

PAME II-2017 Agenda Item 5.9(a)
Developing an Approach/Framework
for More Systematically Engaging with
Observers on PAME's Shipping-Related Work

Background

The PAME 2017-2019 Work Plan provides that PAME will:

Develop an approach/framework for more systematically engaging with Observer States on PAME's shipping-related work, and identify opportunities for Observer States to contribute to and/or support such work.

Recognizing that there is a need to more systematically engage with all Observers on PAME's shipping-related work, and recognizing in particular the responsibilities that Observer States have under international law with respect to safe and environmentally-responsible shipping, the United States and Aleut International Association (AIA), and partners Republic of Korea and Italian Republic, present this paper on developing an approach for improving engagement with Observers, and particularly Observer States, on PAME's shipping-related work. Currently 13 non-Arctic States have Observer status with the Arctic Council.¹

I. Procedures Governing Observer Participation in Arctic Council Working Groups²

Observers primarily contribute to the work of the Arctic Council through their engagement at the level of Arctic Council Working Groups.³ The Arctic Council Rules of Procedure (Rules of Procedure) and the supporting Observer Manual for Subsidiary Bodies (Observer Manual) govern the participation of Observers in Arctic Council Working Groups.⁴ Under those authorities, Observers are permitted to:

¹ France, Germany, Italian Republic, Japan, The Netherlands, People's Republic of China, Poland, Republic of India, Republic of Korea, Republic of Singapore, Spain, Switzerland, and the United Kingdom currently have Observer status with the Arctic Council. See Arctic Council, *Arctic Council Observers*, <https://www.arctic-council.org/index.php/en/about-us/arctic-council/observers>

² This paper paraphrases and summarizes certain provisions of the Arctic Council Rules of Procedure and the Observer Manual for Subsidiary Bodies pertaining to Observer participation, solely for the purpose of providing relevant background. The included summaries are not intended to serve as a substitute for the actual text of the Arctic Council Rules or Procedure or the Observer Manual for Subsidiary Bodies and are not intended to provide definitive interpretations of any provisions therein. Only the official documents themselves are the authoritative sources that may be relied upon. The included summaries in no way prejudice the positions or views that the co-sponsors of this paper may hold with respect to the underlying documents.

³ Arctic Council, *Arctic Council Rules of Procedure*, Rule 38 (adopted Sept. 1998; revised May 2013), https://oaarchive.arctic-council.org/bitstream/handle/11374/940/2015-09-01_Rules_of_Procedure_website_version.pdf?sequence=1&isAllowed=y (*Rules of Procedure*)

⁴ *Rules of Procedure*, Rules 36-38; Arctic Council, *Observer Manual for Subsidiary Bodies* (adopted May 2013; Addendum approved Oct. 2015 & Oct. 2016), https://oaarchive.arctic-council.org/bitstream/handle/11374/939/EDOCS-3020-v1B-Observer-manual-with-addendum-finalized_Oct2016.PDF?sequence=8&isAllowed=y (*Observer Manual*)

- Attend Working Group meetings and other activities of the Arctic Council, unless Senior Arctic Officials (SAOs) have decided otherwise.⁵
- Receive meeting documents, including the final agenda, no later than 30 days before the meeting, other than those documents designated as “restricted to Arctic States and Permanent Participants.”⁶
- At the discretion of the Chair, make statements after Arctic States and Permanent Participants, present written statements, submit relevant documents and provide views on issues under discussion.⁷ The Chair of the Working Group should make every effort to allow Observers to take part in discussion concerning projects to which the Observer intends to contribute or has contributed.⁸
- Propose projects through an Arctic State or Permanent Participant in a collaborative manner.⁹
- Make financial contributions to existing and developing projects, such as direct project funding, in a transparent manner.¹⁰ However, the total financial contributions from all Observers to any given project may not exceed the financing from Arctic States, unless otherwise decided by the SAOs.¹¹
- Make in-kind contributions to existing and developing projects, such as expert involvement and support.¹² Observers may also fund expert attendance at Working Group meetings.¹³
- Host project-specific, expert-level workshops or gatherings, as approved by the SAOs on a case-by-case basis.¹⁴ An Observer must obtain support from at least one SAO or one Permanent Participant prior to submitting any offer to the SOAs.¹⁵
- Where applicable, and to the extent possible, Observers should also receive an updated list of ongoing projects, including projects in development and points-of-contact.¹⁶

In addition to the Rules of Procedure and the Observer Manual, Arctic Council Working Groups may establish operating guidelines that further define Observer State participation.¹⁷ In December 2016, the Arctic Council approved the Working Group Common Operating Guidelines, which include a PAME Annex.¹⁸ However, neither the Working Group Guidelines nor the PAME Annex specifically addresses Observer involvement.¹⁹

⁵ *Rules of Procedure*, Rule 37; *Observer Manual*, secs. 7 & 7.1

⁶ *Observer Manual*, sec. 7.2 & Addendum (1)

⁷ *Rules of Procedure*, Rule 38; *Observer Manual*, sec. 7.4 & Addendum (2)

⁸ *Observer Manual*, Addendum (2)

⁹ *Observer Manual*, sec. 7.5 & Addendum (3); *see Rules of Procedure*, Rule 38

¹⁰ *Observer Manual*, Addendum (3); *see Rules of Procedure*, Rule 38

¹¹ *Rules of Procedure*, Rule 38; *Observer Manual*, sec. 7.5 & Addendum (3)

¹² *Observer Manual*, Addendum (3)

¹³ *Rules of Procedure*, Rule 40; *Observer Manual*, Addendum (3)

¹⁴ *Observer Manual*, Addendum (3)

¹⁵ *Observer Manual*, Addendum (3) fn. 9

¹⁶ *Observer Manual*, Addendum (1)

¹⁷ *Observer Manual*, sec. 7

¹⁸ Arctic Council, Working Group Common Operating Guidelines (approved Dec. 2016),

https://oaarchive.arctic-council.org/bitstream/handle/11374/1853/EDOCS-4005-v1A-Working_Group_Common_Operating_Guidelines.PDF?sequence=3&isAllowed=y

¹⁹ *Id.*

II. Current Participation of Observers with PAME and Other Arctic Council Working Groups

The Arctic Council has six Working Groups: PAME, the Arctic Contaminants Action Program (ACAP); the Arctic Monitoring and Assessment Programme (AMAP); the Conservation of Arctic Flora and Fauna (CAFF); Emergency Prevention, Preparedness and Response (EPPR); and the Sustainable Development Working Group (SDWG).²⁰ Observer participation in Arctic Council Working Groups generally includes:

- *Meeting participation.* Observers frequently send representatives to Working Group meetings, at their own expense.²¹
- *Information sharing, including sharing of technical input, expertise, and best practices.* Arctic Council Working Groups have benefited from the knowledge of Observers, including experience from completed projects, suggestions for best practices when undertaking research/assessments or implementing programs,²² and data-sharing from ongoing research and monitoring activities.²³ As highlighted by the available 2016 Observer Reports, many Observers are involved with research relevant to Arctic shipping issues.²⁴
- *Hosting workshops, meetings, conferences, and training.* For example, in December 2016, the Korea Maritime Institute (KMI) held a seminar with the PAME Shipping Experts Group (SEG) to discuss issues and possible projects related to the PAME shipping agenda.²⁵
- *Funding.* Arctic Council Working Groups have sought funding from Observers for a range of activities.²⁶ Observers may also partner with Arctic States and/or Permanent Participants to provide funding for specific projects.²⁷ For example, in 2015 KMI and AIA entered into a partnership on Arctic Indigenous Marine Use Mapping, whereby KMI agreed to provide financial support for the project, in addition to in-kind support, such as human capacity and increased information-sharing.²⁸ One limitation on Observer funding is the 50% funding limit established by the Arctic Council Rules of Procedure.²⁹

²⁰ Arctic Council, *Arctic Council Working Groups*, <http://www.arctic-council.org/index.php/en/about-us/working-groups>

²¹ *Observer Manual*, sec. 7.6

²² Arctic Council, *Opportunities for Observer Engagement in Arctic Council Working Group Activities* at 1, [https://oaarchive.arctic-council.org/bitstream/handle/11374/1831/EDOCS-3815-v3A-ACOSUS202 Portland 2016 Opportunities for Observer Engagement in AC WG Activities September.PDF?sequence=1&isAllowed=y](https://oaarchive.arctic-council.org/bitstream/handle/11374/1831/EDOCS-3815-v3A-ACOSUS202%20Portland%202016%20Opportunities%20for%20Observer%20Engagement%20in%20AC%20WG%20Activities%20September.PDF?sequence=1&isAllowed=y) (Soliciting Observer involvement with ACP Community-Based Black Carbon and Public Health Assessment Project and ACAP Black Carbon Project)

²³ *Id.* at 3 (discussing Observer involvement in AMAP)

²⁴ See Arctic Council, <https://oaarchive.arctic-council.org/handle/11374/1848> (list of 2016 Observer reports, including Observer States)

²⁵ See Republic of Korea, Observer Report (2016) https://oaarchive.arctic-council.org/bitstream/handle/11374/1862/EDOCS-4020-v1-2016-11-29_Republic_of_Korea_Observer_activity_report.PDF?sequence=1&isAllowed=y.

²⁶ See *Opportunities for Observer Engagement in Arctic Council Working Group Activities*, *supra* note 20

²⁷ *Observer Manual*, sec. 7.5 & Addendum (3); see *Rules of Procedure*, Rule 38

²⁸ See Arctic Council, *Arctic Marine Indigenous Uses Mapping: Tools for Communities*, <http://www.pame.is/index.php/projects/arctic-marine-shipping/arctic-indigenous-marine-use-survey-process>

²⁹ *Rules of Procedure*, Rule 38; *Observer Manual*, sec. 7.5 & Addendum (3) (total funding from Observers cannot exceed contribution of Arctic States, unless SAO's approve an exception)

- *Expert nomination and participation.* Arctic Council Working Groups have benefited from the participation of Observer experts. PAME has previously solicited nominations for Observer experts to participate in Expert Groups on activities and projects identified on the PAME Work Plan.³⁰ A Working Group is not responsible for costs associated with attendance of experts at a Working Group or Expert Group meetings, unless authorized in advance by a decision of the Arctic States.³¹
- *In-kind contributions, including expert involvement and support*³²
- *Assistance developing and implementing plans.* For example, Observers are assisting in the implementation and development of CAFF's Arctic Migratory Birds Initiative (AMBI), with The Netherlands and Singapore hosting workshops focusing on implementation of AMBI actions across flyways.³³ Observers also participated in CAFF's development of the publication "Arctic Flora and Fauna Status and Trends: Recommendations for Conservation."³⁴

III. Solicitation of Input from Observers

The authors of this paper are interested in soliciting input and recommendations on how to more systematically engage with Observers on shipping-related issues.

1. How are interested Observers, and particularly Observer States, currently engaging with PAME on shipping-related issues?
2. Consistent with the Arctic Council Rules of Procedure and the Observer Manual for Subsidiary Bodies, what types of involvement with PAME's shipping-related work are Observers most interested in undertaking? Are there specific shipping issues of interest to Observers?
3. Would Observers be more interested in identifying and pursuing opportunities for engagement that involve financial contributions, in-kind contributions, or other types of involvement?
4. Would Observers be more interested in partnering with a single Arctic State/Permanent Participant, multiple Arctic States/Permanent Participants, or does the format of a collaborative arrangement not make a difference? Are there examples of collaborative efforts between Observers and Arctic States/Permanent Participants that could serve as models for future collaboration?
5. Would Observers find regular attendance of PAME meetings (e.g., Working Group and/or Expert Group meetings) useful to facilitate more systematic engagement with PAME's shipping-related work? If an Observer is not regularly attending PAME meetings, what is the impediment to attendance (e.g., cost, insufficient information, meeting location, lack of Observer-related agenda items, no commercial ships or

³⁰ *Opportunities for Observer Engagement in Arctic Council Working Group Activities*, supra note 20, at 6

³¹ *Rules of Procedure*, Rule 40

³² *Opportunities for Observer Engagement in Arctic Council Working Group Activities*, supra note 20, at 3 (discussing Observer involvement in AMAP and in-kind contributions); see also Republic of Korea, Observer Report (2016) https://oaarchive.arctic-council.org/bitstream/handle/11374/1862/EDOCS-4020-v1-2016-11-29_Republic_of_Korea_Observer_activity_report.PDF?sequence=1&isAllowed=y

³³ *Opportunities for Observer Engagement in Arctic Council Working Group Activities*, supra note 20, at 4

³⁴ CAFF, *Arctic Flora and Fauna Status and Trends: Recommendations for Conservation* (2001), available at: <https://www.caff.is/assessment-series/38-arctic-flora-and-fauna-status-and-trends-recommendations-for-conservation>

research vessels currently using or anticipated to use Arctic waters, no national strategy or priority for Arctic shipping, improper Arctic shipping contact point)?

6. Would providing more specific identification of opportunities and solicitation for Observer assistance via Arctic Council publications be an effective way to engage Observers on shipping-related issues? What types of additional information would be useful for increasing Observer engagement?
7. Given the current involvement of Observer experts in PAME shipping-related work, how could PAME more effectively integrate the knowledge and experience of these experts?
8. What kind of additional suggestions or ideas would be effective in encouraging Observer engagement in PAME's shipping-related work in the future?

IV. Recommendation

The United States, AIA, the Republic of Korea and the Italian Republic, recommend that PAME adopt a Record of Decision inviting all Arctic Council Observers to submit responses to the questions identified in Section III of this paper to the PAME Secretariat by 15 January 2018.