

EXPLANATORY NOTE

to the Draft of Federal Law “On Introduction of Changes to Some Legislative Acts of the Russian Federation as Related to the Governmental Regulation of Merchant Shipping in the Water Area of the Northern Sea Route”

1. Substantiation of Necessity to Adopt a Draft Law

A draft law is developed in order to address safety issues of shipping in the water area of the Northern Sea Route.

The measures shall include navigation-hydrographic and hydrometeorological support and assurance of ice-breaker pilotage, ice pilotage and pilotage of the vessels through the recommended routes in the water area of the Northern Sea Route.

The provisions of the draft law are aimed at coordination of the available management system of the Northern Sea Route and the doctrine of the Russian Federation approved by the President of the Russian Federation as related to the support of the national interests in the Arctic.

The available Rules of Navigation on the Northern Sea Route approved by the Ministry of the Maritime Fleet of the USSR on September 14, 1990, are consistent with the requirements of Clause 234 of the UN Convention on the Law of the Sea of 1982 that empowers the coastal states to adopt and provide observance of the non-discriminatory laws and regulations to prevent, reduce and control pollution of the marine environment from the vessels in the regions within the exclusive economic zone covered with ice for the most of the year.

However, the reforms in Russia in the beginning of 1990s introduced significant changes to the management system of the Northern Sea Route and arrangement of ice pilotage of the vessels through the Northern Sea Route.

At present atomic ice-breakers are owned by FSUE Atomflot which is subordinated to State Corporation Rosatom.

Diesel-powered open sea ice-breakers are owned by FSUE Rosmorport which is subordinated to the Federal Marine and River Transport Agency (Rosmorrechflot) and OAO Far-East Shipping Company (OAO DVMP) in accordance with the agreements awarded with the Federal Agency for State Property Management (Rosimushchestvo) with the concurrence of Rosmorrechflot.

Through these agreements the Government has granted the right to the companies to have control over the ice-breakers (to carry out technical and personnel management) as well as the right and obligations to obtain payment for the services on ice-breaker pilotage of the vessels.

FSUE Atomflot, FSUE Rosmorport and OAO DVMP were not granted by the Government the right to carry out pilotage of the vessels in the water area of the Northern Sea Route.

The responsibilities to pilot guide the vessels in the water area of the Northern Sea Route that are carried out by the Marine Operations Headquarters – subdivisions of these companies – are not settled by the legislative acts of the Russian Federation.

Services to pilot guide the vessels in the water area of the Northern Sea Route rendered by the Marine Operations Headquarters shall be performed by a state organisation.

The Order of the President of the Russian Federation No.314 "On the Structure and System of the Federal Executive Authorities" dated March 09, 2004, adopted a decision to establish the Federal Marine and River Transport Agency (Rosmorrechflot). In accordance with the Provision on the Federal Marine and River Transport Agency approved by the Government Decree of the Russian Federation No.371 dated July 23, 2004, Rosmorrechflot carries out the responsibilities on management of the state property within marine and river transport and provision of the state services.

During the inventory of the responsibilities within river transport that was carried out under the administrative reform, the responsibilities of ice-breaker pilotage and control of navigation in the water area of the Northern Sea Route were excluded from the Provision on the federal executive authority on transport on the ground that they were not determined by the federal legislation.

The Rules of navigation through the Northern Sea Route of 1990 are not entitled to control navigation in the water area of the Northern Sea Route because the Administration of the Northern Sea Route as the state company authorized by the Government of the Russian Federation has been terminated, and the ship-owners (the operators) of the ice fleet and state shipping companies, including their subdivisions – Marine Operations Headquarters, have been privatized.

Therefore, the main objective of the state reforms to distribute the responsibility of the state management and economic operations and to establish a relevant system of state management as related to the navigation in the water area of the Northern Sea Route has not been achieved.

In order to manage the navigation through the Northern Sea Route (including shipping of the international vessels) by the federal executive authority empowered by the Government of the Russian Federation the Rules of navigation in the water area of the Northern Sea Route shall be developed.

2. The Concept of the Draft Law

The main concept of the draft law is to improve the legislation of the Russian Federation as related to the regulation of relations connected to the navigation of the vessels in the water area of the Russian Federation.

3. The Objective of the Draft Law

The draft law is focused on the assurance of implementation of tasks of the Russian Federation in the Arctic, the Marine Doctrine of the Russian Federation, including provision of the national interests of Russia as related to the Northern Sea Route, centralized management of this transport system, assurance of navigation safety and protection of the environment of

the Arctic region, ice-breaker services and granting of the equal access to the interested transport operators, including international.

Moreover, the draft law shall give a definition of the water area of the Northern Sea Route.

4. Conformity of the available management system of the Northern Sea Route with the Doctrine of the Russian Federation as related to the provision of the national interests of the Russian Federation in the Arctic

The fundamental document that defines the national marine policy of Russia is the "Marine Doctrine of the Russian Federation for the Period through 2020" approved by the President of the Russian Federation on July 28, 2001 (No.Pr-1387).

Pursuant to this document the tasks of the Russian Federation in the Arctic include the following:

- research and exploration of the Arctic and commitment to the development of the export industries;

- provision of the national interests of the Russian Federation as related to the Northern Sea Route, the centralized state management of this transport system, ice-breaker service and granting of the equal access to the interested transport operators, including international;

- maintenance of the global leadership in construction and operation of atomic ice-breakers;

- update and safe exploitation of the atomic ice-breaker fleet;

- state funding of the expenses for maintenance, construction and operation of the ice-breakers and transport vessels of ice class, primarily with atomic power units, establishment of the special-purpose registration system;

- consolidation of efforts and resources of the federal centre and constituent entities of the Russian Federation in order to develop navigation in the Arctic, sea and river mouths of ports and to carry out deliveries of goods to the Northern Territories of Russia as well as information systems that provide for the stated activities.

The necessity to carry out a reform of the management system of the Northern Sea Route is preconditioned by the fact that the available management system of ice-breaker operations on the Northern Sea Route contradicts to the provisions of the Marine Doctrine of the Russian Federation.

The national transport route of Russia in the Arctic – the Northern Sea Route – came under the management of the ship-owner companies of the ice-breaker fleet operating the ice-breakers upon the terms of trust management or rent.

Prior to 2003 the Arctic ice-breaker fleet and agencies providing the arctic navigation were maintained at the expense of two financial sources: the federal budget and proceeds from the services of the ice-breaker fleet.

Funding of the maintenance for the ice-breaker fleet at the expense of the federal budget was terminated in 2003 by the Decree of the Government of the Russian Federation No.1528-p dated October 31, 2002.

It has been stipulated that funding of the current operational costs for maintenance of the ice-breaker fleet that provides pilotage of the vessels in the water areas of the Northern Sea Route, including actions to prolong the operating life of atomic steam-generation plants, shall be carried out at the expense of the funds that are received as payments for the services of the ice-breaker fleet settled according to the established procedure.

The tariffs for the services of the atomic ice-breaker fleet were significantly increased and continued to grow each year due to the inflation and fast escalation of the prices for nuclear fuel in connection with the transit to funding of maintenance of atomic ice-breakers and nuclear maintenance vessels from one source.

Last but not least, the biggest resource-producing companies that operate in the Arctic commenced at their own expense high-cost projects on construction of transport vessels of reinforced ice class to transport their products and supply ice-breakers to provide safe operation of the terminals and oil rigs specifically because of the high tariffs.

Owing to the plans of the Russian Federation to develop the Arctic shelf fields, the value of the Northern Sea Route will only expand in future.

However, at present the role of the state on the Northern Sea Route is diminished. No practical actions to implement the tasks of the Marine Doctrine in the Arctic have been undertaken.

In order to establish competitive environment and taking into account the geopolitical and defence value of the Northern Sea Route, the infrastructure of the marine transport system shall be funded at the state expense.

The provisions of the draft law are focused on the coordinating of the available system of management of the Northern Sea Route and the Marine Doctrine of the Russian Federation in connection with the national interests in the Arctic.

5. Issues that constrain transit and regional transportations on the routes of the Northern Sea Route can be divided into two categories:

- legislative;
- organisational.

Legislative Issues:

The available legal framework and the system of management of the marine operations in the Arctic were established in the years of the state monopoly and seamlessly complied with the system of industrial relations.

The UN Convention on the Law of the Sea of 1982 empowered the coastal states to adopt and provide observance of the non-discriminatory laws and regulations in the regions within the exclusive economic zone covered with ice for the most of the year.

These rules were also stipulated in Clause 32 of Federal Law No.191-FZ "On the Exclusive Economic Zone" dated December 17, 1998.

Starting from the date of issue in the "Notices to Mariners" in July 1991 the rules of navigation through the Northern Sea Route regulate shipping in the water area of the Northern Sea Route for the vessels of all states on the non-discriminatory basis.

The situation has dramatically changed during last 10 years.

It is primarily connected to:

the establishment of private shipping companies;

the availability of private ship-owners;

the start of exploration of the shelf fields of the Arctic seas;

the increase of scientific researches in the Arctic;

the expanding of the requirements to the vessels involved in transportation of crude hydrocarbons and hazardous cargoes;

the advancement of the concern from the international states, first of all within the Arctic regions, to the development of navigation in the Arctic.

Based upon Clause 234 of the UN Convention on the Law of the Sea of 1982 it is required to commence development of the contemporary legal framework.

The draft law is appealed for specification of the legal status and borders of the water area of the Northern Sea Route as well as the status of the Administration of the Northern Sea Route to be established as the federal state enterprise.

It is necessary to determine the federal executive authorities responsible for assurance of navigation safety and prevention of pollution of the Arctic marine environment from the vessels, including pilotage of the vessels through the recommended routes, in the water area of the Northern Sea Route as well as ice-breaker pilotage and ice pilotage of the vessels in the water area of the Northern Sea Route, within the federal legislation by introducing changes to the relevant federal laws.

Organisational Issues:

The Arctic marine transport corridor is assigned to the routes of communication the infrastructure of which shall be subsidized by the state, moreover, the subvention shall become significant during the rehabilitation.

Therefore, the issues how to combine the task on reimbursement of the expenses and the task to provide access to these services as well as how to apply these subventions more effectively appear.

The Administration of the Northern Sea Route stipulates payment of the Arctic tonnage dues for the services on assurance of navigation safety and prevention of pollution of the Arctic marine environment from the vessels, including pilotage of the vessels through the recommended routes, under the navigation of the vessels in the water area of the Northern Sea Route.

The rates of the Arctic tonnage dues and rules for their application shall be determined in accordance with the legislation of the Russian Federation on the natural monopolies considering the tonnage of the vessel, its ice class, distance of the vessel's pilotage and season of navigation.

The tariffs for the services rendered in the water area of the Northern Sea Route under the ice-breaker pilotage of the vessels by the ship-owners of the ice-breaker fleet based on the agreements, ice pilotage of the vessels, and the rules for application of the tariffs shall be

defined in conformity with the legislation of the Russian Federation on the natural monopolies considering the tonnage of the vessel, its ice class, distance of the vessel's pilotage and season of navigation.

6. The draft law is focused on the improvement of the legislation of the Russian Federation pertaining to the regulation of relations connected to the navigation of the vessels in the water area of the Northern Sea Route.

Due to this fact, in order to solve the above-stated issues the changes shall be introduced to the wordings of three federal laws:

No.81-FZ "Code of Merchant Shipping of the Russian Federation" dated April 30, 1999;

No.155-FZ "On the Internal Sea Waters, the Territorial Sea and the Contiguous Zone of the Russian Federation" dated July 31, 1998;

No.147-FZ "On the Natural Monopolies" dated August 17, 1995.

The adoption of the draft law will allow establishing a unique system of management in the water area of the Northern Sea Route and a modern infrastructure that shall assure safe conditions of navigation of the vessels in the Arctic waters, including navigation-hydrographic and hydrometeorological support as well as the ice-breaker pilotage.

The adoption of this draft law will not entail additional expenses from the federal budget.