Civil liability in polar marine environments, CMI Hamburg 17 June 2014

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AGENDA

- Agenda
  - Scope: Oil pollution by persistent oil from tankers in the Arctic
  - Background
  - The Arctic 8 legal regimes
  - Practical response to oil pollution in polar environments
  - Insurance and the funds
  - ”Special” polar related compensation issues?
OIL POLLUTION BY PERSISTENT OIL FROM TANKERS IN THE ARCTIC

- Choice of scope
- Other highly relevant topics are
  - The HNS Convention 1996/2010
  - The Bunkers Convention 2001
  - National environmental protection acts
  - EU Environmental Responsibility directive (2004/35)
  - LLMC 1976/92
  - Passenger vessels
BACKGROUND – NEW TRADE ROUTES
In the period 1 May – 1 October 2013 10 different vessels used the North East passage:

- 4 tankers (L=288m, L=250m, L=227m, L=183m)
- 2 bulk carriers (L=225m, L=225m)
- 1 LNG carrier (L=288 m)
- 2 general cargo carriers (L=131m, L=160m)
- 1 fish carrier (L=153m)
NORTHERN SEA ROUTE PASSAGE STATISTICS 2013
Generally, the traffic in the Arctic increases.

First Arctic oil carried to Rotterdam by MIKHAIL ULYANOV in May 2014.

The Northeast Passage offers substantial benefits:
- The journey is one third shorter and will cut journey times by around two weeks.
- It is estimated to cut fuel costs by around $180,000.
- There is a drastically reduced risk of piracy which again reduces costs.

The Arctic Region produces about one tenth of the world’s oil and a quarter of its natural gas.

Experts have calculated that as much as 25% of the world’s remaining fossil fuel reserves are located in the Arctic Ocean.
NAVIGATIONAL AID

- Marine charts and electronic aid
- Pilots and local guides
SOME IDENTIFIED ADDITIONAL ARCTIC HAZARDS

- Ice bergs as collision hazard
- Extreme cold leading to brittleness of metal (structural failure)
- Poor navigational charts
- High latitude effects on navigation systems (lack of GPS, cosmic radiation effects)
- Variations of magnetic north/south
- Long days or long nights resulting in interrupted sleep patterns, loss of alertness, poor decision making
- Weak primary radar returns from icy shorelines
- Extremely low visibility or low visibility for long periods of time
THE ARCTIC 8 LEGAL REGIMES

- (Greenland) Denmark CLC 1992/IOPC 2003
- Norway CLC 1992/IOPC 2003
- Sweden CLC 1992/IOPC 2003
- Finland CLC 1992/IOPC 2003
- Iceland CLC 1992/IOPC 2003
- Canada CLC 1992/IOPC 2003 + domestic Ship-Source Oil Pollution Fund
- Russia CLC 1992/IOPC 1992
- USA OPA 90
CLC 1992 OVERVIEW

- Scope
- Liability to pay compensation for pollution damage
- Strict liability
- Channelling of liability to the registered owner
- Defenses
- Limits calculated by reference to tonnage
- Breach of limit
- Duty to insure liability
- International Oil Pollution Compensation Fund(s)
OPA 90 OVERVIEW

- Scope (in this context)
- Liability to pay compensation
- Strict liability
- The "responsible party"
- Defenses
- Limits calculated by reference to tonnage (here double hull tankers)
- Breach of limit
- Duty to procure evidence of financial responsibility (COFR)
- Oil Spill Liability Trust Fund (OSLTF)
- Specific state law regulation
PRACTICAL RESPONSE TO OIL POLLUTION IN POLAR ENVIRONMENTS

- Oil Spill Recovery Institute, ITOPF and PAME studies
  - Prince William Sound after 25 years
- Effects of Arctic conditions
  - Extreme cold reduces the rate of natural weathering processes
  - Pack ice dampens wave energy and reduces natural dispersion and emulsification
  - Fast ice means that oil may become encapsulated
- Response options
  - Mechanical recovery
  - Chemical dispersion
  - In-situ burning
POLLUTION RESPONSE INFRASTRUCTURE IN THE ARCTIC

- The Arctic Council 2013 Agreement on cooperation on Marine Oil Pollution Preparedness and Response in the Arctic
- International Convention on Oil Pollution Preparedness, Response and Co-operation
- Port of refuge issues (risk and reasonableness)
- The Russian infrastructure investments in the area to aid further growth in shipping (e.g. construction of a modern Arctic port at Sabetta)
- Iceland possible hub?
- National response hardware and software adequate?
- Equipment lead time
- SAR
INSURANCE, IOPC AND OSLTF

- CLC 1992
  - Duty to be insured up to limitation amount
- IOPC 1992 scope and limit
- IOPC 2003 protocol scope and limit
- OPA 90
  - COFR
- OSLTF scope and limit
CLAIMS

- CMI Guidelines on Oil Pollution Damage 1994
- IOPC Claims Manual 2013
  - Clean up and preventive measures
  - Property damage
  - Economic loss in the fisheries, mariculture and fish processing sectors
  - Economic loss in the tourism sector
  - Measures to prevent pure economic loss
  - Environmental damage and post-spill studies
- NPFC practice
“SPECIAL” POLAR RELATED COMPENSATION ISSUES

- Transfrontier pollution?
- Navigational aid defense?
- “Take the victim as you find him”?
  - Pollution fighting measures scientifically available?
  - Sufficient response infrastructure?
  - Port of refuge issues?
  - What measures are “reasonable”?
- How to reinstate or replace a damaged Arctic ressources?
- How to assess diminution in value pending restoration?
- Limits and funding sufficient?