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Benefits over risks: a case study of government support of energy development in the Russian North

Roman Sidortsov, Ph.D, JD, LL.M¹

Abstract

Projected benefits serve as the driving force behind hydrocarbon development. Such benefits are analysed in conjunction with the risks posed by proposed oil and gas activities, leading to an ostensibly rational decision on whether to proceed with the development. This article explores the ways and extent to which government policies aimed at supporting the oil and gas sector affect the outcomes of decision-making processes regarding new hydrocarbon projects. The article is premised upon a case study of the Russian Arctic and Subarctic. The study utilizes transcripts of key presidential meetings and speeches, as well as applicable programmatic policy statements, laws, and administrative regulations. The data is subjected to the complimentary and corroborative discourse and legal analyses. The article concludes that the dominance of benefits over risks in the policy discourse is particularly impactful in the decision-making process regarding new oil and gas development in Russia.

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Keywords

Russia; risk governance; Arctic; environmental assessment

1. Introduction

Over the last century, the Arctic and Subarctic have provided billions of barrels of oil and trillions of cubic feet of natural gas. (Budzik, 2009) The on-going interest in the region indicates that many government and corporate decision-makers are on the threshold of making decisions about continuing this trend well into this century. (Sidortsov, 2016) The Kremlin has been particularly persistent in pushing new oil and gas development in the High North whilst tying it to the health of the Russian economy and increasing welfare of Russian citizens. (Sidortsov, 2017) Judging by the past, these decisions will cause far-reaching consequences, some of which will be adverse. Russia has a particularly questionable record of severe environmental and social impacts of oil and gas production in the Arctic and Subarctic. (UNDP, 2009) (IWACO, 2001) (Greenpeace, 2016) Therefore, the exact outcomes of the decisions to open up the region for further hydrocarbon development remain uncertain.

Risk is often viewed as means of reducing uncertainty. Callon, Lacoumes, and Barthe (2011, p. 19) describe risk as ‘well-identified danger associated with a perfectly describable event or series of events’. This kind of quantitative grasp on an event or occurrence is what the authors believe sets risk and uncertainty apart, making the former a tamer version of the latter. Therefore, it is not surprising that the term ‘risk’ received prominence in the Arctic energy discourse (Sidortsov, 2016). Understanding adverse consequences associated with oil and gas development in this remote and environmentally sensitive region is not only a prudent thing to do. It is also a prudent

strategy of ensuring government actors, civil society, and general public of one's ability to handle the dread and unknown risks in pursuit of ostensibly plentiful benefits (Slovic, 1987).

This article aims to explore the ways and extent to which the official discourse regarding the benefits of oil and gas development and government support of oil and gas activities impact policy, legal, and regulatory regime governing risks associated with the development. The article builds on the interdisciplinary nature of and trend in energy law employing qualitative social science data and methods whilst contributing to the development of the socio-legal aspect of the emerging risk governance concept (Bosselman et al., 2010) (Heffron & Talus, 2016) (Heffron & Talus, 2016a). Thus, the overarching objective of the article is two-fold. First, it is to strengthen conceptual and methodological linkages between energy law and broader social science. Second, it is to highlight the importance of national context in applied energy law and policy analysis.

The article is premised on a larger study of risk governance of oil and gas activities in the Russian Arctic and Subarctic conducted by the author in 2012 - 2016. The article begins with a brief introduction to risk posed by oil and gas development in the Arctic, risk governance, a key concept upon which the study is based, and the data and methods used. The article continues with the discussion of favourable positioning of benefits of hydrocarbon development in official Russian presidential meetings on balancing risks and benefits. The article concludes with policy recommendations and reflections on avenues for future research.

2. Background, data, and methods

There is no shortage of analytical and scholarly literature regarding risks arising from oil and gas activities in the High North. A number of analytical and scholarly sources list oil spill as the

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4 most serious risk to the Arctic environment. A report produced jointly by Lloyd's and Chatham
5 House titled 'Arctic Opening: Opportunity and Risk in the High North' (the 'Lloyd's Report')
6 lists the following ways ('other than direct release of pollutants') in which ecosystems can be
7 disturbed: '[t]hrough noise pollution from offshore drilling, seismic; [t]hrough the construction
8 of pipelines and roads, survey activity or additional maritime traffic; [t]hrough physical
9 disturbance of the sea and seabed during drilling; [and, t]hrough the break-up of sea ice'
10 (Emerson & Lahn, 2012, p. 38). The E&Y Arctic Report lists some of these items as 'large
11 environmental risks' associated with 'greenfield development' of supporting infrastructure. (EY,
12 2012, p. 5) Surprisingly, the Lloyd's Report does not specifically mention emissions to the sea
13 (other than oil spills) and to the air. The former include waste, produced water, and drilling mud
14 disposal (Bellona, 2007). The latter include emissions from vessels and casing head gas flaring
15 (*Id.*).
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34 Some reports view such environmental risks as a much more inclusive category. For example,
35 the report entitled 'Oil Spill Prevention and Response in the U.S. Arctic Ocean, Unexamined
36 Risks, Unacceptable Consequences' (the 'Pew Oil Spill Report') covers potential adverse
37 consequences of an oil spill on fish, marine animals, birds, and the very species who cause oil
38 spills – people (Nuka, 2010). The Arctic risk database developed by DNV GL also targets oil
39 spills as the primary risk driver. It approaches to identifying and spatially tracking these risks in
40 the environmental and safety contexts (DNV GL, 2016).
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52 The report entitled 'An Evaluation of the Science Needs to Inform Decisions on Outer
53 Continental Shelf Energy Development in the Chukchi and Beaufort Seas, Alaska' prepared by
54 the U.S. Geological Survey (the 'USGS Circular') elaborates on the systemic approach taken in
55 the Pew Oil Spill Report and investigates risks to subsistence activities of the indigenous Iñupiat
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(USGS, 2011). The report also covers cumulative impacts, i.e. adverse consequences, that ‘can result from factors that may be insignificant by themselves but significant when interacting and (or) accumulating over time and space, through repetition, or in combination with other effects.’ (*Id.* p. 203) Such consequences include *inter alia* socioeconomic change; aesthetic, cultural, and spiritual impacts; and human health effects (*Id.* p. 207).

The Lloyd’s Report takes note of nations’ commitments to mitigate climate change in the section labelled, ‘Commercial rationales and risks’ (Emerson & Lahn, 2012, p. 24). It states that: ‘Governments and companies should consider how the drive to develop Arctic oil and gas exploration will align with international action on climate change mitigation.’ (*Id.*) However, the report does not specify how (if at all) these commitments will affect the future of Arctic oil and gas development (*Id.*). A report prepared by the Arctic Monitoring and Assessment Programme (AMAP) paints a comprehensive picture of ‘potential effects’ related to oil and gas development in the Arctic spanning environmental, social, and economic dimensions (AMAP, 2010, Sec. 2.6, 2.7, 2.8, Ch. 3.).

Although the aforementioned literature provides a comprehensive depiction of different sources and types of risks in connection with oil and gas development in the Arctic and Subarctic, scholarly and analytical efforts on how to handle such risks in an inclusive, timely, and holistic manner remain scarce (Sidortsov, 2016). The scarcity of such literature prompted the selection of risk governance as a key concept for the underlying study. Risk governance is based on the concept of collective decision-making. It draws upon the participation of a combination of both private and state actors, who are acting pursuant to formal and informal rules (Rosa, et al., 2014, pp. 151-159). It coalesces this collective decision-making with traditional risk analysis. As a result, risk analysis is integrated into applicable political, legislative, administrative, and

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4 corporate processes. Risk governance brings into the process actors who are capable of openly
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6 questioning and sometimes overruling experts on non-scientific, ethical, political, and legal
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8 grounds (Renn, 2006).
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12 Risk governance is a novel concept that began to emerge in the mid-90s (Rosa, et al., 2014). The
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14 risk governance framework proposed by the International Risk Governance Council (IRGC,
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16 2005, p. 11) and Klinke and Renn (2006) assign equal significance to risk governance's
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18 'conventional' elements (such as technical risk analysis) and its societal context. Under the
19
20 IRGC risk governance framework, the risk process comprises five phases: pre-assessment (PA),
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22 appraisal (scientific risk assessment and concern assessment), characterization and evaluation
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24 (C&E), management, and communication (IRGC, 2005, p. 5).
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31 Risk PA and C&E are instrumental for understanding the societal context of risk and, therefore,
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33 its legal aspect (Sidortsov, 2014). Risk PA centres on constructing the initial overview of risks
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35 and benefits. assessment of organizational and institutional capacity is one of the critical
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37 elements of PA, the rules governing it set forth the entire policy, legal, and regulatory structure
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39 in which the entire risk governance process occurs (IRGC, 2008a). In this sense, they act as
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41 meta-rules for risk governance. These rules also guide the decision-making process in *ex-ante*
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43 threshold matters and help determine whether a matter even gets to the scientific risk assessment
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45 stage. In the context of this article, such threshold matters include, among other things, opening
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47 an area for exploration, granting the right to develop a hydrocarbon deposit, negotiating terms of
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49 a licence, and extraction. The chief objective of risk C&E is to 'ensure that the evidence based
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51 on scientific facts is combined with a thorough understanding of societal values when making the
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53 sometimes controversial judgement.' (IRGC, 2005, p. 12) Rules governing categorisation and
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55 evaluation (C&E) are as important, if not more so, for decision-making in such threshold
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4 matters. Risk C&E is the phase of risk governance when actors make an *informed* decision based
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6 on the scientific risk and concern assessment. This is when the risk-benefit analysis is performed,
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8 risk's tolerability is determined, and risk is deemed acceptable or not. (*Id.*) In the context of oil
9
10 and gas policy in the Russian Arctic and Subarctic, this is the last opportunity to stop before
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12 making a multi-billion dollar and multi-year commitment to a project, activity, or technology.
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17 The overall methodology of the study is premised on Grounded Theory (Strauss, 1987) with
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19 corroborative and complimentary discourse analysis and legal analysis as the main two methods.
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21 The study utilized a great deal of experiential data derived from author's prior extensive research
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23 on Russian energy law and policy, including whilst practicing law in Russia. This data informed
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25 author's choice to focus on the Government of the Russian Federation (RF Government) and the
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27 President as the most influential decision-making actors regarding oil and gas development in the
28
29 Russian Arctic and Subarctic.² Because publicly available records are scarce within the RF
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31 Government, and because the President holds a superior position in the Russian State hierarchy,
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33 transcripts of Presidential meetings, press conferences, addresses, and speeches were selected as
34
35 main data sources for discourse analysis (Sidortsov, 2017).
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43 The importance of these data sources for analysing energy law and policy in Russia should not
44
45 be underestimated. Often what is discussed during these meetings serves as the basis for
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47 regulatory and legislative action. For example, a series of presidential meetings in 2013 led to
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49 significant changes in the governance of Russia's liquefied natural gas (LNG) market (Sidortsov,
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51 2014). Because the current Russian leadership, including President Vladimir Putin and Prime-
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53 minister Dmitriy Medvedev, has either controlled or exercised immense influence over the
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58 ² The Government of the Russian Federation or *Pravitel'stvo Rossiyskoy Federatsii* is a mega-agency that consists
59 of many sub-agencies. For the sake of clarity, in this thesis the term 'RF Government' refers to this mega-agency.
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4 legislative branch, turning agenda items and taking points into legislation has rarely been a
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6 problem (Gontmakher, 2013) (President of Russia, 14 October 2014). Often, the rulemaking or
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8 legislative process commences via a Presidential directive that resembles an action item list
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10 premised on the results of a Presidential meeting or speech (Directive List PR-1530, 2014).
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15 The veracity and credibility of the transcripts were confirmed by comparing ten sample
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17 transcripts to the video recordings of the underlying events. The veracity and credibility was
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19 further confirmed by the customary treatment of statements made at these presidential meetings,
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21 addresses, and speeches as official policy statements among Russian energy policy experts
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23 (Mitrova, 2015). However, the author fully acknowledges that such transcripts do not represent
24
25 the exhaustive record of high-level energy policy discourse in Russia. Not all official
26
27 conversations and remarks are made available to the public and a multitude of very important
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29 decisions are made off the record. For this reason, the author utilised several data sources and
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31 complimentary and corroborative analysis to conduct this study.
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38 Transcripts capturing meetings of presidential commissions and ad-hoc consultative and
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40 coordinating bodies proved to be especially informative. In fact, on many occasions, a meeting
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42 transcript revealed a snapshot of a substantive decision-making process that resulted in a policy
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44 or legislative change and an accurate assessment (as corroborated by other evidence) of a
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46 particular policy issue. The Office of the Russian President's official online transcript database
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48 was searched by using the terms 'environment', 'energy', 'oil and gas', and 'risk' (in Russian)
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50 covering the records from the inception of the database in December 1999 through January 2016
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52 (President of Russia, 2016). The returned records were manually reviewed and 105 transcripts
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54 spanning from June 2003 to April 2015 were selected for in-depth discourse analysis. Transcripts
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56 related to the Arctic and Subarctic were prioritised, as well as the official discourse pertinent to
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regulatory and legislative changes impacting the entire Russian oil and gas sector. The analysis was conducted in the Atlas.ti software during which the author performed several rounds of coding, starting with open coding and gradually moving to axial coding.

As noted above, the Arctic and Subarctic regions have been designated by the Kremlin as a strategic area for growing Russian economy. This designation requires little explanation in light of oil and natural production data depicted in Table 1 and 2 below. In 2013, 77% of all oil and 95% of all natural gas production occurred in these regions.

Table 1: Russia's oil production in Arctic and Subarctic regions in 2013 (EIA, 2015)

Table 2: Russia's Natural Gas Production in Arctic and Subarctic Regions in 2013 (EIA, 2015)

Although under the Constitution of the Russian Federation management of natural resources is *de jure* under the joint federal and provincial jurisdiction, *de facto* it is under near complete control of the federal government (Sidortsov, 2017). Federal programmatic policy statements, laws, and regulations governing strategic energy planning, distribution and management of onshore and offshore oil and gas resources, environmental protection, petroleum taxation, protection of indigenous people, and construction of energy infrastructure were analysed. In addition, 21 semi-structured, open-ended interviews were conducted. The interview data, as well as relevant energy statistics and results of public polls conducted in Russia from 2003 and 2016 were used as corroborative, complimentary, and contextual evidence. Due to the lack of relevance of these sources to the topic of this article they are not discussed in further detail.

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4 Because of the dynamic nature of the Russian legal and regulatory framework legal analysis was
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6 conducted throughout the study to ensure that the discourse analysis remained in the context of
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8 policies, laws, and regulations that were currently in effect. The discourse analysis of the official
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10 transcript data and the legal analysis of the relevant policies, laws, and regulations in a cross-
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12 complementary and cross-corroborative manner (Shuy, 2003).
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16 17 **3. Discussion** 18

19 20 **3.1. It is all about the benefits** 21

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24 It would be an understatement to say that the Russian leadership likes to focus on occurring and
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26 potential benefits of oil and gas development. Every reviewed presentation or speech made at a
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28 meeting or press conference related to oil and gas development began with a great deal of
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30 discussion about the realized and unrealized resource potential. For example, President
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32 Medvedev began his speech at the 17 September 2008 Security Council meeting, which was
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34 devoted to Russia's interests in the Arctic, with emphasizing the region's importance for
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36 maintaining Russia's competitive advantage on global commodity markets. He immediately
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38 drew attention to the scale of the on-going mineral resource extraction and concluded his
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40 introduction with the following statement: 'Of course, our foremost goal is to transform the
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42 Arctic into Russia's resource base in the 21st century. . . .' (President of Russia, 17 September
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44 2008)
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52 The Russian leadership is concerned with the shrinking oil reserves and thus the real possibility
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54 of declining oil production. According to the head of Federal Agency for Mineral Resources
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56 (*Rosnedra*), Alexander Popov, if already-explored fields were not developed, the rate of
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58 production would start declining in 2020, reaching 360 million tonnes a year by 2030. (President
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4 of Russia, 13 February 2013) This would represent a nearly 35% drop from the 2014 level of 540
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6 million tons (EIA, 2016). However, the rate of extraction of already explored oil fields is an even
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8 bigger problem. Not only does the Russian leadership encourage extraction, but it also requires
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10 the subsoil deposit users (oil and gas operators) to produce. Under this scenario, the acquisition
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12 of benefits becomes a foregone conclusion regardless of the risks that stand in its way. (President
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14 of Russia, 13 February 2013)
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23 In contrast, a discussion of risks does not always take place, and when it does, it almost always
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25 follows the discussion of benefits. When risks are considered, they are frequently manipulated in
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27 order to highlight the overall value and supremacy of benefits. At the same September 2008
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29 meeting when President Medvedev set transformation of the Arctic into Russia's resource base
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31 as the nation's foremost goal, he also briefly acknowledged that 'resolution of environmental
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33 problems of the North remains a priority.' (President of Russia, 17 September 2008) Considering
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35 that this was the eighth item on his agenda list, following a discussion of airport modernization
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37 and development of the Northern Sea Route, doubts arise as to whether addressing
38
39 environmental risks is indeed a Kremlin priority. (*Id.*)
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46 The Russian leadership has made several other references to the risks posed by oil and gas
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48 development, and each was just as laconic, if not more so. The following two-sentence remark
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50 by President Medvedev captures this extreme brevity: 'The effect of the fuel and energy sector
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52 remains rather negative. It is what it is.' (President of Russia, 13 December 2010) The brevity
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54 can be attributed to the fact that Russian leadership does not give such risks as much as an
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56 afterthought. In a meeting that took place on 9 June 2011, Dmitry Kobylkin, the governor of the
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4 Yamal National Autonomous District, started his presentation about on-going and planned oil
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6 and gas projects in the Russian Arctic by emphasizing that they are aimed at strengthening
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8 Russia's economic presence and potential in the region. He switched to the environmental part of
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10 his presentation by stating that a 'thorough thought must be given as to how to avoid a negative
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12 impact on the environment.' (President of Russia, 9 June 2011)
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17 Mr Kobylkin's statement is concerning because he suggests that *no* thought has been given to
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19 environmental risks despite a great deal of planned and occurring oil and gas activities in the
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21 region. At the same time, oil and gas extraction is perceived as unavoidable and even as part of
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23 human nature. As President Putin pointed out, humans have always used nature for subsistence,
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25 and hydrocarbon extraction is the modern day subsistence. 'Is it possible to stop it? Of course
26
27 not. It is impossible to stop it', said Mr Putin at the plenary session of the international Arctic
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29 forum, 'The Arctic, Territory of Dialogue'. (President of Russia, 25 September 2013) In contrast,
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31 according to the Russian President although minimizing environmental risks is something that
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33 the Kremlin aspires to do, doing so 'now is difficult' (*Id.*).
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41 The 'impossible to stop' oil and gas development is presented via benefits expressed in real
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43 numbers. In contrast, the presentation of risks is usually made in less certain terms.
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45 Paradoxically, in speeches and meetings, the overarching topic of which was energy
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47 development, Slovic's (1987, p. 281) uncertain risk factor was utilized to *ease* and not emphasize
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49 fears about potentially negative impacts of the development. The meeting participants and the
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51 Russian leadership framed unknown risks as insignificant, especially in comparison to
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53 significant, substantial, and concrete benefits. Omitting references to potentially catastrophic
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4 spills in Arctic waters and catastrophic changes in demand for oil and gas certainly helped to
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6 accomplish this goal.
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10 For example, during a 26 September 2013 (President of Russia) meeting regarding the Yamal
11 LNG project, Mr Putin highlighted the 1.3 tcm resource potential of the Yuzhno-Tambeyskoe
12 natural gas field and 53% increase in the Northern Sea Route (NSR) passage traffic as two strong
13 reasons for proceeding with the project and for the Russian government's investment in the
14 project's infrastructure. As to the risks, they were to be determined later per the president's
15 directive. However, whatever these risks would turn out to be, they were not going to reverse the
16 decision to proceed with Yamal LNG. (*Id.*)
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28 Presenting oil and gas reserves and resources as certain benefits is misleading. According to the
29 Society of Petroleum Engineers (SPE) (2016), proved reserves, offer '90% probability that the
30 quantities actually recovered will equal or exceed the estimate'. Probable reserves offer 50% of
31 such probability and possible reserves offer 10%. (*Id.*) Russia does not follow the widely
32 accepted SPE classification and does not use probabilities of recovery that are similar to the
33 SPEs (Order N477, 2013). In particular, it lacks the analysis of the quality and economics of
34 deposit recovery (President of Russia, 13 February 2013). According to the Head of *Rosnedra*,
35 these shortcomings of the reserve classification system lead to international financial auditors
36 underestimating the true resource potential of the Russian Federation by 30% (*Id.*). Whether
37 Russia's reserve data are over- or underestimated, they definitely lack certainty. (Smil, 2010, p.
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56 Mr Putin's remark about the NSR traffic was also misleading because it did not represent the
57 trend in Arctic shipping. In 2014, the NSR traffic dropped by 75% from 2013, and in 2015 it
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4 dropped by 86% from 2014. (Rodova & Geller, 2016) There were no oil and gas transit cargoes
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6 in 2014 or 2015 (*Id.*). However, the President had *firm* numbers for the benefits and *slight*
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8 concerns for the risks. In this scenario, numbers win handily making the decision to proceed with
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10 Yamal LNG appear perfectly rational.
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15 A 5 June 2014 meeting, with the officially designated topic of ‘on effective and safe
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17 development of the Arctic’, epitomizes the deafening primacy of oil and gas activities in the
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19 Russian energy policy discourse. The meeting began on a surprising environmental note with
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21 President Putin signifying its coincidence with the World Environment Day. The President
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23 emphasized the importance of environmental protection for the region’s fragile flora and fauna,
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25 and noted the devastating ‘consumer-like’ attitude of the past. He summarized the first half of his
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27 address with a call not to make the same environmental mistakes in the future. (President of
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29 Russia, 5 June 2014)
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36 After this atypical introduction, the president’s address and the following presentations took a
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38 180-degree turn. The World Environment Day meeting, the main topic of which was supposed to
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40 be risks *posed by oil and gas* development in the Arctic, turned into a meeting about handling
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42 risks *threatening oil and gas* development in the Arctic. One after another, participants discussed
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44 what various government agencies, the scientific community, and civil society could do to aid oil
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46 and gas development in the Arctic.
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52 A few remarks were related to mitigating the risks of oil and gas development in the Arctic. For
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54 example, the head of the Russian branch of the World Wildlife Federation (WWF) Alexey
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56 Knizhnikov touched on his organization’s cooperation with the industry on matters such as oil
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58 spill prevention in Arctic waters and endangered species protection during hydrocarbon
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4 activities. (*Id.*) However, none of the participants questioned the supremacy of oil and gas in the
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6 economic development of the Arctic region over all other policy concerns. None of the
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8 presenters scrutinized the perceived grand benefits of turning the Arctic into Russia's resource
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10 base for the twenty-first century. Additionally, no one at the meeting wondered whether the risks
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12 of oil and gas development in the Arctic might outweigh its ostensible benefits. The World
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14 Environment Day meeting began and ended with oil and gas development in the Arctic being a
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16 foregone conclusion and the risk discourse centred on mitigating the potential adverse impacts
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18 not *from* but *to* oil and gas activities.
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25 An argument could be made that if this meeting were to be run by Greenpeace, which
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27 unequivocally opposes hydrocarbon development in the Arctic, the scenario under which oil and
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29 gas development in the Arctic could proceed would not have been on the table. The difference,
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31 however, lies in the forum where the discourse takes place, as well as in the practical outcomes
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33 of the discourse. The 5 June 2014 meeting was not the gathering of a stakeholder group in which
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35 the group refined its position and strategies. This was a meeting organized and run by the
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37 ultimate sovereign decision-maker with agenda-setting power. The sovereign framed the
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39 discourse so that acquisition of oil and gas benefits was the only option, whereas an analysis of
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41 the risks posed was reduced to determining the ways of fostering acquisition.
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48 **3.2. The state of risk checks and balances**

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52 The amount of time devoted to discussion of potential benefits vis-à-vis potential risks, the order
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54 in which risks and benefits are discussed, and the degree of certainty in which risks and benefits
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56 are expressed explain the inadequate state of risk PA and C&E mechanisms largely imbedded in
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58 Russian environmental and technical regulating legislation. Environmental assessment (EA)
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4 serves as a critical risk governance mechanism (Sidortsov, et. al., 2016). whereas technical
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6 standards (*tekhnicheskie reglamenty*) enacted pursuant to law ‘On Technical Regulating’ provide
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8 risk assessment and risk management requirements (Law N184-FZ, 2002, art. 2).
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12 Peterson and Bielke (2001), Bobylev (2005), and Bykov (2005) attribute the demise of
13
14 environmental protection in Russia to the policy of reviving the extractive sector. This process,
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16 termed by Mol (2009) as ‘environmental deinstitutionalization’, began with the absorption of the
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18 State Committee of the Russian Federation for the Protection of the Environment
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20 (*Goskomekologia*) into the Ministry of Natural Resources (*Minresursov*). As a result of this
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22 ‘environmental coup’ (IQ HSE, 2002), *Minresursov*, which is currently known as *Minprirody*,
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24 subjugated environmental protection to the interests of mineral resource development (Crotty &
25
26 Rodgers, 2012). Thus, the order in which the benefits and risks are discussed, as well as the
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28 amount of time devoted to the discussion of each reflects the subordinate (to industrial activities)
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30 nature of environmental protection.
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38 The next round of changes came in 2003 and 2004 in the form of ‘recentralization’ when
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40 environmental enforcement, permitting, and monitoring were transferred from regional agencies
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42 to five federal agencies mentioned in Chapter 4: *Rosprirodnadzor*, *Rostekhnadzor*, *Rosnedra*,
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44 *Rosvodnadzor*, and *Rosgydromet* (Crotty & Rodgers, 2012, p. 17). This left regions largely in the
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46 role of observers to oil and gas projects occurring in their territory. Yet the Kremlin was not
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48 quite done with administrative reform in the environmental sector. Its next target was EA.
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54 In December 2006, the enactment of the federal City Building Code prompted comprehensive
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56 changes in environmental legislation (Law N232-FZ, 2006). The two major amendments
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58 impacting risk governance of oil and gas activities included the definition and the scope of EA.
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4 As the Table 3 depicts, the new definition transformed an assessment of an actual activity into a
5 document review. In addition, the original definition focused on risk, i.e. ‘potential adverse
6 consequences of the activity’ and included social and economic risks in the purview of EA. EA
7 or as the law ‘On Environmental Review’ terms it ‘state environmental expert review’ (SEER) is
8 only required for oil and gas activities occurring offshore and located in highly protected
9 environmental areas (Law N175-FZ, 1995, art. 11). In addition, related activities involving
10 construction waste disposal or recycling facilities are included as well. Thus, oil and gas
11 pipelines, onshore exploration and extraction as whole projects and activities remain excluded
12 from the purview of ‘On Environmental Review’ (*Id.*).
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27 *Table 3: Definition of Environmental Assessment Under Article 1 of ‘On Environmental Review’*
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29 (Law N175-FZ, 1995)
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37 SEER is the second step of a two-step environmental assessment process under Russian law. The
38 first step is environmental impact assessment, or *otsenka vozdeystviya na okruzhaiyschuiy sredu*
39 (OVOS). ‘On Environmental Review’ does not specify the mechanics of OVOS, nor does it
40 clearly connect OVOS to SEER. In fact, ‘On Environmental Review’ mentions OVOS only
41 once, in Article 3, where it sets forth OVOS comprehensiveness as one of the principles of SEER
42 in Russia. The 16 May 2000 Order of the Committee of the Russian Federation on Protection of
43 the Environment (‘Order 372’) establishes a much tighter connection between OVOS and SEER
44 by requiring the documents reviewed during SEER to be based on OVOS (Order N732, 2000).
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57 The brevity with which ‘On Environmental Review’ treats OVOS is puzzling as it the only
58 source of data and analysis for the documents that state experts review during SEER.
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4 The lack of cohesion between ‘On Environmental Review’ and Order 372 affects risk
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6 governance. Article 3 of Order 372 mandates OVOS to include the assessment of ‘risk
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8 probability’, as well as the assessment of adverse environmental, social, and economic impacts
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10 of the proposed activity. However, because ‘On Environmental Review’ does not mention risk or
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12 social and economic impacts as part of SEER, experts are not required to include these items in
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14 their analysis.
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20 After finalizing the OVOS documentation, the process moves to the SEER stage. The Federal
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22 Service for Oversight of Natural Resources (*Rosprirodnadzor*) or its regional branch forms an
23
24 expert commission from staff and invited experts on an *ad hoc* basis for each individual project
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26 (Law N175-FZ, 1995, art. 15). The process is not inclusive at this stage, as only provincial and
27
28 municipal governments have the right to recommend their own experts to serve as observers at
29
30 an expert commission meeting, and deliberation is limited to a discussion among experts (*Id.*).
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32 Therefore, even though an OVOS of an offshore project might reveal a significant issue, SEER
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34 experts are not bound by OVOS documentation (WWF, 2016). To date, not a single offshore oil
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36 and gas project has experienced a SEER-related delay. In this sense, a no-action option is *de*
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38 *facto* absent (Sidortsov, 2017)
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45 The former Minister of Environment and Natural Resources Yuri Trutnev listed ‘termination of
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47 environmental assessment’ as the leading environmental protection problem in Russia. (President
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49 of Russia, 27 May 2010) The minister clarified that the scope of EA had been reduced to the
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51 point where it covered only 5% of activities that were originally in the purview of ‘On
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53 Environmental Review’ (*Id.*). Although Mr Trutnev made this observation in 2010, judging by a
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55 lack of progress in relation to the action items identified in several presidential meetings
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57 dedicated to the environment, EA in Russia remains in an inadequate state.
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4 In addition to SEER, ‘On Environmental Review’ sets forth the public environmental expert
5 review (PEER), a more inclusive mechanism that offers perhaps the most opportunity for
6 deliberation (Law N175-FZ, 1995, arts. 20-25). PEER is not mandatory. It can be initiated by
7 citizens, local governments, and NGOs (*Id.*). A party wishing to conduct a public environmental
8 assessment must seek permission from the local government (*Id.*, art. 23). Permission may be
9 denied on several grounds. For example, government officials may decline to permit the public
10 environmental assessment if information about the project or a related activity contains
11 ‘commercial secrets.’ (*Id.*, art. 24) This gives government officials an easy out, so to speak, as
12 virtually every project or economic activity contains sensitive information. The results of PEER
13 are not binding, which weakens its practical effects. The only requirement posed by ‘On
14 Environmental Review’ is that the results of any permitted public environmental assessment
15 must be considered during the mandatory SEER process (Law N175-FZ, 1995).
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34 Russia does not have a framework for performing strategic environmental assessments (SEAs),
35 despite Russian and international environmental NGOs and academia advocating for the
36 adoption of such since the 1990s (Bogolybov, 2013). Thus, the two-step EA process serves as the
37 main mechanism for environmental risk governance of hydrocarbon activities.
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46 ‘On Technical Regulating’, enacted in 2002, introduced technical regulations (*tekhnicheskie*
47 *reglamenti*) intended to organize technical standards into coherent groups (Law N184-FZ, 2002,
48 art. 2). Technical regulations also set the minimum standards for products, processes, and
49 facilities (*Id.*). The minimum requirements are developed pursuant to acceptable and tolerable
50 risk, which the statute defines as ‘probability and severity of harm to life or health of citizens,
51 personal, corporate, state, and municipal property, environment, life or health of flora and fauna.’
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4 (*Id.*) The scale upon which ‘On Technical Regulating’ utilizes risk to shape regulatory
5 requirements makes it *de jure* the most innovative law in terms of risk governance.
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10 A technical regulation can take the form of statute, administrative regulation, or even an
11 international treaty (Law N184-FZ, 2002, art. 2). This means that it is the government that
12 determines the tolerability and acceptability of the risk at issue, which is in line with Russia’s
13 historic approach to risk. This also means that all technical standards that fall under a technical
14 regulation must comply with the regulation. In addition, these standards cannot contradict other
15 administrative regulations such as the 2014 ‘Federal Industrial Safety Regulations “Offshore Oil
16 and Gas Safety Rules”’ (‘Offshore Oil and Gas Safety Rules’) and tens and even hundreds of
17 other administrative regulations (Order N105, 2014).
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31 Comprehensive technical regulations are expected to bring order to the multitude of technical
32 standards and ensure that administrative regulations, such as the Offshore Oil and Gas Safety
33 Rules, do not send contradictory messages to companies. Unfortunately, Russia is a long way
34 from reaching this goal. President Medvedev described the state technical regulations in early
35 2010 as follows:
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44 I am talking about the technical regulating legislation. The law as it was enacted had
45 proven to be completely ineffective. As a result, we had to take immediate measures
46 to bring it in compliance with today’s requirements. (President of Russia, 20 January
47 2010)
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54 The Russian President was puzzled that in 2010, *eight* years after ‘On Technical Regulating’ was
55 enacted, the RF Government was still unsure how many technical regulations were necessary for
56 its full implementation. ‘At first they said 40 to 50. After that, some other number emerged; and
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4 after that I was told 400.’ (*Id.*) The Russian leadership remarked that this not only represents a
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6 significant gap between technical standardization in the Western countries and Russia, it also
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8 indicates a marked decline in the quality of technical regulation since the collapse of the Soviet
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10 Union (President of Russia, 13 February 2013).
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15 The situation remains largely the same as the time when this article was written. The only
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17 technical regulation adopted by the RF Government since the enactment of ‘On Technical
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19 Regulating’ that directly relates to the oil and gas sector is a regulation concerning distribution of
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21 natural gas pipelines (Rosstandard, 2019). Thus, in the foreseeable future, instead of receiving
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23 clarification regarding the parameters of acceptable and tolerable risk, oil and gas companies are
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25 exposed to regulatory risks created by legal ambiguity.
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31 **4. Conclusion and policy implications**

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35 Benefits of oil and gas development are prioritized over risks in the Russian official policy
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37 discourse. In most instances, the discussion of benefits precedes the discussion of risks. This
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39 should not be surprising, because risks of oil and gas development should not be discussed
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41 absent the source of the hazard, the development itself. Yet it is not necessarily the order in
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43 which risks and benefits are presented, but the combination of the order, extent, and precision
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45 with which benefits are described that elevates them (the benefits) over risks, which are
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47 frequently mentioned as an afterthought. Therefore, the initial broad picture of risk in the Arctic
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49 and Subarctic, as well as the risk-benefit analysis is distorted by: (i) the amount of time devoted
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51 to discussion of potential benefits vis-à-vis potential risks; (ii) the order in which risks and
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53 benefits are discussed; and (iii) the degree of certainty in which risks and benefits are expressed.
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4 As a result, the incumbent, expansive, and ostensibly certain knowledge of benefits creates a
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6 power dynamic that negatively affects the creation of new bias-free knowledge about risks.
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10 Because the study upon which this article is premised focuses on a single country, the following
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12 points should be viewed as policy recommendations for the Russian Federation only. However,
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14 the pro-fossil fuel policy bias is prevalent in countries with ostensibly robust environmental and
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16 social checks on oil and gas development such as the United States and Norway (Sidortsov,
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18 2016) (The White House, 2017). Therefore, these policy recommendations can serve as working
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20 hypotheses for applied analysis other national policy, legal, and regulatory regimes.
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25 Based on the discussion above, governance of risks from oil and gas activities in the Russian
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27 Arctic and Subarctic can be improved in the following ways:
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- 31 • The discussion of risks from and benefits of oil and gas development must be balanced in
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33 the official policy and regulatory discourse. This can be achieved by creating two equally
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35 powerful agencies, one advocating for hydrocarbon development and another
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37 safeguarding against it. It would entail undoing the ‘environmental deinstitutionalization’
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39 of the early 2000s and breaking up the Ministry of Natural Resources and the
40
41 Environment (*Minprirody*) into two federal agencies. (Mol, 2009)
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- 46 • Rules of risk discourse must be established through administrative actions by which
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48 official discussions of risks vis-à-vis benefits must be fairly balanced in terms of the time
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50 allowed, sequence, and qualitative and quantitative presentation of risks and benefits.
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- 54 • An official guidance for permitting, licensing, and environmental assessments must be
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56 promulgated requiring treating uncertainty as a factor that amplifies risk.
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- The scope of Russia's environmental assessment statute 'On Environmental Review' (Law N175-FZ, 1995) must be restored thereby enabling the government to weigh risks and benefits of industrial projects instead of merely assessing the technical documentation that accompanies them (Sidortsov, et. al., 2016).
- The void of technical regulations in the oil and gas sector must be resolved by developing a sufficient number of regulations and allowing the existing regulatory framework to fill the void until such objective is accomplished.

Connecting official energy policy discourse to legal mechanisms through which the policy is channelled and placing the analysis in the context of risk governance advances the interdisciplinary nature of energy law. This helps to expand energy law's disciplinary boundaries and equip energy scholars and practitioners with valuable conceptual and methodological tools. Considering the complexity of energy law and its connection with engineering, economics, geography, and other disciplines, looking beyond the legal theory and utilising concepts like risk governance is all but mandatory for energy law researchers (Heffron & Talus, 2016). Likewise, employing discourse analysis is invaluable for understanding the policy rationale and legislative purpose of a legislative act, especially the official legislative history is scarce or unreliable.

The analysis conducted in this article also highlights the importance of national context for studying energy law and policy in a particular jurisdiction. Thus, the most informative data and the most effective methodology must be determined based on the realities of a national political, legal, and regulatory regimes. The importance of accounting for national context, however, does not undermine the analytical value of energy law theory. In fact, this underscores the significance of energy law principles, proposed by Heffron *et al.* (2018), such as balancing the Principle of National Resource Sovereignty and the Principle of the Protection of the Environment, Human

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4 Health & Combatting Climate Change. Therefore, a multi-jurisdictional study applying a similar
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6 methodology to similar data sources appears to be the next step to advance this area of energy
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8 law scholarship.
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Table1

Table 1: Russia's oil production in Arctic and Subarctic regions in 2013 (EIA, 2015)

Region/Territorial Unit	Output (thousand b/d)	Percentage
Western Siberia	6,422	61.60%
Krasnoyarsk	426	4.09%
Sakhalin	277	2.66%
Arkhangelsk	269	2.58%
Komi Republic	257	2.47%
Irkutsk	227	2.18%
Sakha (Yakutia)	149	1.43%
Total	8,027	77%

Table 2

Table 2: Russia's Natural Gas Production in Arctic and Subarctic Regions in 2013 (EIA, 2015)

Territorial Unit	Region	Output (bcf/day)	Percentage
Yamalo-Nenets	West Siberia	53.7	82.87%
Khanti-Mansiisk	West Siberia	3.5	5.40%
Tomsk	West Siberia	0.5	0.77%
Sakhalin	East Siberia and the Far East	2.7	4.17%
Irkutsk	East Siberia and the Far East	0.3	0.46%
Krasnoyarsk	East Siberia and the Far East	0.3	0.46%

Table 3

Table 3: Definition of Environmental Assessment Under Article 1 of ‘On Environmental Review’
(Law N175-FZ, 1995)

Current Definition (last amended on 25 December 2018)	Original Definition (as of 23 November 1995)
The determination of whether documents or documentation that support an economic or other activity comply with the environmental requirements set forth in in technical regulations and legislation in the area of environmental protection for the purposes of prevention of negative impact of said activity on the environment	The determination of whether a planned economic or other activity meets environmental requirements and determination of whether the activity can proceed considering the goals of prevention of potential adverse consequences of the activity on the environment and related social and economic and other consequences of the activity.