

Q & A Briefing
Incorporating Arctic Indigenous Peoples Perspectives in International Maritime Law
Arctic Indigenous Representation at the International Maritime Organization

Globally, shipping is a major contributor to greenhouse gas emissions, transfer of invasive species, discharges and other environmental impacts. At the same time, shipping is central to current arctic economies and may present future economic opportunities. Increased shipping may significantly affect specific waters, food security, subsistence activities, water quality and wildlife. Arctic communities, arctic food security, and Indigenous Peoples' cultures stand to be impacted by increased shipping.

Many issues and concerns surrounding increased shipping are discussed across multiple regional, national, and international government bodies. However, the International Maritime Organization, a specialized agency of the United Nations, is the only agency which sets international maritime law.

With increased international vessel transits through Arctic waters, there is a need to set standards that protect the livelihoods of Arctic Indigenous Peoples. However, **there is a glaring lack of direct input or independent representation by Arctic Indigenous Peoples in creating or advising international maritime law for the region.**

Below please find questions regarding the International Maritime Organization (IMO) and participation.

Q: What is the current status of input by Arctic Indigenous Peoples into international law created by the IMO?

A: No independent organization currently represents Arctic Indigenous Peoples at the IMO.

Several Arctic Indigenous Peoples representatives in past years have attended IMO meetings as members of the Canadian delegation and as members of several Non-Governmental Organization delegations (NGOs).

In October 2016, several Arctic Indigenous Peoples representatives from Alaska, Canada and Russia addressed the IMO. The panel discussion was well attended and it was the first time that the IMO had been directly addressed by Arctic Indigenous Peoples. Attending as members of NGO delegations, they were also able to speak to papers under consideration concerning food security in the Arctic. The representatives also met with the IMO's Secretary General and his staff, as well as several member state delegations, including the United States and Canada.

In March of 2017, during a meeting of the Arctic Council, the Arctic Council Permanent Participants met with the IMO Secretary General in Juneau, Alaska.

IMO member states and the IMO Secretary General are highly interested in Arctic Indigenous Peoples concerns. Presently, there is no independent representation by Indigenous Peoples organizations or governments in any IMO process.

Q: What issues are important to Arctic Indigenous Peoples are currently under consideration at the IMO?

A: Matters of regional impact and global matters which affect the Arctic are both under active consideration.

Matters of interest to the Arctic under current consideration include developing Arctic regulations for **heavy fuel oil** which poses a catastrophic risk if spilled. The IMO is also developing rules for the requirement that ships **avoid marine mammals** in the Arctic.

IMO issues of global interest that may also be of interest to Arctic Indigenous Peoples include **regulating greenhouse gases and black carbon**, both contributors to climate change. If international shipping were a country, it would be ranked as the sixth largest polluter between Japan and Germany. Other issues being presently addressed by IMO that may impact food security of Arctic Indigenous Peoples include **underwater noise and invasive species**. Arctic Indigenous Peoples may identify other issues of concern, and the best way to identify these would be to participate in the IMO process.

Q: Who is allowed to attend the IMO?

A: All attendees must be part of a credentialed delegation. Delegations include the 172 member states as well as 79 Non-governmental Organizations (NGO) and 64 Intergovernmental Organizations (IGO) with observer status.

Currently, if Arctic Indigenous Peoples representatives wish to participate at the IMO, they could request to attend as a member of their country's delegation or as a member of an observer organization.

<http://www.imo.org/en/About/Membership/Pages/NGOsInConsultativeStatus.aspx>

<http://www.imo.org/en/About/Membership/Pages/IGOsWithObserverStatus.aspx>

Q: What are the options for creating an independent Arctic Indigenous Peoples organization?

A: An existing international Indigenous Peoples organization could apply for consultative status as either a Non-governmental Organization or enter into an agreement with the IMO as an Intergovernmental Organization (IGO).

The IMO accepts applications for NGOs once per year. Applications are generally due by March 31 and reviewed in June.

The IMO may enter into agreements of cooperation with other Intergovernmental Organizations. The IMO Council can provisionally approve this agreement which is later approved by the IMO Assembly which meets every other year.

Q: Who pays for observer organizations?

A: There is no membership fee to become a member of the IMO, but organizations must cover all costs of participating. This includes people's time, travel costs and per diem.

Q: How much influence do organizations with observer status have at the IMO?

A: Organizations with consultative status have significant potential to raise and move forward important issues including several recent examples in arctic maritime policy.

Organizations with consultative status can present papers for discussion, including raising the need for the IMO to consider new issues. Organizations with consultative status can also respond during IMO meetings or via papers to matters raised by member states. However, only proposals made by member states can be assigned to a working group to draft law or regulation.

Recent examples of arctic maritime policy which was driven by NGOs participation include upcoming regulation of heavy fuel oil in the Arctic. Canada, the United States, and several other countries requested that the HFO matter be assigned to a regulatory committee after NGOs had raised the issue. Provisions for

mariners to avoid marine mammals in the Arctic are now assigned to a rulemaking committee after NGOs that promoted its inclusion in the Polar Code noted that rules remained to be developed.

Q: Can national regulations be adopted by the IMO?

A: Yes. For northern waters, a good example is the recent adoption of Areas to be Avoided (ATBAs) for the Aleutians Islands area of Alaska. The rules require ships to avoid sensitive and dangerous waters that were defined with local input. Local input occurred through the Aleutian Risk Assessment process. Ship traffic has shifted significantly away from these areas now that the IMO has adopted these recommendations under international rule.

Q: Does the Arctic Council address matters related to Arctic shipping?

A: The Arctic Council studies a wide range of Arctic matters, including shipping, but international law that regulates shipping is set by the IMO.

In 2009, the Arctic Council produced the comprehensive Arctic Marine Shipping Assessment, surveying a wide range of anticipated impacts. The Arctic Council continues to devote significant resources to studying a range of shipping-related issues.

These currently include several studies related to ships' use of heavy fuel oil. The Arctic Council has identified a spill of heavy fuel oil as one of the top threats posed by arctic shipping.

Q: Does the Polar Code now safeguard Arctic waters?

A: The Polar Code is a major step forward towards safeguarding the Arctic, but several issues of high concern remain unaddressed.

The IMO approved the Polar Code which went into force in 2017. The Code includes mandatory safety measures including ship hull strength and design standards that determine the density of ice where they are permitted to travel. Mariners are required to receive training for polar operations. Oily waste discharge is prohibited. Navigation measures include avoiding ice and avoiding marine mammal concentrations.

The Polar Code falls short on several important measures.

The Polar Code failed to address the use and carriage of heavy fuel oil, a viscous fuel often burned by ships. Heavy fuel oil would be especially difficult to contain or clean up in the event of a spill. Its use is already banned in Antarctic waters. The IMO has currently assigned a work group to draft regulations for this dangerous fuel in the Arctic.

The Polar Code also failed to include stringent discharge regulations with regard to greywater, garbage, black carbon and Arctic-specific invasive species provisions.

The Polar Code also requires that mariners plan to avoid Arctic marine mammals, but does not specify how mariners should meet that requirement. The IMO recently assigned a committee to develop these rules.