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| <input type="checkbox"/> ARM  | <input type="checkbox"/> ENG | <input type="checkbox"/> PAP            |
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Agenda item	X
Author(s) / Submitter(s)	Secretariat

## IALA Regions at the Poles

The intention of this paper is to provide a background to the discussions on LAP 21 agenda item 11.2

### 1 BACKGROUND

LAP 20 received a liaison note from ARM on legal advice in relation to IALA Regions at the Poles. In particular ARM asked if there could be legal implications of modifying the map included in the IALA Recommendation R1001: the IALA Maritime Buoyage System (MBS). The intention of the modification would be to show the precise boundaries of the IALA Regions at the Poles.

LAP 20 sent a liaison note to ARM asking

- if there are AtoNs in operation at the poles or plans to commence with this in the immediate future
- what is the status of the map included in R1001

The LAP Chair has received answer by e-mail from the ARM Chair, Phil Day and WG Chair, Guttorm Tomren. To the first question, they both agree that this is primarily a theoretical issue and that deployment of AtoNs will remain rare in Polar Regions. As for the Arctic, there are no zones of overlapping use of AtoNs and the question will only become relevant if nations start deploying AtoNs in the ice-covered waters above 80N latitude, which is rather unlikely.

To the second question they refer to the map as non-binding, but are hoping to have it provide some information on the MBS in the Polar Regions as part of the next review of the MBS, planned for GA 2022. They have no further information on the status of the map.

#### Short historical background to the IALA MBS (and the map)

Originally, the IALA MBS was annexed to the 1982 Agreement on the IALA Maritime Buoyage System. The annex was superseded in 2010 by IALA Maritime Buoyage System Second Edition, including additional aids to navigation marks. In 2017 the MBS was formally adopted by IALA GA as IALA Recommendation R1001, the IALA Maritime Buoyage System. For more information on the development of the MBS itself, the 2010 MBS includes a chapter on its historical background.

According to information from the Secretariat, the map included in the 2010 MBS and R1001 was probably developed by the Secretariat for inclusion in the 2010 MBS. The map is similar for 2010 MBS and R1001. According to the historical background chapter of the 2010 MBS there was a map included in the annex to the 1982 MBS Agreement: *“The boundaries of the buoyage regions were also decided and illustrated on a map annexed to the rules.”* Unfortunately, we have no copy of the original map and we do not know if the map to the 2010 MBS builds on the original map.

### **Legal status of the MBS**

The 1982 MBS Agreement is an agreement between lighthouse authorities. It is not an international treaty between States and as such does not create legally binding obligations on States. However, it clearly embodies the will of lighthouse authorities that their national systems adhere to the Regions A and B. The 2010 MBS and the R1001 are IALA documents and are not legally binding on States, as it is not within IALA mandate to issue legally binding international instruments. However, when claiming compliance to IALA standards they must be followed. In the words of IALA Standard S1010 the status of R1001 is: *“The following Recommendations are normative provisions, and shall be observed if compliance to this Standard is claimed.”*

Despite it not being legally binding the IALA Maritime Buoyage System is universally recognized and implemented. It is referenced in the International Convention for the Safety of Life At Sea, 1974, as amended (SOLAS regulation V/13).

## **2 DISCUSSION**

### **Discussion on legal implications of modifying the map showing Regions A and B.**

It is first of all important to be aware that the map does not have any legally binding effect on states, in keeping with the status of the 1982 MBS Agreement, the 2010 MBS and the R1001.

What it does do is to illustrate on a global scale the Buoyage Regions A and B, based on the declarations made by the lighthouse authorities (relevant competent authorities) as to which system they follow. This is quite clear from reading the 1982 MBS Agreement where it is up to the lighthouse authorities themselves to *“convey (...) its intention to be included in Region A or in Region B.”* The Agreement also provides a mechanism for withdrawal. The power to decide remains, in other words, with the national lighthouse authorities.

Due to the legal status of the 1982 MBS Agreement, the 2010 MBS and the R1001 the same is clearly the case for States.

It would follow that any map showing the Buoyage Regions would only be an illustration of the national status as expressed by each national lighthouse authority or State. Any issues with borders between States of different MBA regions would best be solved between those States, as these issues are often highly political.

It is not clear what is the purpose or added value of establishing precise boundaries in the high seas between Region A and B, as this is only relevant for lateral marks, which are usually not deployed in the high seas. In this context, it is also worth noting that the boundaries between regions A and B in East Asia are also not clearly set out in the map.

### **A special note on Antarctica**

In the input paper for ARM it is *“presumed that the regions in Antarctica extend to the South Pole”*. It is not clear that this presumption finds support in the 1982 MBA Agreement. The Agreement does not at all address the issue, and any international agreement would only be binding on the parties to it.

Antarctica is a very special case as it is a de facto condominium (a political territory in or over which multiple sovereign powers formally agree to share equal dominium/sovereignty and exercise their rights jointly, without dividing it into "national" zones), governed by parties to the Antarctic Treaty System that have consulting status. At present there are 54 states party to the treaty, 29 of which, have consultative (voting) status. These states, including states with territorial claims in Antarctica, are of both region A and B.

The legal implications of this in terms of establishing the status of Antarctica in the MBS is not clear, but to make presumptions as to its status based on the 1982 MBS Agreement and a map of unsure status would not be advisable.

The way forward might be for IALA to offer advice on possible solutions and to bring this to the attention of the Secretariat of the Antarctic Treaty.

### **3 ACTION REQUESTED**

Participants in LAP21 are invited to discuss the above proposal.