Arctic Shipping – Navigating the Legal Landscape for marine infrastructure and Off-Shore Development

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Remoteness is not the exception
In the Arctic no one goes it alone
In the middle of nowhere
What is wrong with the picture
Areas of Arctic Development

• Main sectors
  – Mining – 5 operating mines and additional 18 projected
  – Land based Oil and Gas -
  – Off-Shore – estimated 75 billion barrels of oil under seabed

• Support sectors
  – Marine Transportation
  – Renewable energy / Hydro Electric Power
  – Telecommunications / Broadband expansion
  – Port infrastructure and construction
  – Banking and finance
Regulatory Framework

• Federal Legislation
• Territorial Legislation
• Comprehensive Land Claims Agreements
  – Board Approvals
  – Impact and Benefit Agreements
  – Environmental Assessment Statements
  – Resource Sharing Agreements
• National Energy Board
• Bureau of Ocean Energy Management
• United Nations Convention on the Law of the Sea
• Arctic Council
Canada Shipping Act, 2001

- Northern Canada Vessel Traffic Services Zone Regulation
  - Establishes NORDREG Zone
  - In force since July 1st, 2010
  - Replaces voluntary reporting system under Arctic Canada VTS Zone
  - Made up of the 16 Shipping Safety Control Zones (SSCZ)
  - Recently extended to full 200 nm of Canada`s EEZ
  - Reporting requirements at least 24 hours before entering SSCZ
Vessel Traffic Service Zone
UNCLOS

• At an International level, regulates resource extraction in the Arctic
• Deals with sovereignty rights of states, develops zones of influence (territorial sea, EEZ, High Seas)
• Mechanism for extension of rights along a country’s continental shelf
• Requires the adoption of laws by coastal states to prevent, reduce and control oil pollution and damage to the environment
• Not yet ratified by United States (sovereignty concerns and restrictions on deep water provisions)
• Canada has until 2013 to submit its claim to the UN Commission
Arctic Council

- Ottawa declaration 1996 – based in Tromsø, Norway
- High level forum to provide means for promoting cooperation, coordination and interaction among Arctic States
- Member States - Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden and the U.S.A. And Permanent Participants such as indigenous peoples’ organizations
- Recommendations non-binding
- Through the Arctic Environmental Protection Strategy, has set up a number of programs such as for Arctic Monitoring and Assessment, Conservation of Arctic Flora and Fauna, Protection of the Arctic Marine Environment, and Emergency and Preparedness and Response
- Calls for the creation of a binding coordination agreement, a road map possibly under UNCLOS, to set out specifics on when, how and under what circumstances a coastal state will answer and environmental emergency.
- Search and Rescue of aeronautical and maritime vessels and passengers (SAR) - The first international agreement made by the Arctic and signed at the ministerial meeting in Nuuk, May 12 2011
- Planning a second international agreement dealing with oil pollution in the Arctic
Duty to Consult

• Supreme Court of Canada makes it a “super added” requirement
• Degree of consultation may under certain circumstances be beyond what is required in order to obtain Regulatory Approval
• The Regulatory framework created by Comprehensive Land Claim Agreements is not a self-contained roadmap to project development
Eastern Canadian Arctic Seismic (ECASE) Experiment

- Marine seismic survey in Baffin Bay and Lancaster Sound to have been conducted in the Summer of 2010
- Testing proposed by Natural Resources Canada
- R/V POLARSTERN – German polar research ship
- Concerns raised by public regarding lack of consultation
- Approved by NIRB with terms and conditions for additional consultation with potentially affected communities
- Court injunction granted following granting of licence – stopping the seismic testing
- Risk of displacement of marine mammals from migration routes and breeding areas
- Consultation must be meaningful to assess impact of unique environment
Polar Code

- Being prepared by the IMO
- Ship design and construction
- Designation of a Polar Class – classification
- Training of crew for arctic navigation and vessel operations
- Transport Canada looking to introduce new regulations for Life Savings Appliances and crew training for when the Polar Code becomes mandatory
Incentive to build Polar Class Vessels

• Increased building or conversion costs
  – Ice strengthened
  – Increased engine power

• Increased running costs
  – Built to operate under extreme conditions
  – Training costs
  – Increased fuel consumption

• Trading in off-season - uncompetitive

• Need for dedicated market and purpose built ships
  – Apportionment of running costs and training costs over multiple voyages
  – Mining and Oil and Gas industry
  – Where Polar Class vessels serve dual purpose - military
Thank You