

Arctic Shipping

A position paper



Purpose and scope

The International Chamber of Shipping (ICS) is the principal global trade association for shipowners, representing all sectors and trades and over 80% of the world merchant fleet. ICS membership comprises the world's national shipowner associations, including nations located inside and outside the Arctic Circle.

Reported changes to the world's climate appear to be increasing the accessibility of the Arctic to international shipping!¹ These changes are likely to increase shipping traffic navigating throughout the region.

In view of this anticipated future increase in shipping, there is growing awareness within the international community about the potential sensitivity of Arctic ecosystems to the impact of such activity and the necessity for a high degree of care whenever ships navigate Arctic waters. These concerns are fully acknowledged and shared by international ship operators, as represented by ICS which is totally committed to the protection of the environment and the prevention of pollution.

This position paper has been updated following the global entry into force of the **International Code for Ships Operating in Polar Waters (Polar Code)** adopted by the UN International Maritime Organization (IMO). The purpose of this ICS paper is to reiterate some key principles with respect to the regulation of ships navigating Arctic waters and the governance of maritime activity in the Arctic.

¹ There is widespread concern about the possible effects of global warming caused by increased CO₂ emissions, and the negative impact this may have upon the climate and the delicate environmental balance that exists within the Arctic region. The international shipping sector fully acknowledges its responsibility to further reduce CO₂ emissions. With the full support of shipowners, international shipping was the first industrial sector to be covered by a binding global agreement, adopted by IMO, to reduce CO₂ emissions through technical and operational measures, which entered into force in 2013. The total CO₂ emissions from shipping have reduced significantly since 2008 (see graph on back page). Importantly, this global IMO regime is now supported by the Initial Strategy on Reduction of GHG Emissions from Ships, adopted by IMO Member States in April 2018, which includes very ambitious CO₂ reduction goals. This is expected to lead to the adoption of further CO₂ reduction regulations for implementation by ships before 2023. See *Reducing CO₂ Emissions to Zero: The 'Paris Agreement for Shipping'* via the ICS website.



Introduction



Arctic shipping is a key issue of focus at IMO. This includes the adoption by IMO Member States of the Polar Code which entered into force worldwide in 2017 via amendments to the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention for the Prevention of Pollution from Ships (MARPOL). These IMO Conventions are already widely ratified and enforced on a global basis, which means that the Polar Code is already being implemented by virtually all merchant ships that are trading in Arctic waters.

Indications of thinner ice and longer ice free periods have opened up the possibility of increased international shipping activity in the Arctic. Already, ships in the Arctic are involved in four main types of operation:

- i. Offshore support vessel activity (supporting offshore exploration and the extraction of oil and gas);
- ii. Destination transport, with ships moving energy, raw materials (and goods) from and between Arctic ports and the rest of the world;
- iii. Trans-Arctic shipping using commercially viable intercontinental Arctic sea routes, connecting the Atlantic and Pacific Oceans via the (Russian) Northern Sea Route (NSR) and, potentially in the future, via the (Canadian) Northwest passage; and

iv. Cruise shipping and tourism.

Offshore support vessel activity already represents a significant form of shipping in the Arctic region, while destination transport is anticipated to grow considerably in the next few years as new sources of raw materials and energy are developed and the population of the Arctic increases.

Although the expected timeline for the opening up of trans-Arctic intercontinental sea routes is currently unclear, and for the immediate future their impact on traditional shipping routes should not be overestimated, use of the NSR is already a reality for a small number of merchant ships.

Independent of climate change, technical developments in ship design, construction and equipment – that make operations possible in remote regions with challenging and unpredictable sea and weather conditions – are stimulating increased interest in Arctic shipping. This is driven to a large extent by increasing demand for shipping services that can support the extraction of seemingly abundant natural resources, with maritime trade between Arctic destinations and the rest of the world expected to expand as a result of this new economic activity.

The demand for maritime tourism in the Arctic is also expected to grow, facilitated by increasing accessibility and improvements to ship design and maritime safety.

Principles

ICS and its member national shipowner associations advocate the following principles with respect to the regulation of ships navigating Arctic waters and the governance of maritime activity in the Arctic:

1. Maintenance of a global framework regulating Arctic shipping, under the auspices of IMO, to ensure safety and environmental protection

IMO is the appropriate forum for the development of standards for vessels operating in the Arctic, as it has the necessary legal and technical expertise to facilitate engagement by, and take into account the interests of, all of the world's maritime nations including flag States and coastal States.

The particular interest and engagement in maritime issues exhibited by Arctic Council nations is welcome and fully acknowledged, including the establishment of 'The Arctic

Shipping Best Practice Information Forum' which ICS encourages shipowners to utilise.² This Forum promotes awareness of the IMO Polar Code and facilitates the exchange of information and best practices.

At the same time, it is important that the Arctic Council, and any other nations or bodies with an interest in Arctic shipping, continue to pursue the development of any new regulatory requirements through IMO to avoid causing conflict with existing IMO regulations or guidance.

In order to ensure the effective and uniform implementation of the Polar Code to deliver safe marine navigation and security, enable commercially viable operations and optimise environmental protection, all national maritime policies applicable to Arctic waters, within the jurisdiction of States that are members of the Arctic Council,³ should be harmonised and in conformity with the Polar Code, as well as all other relevant IMO instruments, consistent with the provisions of the United Nations Convention on the Law of the Sea (UNCLOS).

2 'The Arctic Shipping Best Practice Information Forum' was established in 2017 to help raise awareness and promote the effective implementation of the Polar Code. Links to authoritative information essential to implementation and compliance with the Polar Code are accessible via <http://www.arcticshippingforum.is>.

3 The full members of the Arctic Council are Canada, Denmark including Greenland, Finland, Iceland, Norway, Russian Federation, Sweden and the United States. Finland, Iceland and Sweden, however, do not have Arctic maritime zones as defined by the SOLAS and MARPOL Conventions.

Arctic nations should only apply requirements to foreign flag ships consistent with 'generally accepted international rules and standards' (GAIRAS).

ICS further believes that the goal-based nature of the Polar Code needs to be maintained and any future amendments or other regulatory developments should be undertaken in a manner that is genuinely risk based. This is to ensure that requirements imposed on ships, e.g. 'ice class' standards for ship construction and operation, or requirements for life-saving appliances, take full account of the hazards relevant to the type of ship operation, ship location, natural conditions and the season of operation. Furthermore, risk mitigation measures should remain performance based.

Any additional environmental measures in the Arctic should be aimed at mitigating risks, based on thorough scientific data and analysis, to ensure sustainable economic and social development in addition to environmental sustainability (consistent with the UN Sustainable Development Goals for 2030).

Any country, including Arctic nations, which has not yet ratified UNCLOS is strongly encouraged to do so as soon as possible.

Regional Memorandums of Understanding on Port State Control should also have a role in developing uniform procedures for the inspection and enforcement of regulations that have been adopted by IMO within the Arctic region, including the Polar Code.⁴

2. Development of Arctic maritime infrastructure to support safety and environmental protection

While the Polar Code provides the regulatory framework, the infrastructure needed to ensure safety and environmental protection in the Arctic must also be developed and further improved. This includes, *inter alia*: aids to navigation, nautical charts, satellite communication, bunkering facilities, port reception facilities for ship's waste, pilotage in shallow passage areas and ice-breaking assistance, as well as search and rescue infrastructure developed for defined incident scenarios, and the provision of adequate 'places of refuge' should ships be in distress.⁵

The Arctic Regional Hydrographic Commission (ARHC) is continuing to enhance co-operation between Arctic States on hydrographic survey and charting. There remains a need, however, for a continued commitment by all IMO (and IHO) Member States to conduct the necessary hydrographic surveys to bring Arctic navigational charts up to a level acceptable to support best practices for safe navigation. Systems are also needed to enable the real-time acquisition, analysis and transfer of meteorological, oceanographic, sea ice and iceberg data to ships.

Serious challenges related to life-saving and oil spill clean-up capability in remote or hostile waters, or where sea ice potentially presents an obstacle, must also be addressed.⁶ In particular, in co-operation with IMO, this requires increased

co-ordination amongst Arctic nations so as to ensure appropriate resources for, and promote the region's Search and Rescue (SAR) operations, salvage capability and emergency pollution response as shipping activity expands in the future.

3. Full participation of shipping nations

Given the important implications for all IMO Member States of current and future regulatory discussions, it is vital that all maritime nations in their capacity as flag States and coastal States be fully and actively involved in all decision making processes that impact on Arctic shipping.

ICS believes that it is particularly important that non-Arctic nations be fully included in any regulatory discussions affecting Arctic shipping from the outset. The rights of coastal States located within the Arctic (Canada, Denmark including Greenland, Norway, Russia, and the United States) must be acknowledged. However, such rights must always be exercised in a manner that remains consistent with UNCLOS and IMO Conventions.

Coastal States should not impose discriminatory treatment or other measures upon ships registered with non-Arctic nations that might prejudice the interests and rights of nations or ship operators under international maritime law. Examples of potentially prejudicial measures include: unilateral ship construction, design and equipment standards, navigation requirements including mandatory navigation or ice-breaker service fees, and the unilateral imposition of additional insurance requirements.

4. Full market access and freedom of navigation

Unilateral, national or regional regulations governing ship safety, environmental protection and other shipping matters should be avoided and must not disadvantage ships registered with non-Arctic States. This includes regulations and enforcement mechanisms that Arctic coastal States might seek to introduce within ice-covered waters inside the 200 nautical mile Exclusive Economic Zone (EEZ), which should be addressed internationally via the regulatory framework provided by IMO.

ICS believes that the UNCLOS regime of transit passage for straits used for international navigation (as codified in Part III of UNCLOS) takes precedence over the rights of coastal States under UNCLOS Article 234. Maintenance of this principle also has implications for other international straits outside the Arctic that have vital strategic and political significance.

Regulations governing market access should be consistent with commitments made by governments at the World Trade Organization (WTO) and, where relevant, with the Principles of Common Shipping Policy adopted by the Organization for Economic Co-operation and Development (OECD) in 2000.

4 The Paris MOU on Port State Control includes all Arctic nations (with the United States participating as an observer).

5 In conformity with the 'Guidelines on places of refuge for ships in need of assistance' (IMO Resolution A.949(23)).

6 The Arctic Council Agreement on Co-operation in Aeronautical and Maritime Search and Rescue in the Arctic, signed in 2011, is an important development, as is the Arctic Council Agreement on Co-operation on Marine Oil Pollution Preparedness and Response in the Arctic, signed in 2013.

5. Need for legal clarity about the status of the Arctic

ICS suggests that the legal status of Arctic waters needs to be clarified at the United Nations level.

In general, in all waters (other than 'internal waters'), the right of 'innocent passage' within the Exclusive Economic Zone (EEZ), as enshrined in UNCLOS, must always apply. However, clarification is needed about the definition of 'internal waters', including the use of straight baselines with respect to islands situated off a mainland, as Arctic sea routes become more accessible.

The relationship between UNCLOS Article 234 and the UNCLOS regime of transit passage for straits used for international navigation also needs to be clarified, now that straits in the Arctic region are actually starting to be used by international shipping.

The above notwithstanding, Article 234 of UNCLOS permits coastal States to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the EEZ, where particularly severe climatic conditions and 'the presence of ice covering such areas for most of the year' create obstructions, or where 'exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance'.

However, ICS believes a debate is required as to what is meant in UNCLOS by 'most of the year' as Arctic waters become ice free for longer periods. Questions need to be resolved about the rights of coastal States to enforce unilateral laws and charges when Arctic waters are indeed 'ice free', the definition of 'ice free', and the extent to which hazards to navigation may be regarded as 'exceptional' during ice free periods.

It is also vital that international ship operators have clarity with respect to which nations or organisations are responsible for ensuring the safety of maritime transport in Arctic waters. This applies particularly to waters beyond the territorial sea.

The need for answers to political questions about the extent of the continental shelf of Arctic nations is also of indirect concern to shipping. So long as it remains unclear which nations are entitled to develop natural resources in the Arctic, uncertainty about demand for shipping services and the need to invest in supporting infrastructure will remain. The right to navigate ships in the Arctic should not be treated as a bargaining counter in disputes about the right to exploit natural resources.

6. Transparency of national regulations

As stated above, national regulations should be consistent with UNCLOS, IMO Conventions and Codes, and the principle of 'generally accepted international rules and standards' (GAIRAS).

Wherever national rules apply to ship operations in Arctic waters, they should be transparent and comprehensible. As well as being made readily available to shipping companies and ships' crews on the internet, they should always be available in the English language.

7. Reducing bureaucracy and setting appropriate fees for services

Consistent with coastal States' rights and obligations under UNCLOS, the development of Arctic shipping must take the commercial requirements of ship operators into consideration. For example, national requirements concerning long periods of advance notification prior to use of some Arctic sea routes are often impractical and incompatible with the way in which international shipping markets operate. In bulk shipping, moreover, the destination ports frequently change during the course of a ship's voyage.

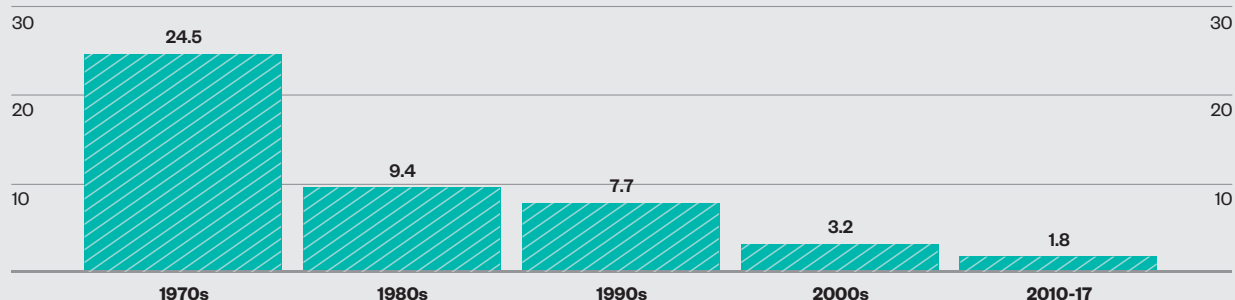
While the environmental challenges associated with operations in the Arctic are fully acknowledged, the especially high level of fees for some ice-breaking and other navigational services also needs to be examined if Arctic sea routes are to provide a commercially viable alternative to the Suez Canal or trans-Pacific sea routes. Likewise, if frequent and reliable international shipping services are to be provided between Arctic ports and the rest of the world, or natural resources in the region are to be developed in a manner that reconciles the need for both environmental and economic sustainability, this will require the provision of maritime services that are competitive and cost efficient.



Shipping and the Environment

Reduction in Major Oil Spills

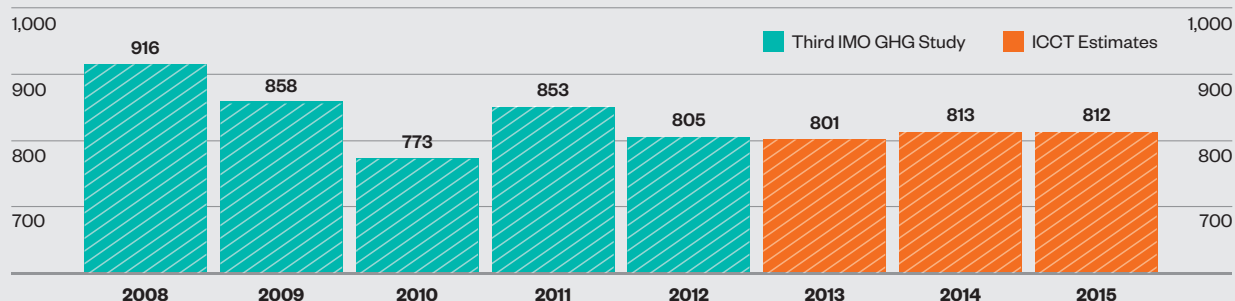
Average number of major oil spills per year (over 700 tonnes)



Source: ITOPF

Total International Shipping CO₂ Emission Estimates

Million tonnes per year



Source: Third IMO GHG Study & ICCT

GHG Strategy Reduction Targets

Initial IMO Strategy on Reduction of GHG Emissions from Ships

Adopted on 13 April 2018

Vision

IMO remains committed to reducing GHG emissions from international shipping and, as a matter of urgency, aims to phase them out as soon as possible in this century.

Levels of Ambition

1. Carbon intensity of the ship to decline through implementation of further phases of the energy efficiency design index (EEDI) for new ships

Review with the aim to strengthen the energy efficiency design requirements for ships with the percentage improvement for each phase to be determined for each ship type, as appropriate;

2. Carbon intensity of international shipping to decline

To reduce CO₂ emissions per transport work, as an average across international shipping, by at least 40% by 2030, pursuing efforts towards 70% by 2050, compared to 2008; and

3. GHG emissions from international shipping to peak and decline

To peak GHG emissions from international shipping as soon as possible and to reduce the total annual GHG emissions by at least 50% by 2050 compared to 2008 whilst pursuing efforts towards phasing them out as called for in the Vision as a point on a pathway of CO₂ emissions reduction consistent with the Paris Agreement temperature goals.

(The Strategy also includes a list of candidate measures for further CO₂ reduction that will be considered by IMO, including measures that could be implemented before 2023.)