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The Polar Code and the Arctic

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Navigation in Arctic waters can be difficult and hazardous due to a several reasons, including the presence of sea ice, extreme cold, remoteness, poor visibility, darkness, lack of infrastructure, and lack of charts. Additionally, shipping poses numerous environmental risks to the marine environment. These would include oily wastes during normal operations, a spill of noxious (poisonous/chemical) substances, sewage and grey water release, a wide range of garbage discharge from onboard operations, air pollution, ballast water discharge, noise from operations, and ship strike to marine mammals. These environmental risks posed by shipping may be exacerbated in Arctic waters due to the difficulty of monitoring pollution incidents or attending pollution sites Therefore, specific regulations for Arctic shipping were necessary.

Maritime shipping regulations set forth by the International Maritime Organization (IMO), the only UN agency with the power to establish international rules and standards for the shipping industry, were designed for general marine transportation taking place on the ice-free open waters. Therefore, they were not addressing problems associated with polar shipping. For example, IMO's shipping regulations applicable to the Arctic Ocean simply consisted of several non-mandatory provisions and guidelines.

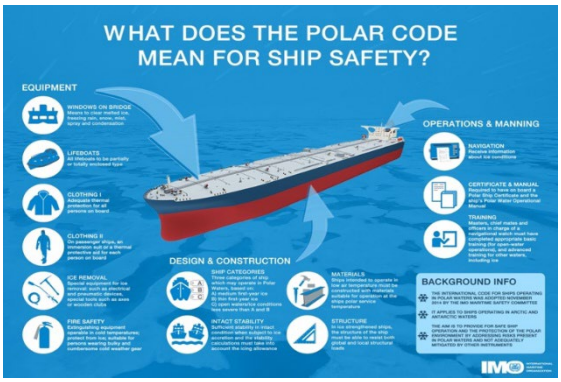
The creation of polar-specific navigational rules did not happen overnight. The effort for such a legal instrument extends back to the early 1990s, and it is the result of initial efforts mutually put forth by several nations, including Germany and Canada because they were the initial maritime States raised the issue for IMO to consider specific regulations for the region.

IMO first developed a set of voluntary guidelines titled "IMO Guidelines for Ships Operating in Arctic Ice-Covered Waters" and approved it in 2002. But being a voluntary instrument, this solution did not produce the desired outcome. Therefore, in 2017, IMO created its first mandatory shipping rules for the "Arctic waters" which are defined as waters captured by the meridian north of 60 degrees, with adjustments off Greenland, Iceland, and the Barents Sea to reflect polar ice limits. And this legal instrument is called the

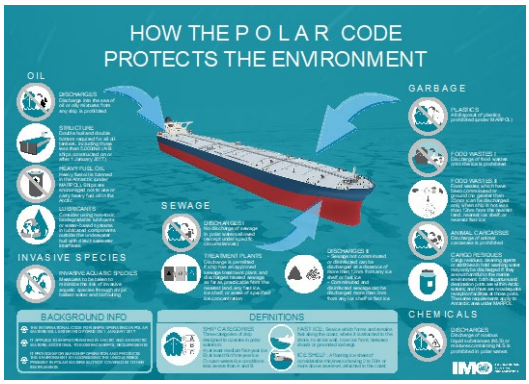
"International Code for Ships Operating in Polar Waters" (Polar Code). Polar Code is also considered one of the first proactive legal instruments created by the IMO as the UN agency has traditionally been reactive in its approach to regulating maritime shipping assome of the major IMO legal instruments are created as a reaction to major maritime incidents. For example, the International Convention for the Safety of Life at Sea (SOLAS) is created as a reaction to the Titanic.

IMO was only able to accomplish this by consulting for instance with the Arctic Council, which through its reports and recommendations, such as the Arctic Marine Shipping Assessment (AMSA) Report, helped shape the Polar Code.

The Polar Code is intended to cover the full range of shipping-related matters relevant to navigation in polar waters: ship design, construction, and equipment; operational and training concerns; search and rescue; and, equally important, the protection of the unique environment and eco-systems of the polar regions. It contains safety provisions in the mandatory Part I-A and non-mandatory Part I-B, and pollution prevention provisions in the mandatory Part II-A and non-mandatory Part II-B. Together, the parts set out new international minimum standards for polar shipping. The approach to regulation is risk and goal-based, particularly with respect to safety standards, but also prescriptive with regard to pollution prevention standards.



Polar Code Safety Measures



Polar Code Environmental Protection Measures

The Polar Code is not a self-standing convention, but a set of amendments to three existing IMO Conventions regulating safety, marine protection, and crew competence aspects of international marine transportation. These

Conventions are the SOLAS, the International Convention for the Prevention of Pollution from Ships (MARPOL), and the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW).

The Polar Code covers both Arctic and Antarctic waters, and its application would include passenger and cargo ships over 500 gross tonnes engaging on international voyages, which for the time being, excludes non-SOLAS vessels, including fishing vessels and pleasure craft.

Some of the key provisions of the Code would include the polar ship certificate (PSC), which attests that the ship complies with the Ship safety requirements, polar service temperature (PST) standard, a risk-based navigation system (known as POLARIS), variable application of rules to ship categories (A, B, C) based on operations under different ice concentrations, and a requirement for onboard polar water operating manual (PWOM), whose goal is to provide the owner, operator, master and crew with sufficient information regarding the ship's operational capabilities and limitations in order to support their decision-making process.

Polar Code provides supplementary rules to general IMO maritime rules on pollution prevention from oil, noxious liquid substances (NLS) carried in bulk, sewage, and garbage and additional guidance for oil, NLS carried in bulk, garbage, ballast waters, and biofouling.

Controversial Heavy Fuel Oil (HFO) use or carriage is not banned by the Code, but non-mandatory guidelines include a provision that refers to Regulation IX/43 of MARPOL Annex I.62 which bans the carriage of HFO in bulk as cargo, ballast, or for use as fuel.

Overall, the Polar Code is a major achievement for polar shipping as it mitigates the risk involved in polar operations and helps protect the marine environment. However, it is also important to realize that the Polar Code is a first-generation instrument that represents the bare minimum that parties managed to come to a mutual understanding and consensus. Its provisions will be reviewed and updated by IMO from time to time as lessons are learned. Additionally, under the concept of 'generally accepted international rules and standards (GAIRAS), coastal States are also free to have more stringent rules

in their jurisdiction. Lastly, exceptional power provided to coastal States via UNCLOS Article 234 is also a tool to use in case further regulatory measurement is needed.

For more on this, read…

Chircop A, 'The Polar Code and the Arctic Marine Environment: Assessing the Regulation of the Environmental Risks of Shipping' (2020) 35 The International Journal of Marine and Coastal Law 533

International Maritime Organization (IMO), International Code for Ships Operating in Polar Waters (Polar Code), https://www.imo.org/en/ourwork/safety/pages/polar-code.aspx.

Basaran I, 'The Future of Arctic Navigation: Cooperation between International Maritime Organization and Arctic Council' (2017) 48 Journal of Maritime Law and Commerce 35