Reguleringer og russiske myndigheters rolle ved et grenseoverskridende oljeutslipp

Barents Sea Exploration Collaboration (BaSEC) er et industrisamarbeid for å forberede leteoperasjoner i Barentshavet. BaSECs siktemål er å koordinere operatører og komme med anbefalinger om tiltak som kan danne grunnlag for sikker og effektiv letevirksomhet i Barentshavet. BaSEC har 16 medlemmer, alle operatører på norsk sokkel. BaSEC bygger sine rapporter på beste tilgjengelige kunnskap og på den brede erfaring disse 16 selskapene har fra operasjoner på norsk sokkel og i andre områder med tilsvarende forhold.

Denne rapporten analyserer på oppdrag fra Lundin Norway AS reguleringer og rolle til russiske myndigheter i tilfelle at et oljeutslipp fra Barentshavet sørøst skulle gå over grensen til Russland. BaSEC har delfinansiert denne studien.

Risikoen for en oljeutblåsning er liten, men alle operatørselskapene ser det som viktig at man er forberedt på å håndtere dette i forhold til myndighetene på russisk side. Her spiller norske myndigheter en sentral rolle og det er derfor BaSECs håp at denne rapporten kan belyse viktigheten av myndighetenes rolle i å bidra til avklaringer av rammevilkår ved fremtidige tildelinger.

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ANALYSIS OF OSR REGULATIONS AND AUTHORITIES ROLES IN RUSSIA IN CASE OF TRANSBOUNDARY OIL SPILL IN THE BARENTS SEA

Murmansk, Russia
2015

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Summary

Few countries have sufficient resources for combating large oil spills on their own. Norway and Russia have had plans to mutually assist one another in oil spill response (OSR) in the Barents Sea for more than 20 years.

Cooperation has largely been performed by the national governmental bodies. As Norwegian oil and gas industry moves closer to the Norwegian-Russian border in the Barents Sea, interest from the Norwegian operators to learn more about practicalities of the joint OSR and associated challenges is increasing. The special attention is naturally given to the OSR on the Russian side as organization of OSR system in Russia is unfamiliar for the Norwegian operators.

This report analyzes roles and responsibilities of the central Russian stakeholders with whom a Norwegian operator may need to interact with in case of the cross-border oil spill from its activities in the Barents Sea. The report gives a short overview of the Russian national legislation, while main focus is made on the rules of border crossing and customs clearance, use of dispersants and compensation of oil spill damage on the Russian side in case of transboundary oil spill.

Content

List of Acronyms and Definitions

CLEE	The Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources, 1977
CNIIMF	Russian Maritime Institute
Contact point	National agency or authority to which notification on oil pollution shall be addressed. The national contact point is responsible for possible further notification to its own organization and for the implementation of the Joint Plan.
CSM	Centre of Standardization and Metrology
EEZ	Exclusive economic zone
EMERCOM	The Ministry of Civil Defense and Emergencies of the Russian Federation
FPSO	Floating Production, Storage and Offloading
FSS	Federal Security Service
FZ	The Russian Federal Law (In Russian, Federalniy Zakon)
IDDRI	The Institute for Sustainable Development and International Relations
IMO	International Maritime Organization
INEPRS	The Integrated National Emergency Prevention and Response System of the Russian Federation
Joint Plan	The Joint Norwegian-Russian Contingency Plan for Oil Spill Response in the Barents Sea
JPG	The Norwegian-Russian Joint Planning and Policy Group under the Joint Plan
JRC	Joint Response Centre - the designated site of each Party where facilities are available to provide requirements to fulfil the provisions of the Plan
Lead country	The country requesting assistance shall, unless otherwise agreed, be in charge of the joint operations
MARPOL 73/78	International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978
Mintrans	The Russian Federation Ministry of Transport
Minprirody	The Ministry of Natural Resources and Environment of the Russian Federation
MPC	Maximum permissible concentration
MRC	Marine Rescue Service of Rosmorrechflot
MRCC	Maritime Rescue Co-ordination Centers
MRCSC	Maritime Rescue Co-ordination Sub-centers

MRS	Marine Rescue Service
Murmansk CSM	Regional Centre of Standardization, Metrology and Testing in Murmansk Region
NCA	Norwegian Coastal Administration
NEBA	Net Environmental Benefit Analysis
NEMC	National Emergency Management Center of the EMERCOM of Russia
NOR-VTS	Vardø Vessel Traffic Services of the NCA
Norwegian-Russian agreement	Agreement between the Kingdom of Norway and the Russian Federation on the Combatment of Oil Pollution in the Barents Sea of 1994
NOSC	National On-scene Commander / Coordinator
On-Scene Commander	Tactical Commander
OPOL	Offshore Pollution Liability Agreement
OPRC	The International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990
OSPAR Convention 1992	Convention for the Protection of the Marine Environment of the North-East Atlantic, 1992
OSR	Oil spill response
POLREP	Pollution Report - report of the most current information relating to a pollution incident, including actions taken and progress made during the response
Roshydromet	The Federal Service on Hydrometeorology and Environmental Monitoring
Rosmorrechflot	The Federal Agency of Maritime and River Transport
Rosrybolovstvo	The Russian Federal Fisheries Agency
Rosprirodnadzor	The Federal Supervisory Natural Resources Management service
RUB	Russian Ruble
SAR	Salvage and Rescue
SDR	Special Drawing Rights
SMRCC	State Maritime Rescue Coordination Center
Strike team	Self-supported oil spill response unit/units
SOSC	Supreme On-Scene Commander / Coordinator
UNCLOS	United Nations Convention on the Law of the Sea, 1982

1. Introduction

Cooperation between Norway and Russia on environmental protection from oil pollution in the Arctic has existed for more than 20 years. It is based on the Agreement between the Kingdom of Norway and the Russian Federation on the Combatment of Oil Pollution in the Barents Sea, signed by the governments of Norway and Russia in April, 1994 (*hereinafter – the Norwegian-Russian Agreement*). Under the agreement, the Joint Norwegian-Russian Plan for Oil Spill Response in the Barents Sea (*hereinafter – the Joint Plan*) was developed. These documents determine the official framework for cooperation within OSR, running regular joint meetings, and exercises (figures 1 and 2). In practice, cooperation has largely been delegated by national ministries to their subordinate agencies, the Norwegian Coastal Administration and the Northern Branch of the Maritime Rescue Service of the Russian Federation, which have cooperated through the Joint Planning and Policy Group.

Figure 1. Annual Norwegian-Russian joint exercises Barents in the Barents Sea.

Figure 2. Norwegian-Russian shoreline protection and beach cleaning exercises.

Norwegian operating companies have not been significantly involved in the joint meetings and exercises. In November 2014 in the framework of the Norwegian-Russian Agreement, the first joint Norwegian-Russian OSR exercise with Norwegian operators (*hereinafter – table-top*) was held in Murmansk (figure 3).

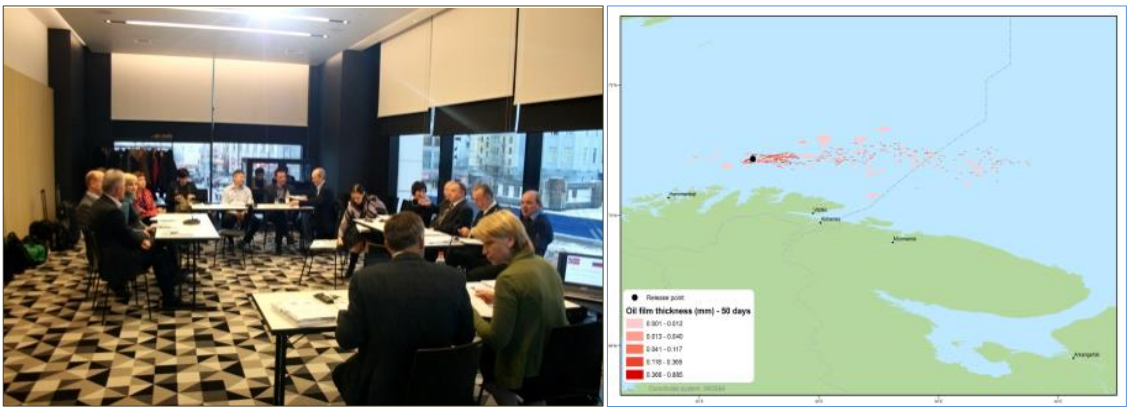


Figure 3. Table-top OSR exercise, Murmansk, November, 2014

The Norwegian side was represented by the Norwegian Coastal Administration and Norwegian oil companies operating in the Barents Sea: Statoil, Lundin Norway and Eni Norge.

Among the Russian participants there were the Northern Branch of Marine Rescue Service (MRS) of Rosmorrechflot, Murmansk Maritime Rescue Co-ordination Center (MRCC Murmansk), Regional Centre of Standardization, Metrology and Testing in Murmansk Region (Murmansk CSM), Murmansk branch of the Federal Service on Hydrometeorology and Environmental Monitoring (Roshydromet), private Russian companies EcoService (strike-team) and IS-Systems (coordinator).

The scenario that was used for the table-top was a blowout from an exploration well which occurs on the Norwegian side of the Barents Sea with spreading to the Russian side. The aim of the table-top was to practice the notification scheme between the Norwegian Coastal Administration and the Russian stakeholders as well as to identify challenges which may arise during a joint OSR.

One challenge that was identified during the exercise was an unclear role of the operator after transfer of OSR operations command to the Norwegian Coastal Administration. To further investigate this question it was decided to analyze the central Russian stakeholders which operator may interact with, and Russian national legislation which has relevance for the joint OSR operations in the Barents Sea.

The current report gives an overview of roles and responsibilities of the Russian authorities involved into OSR in the Barents Sea. When analyzing legislation, the focus is made on the rules of border crossing and customs clearance, use of dispersants, as well compensation of oil spill damage on the Russian side.

2. Russian national OSR legislation

2.1. Russian OSR regulations and recent changes in the national legislation

Offshore oil and gas activity in the Russian Federation is regulated through a complex system of rules derived from the Constitution, multiple statutes and decrees, sub-statutes, regulations and other sources of law (Belkina and Sarkova, 2014). The national Russian OSR legislation is not analyzed in detail in this report as it mainly does not have direct influence on planning and implementation of joint OSR in the Barents Sea. The list of the main Russian laws and regulations is given in Appendix A for information.

In contrast to the Norwegian approach, Russian OSR planning is based on strictly prescribed maximum possible volumes of oil spills from facility categories such as 'marine terminals' and 'oil rigs' Previously, OSR planning for exploration and production wells was based on an absolute value of 1500 tonnes absolutely independently of the type and design of the offshore facilities and preventive measures adopted (Decree No. 613[1]). Nowadays, some improvement has been made towards more specific estimations for a particular offshore well. According to new Decree No. 1189[2], which was adopted in November, 2014, the maximum possible volume of oil spill shall be calculated based on the max flow rate from the well and 3 days duration.

Decree No. 1189 has replaced two central Russian Governmental Decrees No. 613 and 240[3], which are now relevant only for onshore OSR planning. Decree No. 1189 stipulates basic rules for oil spill prevention and response on the continental shelf, in the inland sea waters, territorial seas and adjacent zone of the Russian Federation. Among the most important amendments which were made by the Decree the following ones should be mentioned:

– Decree No.1189 doesn't stipulate the Tiered Response concept which was focused on volumes of spilled oil as it was earlier provided by Decrees 613 and 240.

– The requirement to localize any oil spill in 4 hours from the moment when the spill was detected or information on the spill was received is no longer in force[4].

In Russia, as well as in Norway, mechanical recovery is considered as a primary OSR strategy at sea, while dispersants can be a supplemental one. Regulation of dispersants use in Russia and in joint OSR in the Barents Sea is discussed in 2.2.

In contrast to Norway, there is no requirement in Russia to perform oil weathering studies. Only original chemical and physical properties of oil are taken into account when planning OSR. Some efforts were made by SINTEF to transfer Norwegian practice in testing oil weathering to Russian laboratories. In particular, oil weathering test laboratory was established in Murmansk in 2008 under the agreement between Murmansk Regional Government and Statoil ASA.

Management of claims associated with transboundary oil pollution is a very complicated and important question which requires special attention both from the industry and authorities. IS-Systems has been in contact with the Ministry of Environment and Natural Resources of the Russian Federation (Minprirody) to clarify the process of environmental damage assessment in case an oil spill spreads into the Russian waters. The main findings are presented in 2.3. Correspondence between IS-Systems and Minprirody is attached in Appendix B.

[1] Russian Federation Governmental Decree as of August 21, 2000 No. 613 "On Immediate Actions on Oil Spill Prevention and Response".

[2] Russian Federation Governmental Decree as of November 14, 2014 No. 1189 "On Organizing of Prevention and Response of Oil Spills on the Continental Shelf of the Russian Federation, in the Inland Sea Waters, Territorial Sea and Adjacent Zone of the Russian Federation".

[3] Russian Federation Governmental Decree of April 15, 2002 No. 240 "On the Procedure for Oil Spill Prevention and Response Activities Organization on the Territory of the Russian Federation".

[4] The term 'to localize' in relation to an OSR strategy means to limit spread of an oil slick within a particular area and/or prevent the spread of oil to particular zones. In practice, it generally includes use of booms and skimmers.

2.2. Regulations for dispersants use in a transboundary context in the Barents Sea

In Russia mechanical recovery is considered the primary OSR strategy at sea. However, use of dispersants may be more realistic and beneficial from an environmental point of view when OSR operations take place in remote areas.

The Joint Plan does not set any specific requirements for use of dispersants and lets the Parties of the Norwegian-Russian agreement follow their national procedures. The Joint Plan emphasizes that in case of transboundary pollution the decision to use dispersants shall only be undertaken upon common agreement. However, a well-established and agreed algorithm determining this process in joint OSR operations, where there is a risk of transboundary pollution, does not exist.

Dispersants for use in OSR operations in Russia must be pre-approved by relevant environmental authorities. This preliminary approval confirms that the dispersant has "in principle" been allowed for use in the inland and territorial sea, as well as in the exclusive economic zone of the Russian Federation. Pre-approval also means that a dispersant has been tested for toxicity, and corresponding maximum permissible concentration (MPC) is determined for it.

According to the Order of the Russian Federal Fishing Agency (Rosrybolovstvo) as of January 18th 2010 "On approval of water quality norms for fishery water bodies, including MPC of harmful substances in fishery water bodies" the list of pre-approved dispersants contains MPC only for COREXIT 7664. There is no other legal document in force which provides MPCs or temporary norms for use of dispersants in the Russian arctic marine waters (Belkina *et al.* 2015).

If dispersants are chosen as a potential OSR strategy, it must be reflected in the OSR plan and approved by appropriate authorities before commencing any activities which pose risk of pollution. Selection of OSR strategy shall be based on a Net Environmental Benefit Analysis (NEBA).

In case of an oil spill it is necessary to get an authorization to use the pre-approved dispersants. The approval for use shall be made in agreement with the territorial bodies of Federal Supervisory Natural Resources Management Service (Rosprirodnadzor) and Rosrybolovstvo on the basis of the NEBA.

According to "Regulations on Oil Spill Dispersants Application" as of October 2005, approved by Minprirody and The Federal Agency of Maritime and River Transport (Rosmorrechflot), NEBA for dispersants application must be performed at the stage of OSR plan preparing (preliminary NEBA) and when a decision to mobilize is being made at the time of an oil spill incident (NEBA of the actual situation).

If a preliminary NEBA has been performed, the NEBA of the actual situation can be conducted in an abbreviated form to evaluate whether the actual situation corresponds to the scenarios proposed in the OSR plan. If the actual and proposed scenarios are similar, the authorized representatives of the territorial units of Rosprirodnadzor and Rosrybolovstvo should endorse the use of dispersant in the given situation. If the actual situation deviates significantly from a proposed one, a new NEBA must be conducted.

The above mentioned regulations stipulate policy for dispersants use in Russia and contain general information on dispersant testing and certification, planning and approval of dispersants use, NEBA procedure, dispersants application techniques, etc. However, these regulations, as

any other relevant documents in Russia, do not stipulate clear algorithms for inclusion of the pre-approved dispersants into the actual OSR operation. Lack of a well-established approval procedure can result in a long and unclear permitting process and delays to the OSR campaign. As a consequence, while spending time on getting authority's approval, window of opportunity for efficient response can be lost.

Another factor which can make dispersants less attractive than mechanical recovery in Russia is that application of pre-approved dispersants may be considered as "discharge of pollutants into water environment" which must be paid for in accordance with the Russian environmental protection policy. However, it should be noted that dispersants have not yet been used in OSR operations in Russia (at least there are no reliable records). Thus, there is an absence of practical administration of the fee for discharge of "pollutants" (here dispersants). The legal side of this issue is controversial and requires additional coordination with environmental authorities, namely Rosprirodnadzor and the Ministry of Natural Resources and Environment of the Russian Federation (Minprirody).

IS-Systems has been in contact with the Minprirody to clarify the process of obtaining a permit for use of dispersants in a real spill and whether dispersants may be considered as pollutants (Letter No. 12-47/16212). However, no clear answer has been received so far. Minprirody refers only to "Regulations on Oil Spill Dispersants Application" (CNIIMF, 2005), which contains only general provisions on dispersants use and certification and do not cover these questions (see Appendix B).

2.3. Possible Russian claims for damage caused by a transboundary oil spill from petroleum activities in the Barents Sea

Today, there is no international convention that regulates management of claims associated with transboundary oil spill from offshore installations. A summary of the analysis of the relevant international legislation is given in 2.3.1.

The Russian approach to oil spill damage assessment as well as results from communication with the Ministry of Natural Resources and Environment of the Russian Federation regarding transboundary oil spill damage are presented in 2.3.3 and 2.3.5. These sections give a brief presentation of Russian approach to assessment of environmental damage, other types of claims are not considered here. For more detailed analysis it is recommended to see PhD dissertation "Compensable damage ex delicto as a result of harm in the Barents Sea caused by the petroleum spills from offshore installations" (Svendsen, 2015).

Potential economic risks for the Norwegian operator associated with transboundary spill are shortly presented in 2.3.5.

2.3.1. International legislation for compensation of oil spill damage from offshore facilities

United Nations Convention on the Law of the Sea, 1982 (UNCLOS) contains general provisions on pollution damage compensation and requires States to control pollution of the marine environment from sea-bed activities and to provide recourse for compensation for damage caused by such pollution (articles 145, 194, 235). UNCLOS does not include any compliance or enforcement mechanism, nor does it deal with liability or compensation. It does however promote under article 235, that States shall "*cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage*".

Some countries have entered into regional agreements such as the Convention for the Protection of the Marine Environment of the North-East Atlantic, 1992 (OSPAR Convention) serving the North Atlantic countries, and the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992 (Helsinki Convention) serving the Baltic region. However, these conventions deal with marine environment protection, not liability and compensation.

International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78) deals mainly with environmental aspects of offshore activities, e.g. performance or operational standards and does not cover liability and compensation of acute oil spills.

The Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources, 1977 (CLEE 1977) was intended to provide adequate compensation to victims of pollution damage from offshore activities, limited to 30 million special drawing rights (SDR). Unfortunately, the CLEE 1977 was not ratified and did not come into force.

However, in May 1975 a voluntary industry compensation scheme, the Offshore Pollution Liability Agreement (OPOL), came into effect as an interim measure to CLEE 1977, providing compensation up to $250 million. The scheme is funded by specific oil companies who are parties to OPOL. Cover extends to direct loss or damage by contamination which results from a discharge of oil from an offshore facility within the jurisdiction of any state specified in the agreement. These states presently include the UK, Denmark, Germany, France, Netherlands, Norway, the Isle of Man and the Faroe Islands.

The International convention on oil pollution preparedness, response and cooperation, 1990 (OPRC) promotes international cooperation and aim to enhance existing national, regional and global capabilities concerning oil pollution preparedness and response. Its Annex contains rules on the reimbursement between the parties of costs of assistance in connection with oil pollution incidents. The Agreement on Cooperation on Marine and Oil Pollution Preparedness and Response in the Arctic, 2013 (Kiruna agreement) as well as OPRC, provides provisions for reimbursement only of costs of assistance, not covering the environmental damage reimbursement.

Other regional agreements which deal with joint OSR actions across the border such as the Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil, 1983 (Bonn agreement), the Agreement between Denmark, Finland, Iceland, Norway and Sweden on information and cooperation in response to pollution of the sea by oil or other harmful substances, 1994 (Copenhagen agreement), as well as the Norwegian-Russian agreement, 1994 in a wider sense, address the issues of liability for pollution, in particular inter-state compensation for clean-up activities. However, these agreements do not concern the rights of the third parties for other types of claims besides clean-up costs.

The Joint Plan was signed for the first time in 1994 simultaneously with the Norwegian-Russian agreement. The Joint Plan provides regulations for cooperation between the competent national authorities of two countries on OSR, joint exercises and regular meetings of the Joint Planning Group. The Joint Plan is updated regularly, based on the experience from exercises and meetings. In 2014 the Joint Plan was renewed and resigned.The Joint Plan does not regulate compensation of environmental damage or other third parties claims except of clean-up costs and stipulates that relevant national procedures should be followed.

IMO has developed a comprehensive regime covering liability and compensation resulting from pollution from oil carried by ships, both as cargo and as fuel: the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC), as amended by its 1992 Protocol, the 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (FUND) and the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (BUNKER).

However, 1992 CLC and 1992 FUND do not currently cover pollution damage caused by offshore exploration and exploitation activities (IMO Legal Committee 97th Session, 15-19 November 2010 http://www.imo.org/en/MediaCentre/MeetingSummaries/Legal/Pages/LEG-97th-Session.aspx). 1992 CLC and 1992 FUND do not apply to oil rigs and arguably they do not apply to FPSOs as they essentially apply to ships carrying oil as cargo that are on a voyage[5]. Mobile offshore rigs may in certain cases fall under the BUNKER as "ship" is broadly defined here as any seagoing vessel or seaborne craft of any type, making this convention applicable in cases of bunker oil spills[6].

In-depth analysis of the international legislation and compensation of oil spills from offshore facilities can be found in the following reports:

- Civil Liability and financial security and compensation claims for offshore oil and gas activities (University of Maastricht, 2013)
- Civil liability, financial security and compensation claims for offshore oil and gas activates in the European Economic Area (European Commission, 2014)
- Seeing beyond the horizon for deep-water oil and gas: strengthening the international regulation of offshore exploration and exploitation (Rochette *et al.*, 2014)

It can be concluded that, today, there are no international conventions which regulate civil liability and compensation in case of oil spills from offshore exploration and production. BUNKER due to the broad definition of "ship" might be applied to bunker oil spills from mobile drilling rigs and FPSOs. Regional agreements such as OPRC and the Norwegian-Russian agreement address only reimbursement of clean-up costs and do not cover compensation of claims from the third parties.

2.3.2. IMO's follow-up of the international oil spill compensation regime after Montara spill

The Montara blow-out incident highlighted the fact that there is no international convention in force covering the issues of liability and compensation for transboundary oil spills from offshore exploration and production activities.

In April 2011 the Government of Indonesia submitted a paper to the IMO Legal Committee (LEG/14/1) in which, a result of the Montara incident, it proposed a new work program item to address issues of liability and compensation arising from transboundary oil pollution damage resulting from offshore oil exploration and production. The Legal Committee has concluded that there is no compelling need to develop an international convention on this subject and that the

[5] There has however been a Greek Supreme Court decision in the Slops case (case number 23/2006) where a permanently anchored storage unit whose propeller had been removed and engine deactivated, was found to fall within the definition of ship under CLC 92. http://www.standard-club.com/media/1557823/definition-of-a-ship.pdf

[6] Grounding of the Shell Kulluk oil rig near Kodiak Island, Alaska, in 2012 highlighted the risks of bunker oil spills in the Arctic waters.

problem would best be resolved by means of regional and bilateral agreement between states. The Committee agreed, accordingly, that it wished to further analyze the liability and compensation issues, with the aim of developing guidance to assist States interested in pursuing bilateral or regional arrangements, without, however, revising the IMO's Strategic Plan[7] (citation from the summary of the IMO Legal Committee 99th Session, 16-20 April 2012 http://www.imo.org/en/MediaCentre/MeetingSummaries/Legal/Pages/LEG-99th-session.aspx).

The IMO Legal Committee agreed that assistance should be provided to those States which are in need of guidance for bilateral and multilateral agreements. Member States were invited to send examples of relevant legislation and, in particular, examples of existing bilateral and regional agreements to the IMO Secretariat; and the delegation of Indonesia was encouraged to continue with its work to facilitate further progress within the Legal Committee (citation from the summary of the IMO Legal Committee 100th Session, 15-19 April 2013 http://www.imo.org/en/MediaCentre/MeetingSummaries/Legal/Pages/LEG-100th-session.aspx).

At the 101 session of the Legal Committee in 2014, Indonesia and Denmark offered to stand ready to co-chair an intersessional consultative group, to develop guidance on bilateral and regional agreements or arrangements related to the liability and compensation issues connected with transboundary pollution damage resulting from offshore oil and exploration activities (http://www.imo.org/en/MediaCentre/MeetingSummaries/Legal/Pages/LEG-101.aspx).

2.3.3. Russian approach to assess compensation from environmental oil spill damage

In contrast to the Norwegian legislation, the Russian legislation attempts to compensate the environmental damage in full, through placement of a monetary value on harm inflicted to the environment (loss of habitats and biological resources). The costs are typically assessed based on the ruble-per-tonne calculations in accordance with the approved Russian methodologies.

The general principle is that harm inflicted to the marine environment and aquatic bioresources is compensated according to the fixed charges and methodologies. If such charges and methodologies are absent, harm is calculated according to the expenses of restoration of environment and aquatic bioresources. Examples of mathematical methodologies which are used in Russia are given below.

Harm to water environment

An example of the typical ruble-per-tonne calculation of environmental damage (to the water environment) of acute oil spill at sea (Methodology for calculating of the damages caused to water bodies due to violations of water legislation, approved by Decree by the Ministry of Natural Resources and Environment of the Russian Federation of April 13, 2009, No. 87) is given below:

$$ED = Cs \times Cd \times Ce \times Ci \times Hi, \text{ where}$$

ED - the amount of damage, mln. RUB;
Cs – coefficient of climate conditions and season;
Cd – coefficient of duration of the negative impact of oil spill without any response actions;

[7] The IMO's Strategic Plan, adopted by IMO Resolution A.1062 (28), contains key strategic directions enabling IMO to achieve its mission objectives, which include promoting of safe, secure, environmentally sound, efficient and sustainable shipping through co-operation.

Ce – coefficient of environmental factors of the water body;
Ci – indexation coefficient which reflects inflation rate;
Hi – rate for the calculation of damage is determined by the weight of the discharged oil (RUB-per-tonne).

Harm to aquatic resources

In 2011 "Methodology for calculating of the damage, caused to water biological resources" was approved by the Decree No. 1166.

The calculation of harm inflicted to aquatic bioresources provides for its definition in kind (kg/tonne) based on the ex post effect of negative factors on the condition of the bioresources, as well as the monetary value (RUB) based on the expenses of recovery of the infringed condition of the aquatic bioresources, taking into account incurred losses including loss of expected gains.

The size of damage depends on the consequences of the multilateral negative effects on the condition of water biological resources and their habitats, and the value of its constituents (incurred losses, including lost profits and the cost of restoration of the aquatic biological resources' condition) and expressed by the following formula:

$$N = N^1 + N^2 + N^3 + N^4 + N^5, \text{ where}$$

N – damage to aquatic biological resources caused by violation of the law, RUB;
N^1 – damage from the destruction of aquatic biological resources (with the exception of food organisms), RUB;
N^2 – damage from the loss of dead aquatic biological resources' offspring, RUB;
N^3 – damage from the loss of growth of aquatic biological resources as a result of destruction of food organisms (plankton, benthos) and algae, ensuring the growth and vital functions of aquatic biological resources, RUB;
N^4 – damage caused by the deterioration of living conditions and reproduction of aquatic biological resources (loss of areas for spawning and breeding, wintering, feeding, as well as violation of migration routes, deterioration of hydrochemical and hydrological regime of water bodies), RUB;
N^5 – cost of restoration of the condition of aquatic biological resources and their habitats, RUB.

The baseline data, used for the calculation, are obtained from surveys, researches, laboratory tests and examinations, carried out within the framework of the administrative inquiry into the facts of death of living aquatic resources and pollution of their habitats.

2.3.4. The international interpretation of the Russian legislation for compensation of environmental damage

It should be noted that internationally such abstract models for damage calculations are often not accepted. For example, such methods are not admissible under the 1992 CLC and 1992 FUND. Article I.6 of the 1992 CLC limits carefully the concept of pollution damage and provides as follows:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;

(b) costs of preventive measures[8] and further loss or damage caused by preventive measures.

This means that in cases where the 1992 CLC and 1992 FUND are applicable, claims for environmental damage based on the theoretical calculations can be rejected, and the compensation will be limited to restoration of environment. See for example case study in the Strait of Kerch below.

Case study in the Strait of Kerch: compensation of environmental damage claimed by the Russian authorities

On 11 November 2007, the Russian-registered tanker *Volgoneft 139* (3 463 GT, built in 1978) broke in two in the Strait of Kerch linking the Sea of Azov and the Black Sea between the Russian Federation and Ukraine. The tanker was loaded with 4 077 tonnes of heavy fuel oil. It is understood that between 1 200 and 2 000 tonnes of fuel oil were spilt. It was reported that three other cargo vessels loaded with Sulphur (Volnogorsk, Nakhichevan and Kovel) also sank in the same area within two hours of the incident.

Some 250 kilometers of shoreline, both in the Russian Federation and in Ukraine, are understood to have been affected by the oil. Heavy bird casualties, numbering in excess of 30 000, were reported.

Operations at sea were reported to have recovered some 200 tonnes of heavy fuel oil. Beach cleaning was undertaken by the Russian military and civil emergency forces and some 70 000 tonnes of oily debris, sand and sea grass were taken away for disposal. In Ukraine some 6 500 tonnes of oily waste were collected, mainly from Tuzla Island, and were transferred to the Port of Kerch prior to disposal.

The Russian Federation is a Party to the 1992 CLC and 1992 FUND. At a meeting in May 2008 the Russian authorities informed the 1992 FUND that Rosprirodnadzor had submitted a claim for environmental damage for some RUB 6 048.6 million. This claim was based on the quantity of oil spilled, multiplied by an amount of RUB-per-tonne. The Secretariat informed the Russian authorities that a claim based on an abstract quantification of damages calculated in accordance with a theoretical model was in contravention of Article I.6 of the 1992 CLC and therefore not admissible for compensation, but that the 1992 FUND was prepared to examine the activities undertaken by Rosprirodnadzor to combat oil pollution and to restore the environment to determine if and to what extent they qualified for compensation under the Conventions. The 1992 FUND has assessed the costs incurred by Rosprirodnadzor at RUB 688 487.

In September 2010, the Arbitration Court of Saint Petersburg and Leningrad Region rendered a judgement rejecting the Rosprirodnadzor claim. In its judgement the Court noted that, under Article I.6 of the 1992 CLC, compensation for damage to the environment, other than loss of

[8] "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage (Article I.6 of the 1992 CLC).

benefit caused by such damage, should be limited to the expenses for the reasonable reinstatement measures, as well as the expenses for the preventive measures and subsequent damage caused by such measures. The Court also noted that the expenses included in the other claims arising from the incident covered any preventive and reinstatement measures actually taken as a result of the incident. Rosprirodnadzor has not appealed and the judgement is therefore final.

The full incident report with overview of civil proceedings and claims for compensation is available at http://www.iopcfunds.org/incidents/incident-map/#139-2007-225-November.

2.3.5. Letter from the Ministry of Natural Resources and Environment of the Russian Federation concerning transboundary oil damage

IS-Systems sent a request to the Ministry of Natural Resources and Environment of the Russian Federation to clarify how damage which occurred in Russia but caused by an incident within the Norwegian part of the Barents Sea will be assessed (Letter No. 150). The Ministry declared that possible claims for compensation of environmental damage will be based on the following conventions: OPRC, 1992 CLC, 1992 FUND, MARPOL 73/78. At the same time the Ministry didn't refer to any national legislation acts or rules, which could be applied in such case (Letter No. 12-47/16212).

As shown in 2.3.1and 2.3.2, the above-mentioned conventions do not concern environmental damage or rights of the third parties besides of the pure clean-up costs when oil spill is caused by an accident at the offshore installation.

2.3.6. Potential economic risks for the Norwegian operator

The Norwegian Petroleum Act, 1996 stipulates provisions for compensation of pollution damage in chapter 7, limiting, however, liability of the Norwegian operator to the Norwegian part of the Barents Sea and not extending it to Russian injured parties harmed within the Russian jurisdiction[9]. In addition, there is currently no agreement about recognition and enforcement of foreign courts judgments between Norway and Russia. As a result, court judgments from a Russian court against a Norwegian operator in Norway will most likely not be recognized and enforced by a Norwegian court, and the Norwegian operator will then most likely not be liable for any harm inflicted to Russian injured parties in Russia (Svendsen, 2015).

However, in situations where the Norwegian operator has assets in Russia and refuses to comply with a court judgment of compensation, it is less problematic for Russian injured parties to receive fulfilment of their court judgments against the Norwegian company in a Russian court, as Russian law opens for the seizure and forced sale of assets.

Clean-up costs are the only type of potential claims from the Russian side which has a solid legislative basis. As it is stipulated by both the OPRC and the Norwegian-Russian agreement, clean-up costs of the assisting country shall be compensated by the country which calls for assistance.

[9] The Norwegian Pollution Control Act (1981) also regulates compensation for pollution damage and has a broader geographical scope than the Petroleum Act (1996) and also applies in cases when damage occurs outside Norway. However, as the Petroleum Act regulates specifically offshore activities it goes before the Pollution Control Act, which will be not applicable in case of transboundary spill from offshore installation.

2.4. Rules and regimes for entering of the Norwegian OSR vessels, equipment and personnel to the Russian waters for participation in OSR operation

2.4.1. General rules for the border crossing and customs clearance

General rules for crossing of the state marine border of the Russian Federation by foreign vessels are stipulated by the Federal Law No. 4730-I-FZ as of 1 April 1993 "On the State Border of the Russian Federation".

Depending on the transportation route of the Norwegian OSR resources, three main scenarios can be considered:

- When a Norwegian OSR vessel enters exclusive economic zone (EEZ) of the Russian Federation (200 nm) but not the territorial waters (12 nm);
- When a Norwegian OSR vessel enters the territorial waters of Russia (12 nm);
- When Norwegian OSR personnel and equipment for beach cleaning operations on the Russian side cross onshore border at Borisoglebsk checkpoint.

A general rule which applies to all foreign vessels crossing the Russian marine border is that vessel's master must notify the Border Guard Department of FSS of Russia in the Murmansk region (Border Guard Department) (see 3.3.2) by fax or e-mail no later than 4 hours before the time of the border crossing.

If a foreign vessel is not going into the territorial waters of the Russian Federation (12-mile zone), customs clearance of the vessel and equipment on board is not needed.

When a foreign vessel with people, cargo and goods on board arrives in or departs from the territorial waters of the Russian Federation (12-mile zone), she must pass through the border, customs and other control procedures at the marine checkpoint in Murmansk sea port, according to Technological scheme, 2015.

When a checkpoint on the arrival in the territorial waters of the Russian Federation is passed, a foreign vessel can obtain a permit for multiple crossing of the border, which allows crossing the border without every time examination when she arrives in or departs from the territorial waters. Terms for getting of such a permit are regulated by the Rules for multiple crossing of the state border of the Russian Federation by foreign vessels (Decree No. 813).

The permit is issued by the Border Guard Department of FSS of Russia in the Murmansk region at Murmansk sea port from which the foreign vessel plans to departure with aim of merchant shipping associated with repeated border crossing.

To obtain the permit the ship-owner or his authorized representative sends to the Border Guard Department an application with appropriate information by fax or e-mail no later than 10 working days before the vessel's arrival in the seaport. The permit is issued for the period requested in the application, but no more than for 1 year. The decision about the permit issuing is taken by the Head of the Border Guard Department or by another authorized officer within 8 working days from the receipt of the application.

When crossing border through the onshore checkpoint 'Borisoglebsk', the simplified procedure of the equipment custom clearance should be applied in the emergency regime as described in 2.4.2.

2.4.2. Special procedure for customs clearance in emergency situation

Customs clearance of the goods, intended for the prevention and elimination of the consequences of natural disasters, accidents and catastrophes, can be done under the special procedure, which is stipulated by the "Instruction of the State Customs Committee of the Russian Federation" (Instruction No. 01-14 / 354).

This procedure can be applied for the border crossing as through the sea checkpoint in the port Murmansk as through the onshore checkpoint 'Borisoglebsk'.

This procedure is extended to the import and export of such goods as rescue and medical equipment, medicines, temporary housing, etc., intended among other things for rescue and emergency response operations, irrespective of the way of their transportation (onshore, offshore or air).

This emergency procedure is mainly intended for speeding up of the standard customs clearance procedure, when customs declaration needs to be sent 30 days before the goods import / export.

Customs clearance of such goods when transported through the any kind of customs border of the Russian Federation is carried out in a simplified way as a priority, provided with a written Statement of the responsible organization on the Russian side, which receives the goods. Depending on the transportation route it can be Rosmorrechflot with MRS (offshore transportation) (see 3.1.1.), or EMERCOM (onshore or air transportation) (see 3.1.2.). This Statement is considered by the Customs authorities as a temporary customs declaration and must contain the same information about goods as standard customs declaration, namely senders and receivers, appellations and quantity, gross weight and cost, purpose of use and customs regimes. In the Statement the receiver also pledges to send to the Customs authorities standard customs declaration with relevant documents and information, no later than 30 days since the date, when the goods are released and can be sent back to Norway, in accordance with the customs regulations, valid for the date of temporary customs declaration acceptance by the customs authority.

Goods, imported into the customs territory of the Russian Federation and exported from the territory within 30 days from the day of an emergency occurrence, can be released without payment of customs duties, provided that the EMERCOM of Russia confirms to the State Customs Committee of Russia in Moscow the date of an emergency and other information, required for the customs purposes. State Customs Committee, in its turn, informs its subordinated bodies in Murmansk about the presence of such confirmation.

Goods, which are imported into the customs territory of the Russian Federation and which are subject to veterinary, phytosanitary, environmental and other types of state control (such as dispersants and sorbents), can be imported under special regime only provided that the responsible organization on the Russian side, namely Mintrans and Rosmorrechflot, guarantees not to use these goods without obtaining necessary permissions from the relevant Russian authorities.

Summarizing from the analysis of the border and customs legislation above, it can be concluded that Norwegian OSR vessels will not face any challenges when crossing the maritime border in the Barents Sea. The Border Guard Department of FSS of Russia in the Murmansk region shall be notified either by fax or email 4 hours before entering the economic zone of the Russian Federation (200 nm zone).

However, neither Russian regulations nor the Joint Plan clearly explain the conditions, if any, for the Norwegian OSR vessels and equipment deploying in the Russian EEZ. The question should be addressed to the Russian authorities, which will be included in the OSR in the Russian waters, namely Federal Agency of Maritime and River Transport (Rosmorrechflot) and Border Guard Department of FSS of Russia in the Murmansk region. In this connection a joint table-top exercise with participation of above mentioned authorities might be very useful.

Notification of Customs authorities in Murmansk is not needed if the Norwegian vessel is not going to enter the territorial waters of the Russian Federation (12 nm zone). However, if the Norwegian vessel is going to enter the territorial waters of the Russian Federation, the special procedure for customs clearance of the vessel and equipment can be applied with exemption of goods from customs duties, taxes and economical prohibitions and restrictions. The same simplified procedure of customs clearance can be applied to the equipment, imported to the Russian Federation's territory through automobile and air checkpoints.

Further dialogue with the Border and Customs authorities in Murmansk is needed to clarify the step-by-step procedure for notification and equipment customs clearance.

3. Russian authorities involved in joint OSR operations in the Barents Sea

Any emergency response in the Russian Federation, including response in case of the transboundary pollution, is organized and performed in the framework of the Integrated National Emergency Prevention and Response System of the Russian Federation (hereinafter - INEPRS), which integrates the state authorities and national OSR resources.

Responsibilities for regulating and performing OSR on the national and international level lie with different ministers and agencies in Russia can be divided into three groups in accordance with their roles in transboundary OSR:

Authorities responsible for coordination of OSR and clean-up operations (see 3.1)

Authorities responsible for environmental monitoring and response (see 3.2)

Authorities responsible for border control and customs clearance (see 3.3)

3.1. Authorities responsible for coordination of OSR and clean-up operations

3.1.1. The Russian Federation Ministry of Transport (Mintrans)

Subordinate bodies:

- *Federal Agency of Maritime and River Transport (Rosmorrechflot)*
- *Marine Rescue Service (MRS) of Rosmorrechflot with its regional branches*
- *Maritime Rescue Co-ordination centers (MRCC) and Maritime Rescue*

Co-ordination Sub-centers (MRCSC)

Mintrans via the **Rosmorrechflot** form a national system for organizing of prevention and response to marine oil spills from vessels and facilities, regardless of their departmental and national affiliation. This national system manages OSR operation, physically performs OSR and has necessary OSR resources and personnel.

Rosmorrechflot and its subordinate body **Marine Rescue Service (MRS),** situated in Moscow, are responsible for organization of OSR operations at sea from vessels and facilities. Mintrans and Rosmorrechflot are the Russian competent national authorities, responsible for oil spill preparedness and response in accordance with Article 6 of OPRC and Kiruna agreement, 2013.

Mintrans is empowered on behalf of the Russian Federation to request assistance from foreign countries or to decide to render requested assistance.

MRS has the following structure (see also figure 4):

- MRC (Moscow)
- State Maritime Rescue Coordination Centre (SMRCC) , Moscow, through which MRC carries out OSR management;
- 7 MRCC and 6 MRCSC, situated in different sea basins;
- 9 regional branches of MRS on the sea basins:
  - Northern Branch (resources and personnel based in Murmansk)
  - Arkhangelsk Branch
  - Azov-Black Sea Branch
  - Baltic branch
  - Caspian Branch
  - Kaliningrad Branch
  - Kamchatka Branch
  - Primorsky Branch
  - Sakhalin Branch

MRS together with its regional branches and MRCC / MRCSC form a resource base of forces and means to respond to emergencies at sea. MRCC Murmansk, MRCC Dikson, MRCSC Archangelsk, MRCSC Tiksi and MRCSC Pevek operate in the Russian sector of Arctic (figure 5). MRCSC Tiksi and MRCSC Pevek operate seasonally, only during the navigation period (approx. from the mid of July to the end of September). The Russian sector of the Arctic is under responsibility of the Northern Branch of MRS (figure 6).

Northern Branch of the MRS will physically perform clean-up operations at sea and in coastal waters of the Barents Sea, while MRCC Murmansk will coordinate collaboration of the Russian and Norwegian OSR resources.

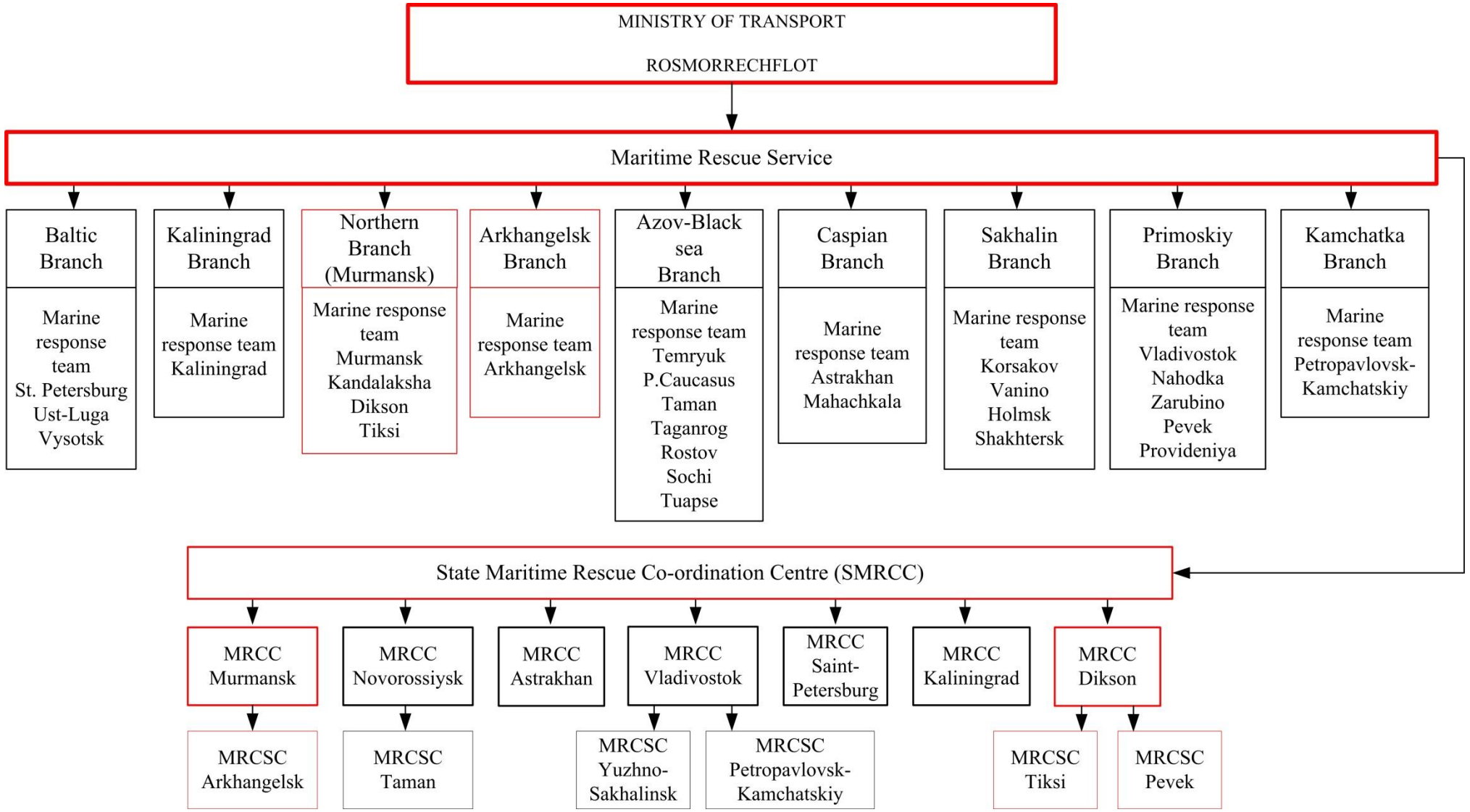


Figure 4. Organizational structure of MRS.

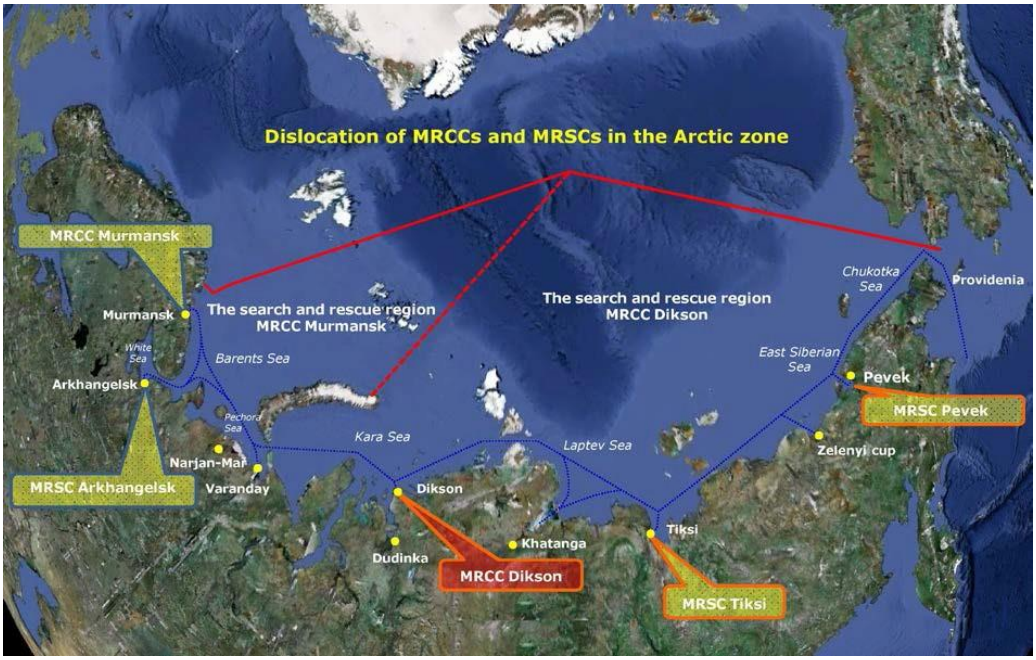


Figure 5. Location of MRCC and MRCSC in the Russian Arctic.

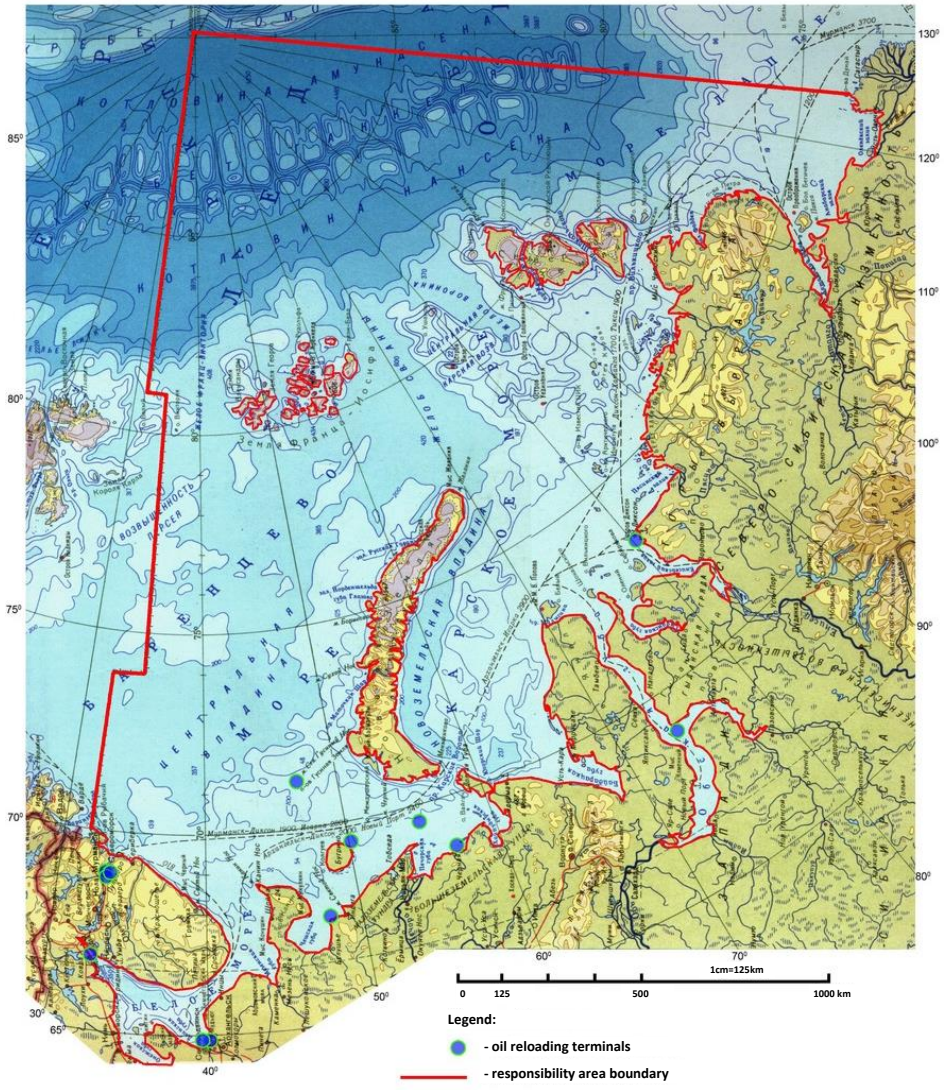


Figure 6. Area of the responsibility of Northern Branch of MRS.

3.1.2. Ministry of the Russian Federation for Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters (the EMERCOM of Russia)

Subordinate bodies:

- *National Crisis Management Centre (NEMC) of the EMERCOM*
- *Crisis Management Centers (EMC)of regional centers of EMERCOM*
- *Crisis Management Centers (EMC) of the Main regional offices of EMERCOM*
- *Regional centers of EMERCOM*
- *Main regional offices of EMERCOM*
- *Arctic search and rescue centers*

EMERCOM of Russia, with its subordinate bodies and NEMC / EMC, regulates and controls civil defence and protects people and areas against emergencies, including acute oil spills at sea.

It is the second Russian competent national authority within OSR in accordance with the Kiruna agreement, 2013. EMERCOM's territorial structure consists of 8 Regional Centres for Civil Defence and Emergencies with 83 Regional Offices of EMERCOM.

Presently 10 complex Arctic SAR centers of EMERCOM of Russia are under construction in frames of program of development of rescue resources in the Arctic zone of the Russian Federation. They will be based in Anadyr, Murmansk, Arkhangelsk, Narjan-Mar, Vorkuta, Nadym, Dudinka, Pevek, Providenija and Tiksi to provide SAR and OSR resources along the Arctic coast. Four centers have been already established in Narjan-Mar, Arkhangelsk, Dudinka and Murmansk (figure 7).

The Arctic center in Murmansk is already constructed and consists of an administrative building, boathouse, gas boiler, diesel power station, fire reservoirs, treatment plants and storage tanks for liquefied petroleum gas as well as indoor heated garages for cars and machinery, helipad and slip-docks for river and sea SAR vessels. The center will be additionally equipped with some kinds of rescue equipment, including OSR equipment by the end of 2015.

EMERCOM will coordinate and manage shoreline OSR and beach-cleaning operation, which will be physically performed by professional strike-teams for OSR on the shoreline, included in the Murmansk regional system for Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters.

Today the only professional strike-team for OSR on the shoreline which is officially included in the territorial system of the Murmansk Region by the Governor's order, is the private company EcoService LLC.

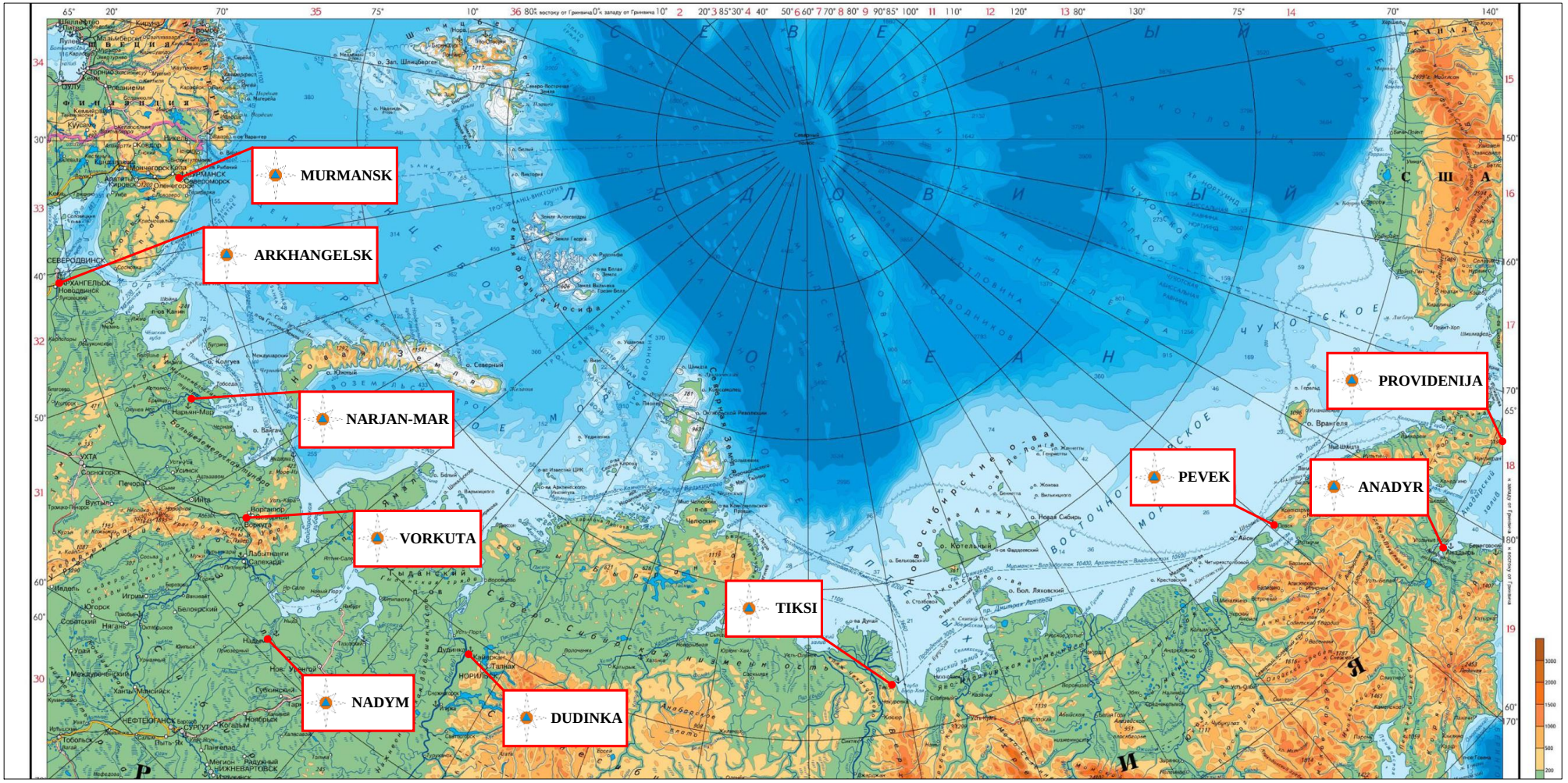
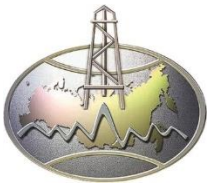


Figure 7. Arctic SAR centers of EMERCOM of Russia.

3.2. Authorities responsible for environmental monitoring

3.2.1. Ministry of Natural Resources and Environment (Minprirody)

Subordinate bodies:



- *Federal Supervisory Natural Resources Management Service (Rosprirodnadzor)*
- *Federal Service on Hydrometeorology and Environmental Monitoring (Roshydromet)*

Minprirody and its subordinate bodies, Rosprirodnadzor and Roshydromet are primarily responsible for the regulatory regime within environmental protection for offshore oil and gas development.

The most important subordinate body is Rosprirodnadzor, which is responsible for control and supervision over the use and protection of the marine environment and natural resources of the Russian internal sea waters, territorial sea and the exclusive economic zone.

Rosprirodnadzor is also responsible for approval of documentation on oil and gas fields' development which is submitted to the state environmental review to ensure that it complies with environmental, normative and legal requirements, including OSR plans.

Rosprirodnadzor is one of the central stakeholders which may claim for environmental damage compensation in accordance with the Russian environmental legislation. When an oil spill has occurred in the Barents Sea, Murmansk regional department of Rosprirodnadzor is notified by MRCC Murmansk.

Roshydromet is responsible for the state environmental monitoring of marine waters and the weather forecast during the OSR operation. Roshydromet is notified by MRCC Murmansk, when there's a threat of oil spill or oil spill incident has already occurred.

3.2.2. Ministry of Agriculture (Minsel'hoz of Russia)

Subordinate bodies:

- *Federal Fishing Agency (Rosrybolovstvo)*
- *Murmanrybvod*

Murmanrybvod, submitted to Rosrybolovstvo and Minse'lhoz of Russia is responsible for the conservation and restoration of marine biological resources in the Barents Sea as well as assessment of the damage to the water biological resources together with Rosprirodnadzor. Murmanrybvod is notified by MRCC Murmansk when the oil spill incident has occurred.

3.3. Authorities responsible for border control and customs clearance

3.3.1. Federal Customs Service of the Russian Federation

Subordinate bodies:

- *The customs post "Murmansk seaport"*
- *The customs post "Many-sided automobile checkpoint Borisoglebsk"*
- *The customs post "Murmansk airport"*

Murmansk branch of the Federal Customs Service of the Russian Federation is responsible for the control and supervision of goods imported into and exported from the Russian Federation through the Barents Sea region.

It is worth noting that the Federal Customs Service has not been actively involved into the joint Norwegian-Russian OSR exercises. The procedures for notification of the Customs Service in Murmansk and customs clearance of OSR vessel and equipment are not practiced. Lack of understanding of the customs rules may become a challenge in case of real oil spill and additional costs if Customs Service claims for violation of the customs clearance procedures.

3.3.2. Border Service of the Federal Security Service (FSS) of the Russian Federation

Subordinate bodies:

- *Border Guard Department of FSS of Russia in the Murmansk region*
- *Border Guard Department of FSS of Russia in the Western Arctic region*

Border Service of FSS is responsible for the protection and defense of the State Border of the Russian Federation, prevention of illegal passing, enforcement of the regime of the state border of the Russian Federation and its checkpoints.

FSS is also responsible for the protection and defense of economic and sovereign interests of the Russian Federation within the border zone, the exclusive economic zone and continental shelf of the Russian Federation. Border Guard Department of FSS of Russia in the Murmansk region should be notified by in accordance with procedures, described in the Chapter 2.4 as well as by MRCC in accordance with the notification scheme (figure 8) both when there's a threat of transboundary oil pollution and when the transboundary oil pollution has already occurred.

3.4. The Northern Fleet

The Northern Fleet of Russia has no functions in the Russian national OSR system and will not restrict, control or monitor joint OSR activities of Norway and Russia in case of the transboundary oil spill pollution, except of the situations when the water areas controlled by the Northern Fleet are affected by the oil pollution. As a rule, these are water areas, adjacent to the Northern Fleet's bases, which are situated along the coastline of the Kola Peninsula. The scheme of the Northern Fleet's bases with adjacent water areas can't be attached in the report as it relates to classified information.

In case of transboundary oil spill pollution, the Northern Fleet will be notified by MRCC Murmansk in the same way as any other stakeholder, the interests of which can be affected by the oil pollution. The difference is that the Norwegian OSR resources will be prohibited entering in the Fleet's water areas. If the Northern Fleet's water areas are affected by the oil spill, the Fleet's command will take a decision regarding OSR resources access and coordinate it with Mintrans.

4. Notification and communication plan of the Russian authorities and other participants in case of transboundary oil spill in the Barents Sea

4.1. General notification scheme in the transboundary pollution

In case of an oil spill on the Norwegian side of the Barents Sea which poses risk of transboundary pollution or when transboundary spreading has already occurred, the Joint Plan in frames of the Norwegian-Russian agreement is invoked.

Detection and notification of an oil spill will normally be done by the operator responsible for oil spill. The initial notification is sent to the Norwegian Petroleum Safety Authority, who in turn notifies the Norwegian Coastal Administration (NCA). The oil operator will submit an Incident Action Plan to the NCA. In case of transboundary pollution, the information from this plan will be forwarded to the Norwegian primary contact point according to the Pollution Report (*hereinafter – POLREP*) system (Table 4.1). POLREP contains the most recent information relating to a pollution incident, including actions taken and progress made during the response.

Table 4.1.The contact points

Contact point	***Norway***	***Russia***
1. Primary	*Vardø* Norwegian Coastal Administration's Vardø Vessel Traffic Services (NOR-VTS)	*Murmansk* MRCC Murmansk
2. Secondary	*Horten* Norwegian Coastal Administration's Emergency Response Centre, or Norwegian Coastal Administration's Department of Emergency Response	*Murmansk* Northern Branch of MRS *Moscow* MRS GMRCC

If an oil spill threatens to affect the Russian territory, an immediate notification is to be given by NOR-VTS to the MRCC Murmansk with a request to invoke the Joint Plan.

After receiving the POLREP, MRCC Murmansk will notify the following agencies (see Notification scheme, figure 8):

- GMRCC (Moscow)
- EMC of the Murmansk EMERCOM (Murmansk)
- Northern Branch of MRS (Murmansk)
- The Administration of the seaports of the Western Arctic (Murmansk)

- Roshydromet (Murmansk)
- Rospriridnadzor's Department of supervision over water and land resources (Murmansk)
- Murmanrybvod (Murmansk)
- Federal Customs Service (Murmansk)
- Border Service of the Federal Security Service (Murmansk)
- Stakeholders, which can be impacted in result of oil pollution.

GMRCC (Moscow), which is the secondary Russian contact point according to the Joint Plan, notifies MRS (Moscow).

MRS (Moscow) gives instructions to the Northern Branch of MRS (Murmansk) regarding the further activities.

EMC of Murmansk EMERCOM, which is contact point of the Russian EMERCOM in Murmansk, is notified by MRCC (Murmansk) in case of the pollution threat to the shoreline. In its turn EMC Murmansk notifies:

- NEMC of the EMERCOM of Russia (Moscow)
- Department of Civil Defense and Emergency Prevention of the Municipality, affected with stranded oil (Murmansk region)
- Deputy Head of Murmansk EMERCOM (Murmansk)
- Murmansk Regional Governmental Commission on prevention of emergency situations and fire safety (Murmansk)
- Professional strike-team for OSR on the shoreline EcoService (Murmansk region)
- Professional strike-teams with other specializations (Murmansk region)
- Roshydromet (Murmansk)

Roshydromet (Murmansk) regularly informs MRCC and EMC about weather forecast.

Department of Civil Defense and Emergency Prevention of the Municipality notifies the Municipality's administration.

Murmansk Regional Governmental Commission on prevention of emergency situations and fire safety notifies the Government of the Murmansk Region.

4.2. The general principles for the command structure for joint OSR operation

The general principles for the command structure for joint OSR operation, as described in the Joint Plan, are presented in figure 9.

The joint operation should contain two main co-ordination and command levels, namely Operational Control ashore and Tactical Command on the scene of operations. If the main body of the oil pollution, originated on the Norwegian side, passes the borderline, the operational command will be transferred to Russia, which becomes the lead country from this moment (Joint Plan, 2014).

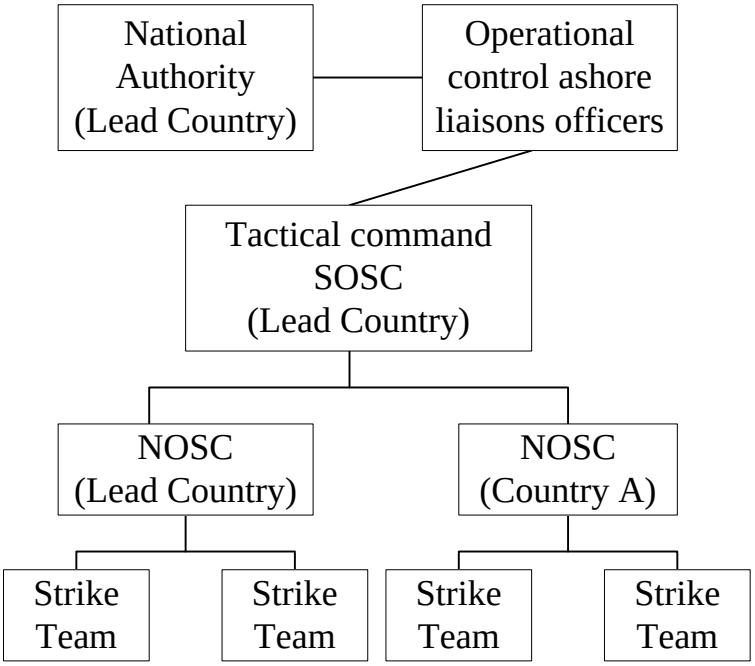


Figure 9. General principles for the command structure for joint OSR operation (Joint Plan, 2014).

Then two countries must determine the number of units of the strike-teams and the amount of equipment that could be placed at the disposal of the lead country and how the OSR operation should be continued.

If necessary the units from different strike teams can temporarily be put at the disposal and command of the lead country's National On-Scene Commander / Coordinator *(hereinafter – NOSC)*, the functions of which on the Russian side will be fulfilled by MRS.

The NOSC operates under command / coordination of the Supreme On-Scene Commander / Coordinator *(hereinafter – SOSC)*, whom the overall tactical command is laid upon, and who is responsible for the operational communication between the different bodies. When the operational command is transferred to Russia, Rosmorrechflot takes SOSC functions.

Strike teams will be transferred from the Norwegian NOSC through SOSC to the Russian NOSC. When receiving a strike team, the Russian NOSC also assumes the responsibility to supply the strike team.

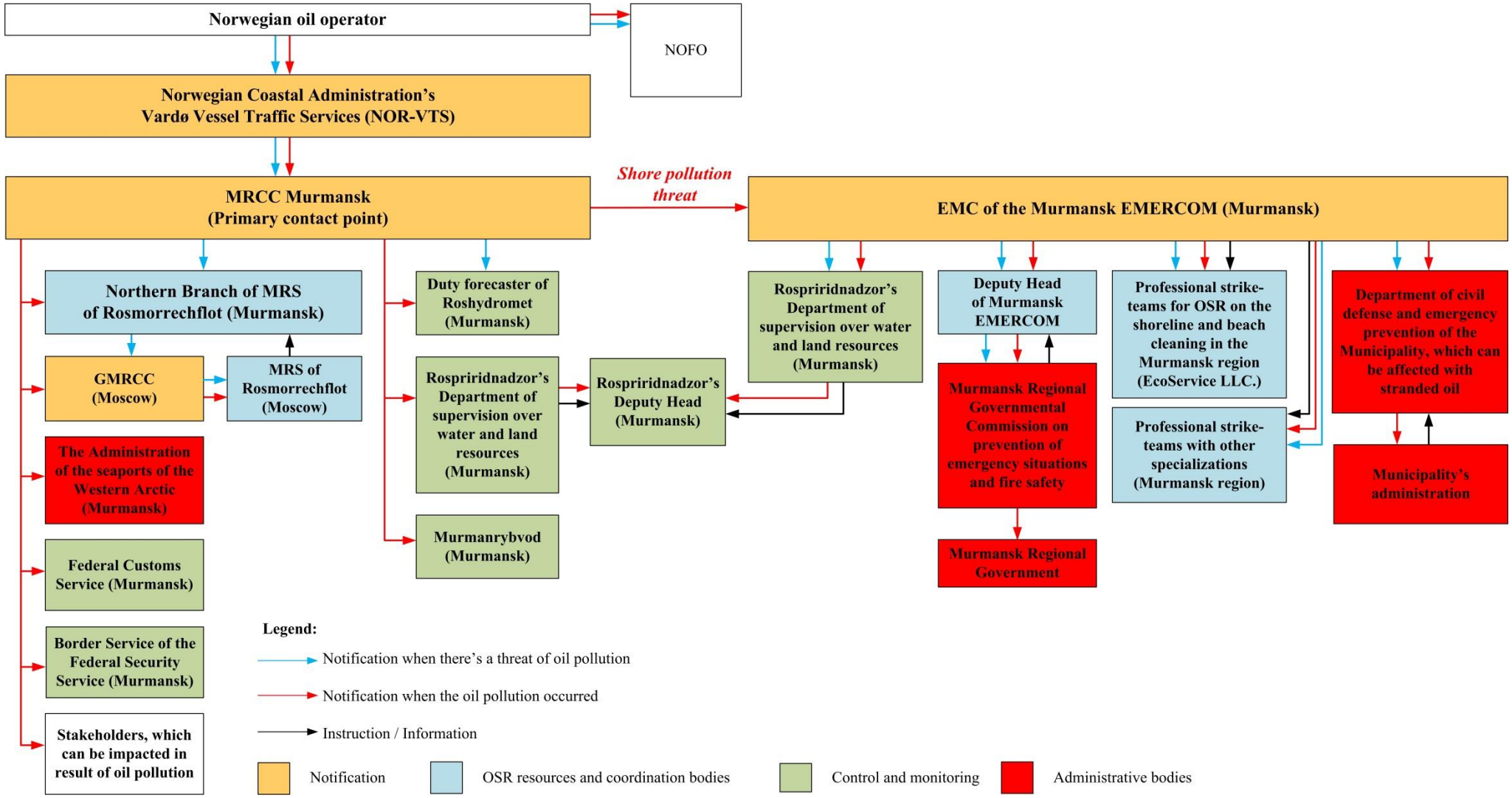


Figure 8. General notification scheme in the transboundary pollution.

5. Conclusions and recommendations

5.1. Organization of OSR operations on the Russian side

When there is a threat of oil spill spreading to the Russian side, or spreading has already started, the Murmansk MRCC is notified by the Norwegian Coastal Administration (Vardø). MRCC in turn notifies all relevant Russian stakeholders who will either perform or control OSR operations. Clean-up work at sea will be performed by the Northern Branch of MRS and coordinated by the Murmansk MRCC. These are two central Russian stakeholders which regularly participate in joint Norwegian-Russian exercises.

Recommendations:

– It is recommended to develop a Contingency Plan which clarifies what Norwegian operator will do at all stages of the joint OSR and how operator shall follow up the OSR on the Russian side with regards to planning and communication with key stakeholders.

5.2. Crossing of the border and customs procedure

The Norwegian OSR vessel shall notify the Border Service of the Federal Security Service in Murmansk by fax or email no later than 4 hours before crossing the border in accordance with the standard procedure. This procedure is applied to all vessels crossing the Russian marine border. However, it is not quite clear whether deploying of OSR resources by the Norwegian vessel in the Russian EEZ may be challenged by the border authorities. This issue is currently not regulated and requires clarification with the Russian authorities.

If Norwegian OSR vessel is staying outside the territorial waters (12 nm) of the Russian Federation, customs clearance of vessel and equipment onboard is not needed.

If the Norwegian OSR vessel goes into the 12 nm zone of the Russian Federation in the emergency regime, the simplified procedure of the custom clearance should be applied to the vessel and OSR equipment on board. In this case the goods receiver on the Russian side (depending on the transportation route it can be Rosmorrechflot or EMERCOM) sends a statement to the Border Guard Department of FSS of Russia in the Murmansk region, confirming that the goods will be used for the elimination of the consequences of an accident, namely for OSR operations. This statement is considered as a temporary customs declaration and is valid for 30 days once the goods have been released. This simplified procedure can be applied to the import and export of the relevant goods, transported via onshore, offshore and air checkpoints.

Goods which have been imported to or exported from the Russian Federation under this simplified procedure within 30 days period after the incident has been officially declared by EMERCOM as emergency situation are exempt from paying customs clearance taxes provided that EMERCOM confirms to the State Customs Committee of Russia in Moscow the date of an emergency's official announcement and other information, required for the customs purposes.

The same simplified regime is used when the goods are imported to or exported from the Russian Federation through the onshore checkpoints 'Borisoglebsk' and air-checkpoint 'Murmansk airport'.

Recommendations:

– Written notification of the Russian border authorities and customs clearance procedures shall be performed by the Norwegian side with the support of the Russian side. However, the detailed procedures of these issues are out of scope of the Joint Plan and annual exercises. It is recommended to agree in advance with NOFO or vessel owner who and how will communicate with the border and customs services in Russia. It is also important to clarify who exactly will be the goods receiver on the Russian side in case of emergency and agree it with the Murmansk branch of the Federal Customs Service of the Russian Federation, Rosmorrechflot and EMERCOM.

– The Norwegian OSR vessel shall cross the Russian marine border in accordance with the standard procedure. However, it is not quite clear whether deploying of OSR resources by the Norwegian vessel in the Russian EEZ may be challenged by the border authorities, because this issue is currently not regulated and requires clarification with the Russian authorities. It is recommended to address this question to the Federal Agency of Maritime and River Transport (Rosmorrechflot) and Border Guard Department of FSS of Russia in the Murmansk region or discuss it in frames of a joint table-top exercise.

5.3. Use of dispersants in transboundary OSR in the Barents Sea

Use of dispersants in a transboundary context is still not properly regulated in the Barents Sea. The Joint Plan refers to the national polices of neighboring countries and stipulates that decision to use dispersants shall be taken only upon agreement. The existing Russian regulations on dispersants use are not adequate enough to receive necessary permit to use dispersants in a timely manner.

Recommendations:

– The main principle for dispersants use is to apply them as close to the source of pollution as possible. In scenarios when licenses are located close to the maritime border in the Barents Sea it is recommended that, if assessing dispersants use, necessary consultations are undertaken with the Norwegian-Russian Joint Planning Group early in the project phase.

– It is believed that the following aspects should be addressed to improve mechanism for dispersants use in a transboundary context :

  - The possibility to standardize dispersants testing and approval procedures in Norway and Russia.
  - The need to pre-define areas, seasons and criteria in the Barents Sea for possible efficient dispersants use.
  - Customs procedures when dispersants need to be imported quickly to Russia.
  - Environmental damage compensation on the Russian side in case of use and no-use of dispersants.

5.4. Compensation of transboundary oil spill damage to the injured Russian parties

Transboundary oil spill can result in different kinds of claims from the injured parties.

Clean-up costs are the only type of potential claims from the Russian side which has a solid legislative basis. As it is stipulated by both the OPRC and the Norwegian-Russian agreement, clean-up costs of the assisting country shall be compensated by the country which calls for assistance.

Today, there is no international convention or regional agreement between Norway and Russia which regulates compensation of damage in case of transboundary oil spill. The Norwegian Petroleum Act limits liability of the Norwegian operator on the Norwegian Continental Shelf to the Norwegian side. Besides, there is currently no agreement about recognition and enforcement of foreign courts judgments between Norway and Russia. As a result, court judgments from a Russian court against a Norwegian operator in Norway will most likely not be recognized and enforced by a Norwegian court, and the Norwegian operator will then most likely not be liable for any harm inflicted to Russian injured parties in Russia.

However, in case a Norwegian operator has assets in Russia and refuses to comply with a court judgment of compensation, the situation is different. It is then less challenging for the Russian injured parties to receive fulfilment of their court judgments against the Norwegian company in a Russian court, as Russian law opens for the seizure and forced sale of assets.

Recommendations:

- It is recommended that questions regarding oil spill compensation in transboundary context are studied further as it may help to evaluate whether operator's insurance needs to be revised.

- Cost control of OSR operations may be challenging when oil spreads to the Russian side, thus, it is recommended to evaluate how clean-up costs of the assisting country can be controlled.

- Questions regarding transboundary oil spill damage are of international importance and should be addressed by the relevant authorities in Norway and Russia. It is recommended that Norwegian operators flag this topic to the Norwegian authorities.

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Russian Federation Governmental Decree as of November 14, 2014 No. 1189 On Organizing of Prevention and Response of Oil Spills on the Continental Shelf of the Russian Federation, in the Inland Sea Waters, Territorial Sea and Adjacent Zone of the Russian Federation.

Russian Federation Governmental Decree as of August 15, 2014 No. 813 On Approval of the Rules for multiple crossing of the state border of the Russian Federation by foreign vessels without passing of border.

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Appendix A. Main National Russian Statutes in Oil Spill Prevention and Response Field

The Russian Federation regulates offshore oil and gas activity in the Arctic through a complex system of rules derived from the Constitution, multiple statutes and decrees, sub-statutes, regulations and other sources of law.

The most important federal statutes relevant for the offshore oil and gas activities and environmental protection are the following:

- Federal Law as of November 30, 1995 No. 187-FZ "About the Continental Shelf of the Russian Federation";
- Federal Law as of February 21, 1992 No. 2395-1 "On Subsoil Resources";
- Federal Law as of July 31, 1998 No. 155-FZ "On Inland Sea Waters, Territorial Sea and Adjacent Zone of the Russian Federation";
- Federal Law as of January 10, 2002 No. 7-FZ "On Environmental Protection";
- Federal Law as of November 23, 1995 No. 174-FZ "On Environmental Review";
- Federal Law as of July 21, 1997 No. 116-FZ "On Industrial Safety of Hazardous Industrial Facilities".

These federal laws set out the general rules for offshore exploration and extraction of the petroleum resources in Russia, including the terms for licensing procedure, requirements for emergency prevention and response, etc.

Besides federal laws in Russia approximately 50 legislative documents can be applied to oil spill prevention and response. The most central documents which contain requirements on OSR planning are listed below:

- Decree by EMERCOM of Russia as of December 28, 2004 No. 621 "On Approval of Regulations for Development, Submitting and Approval of plans on oil and petroleum product spills prevention and response on the territory of the RF".

The Decree stipulates mandatory structure of an OSR plan as well as submitting and approval procedures.

- Decree by the Ministry of Transport of Russia as of April 06, 2009 No. 53 "On Approval of Regulations of a Functional Subsystem for Operational Actions on Prevention and Response to Oil Spill at Sea from Vessels or Facilities regardless their Ownership or Nationality".

The Decree stipulates regulations of the national system for oil spill prevention and response at sea originating from vessels and facilities regardless their ownership or nationality, which determine the organization of OSR at as well as personnel and resources.

- The Instruction by the Federal Agency of Maritime and River Transport as of February 26, 2008 No. DD-27/1484 "On ensuring the minimum area of possible oil spill spreading during loading/unloading operations and bunkering".

The Instruction establishes requirements to loading/unloading and bunkering operations with oil and oil products within sea ports boundaries.

– Decree by the Ministry of Natural Resources of Russia No. 156 "On Approval of Instructions on the definition of the lower level of oil and oil product spills for the classification of oil spill to an emergency situation".

The Decree classifies the oil or petroleum product spill in the quantity of 0.5 tonnes and higher in the seas of the Arctic Ocean including the Barents Sea as an emergency situation which requires development of OSR plan.

– Russian Federation Governmental Decree as of November 14, 2014 No. 1189 "On Organizing of Prevention and Response of Oil Spills".

The Decree stipulates standards for actions on oil spill prevention and response and the basic requirements to development of OSR plans on the Continental Shelf of the Russian Federation, in the Inland Sea Waters, Territorial Sea and Adjacent Zone of the Russian Federation.

Appendix B. Correspondence between Is-Systems LLC. and the Ministry of Natural Resources and Environment of the Russian Federation

1. Letter of IS-Systems to the Ministry of Natural Resources and Environment to No. 150 as of 22 May, 2015, page 1

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Исх. № 150 от 22 мая 2015 г.

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Касательно: *Об ответственности норвежских нефтяных операторов при возможном загрязнении окружающей природной среды Российской Федерации при трансграничном разливе нефти в Баренцевом море*

Уважаемый Сергей Ефимович!

ООО «Системы промышленной безопасности» является экспертной организацией, которая осуществляет планирование и проектирование в сфере предупреждения и ликвидации аварийных разливов нефти на континентальном шельфе, во внутренних морских водах и в территориальном море Российской Федерации, а также постоянным участником и координатором российско-норвежского сотрудничества в рамках Соглашения между Правительством Российской Федерации и Правительством Королевства Норвегия о сотрудничестве в борьбе с загрязнением нефтью в Баренцевом море от 1994 г.

В рамках вышеуказанного Соглашения проводятся ежегодные российско-норвежские учения по ликвидации разливов нефти, в том числе командно-штабные учения (далее – КШУ).

В ноябре 2014 г. в г. Мурманске были проведены КШУ, в ходе которых отрабатывался порядок совместных действий российских и норвежских государственных структур и частных компаний, а также норвежских нефтяных компаний-операторов, планирующих деятельность в Баренцевом море в непосредственной близости к российской границе.

Деятельность нефтяных компаний-операторов на шельфе связана с риском выброса нефти из разведочной скважины. Близость районов риска к российской границе увеличивает вероятность возникновения трансграничного разлива нефти, т.е. разлива нефти на норвежской части шельфа и движения нефтяного пятна в сторону российских вод с последующим их загрязнением.

В результате проведенных КШУ возник ряд следующих актуальных вопросов:

1. Будет ли российской стороной оцениваться ущерб окружающей природной среде Российской Федерации, нанесенный норвежским нефтяным оператором при трансграничном разливе нефти в Баренцевом море?

2. Каков порядок определения ущерба окружающей природной среде Российской Федерации, нанесенный норвежским нефтяным оператором при трансграничном разливе нефти в Баренцевом море?

3. Будет ли применение диспергентов при реагировании на разлив нефти в норвежской части Баренцева моря считаться дополнительным сбросом загрязняющих веществ в морскую среду в случае трансграничного разлива?

4. Какова процедура возмещения ущерба окружающей природной среде Российской

2. Letter of IS-Systems to the Ministry of Natural Resources and Environment to No. 150 as of 22 May, 2015, page 2

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Федерации, нанесенного норвежским нефтяным оператором при трансграничном разливе нефти в Баренцевом море?

Просим Вас дать ответ на вышеуказанные вопросы со ссылками на международное и российское законодательство в области охраны окружающей природной среды.

С уважением,

Генеральный директор
ООО «Системы промышленной безопасности»,
Советник российско-норвежской группы
совместного планирования ЛРН в Баренцевом море _____ О.М. Саркова

3. Letter of the Ministry of Natural Resources and Environment to IS-Systems No. 12-47/16212 as of 13 July, 2015, page 1

МИНИСТЕРСТВО
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13.07.2015 № 12-47/16212
на № _____ от _____

ООО «Системы Промышленной Безопасности»

Проезд Портовый, 31-а, офис 708, г. Мурманск, 183038

Об ответственности норвежских нефтяных операторов

Минприроды России в соответствии с компетенцией рассмотрело письмо ООО «Системы промышленной безопасности» от 22.05.2015 №150 по вопросу ответственности норвежских нефтяных операторов при возможном загрязнении окружающей среды Российской Федерации при трансграничном разливе нефти в Баренцевом море и сообщает.

Борьба с последствиями загрязнения нефтью требует совместных действий государств. Организации таких действий была посвящена «Международная конвенция по обеспечению готовности на случай загрязнения нефтью, борьбе с ним и сотрудничеству 1990 года» (OPRC) (Вместе с «Возмещением расходов, связанных с оказанием помощи») (Заключена в г. Лондоне 30.11.1990).

В соответствии с этой Конвенцией каждая Сторона учреждает национальную систему срочной и эффективной борьбы с инцидентами, вызывающими загрязнение нефтью.

Все суда должны иметь на борту судовой план чрезвычайных мер по борьбе с загрязнением нефтью, а их капитаны должны безотлагательно сообщать о любом событии, связанном с их судном или морской установкой, повлекшем сброс или возможный сброс нефти, а так же о любом замеченном событии, повлекшем сброс нефти или присутствие нефти в море.

Кроме того, в целях установления единых международных правил и процедур решения вопросов ответственности за ущерб от загрязнения нефтью и обеспечения в таких случаях достаточного возмещения лицам, которым причиняется ущерб, принята «Международная конвенция о гражданской ответственности за ущерб от загрязнения нефтью» (КГО/CLC) (Вместе со «Свидетельством о страховании или ином финансовом обеспечении гражданской ответственности за ущерб от загрязнения нефтью») (Заключена в г. Брюсселе 29.11.1969) (далее – Конвенция об ответственности).

4. Letter of the Ministry of Natural Resources and Environment to IS-Systems No. 12-47/16212 as of 13 July, 2015, page 2

Конвенция об ответственности установила порядок возмещения как ущерба от загрязнения в Договаривающихся государствах, так и расходов на меры по предотвращению или уменьшению такого ущерба.

В соответствии с указанной Конвенцией об ответственности Собственник судна с момента инцидента, а если инцидент состоит из ряда происшествий, то с момента первого происшествия, отвечает за всякий ущерб от загрязнения, который явился результатом утечки или слива нефти из его судна вследствие этого инцидента, за исключением ряда случаев.

В дополнение к Конвенции об ответственности была принята «Международная конвенция о создании Международного фонда для компенсации ущерба от загрязнения нефтью» (ФОНД/FUND) (Заключена в г. Брюсселе 18.12.1971).

«Международный фонд для компенсации ущерба от загрязнения нефтью» был создан для того, чтобы обеспечивать компенсацию ущерба от загрязнения в той мере, в какой защита, предоставляемая по Конвенции об ответственности, является недостаточной, а также освобождения собственников судов от дополнительного финансового бремени, налагаемого на них Конвенцией об ответственности, с подчинением такого освобождения условиям, имеющим целью обеспечить соблюдение Конвенции о безопасности на море и других конвенций.

Для обеспечения охраны морской среды от загрязнения с судов, усиления мер по предотвращению загрязнения и контролю за загрязнением морской среды с судов, в особенности с нефтяных танкеров, принята Конвенция по предотвращению загрязнения с судов 1973 г. с Протоколом 1978 г. (Конвенция МАРПОЛ 73/78), которая распространяет действие на весь Мировой океан в целом.

Таким образом, выше перечисленными международными Конвенциями, стороной которых является Российская Федерация, урегулирован вопрос возмещения ущерба окружающей среде при трансграничном разливе нефти на морских акваториях.

Рассматривая российское законодательство, надо отметить распоряжение Правительства Российской Федерации от 13.05.2013 № 769-р «О подписании Соглашения о сотрудничестве в сфере готовности и реагирования на загрязнение моря нефтью в Арктике», целью которого является укрепление сотрудничества, координации и взаимной помощи между Сторонами в сфере готовности и реагирования в случае загрязнения нефтью в Арктике и такого реагирования в целях защиты морской среды от загрязнения нефтью.

5. Letter of the Ministry of Natural Resources and Environment to IS-Systems No. 12-47/16212 as of 13 July, 2015, page 3

Стратегия ликвидации последствий разливов нефти должна включать планирование мер, направленных на ликвидацию разливов нефти в море и на берегу, моделирование траектории распространения нефтяного пятна, выделение уязвимых территорий, планируемый уровень ресурсов для ликвидации разлива нефти (потребности в оборудовании, в том числе его типов и наличия, потребности в дополнительном обученном персонале, методов ликвидации разливов, тактики сбора разлитой нефти на суше и в море), соответствующие исследования, программы работ, связанных с ликвидацией разлива нефти.

Использование диспергентов при ликвидации разливов нефти и нефтепродуктов в море регулируется и «Правилами применения диспергентов для ликвидации разливов нефти СТО 318.4.02-2005» (Утверждены Техническим комитетом по стандартизации ТК 318 «Морфлот» постановлением № 2 от 01.11.2005).

Директор Департамента государственной политики и регулирования в сфере охраны окружающей среды — Д.М. Беланович

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