

Arctic marine pollution response in the “New Ocean” - The most pressing work for the Arctic Council

BY K. JOSEPH SPEARS



The Arctic Ocean Basin continues to see sea-ice diminish and thin on an ever increasing basis, outstripping the scientific predictive models. 2012 was another record year. Recent scientific studies have shown that melt water on the surface of the sea-ice is allowing more sunlight to penetrate, warming the underlying seawater creating another positive feedback loop increasing the already rapid rate of melting. Ice-free in the Arctic Ocean does not mean there will be no ice: the ice will be broken up and allow for increased commercial shipping activity. This in turn increases the economic feasibility of many of Arctic resource development projects which previously were not feasible because of the high costs of shipping using specialized icebreaking and ice-strengthen cargo vessels. In the Arctic, less ice means there will be increased destination shipping as well as in-transit shipping. With increased shipping, there is increased risk of accidents causing pollution, which is why there is an urgent need for a robust marine pollution response capability in Arctic waters. This article will provide the reader with an overview of the issues and possible outcomes, and will examine the active role that the Arctic Council is taking on these issues and Canada’s leadership role on this subject.

Arctic SHIPPING



Photo: Carol Launderville, Fisheries and Oceans Canada

The Canadian Coast Guard's Environmental Response program provided training in pollution response in Resolute Bay, Nunavut.

Last summer saw the Chinese icebreaker Snow Dragon (Xue Long) transit the Russian Northern Sea Route to Iceland, returning to Shanghai across the top via the North Pole on a transpolar route. While this icebreaker is the second largest non-nuclear power icebreaker in the world, a few years ago an Arctic voyage would not have been possible with this vessel because of the multi-year ice conditions in the Arctic Ocean Basin, which would have been a physical barrier to all but the largest Russian nuclear powered icebreakers.

Given the potential increasing shipping activity, the Arctic Council has made it a priority to develop an international regime to increase response capability to combat marine pollution incidents in Arctic waters. The model being put forward for international pollution response is the recent international search and rescue (SAR) agreement that was concluded by the Arctic Council States in 2011. This agreement entitled Agreement on Cooperation in Aeronautical and Maritime Search and Rescue in the Arctic was signed at the Ministerial Meeting in Nuuk, Greenland in May, 2011 and is the first international instrument developed by the Arctic Council.

The Arctic Council created in 1996 is a governmental multilateral organization made up of Arctic nations and indigenous peoples, and was originally created as a forum to develop cooperation around Arctic issues. The Arctic Council's eight members include: Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden, and the United States. Non-Arctic countries and organizations have sought observer status at the Council as its mandate has expanded. China seeking observer status at the Arctic Council has generated a great deal of attention in the world press. There is no set protocol for becoming an observer. The interest of non-Arctic states highlights the growing importance the world's governments place on the work of the Arctic Council which is expanding its role to deal with governance issues. Countries want a seat at the table and have a voice in how the Arctic is going to be managed, and non-Arctic nations don't want to be left out of the discussion. In recent

years, the Arctic Council has taken a more operational focus on technical matters to develop the regimes around commercial activities such as shipping which normally has been the purview of the International Maritime Organization (IMO).

Chairmanship of the Arctic Council alternates between the Arctic states. Canada assumes the leadership of the Arctic Council in 2013 for a two year term followed by the United States in 2015. Canada recently released its position on Arctic development and its approach to the chairmanship of the Arctic Council. Canada's approach was set out in the comments of incoming Canadian Arctic Chair, the Honourable Leona Aglukkaq, M.P.'s at the Arctic Frontiers: Geopolitics & Marine Production in a Changing Arctic conference in Trømso, Norway on Monday, January 21, 2013. Attending the conference were over thousand participants, including politicians, industry representatives, decision-makers, and leading scientists from around the world. Ms. Aglukkaq stated Canada will focus its approach on sustainable economic development of the Arctic. Minister Aglukkaq went on to state in her speech:

"With the help of our Arctic Council partners, we will focus on creating economic growth, strong and sustainable Northern communities and healthy ecosystems ... However, this development must be done in a responsible and environmentally sustainable manner so that the land, water and animals that many Northern people still depend upon, are not negatively impacted."

An oil spill from one of the many ships that will soon be crossing the Arctic waterways as the shipping season extends, could have serious consequences for the environment and the livelihoods of Northern people. Canada foresees the development of guidelines for Arctic tourism and cruise ship operators."

What is clear from these comments is that it is a priority for Canada to develop safe Arctic shipping, which will continue to be at the forefront of the work of the Arctic Council. In the past, Canada has

played a key role in Arctic Council's Arctic shipping assessment as well as the development of Polar Code at the IMO. Aglukkaq said Canada will continue the Arctic Council's work on oil spill prevention in the Arctic.

Similar comments were echoed by the Lt. Gov. of Alaska, Mead Treadwell, a well-respected Arctic expert who stated: "This is the age of Arctic shipping the great explorers dreamed of. We have been given a new ocean of possibilities - and dangers - and we need to do everything we can to prepare for both." In his remarks entitled, "Safe, secure and reliable at sea: the geopolitics of the new ocean" the lieutenant governor called for contingency planning requirements for itinerant Arctic shipping. Treadwell applauded Alaska's ongoing work towards safe shipping, including oil spill prevention and response agreements and voluntary contingency planning.

Coastal states are responsible for oil spill response under the Law of the Sea Convention. This is found in the national legislation. Parts 15 and 16 of the Canada Shipping Act, 2001, sets out the Canadian requirements with respect to pollution response. In addition, the Arctic Waters Pollution Prevention Act which was a controversial and forward-looking piece of legislation when it was enacted in 1970, governs Canadian Arctic waters. Canada advocates the polluter pays principle which holds that the shipowner is liable for responding to ship source pollution. South of the 60° parallel, Response Organizations have been set up under Canadian legislation to respond to a 10,000 ton oil spill. North of 60 degrees, the Canadian Coast Guard is the response organization for ship source oil pollution.

In addition, Canada is a member of the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, which serves as a framework for countries to work together with respect to marine pollution and was developed under the auspices of the IMO. All eight members of the Arctic Council are signatories to this convention. This international convention recognizes that ship source marine pollution does not recognize boundaries, so countries and vessel owners and operators must work together. This agreement also recognizes the importance of multilateral agreements and arrangements including regional conventions which are set out in article 10. The work of the Arctic Council is critically important in the Arctic Ocean Basin where there is a perceived and real lack of response capability, and very little infrastructure to respond to pollution incidents. For that reason, it is critical that Arctic nations share expertise, equipment and other resources, and the new agreement will provide legal certainty for future response. It is an excellent first step.

In the Nuuk Declaration dated May 12,



HMCS Montréal sails off the coast of Grise Fiord.

Photo: Cpl Rick Ayer

2011, Arctic Council member states decided to establish a task force, reporting to Senior Arctic officials to develop an international instrument on Arctic marine oil pollution prevention and response, and called for groups dealing with emergency prevention preparedness and response and other relevant working groups to develop recommendations and best practices for the prevention of marine oil pollution. The goal was to have this available at the next ministerial meeting in 2013. The Arctic Council recognizes that while it has developed various oil-related emergency response initiatives, there was no specific marine oil pollution response instrument in the Arctic and one is clearly needed. The agreement will be called Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic. Work has been moving forward and a great deal of work has been done including an operational manual, which sets out the interaction between nations dealing with marine pollution incidents in the Arctic.

Anton Vasiliev, the Russian ambassador at large for Arctic Co-operation who chaired the recent fifth rounds of talk in Reykjavik, Iceland on October 16, 2012 dealing with the legal instrument stated:

"There are many challenges in responding to oil spills. The Arctic Council has done a very good job of analyzing the peculiarities of the behavior of oil in these harsh, Nordic conditions and has concluded that fighting oil spills in the Arctic will be a technically more difficult task than fighting oil spills elsewhere.... It is a new issue because in the past, the hydrocarbon riches of the Arctic were protected by ice, harsh climate and were inaccessible."

As I stated last year in the 2012 Arctic edition of Canadian Sailings, Canada, as an Arctic nation, Canada can play a key role and build on its long-standing experience with

respect to Arctic shipping. Sustainable economic development of the Arctic requires a robust response capability where there is presently very little infrastructure. Incidents in the Canadian Arctic can and will happen, and one only has to look at events of 2010 when the cruise ship Clipper Adventurer as well as the Canadian tankers Nanny and Mokemai ran aground in the Arctic. In all of these cases, the Canadian Coast Guard was front and center in responding to these incidents. We need to have the necessary command and control contingency planning exercises, coupled with a robust risk management approach and Polar Code to prevent Arctic oil spills. The Arctic Council's agreement on Marine response in the New Ocean coupled with the SAR agreement is a good first step and provides a solid foundation and framework for the Arctic countries working together in cooperation ensuring best practices in a uniform response regime. The private sector and vessel owners and operators have a key role to play in implementing this legal instrument. The Arctic Council under Canadian leadership can further strengthen and address these shipping governance issues with private sector input. The development of a robust marine response capability can serve as the basis of solid sustainable economic development in the Arctic, and also protect the marine environment. Canada can lead thinking on this subject which it has done since the 1970s. What is old is new again in the Arctic, "the world's New Ocean".

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