

Project Plan for Arctic Best Practices - National Liability, Compensation and Financial Security Regimes for Oil Pollution Damage Resulting from Offshore Oil/Gas Exploration and Exploitation

This Arctic best practices project will result in a review of the Arctic countries' regimes on liability, compensation and financial security for oil pollution damage resulting from offshore oil/gas exploration and exploitation. The project will furthermore explore possibilities for further Arctic cooperation regarding liability and compensation from oil/gas activities.

1. Introduction

Oil and gas exploration and exploitation has taken place for many years in the Arctic region, and activities are likely to increase in the coming years. As a response to this increase of activities, the Arctic Council has encouraged the development of suitable national and international regulations and measures to reduce the risk and the potential negative impacts in order to maximize environmental protection and sustainable use of the marine environment. The Arctic Council working groups have developed various oil and gas related products, but the work has so far not addressed issues of liability, compensation and financial security related to marine oil pollution in the Arctic, although liability and compensation issues are important aspects of environmental management regimes. It is therefore timely to address this issue now in order to clearly demonstrate that the Arctic states' actively seek to reduce adverse impacts to the Arctic marine environment and its people in all possible ways.

This best practices project is encouraged by i.e.:

- The Arctic Marine Strategic Plan, adopted by the Arctic Council in 2004, provides the foundation for both the Arctic Council and PAME's mission and objectives. It specifically requires PAME to "periodically review the status and adequacy of international/regional agreements and standards that have application in the Arctic marine environment, new scientific knowledge of emerging substances of concern and analyze the applicability of a regional seas agreement to the Arctic" (Strategic Action 7.3.4).
- The United Nations convention of the Law of the Sea, 1982 (UNCLOS), which requires States to ensure that recourse is available, in accordance with their legal systems, for prompt and adequate compensation for damage caused by pollution of the marine environment by persons under their jurisdiction (UNCLOS Article 235(2)). Furthermore UNCLOS requires States to co-operate in the development of international law relating to responsibility and liability compensation for such damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds (UNCLOS Article 235(3)).

2. Background

At the Arctic Council ministerial meeting in Nuuk, May 2011, the Arctic Council decided to establish a Task Force to develop an international instrument on Arctic marine oil pollution preparedness and response. The Kingdom of Denmark therefore suggested to the Task Force to include provisions on liability and compensation in the international instrument to be presented at the next Ministerial meeting in 2013.

Given the tight deadline before delivery to the next Ministerial meeting in 2013 it has not been possible to reach an agreement on including actual substantive binding provisions on liability and compensation in the current international instrument. These issues are, however, of paramount importance and the Arctic Council Member States and Permanent Participants are therefore encouraged to continue deliberations on these important issues in the work of the Arctic Council beyond the Ministerial meeting in 2013. This proposed PAME project will give Arctic Council Member States and Permanent Participants the opportunity to continue analysing and deliberating on these issues.

The Arctic Council member states have committed to adhere to the “polluter pays” principle through e.g. the adaptation of the 2009 Offshore Oil and Gas Guidelines. The polluter pays principle is also taken into account in the current draft of the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic. It is important to ensure that a liability/compensation regime is in place that effectively allows for the polluter pays principle to apply. This implies that the liability regime must allow for a responsible party of the oil/gas exploration and exploitation can be identified. The regime should allow parties suffering damage or loss to direct reasonable claims towards the responsible party. Further, the regime should contain provisions to ensure that adequate financial security is established, also to a worst case scenario. Cooperation between multiple coastal states and industry may hinder sub standards, level competition amongst oil/gas companies and amongst states, and make possible the adaptation to possible change to worst case scenarios. Therefore such cooperation may benefit industry, coastal states and peoples.

3. Objectives

The overall objective of the best practices project is to provide guidance to Arctic Council Ministers on possible ways to strengthen governance in the Arctic through a mapping of existing national regimes and deliberations on possible cooperative approaches to liability and compensation regimes for oil pollution damage resulting from offshore oil/gas exploration and exploitation. The best practices project will also play a very important role in demonstrating the Arctic States commitment to seek to reduce adverse impacts to the Arctic marine environment and its people in all possible ways.

4. Proposed project scope

The project will engage in a study on Arctic best practices on national regimes for liability, compensation and financial security related to oil pollution damage resulting from offshore exploration and exploitation.

The best practice study will collect information regarding existing national liability and compensation regimes for oil pollution damage resulting from offshore exploration and exploitation in the Arctic. A collection of the existing international/regional/bilateral instruments in force could also be included. If relevant, practices from other countries could also be included.

On the basis of the collected information PAME could consider whether there are gaps in the existing frameworks for liability and compensation for oil pollution damage resulting from offshore exploration and exploitation.

On the basis of any identified gaps PAME could consider if any gaps could be addressed by establishing regional arrangements such as a mutual insurance scheme, an international liability regime and an international oil spill fund or other measures to provide insurance and finance in situations where national arrangements are not sufficient or timely, if any.

The collected national information could thus form basis for informed deliberations on whether further activities within the Arctic Council can add value to ensure sound liability and compensation regimes across the Arctic. Engagement in information sharing and deliberations would be without prejudice to the possible outcomes of such process.

The project will be carried out during the Canadian chairmanship of the Arctic Council, 2013-2015. The project is envisaged to be carried out by email exchanges, teleconferences, videoconferences, deliberations at PAME meetings (in plenary or in a sub group) and possibly at one or more workshops.

A detailed time schedule for the project will be developed by the project group and approved by PAME. A tentative time schedule with project milestones is outlined below:

- PAME I 2013: agreement of final project plan to be included in PAME's work plan 2013-2015
- Intersessional work between Arctic Council Ministerial 2013 – PAME II 2013: Draft detailed time schedule and draft questionnaire to national regulators developed by the project group
- PAME II 2013 (autumn): PAME discussion and agreement of project time schedule and questionnaire to national regulators.
- Intersessional work between PAME II 2013 -> PAME I 2014: Collection of information on national liability, compensation and financial security regimes for oil pollution damage resulting from offshore oil/gas exploration and exploitation. Collection of information on existing international/regional/bilateral instruments in force and related initiatives, if any.
- PAME I 2014: Presentation of national regimes and international/regional/bilateral instruments in force and first deliberations on any possible gaps
- Intersessional work between PAME I 2014 -> PAME II 2014: Draft synthesis report. Draft recommendations.
- PAME II 2014: Workshop; Deliberations on Draft Synthesis Report on Arctic Best Practices - National Liability, Compensation and Financial Security Regimes for Oil Pollution Damage Resulting from Offshore Oil/Gas Exploration and Exploitation. Deliberation of identified gaps/responses to gaps (if any) and draft recommendations to Arctic Council Ministerial 2015
- PAME I 2015: Agreement of deliveries to the 2015 Ministerial Meeting

5. Project Management

Greenland offers to be lead of this project on behalf of the Kingdom of Denmark. Other lead countries and co-lead countries of the project are encouraged to participate in the Project Group.

6. Outcomes

A synthesis of the collected information and identified gaps/responses to gaps (if any) will be presented at the Ministerial meeting in 2015. The synthesis Best Practice Report will be accompanied by recommendations on whether the Arctic Council should address issues of liability, compensation and financial security from offshore oil and gas activities in its future work.

Thus, the best practices study may or may not lead to further work beyond 2015 depending on whether possible areas for cooperation are identified and endorsed by the Arctic Council.

7. Budget

The lead government(s) may engage a consultant to assist with this project and will bear all relevant expenses. Each Arctic Council state will bear the costs of their own participation.