual ice navigation (both a PC and STCW amendment disappointment)

PWOM content still needs work

Pollution prevention:

Canada originally proposed an environment protection, rather than more focused pollution prevention approach

Pollution prevention based on zero discharge: did not quite work out

BWM (mandatory deep ocean exchange, treatment with a system approved and tested for effectiveness at the lowest temperature): ended up in Part IIB instead of IIA.

Hull fouling (mandatory in situ cleaning of hull and sea chests): ended up in Part IIB instead of IIA.

Protecting existing regulation, as needed

Canada was concerned the PC would not fully reflect its concerns (especially environmental) and wanted to make sure consistency with its exercise of Article 234 legislative jurisdiction

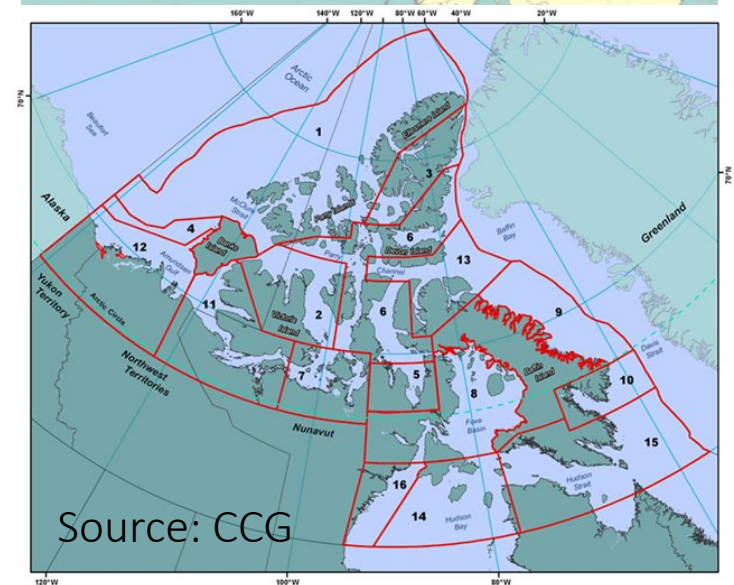
The 'saving clause':

SOLAS, Chap XIV, reg 2: "Nothing in this chapter shall prejudice the rights or obligations of States under international law."

MARPOL, art 16: "Nothing in the present Convention shall prejudice ... the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction."

4. PC implementation in Canada

- Replacement of former Arctic shipping regulations
- Development of ASSPR under AWPPA and CSA, 2001:
- Safety provisions
- Pollution prevention provisions
- Scope:
 - Canadian vessels navigating in polar waters
 - Foreign vessels navigating in a SSCZ
 - Canadian arctic waters (internal, territorial sea, EEZ) (north of 60)



PC Implementation: (a) safety provisions

All safety aspects of PC referentially incorporated; new safety-related matters added/retained.

Safety rules apply to SOLAS certified cargo and passenger vessels of 500 GT+; other vessels of 500 GT+ other than fishing vessels, pleasure craft, and vessels with no mechanical propulsion

Key features of the zone date system, SSCZs & AIRSS ship regime system kept for existing ships (for old ships); POLARIS (similar to AIRSS; potentially produces slightly different outcomes) for new ships

Methodologies for vessel operations in ice (revised ice navigation manual)

Transitional requirement for ice navigator required if vessel using AIRSS; required if non-SOLAS vessel

New STCW rules applicable to master/officers commence to apply (Ship Safety Bulletin re requirement of sea ice time and grandfathering until 2020).

New Canadian ships have to have low temperature notation.

PC
Implementation:
(b) pollution
prevention
provisions

Somewhat more divergence here as a result of AWPPA zero discharge rule: select operational and structural pollution prevention measures implemented

ASSPPR pollution prevention rules apply to all ships

Annex I:

Retained the absolute zero discharge of oil, whereas Annex I amendments appeared to permit discharge of trace oil

Only clean ballast is permissible ('0')

Annex II:

Noxious liquid substances, same as PC

Annex IV:

Sewage same as PC (actually higher in PC)

Annex V:

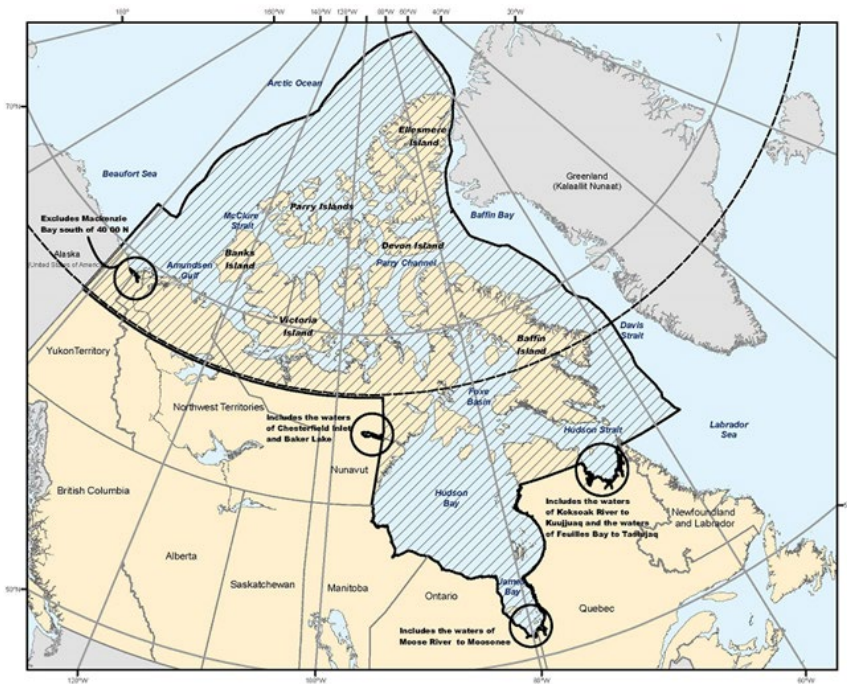
Garbage same

Mandatory reporting

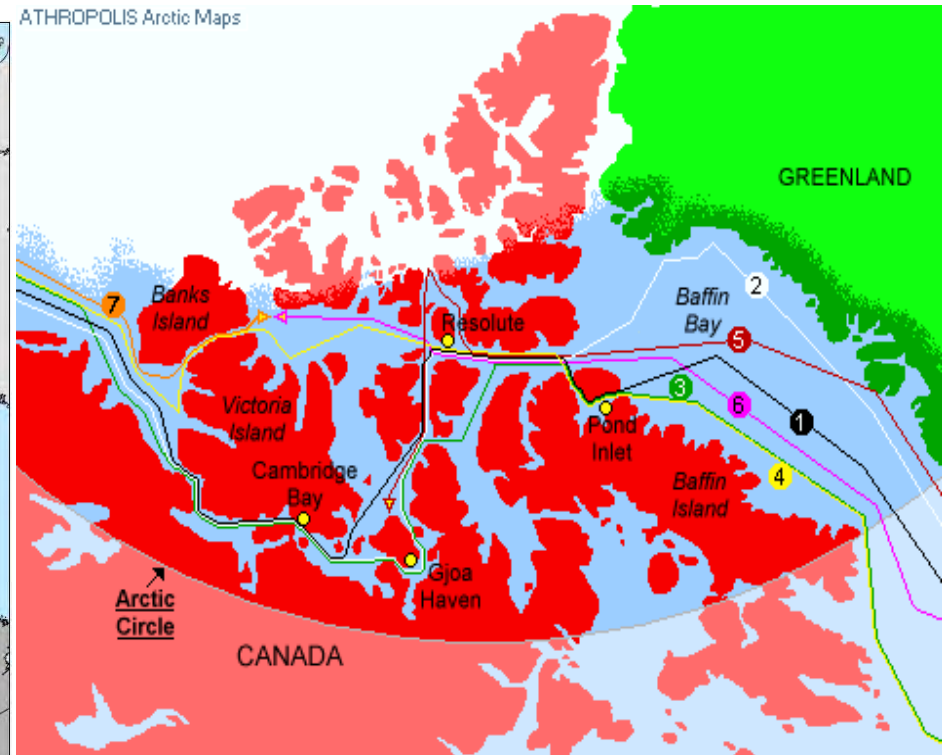
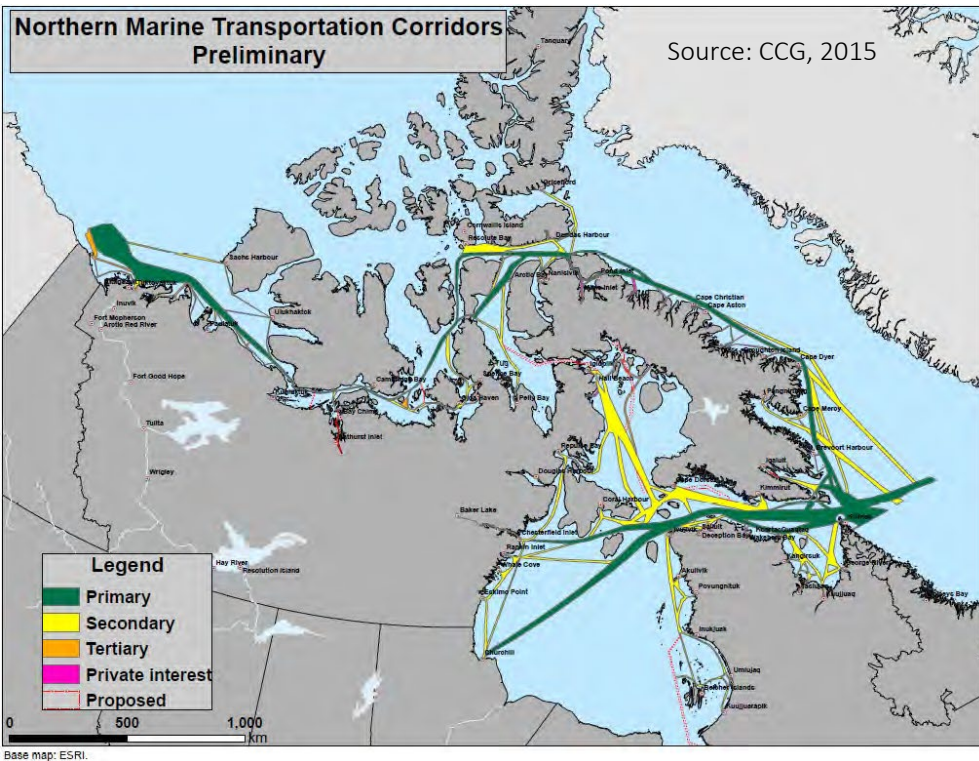
Northern Canada Vessel Traffic Services Zone Regulations (NORDREG):

- Scope: vessels of 300 GT +, vessels engaged in towing or pushing another vessel where the aggregate tonnage is 500 GT +, vessels transporting pollutants or dangerous goods as cargo or towing or are towing or pushing such vessels
- Must report to the Marine Communications and Traffic Services center of the CCG
- Before entering, during passage, before exiting Canadian Arctic waters

NORDREG left intact



Low impact corridors under development



- Corridors to be designated where mariners will be able to depend on services.

- Corridors will not all coincide with all hypothetical NWP routes

5. Post-PC cooperation

Arctic Council:

PAME (e.g., coordinate on IMO initiatives, study on corridors best practices, arctic shipping best practices information forum, etc)

EPPR

IMO:

PC extension to non-SOLAS ships (fishing vessels >24 m; pleasure yachts above 300 GT+ not engaged in trade; cargo ships 500-300 GT)

Carriage and use of heavy fuel oil (HFO)

Regional approach to port-reception facilities

Other: under water noise, grey water

Arctic Coast Guard Forum:

Operationalizing cooperation (e.g., SAR agreement)

6. Conclusion

Significant shift towards greater convergence:

Canada > IMO?

IMO > Canada?

Continuing role of Article 234 as a platform for 'incremental' rules (i.e., building on existing international standards; non-discriminatory; science-based)

