Land-Based Marine Pollution in the Russian North: International Regulatory Models for the Future

ABSTRACT

International attention is continually paid to Russia’s recent offshore explorations, however the landside portions of Russia’s Shtokman and Yamal hydrocarbon preserves have been producing for decades. Hydrocarbon production in this region—and the high quantity of leaking oil making its way into Russia’s landmass—is a transboundary pollution hazard for the wider Arctic ocean. The Arctic Council and the International Maritime Organization agree that land-based pollution from sources both within and outside the Arctic are the major source of contamination to the Arctic marine environment. Despite the consensus, there is currently no Arctic-regional regime to regulate hydrocarbon extraction, on or offshore.

Taking this governance gap as a starting point, this paper begins with a review of Russia’s Arctic hydrocarbon reserves. To better assess the precedents and prospects for regulating land-based hydrocarbon extraction in the Arctic, this paper then analyzes the effectiveness of select international marine pollution regimes (UN-CLOS, OPRC, and MARPOL) and two of the UN’s Regional Seas regimes concerning marine pollution from land-based sources (the Barcelona and Bucharest Conventions). A review of the legal competencies and de facto capacities of Russia’s federal and regional environmental regulatory bureaucracy follows the international discussion. Geir Hønneland has done some of the most extensive English-language work on Russian environmental regulation, and my selection of case studies relies heavily on his work. This paper concludes with the prediction that a regional regime over land-based pollution in the Russian North is unlikely, and that such protection will only come if energy companies are held financially liable for on-land pollution that demonstrably damages the wider Arctic Ocean.
Introduction

This paper will make a prognosis for the future of land-based pollution regulation in the Russian North. According to the Arctic Council (2009) it is land-based pollution located both within and outside the Arctic that represents the major source of pollutants to the Arctic marine environment. The International Maritime Organization agrees: “set against land-based industry, shipping is a comparatively minor contributor, overall, to marine pollution from human activities” (IMO). The future development of the marine regions of the Shtokman and Yamal “Mega Protects” are a part of the pollution equation in Arctic Russia. The landside portions of these reserves have been under exploitation for decades, and represent an existing, serious environmental threat to the Arctic Ocean. Russia maintains, as of 2006, 350 thousand kilometers of oil pipeline that suffer approximately 50 thousand incidents annually (Blokov, 2013). Greenpeace figures—compiled from state, private and NGO monitoring data—put the quantity of spilled Russian crude on land at 500 million tons per year, 500 thousand tons of which end up in the Arctic Ocean (Greenpeace, 2013). Despite the consensus regarding the importance of land-based pollution, the Arctic Council lacks a comprehensive source of pollution data for northern Russia (2007), and appears unable to produce a regional regime that might regulate the extractive industries, on or offshore.

Environmental regulation is the ground level implementation of intersecting national, binational, regional, and international regimes. Therefore, this survey will analyze a selection of the relevant international pollution regimes impinging upon the Russian north, and then working down to the level of actual compliance. An initial review of Russia’s Arctic hydrocarbon reserves will permit us a better sense of the interests involved in their extraction. Next, I will survey the effectiveness of select international marine pollution regimes (namely UNCLOS, OPRC, and MARPOL) as well as two of the existing Regional Seas regimes concerning marine pollution from land-based sources (the Barcelona and Bucharest Conventions) to better assess the precedents and prospects for regulating land-based hydrocarbon extraction in the Arctic. A review of the legal competencies and de facto capacities of Russia’s federal and regional environmental regulatory bureaucracy follows the discussion of international regimes. Geir Hønneland has done some of the most extensive English-language work on Russian environmental law, and my selection of case studies relies heavily on his work. This paper concludes with the prediction that a legally binding, regional regime over land-based pollution in the Russian North is unlikely, and that such protection will only come if energy companies are held financially liable for on-land pollution that demonstrably damages the wider Arctic Ocean.
The Shtokman and Yamal Reserves

Russia publically announced its intention to “convert the Russian Arctic into the leading resource zone of the Russian Federation” (Security Council of the Russian Federation, 2008). Russia’s hydrocarbon boom entails both onshore and offshore development. The largest projects in the archipelago of hydrocarbon fields extending underneath Russia’s landmass and out into the Arctic shelf are the Shtokman and Yamal fields. Shtokman is a field of deposits that underlies the Russian side of the Barents Sea, and is is said to hold offshore reserves of 3,200 billion cubic meters of natural gas—the largest gas and condensate field in the world (Moe & Schei, 2005, pg 11). Russia’s declared lack of expertise in offshore production in extreme conditions led Gazprom to partner with Statoil and Total for exploratory projects.

The other trove of gas is the Yamal Mega Project. Yamal refers to the clusters of fields on the Yamal Penninsula, along the bays adjacent to it, and extending northward underneath the Kara Sea. It contains, according to Gazprom’s website, approximately 30 trillion cubic meters of gas (currently explored plus projected) and 1.64 billion tons of oil and condensate. Current onshore production in Yamal is linked to the exiting network of variously decrepit pipelines running into the Russian mainland, and thence west to ports on the Baltic or into Eastern Europe. Development of new extraction facilities in the the Yamal region will face the near nonexistence of viable roads and railways, and increasing depth and frequency of permafrost melt (Kaczynski, 2009). Sinking building foundations and collapsing support structures are common in the north, and are a perpetual concern for industrial infrastructure. Melting sea ice and the energy boom have caused a surge in northern shipping, as oil companies have found it more profitable to ship oil from ports in Murmansk, the White Sea or Arkhangelsk than to face the bottlenecks in Russia’s Europe-bound pipelines (Moe & Schei, 2009, p. 7). However, exporting by ship does not solve the need for land-based pipelines to ports. Russia’s northern land-based pipeline web, and its attendant pollution risks, remains a long term problem with no foreseeable solution at present.

International Regimes On Oil Spills and Transportation at Sea

The manifestly transnational effects of oil spills at sea has meant that regimes on vessel-source oil pollution have advanced faster and more publically than land-based ones. It will be instructive, therefore, to survey these international regimes to understand what exactly they regulate. This will assist us in conceptualizing a potential Arctic-specific framework for a land-based regime.
The UNCLOS Model

The United Nation Convention on the Law of the Sea (UNCLOS) is an example of customary law codified into a formalized regime. UNCLOS is the preeminent legal reference for the expanding suite of international, regional, and bilateral frameworks. Such frameworks often aim both to affect compliance pursuant to UNCLOS as well as extend UNCLOS’s general principles into unique, region-specific regimes (see the Barcelona and Bucharest Conventions, discussed below).

Article 207 of UNCLOS is the most relevant to transnational land-based pollution. This section obliges states to take measures within their own jurisdictions “to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures” (UNCLOS). What’s more, UNCLOS imposes the obligation to prevent “pollution arising from incidents or activities under their jurisdiction or control [from spreading] beyond the areas where they exercise sovereign rights…” (Article 194.2).

Currently, the most wide reaching regional regime over hydrocarbon pollution in the Arctic is the Convention for the Protection of the Marine Environment in the North-East Atlantic (OSPAR Convention), which came into force in 1998 (Offendal, 2007, note. 38). The convention “covers all technical aspects of pollution from ships of all types” (pg. 153). However, the Convention—previously known as the The Paris Convention for the Prevention of Marine Pollution from Land-Based Sources—no longer bears the term “land-based” in its title. In any case, Russia is currently not a party to it. The Convention Commission nonetheless recognizes that the Baltic and Barents Seas receive large effluent discharges from Russian rivers (OSPAR Commission, pg. 3). Land-based, industrial pollutants such as heavy metals, persistent organic pollutants, and polycyclic aromatic hydrocarbons are all associated with Russia’s northern ports (Arctic Council, 2009, pg. 11).

Another notable regional soft-law product pursuant to UNCLOS’s Article 207 is the Arctic Council’s Regional Program Of Action For The Protection of the Arctic Marine Environment From Land-Based Activities (RPA). The RPA is explicitly linked to the UN’s wider Regional Seas Programme (discussed below), though unlike the legally binding conventions that the UN program has borne for the Black and Mediterranean Seas, the Artic Council’s RPA is a merely a “normative endeavor” (Stokke, Hønneland, & Schei, 2007, pg. 98) That is, the RPA is a means to coordinate environmental studies, share technology and information, and jointly establish pollution mitigation practices, but is not an enforcement mechanism.

The principles articulated in UNCLOS are broad. This can be both its weakness and its value in application to the Arctic. Oran Young goes so far as to call UNCLOS a “framework agreement,” insofar as it establishes broad principles, institutions (the CLCS, etc.), and concepts related to the human use of marine resources
UNCLOS does not provide legal rules for the use of the Arctic environment, save those deriving from general obligations such as those mentioned in Article 234 on “Ice-Covered Areas”. To the extent that it is a law, UNCLOS simply grants states the sovereign right to adopt or enter into “a variety of specific regulatory arrangements aimed at addressing the conditions obtaining in the Arctic” (Young, 2011, pg. 98). Two recent cases of such arrangements have been the Arctic Council’s “Arctic Marine Shipping Assessment” and “The Guidelines for Ships Operating in Polar Waters”, both published in 2009. These comprehensive publications establish frameworks for Arctic ship construction and operation, standards for exhaust and sewage discharge, etc. (Loukacheva, 2010, pg. 62). While these frameworks are not legally binding, this does not mean—as we will see below in regards to MARPOL—that they are ineffective.

The MARPOL Model

1973 International Convention for the Prevention of Pollution from Ships and its 1978 Protocol, commonly referred to as MARPOL, is generally considered to be a successful and widely implemented regime. Mitchell et al. ascribe the success of the regime to three aspects of its construction: the procession of its authority from the IMO, its “deputization” of insurance and classification procedures, and the fact that existing incentive structures motivate its implementation (Mitchell, McConnell, Roginko, & Baret, 1999).

MARPOL consists of three subregimes, two of which have been deeply successful: equipment/utilities standards, and oil discharge rules. The 1998 update to MARPOL finally banned oil dumping altogether, whereas previously it was permitted. MARPOL’s perpetually evolving codification of best practices has become the yardstick by which shipbuilders, tank owners and operators, classification societies, and insurance companies evaluate each other’s work. Governments that initially resisted MARPOL’s adoption now use its rules to judge behavior. The regime’s ability to modify the behavior of (especially) utilities and ship builders “depended, in part, on…states’ perception of the IMO as the only authoritative voice in regulating maritime policy…[this] gave IMO rules on maritime pollution more rapid and broader legitimacy” (Mitchell, McConnell, Roginko, & Baret, 1999, pg. 79). Moreover, the IMO’s preexisting legitimacy in effect codified shipbuilding and oil storage standards, creating an institutional and market context wherein noncompliance became less of an option. This was especially true of insurance companies, for whom IMO best practices standards became the bar by which premiums were established (pg. 80). MARPOL thus, in effect, “deputized” insurers and classification societies, and their standards replaced external coercion as the means of enforcement.

In the final analysis, Mitchell et al. ascribe the success of MARPOL to the
fact that its implementation is grafted onto existing market incentives. It is for this same reason that MARPOL finds such acceptance in countries hosting major oil conglomerates. Even oil companies prefer international guidelines to likely stricter domestic legislation. International legal standards are usually less stringent than domestic legislation, especially in so-called “activist” countries like the US and UK. Oil companies’ positive disposition to MARPOL further illustrates its harmony with market incentives (pg. 84).

**MARPOL: Insufficiencies**

MARPOL’s insufficiencies can also be instructive as we conceptualize a framework for the Arctic. One of these is its near total lack of integration with the landward side of the oil transport industry. Mitchell argues (1999, pg 79) that MARPOL would probably never have been passed had it extended its reach beyond the IMO’s traditionally accepted sphere of expertise, the ocean. MARPOL’s “ships only” purview is due primarily to the IMO’s refusal to adopt land-based pollution as part of its mandate. The dearth of land-based provisions speaks to what Oran Young calls “the well known tradeoff between legal status and substantive content” (Young, 2011, pg 32).

The only aspect of MARPOL that addresses land-based pollution is the provision requiring states to “ensure the provision” of special slop oil reception facilities at tanker and non-tanker ports is that ship owners will be less incentivized to dump slop oil at sea. But provision’s vagueness as to exactly who should ensure for the facilities, government or industry, has stalled its implementation, especially in OPEC countries. Furthermore, tanker owners bear the equipment and operational costs of retaining slop oil onboard while at sea, as well as the cost of extra time spent in port offloading it into reception facilities (Mitchell et al., 1999, pg. 47). This mismatch with incentives has meant that MARPOL’s rules against ocean dumping have been hard to implement.

Thankfully, this provision has not severely hampered MARPOL’s wider success. Since it was adopted, vessel-source pollution has decreased from approximately 35% of global marine pollution in the early 1970s to approximately 10% by the early 1990s (Nowlan, 2001, pg. 21).

MARPOL annexes provide for the designation of “special areas” and “particularly sensitive areas” in which several shipping restrictions apply. Given that Article 234 of UNCLOS already grants it to nations to establish special marine laws in ice covered waters, application of the “special areas” provision of MARPOL would be redundant in the Arctic (pg. 20).
The OPRC Model

The International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) acknowledges the transboundary nature of oil spills, primarily via the obligation to provide oil spill assistance to affected neighboring countries who request it (Dopplick, 2011, pg. 4). Russia has in fact ratified this convention. This a first step towards an integrated land-and-sea concept of the marine ecosystem. However, OPRC has not produced standards for oil extraction the way that MARPOL has for oil transport.

The Arctic Council accelerated its implementation of the OPRC’s stipulations for regional preparedness and response systems after the 2010 Deepwater Horizon tragedy. A task force – to be chaired by Norway, Russia, and the US – was formed at the May 2011 Arctic Council Ministerial Meeting in Greenland, and was charged with producing an Arctic-specific instrument for implementing the OPRC. However, OPRC only obligates countries to maintain oil spill response capability (Dopplick, 2011, pg. 4). Mandatory preventative capabilities were absent from the purview of the Council’s new instrument, which was finally agreed upon on May 15th, 2013. This runs quite contrary to the post-Deepwater spirit of the Greenland meeting (pg. 4).

Preventative practices are currently being researched within other Arctic Council working groups, and the Council hopes that member states will “voluntarily” adopt pre-spill best practices. The Council evidently preferred to seek consensus on the more agreeable, post-spill response practices. The word “prevention” is not even in the new agreement (U.S. Department of State, 2003). The Council’s only thus-far publication regarding pre-spill preventative measures is the “Arctic Offshore Oil and Gas Guidelines,” which, qua guidelines, are not legally binding.

There are thus no legally mandated practices or preventative technologies for oil and gas exploration, save those under MARPOL, which only cover ships. Pollution prevention obligations can only be inferred from the various regional and international agreements/laws currently on the books (see list in Dopplick, 8-11).

UNCLOS, MARPOL, and OPRC: Lessons

These regimes set precedents that could aid in the elaboration of a land-based pollution regime for the Arctic. UNCLOS grants states the legal right to establish special transit restrictions in ice covered waters within their Exclusive Economic Zones (EEZs). This right implies the interconnectedness of marine and land-based pollution. MARPOL is a model regime in that its “deputization” of stakeholders’ roles does not interfere with their natural incentives. The Arctic Council’s activities pursuant to, inter alia, the OPRC might lack enforcement authority, but they are arguably establishing an environmentally conscious operational status quo for the
Arctic. Moreover, the Council’s newest agreement on oil spill cleanup preparedness represents a landward extention of the Council’s purview. Any future regime over land-based pollution would need to encompass all of these aspects.

**International Regimes on Land-Based Pollution**

It is worth remembering that UNCLOS and MARPOL arose from customary law of the sea. Customary maritime law grew out of a global recognition of the oceans as open transboundary spaces. This notion produced two coupled values: absolute freedom of the high seas, and absolute state sovereignty over its own coasts, enshrined in UNCLOS’s provisions on internal, territorial, and EEZ waters. The simultaneity of freedom and sovereignty speaks to a dialectical understanding of the marine environment as a common space that nonetheless penetrates national boundaries. The UN Environmental Program (UNEP) Regional Seas Programme and its regimes over land-based marine pollution are legal manifestations of this dialectical understanding.

UNEP established the Regional Seas Programme in order to foster implementations of international environmental law that are adapted to the specific ecological characteristics of unique marine environments (Doussis, 2006, pg. 360). Both the Mediterranean and Black Seas were legally designated as regional seas. The Barcelona and Bucharest Conventions are the concomitant legal regimes to which states bordering these seas have acceded. Each convention contains sets of interlinking protocols pertaining to land-based sources of marine pollution (see Doussis, 360 and Hildering et al., 80-86).

As Doussis explains (2006, pg. 360), much like the Arctic, these seas are enclosed, regenerate slowly, and break down toxins at comparatively slow rates. The Black Sea, especially, serves as a catchment area for so many large, polluted rivers that the estimated retention rate for petrochemical toxins can extend to 140 years. Doussis’s description of the last forty years of Black Sea pollution could easily be applied to the Russian Arctic: “the introduction of non-endemic species through aquaculture, deballasting operations, illegal discharges, the uncontrolled discharge of untreated sewage, overfishing and transboundary pollution, in combination with the absence of adequate preventive measures at the local and regional levels, have all had a severe effect on the Black Sea’s ecosystem” (pg. 360).

The recognized authority of the European Court of Justice (ECJ) bolsters enforcement of the Barcelona Convention among signatory states that are also EU members. Compliance is thus overall better than among Black Sea states. Protection of the Mediterranean is an obligation under the EU’s Water Framework Directive and the Marine Strategy Framework Directive, tools that legally require EU member states to abide by international conventions (Keessen, Helena van Rijswick, &
The ECJ can impose fines as well as levy sanctions on member states for violations of EU environmental law (Doussis, 2006, pg. 363). The 2004 case of L’Etang de Berre straightforwardly established that, pursuant to the Athens Protocol of the Barcelona Convention, EU states had the obligation to achieve pollution reduction, not just attempt it. The case furthermore established states’ right to prosecute each other for illegal transboundary pollution (Keessen et al., 2009, pg. 83).

The EU’s strict enforcement differs markedly from the environmental legal regime covering the Black Sea. The Bucharest Convention is embodied institutionally in the Bucharest Commission and Secretariat, and while these institutions’ purpose is to solicit environmental monitoring data from Convention member states, such data is only as good as what these largely underdeveloped states publish. More importantly, unlike the ECJ the Bucharest Commission has no legal competence to impose sanctions on noncompliant states. Nor does it provide a regional framework for pollution liability. Like the Arctic Council, the convention commission only “recommends” that states agree upon one.

In conclusion, UNEP’s Regional Seas Programme is a powerful “orientation tool” in that it can produce multilateral regimes that are harmonious with international ones (Doussis, 2006, pg. 360). Moreover, the Bucharest and Barcelona Conventions have integrated understanding of land-based marine pollution, dumping, transboundary waste pollution, and other practices. However, the Bucharest Convention, to which Russia is a member, lacks the power of the ECJ and neither convention provides for integrated pollution liability. Nonetheless, the Regional Seas Programme is a valuable model for the Arctic, one that encompasses land-based sources of pollution more comprehensively and with more regional specificity than international customary-law-based treaties like MARPOL. If the Arctic States could manage to utilize the ICJ as readily as parties to the Barcelona Convention utilize the ECJ then there might be hope for the regulation of Russia’s land-based hydrocarbon development.

**International Regime Implementation in Russian Law and Practice**

Russian federal law is the first threshold between international agreements and national level compliance. I therefore briefly summarize the important restructurings that the federal environmental regulatory bureaucracy experienced in the early 90s, and then again in 2000 with the arrival of Putin. This bureaucracy’s regulatory capacity is critical for tracing the path from formal implementation to actual compliance. I will then lay out the current status quo in the Russian North – that is, the meeting of environmental law and on-the-ground reality. I will rely primarily
on Geir Hønneland’s history of the implementation of nuclear waste regime compliance in Northern Russia. Hønneland’s work illustrates some of the political and social dynamics inherent in environmental regime compliance. This illustration will provide better grounds on which to evaluate the likelihood of possible regulation of oil and gas pollution in this region in the future.

The Reorganization of the Federal Regulatory Bureaucracy Under Putin

The Arctic Council has its roots in the so-called “green wave” of European environmental consciousness that characterized the late Soviet era. Mikhail Gorbachev symbolically inaugurated this wave in his now famous 1987 Murmansk speech, wherein the political cliché, “the Arctic as a zone of peace,” was coined. Awareness of the transnational effects of pollution had reached a crescendo in the wake of the Chernobyl and Exxon Valdez disasters, to name only the most dramatic (Nowlan, 2001, pg. 7). Alarmism was especially prevalent in Scandinavia. Amidst international skepticism, Finland took Gorbachev’s promises of Arctic peace seriously and spearheaded the Rovaniemi summit of Arctic states in 1989. Rovaniemi would ultimately produce the Arctic Environmental Protection Strategy (AEPS), the provenance of the Arctic Council.

Initially, the fleeting, democratic government of what would be the Russian Federation was eager to cooperate with foreign countries and implement new international environmental obligations, at least on paper. Of note was the promotion of the State Committee for Environmental Protection (SCEP; formed in 1988) to the status of a “full ministry” in 1992. That same year, Russia rushed to be to be the first signatory to the Convention on Biological Diversity, resulting in a tenfold increase in the number of protected Russian wetlands (Jørgensen & Hønneland, 2006, pg. 43). The years immediately following the 1992 United Nations Conference on Environment and Development (the Rio Conference) were critical: an updated Russian Environmental Law was published, multilateral biodiversity initiatives were founded in the heartland and Far East, the of the UN Framework Convention on Climate Change (to include the Kyoto protocol in 1997) was ratified, and the Russian Red Book on endangered species was updated (Oldfield, Kouzmina & Shaw, 2003, pg. 161).

These were, arguably, merely symbolic achievements. The political tumult of the 1990s, as well as the near complete lack of funding for regional governments, undermined ground level implementation of environmental initiatives during that decade (Oldfield et al., 2003, pg. 161). Even during the ’89-’92 green wave, the percentage of the federal money actually allotted to environmental protection dropped by 90 percent (Jørgensen & Hønneland, pg. 45). Much of the aforementioned biodi-
versity programs were in fact jointly funded by the UNEP. The de jure nature of Russian implementation reflects, among other things, the fledgling democracy’s desire to garner political cache as well as foreign investment.

In 2000, Putin condensed and reorganized the federal bureaucracy. This entailed “effectively dismantling” the environmental apparatus built during the 1990s (Honneland, 2009, pg. 45). Funding for the aforementioned SCEP-turned-ministry decreased steadily through the 1990s, only to be dismantled finally in 2000. A new department within the Ministry of Natural Resources (MNR) would resume the ministry’s environmental monitoring functions. One of the MNR’s current functions, and sources of income, is the licensing of natural resource extraction permits. “It was like letting the fox guard the hen house. For the ministry as a whole, utilization, not protection is the main pillar of natural resources policy” (Jørgensen and Honneland, pg. 46). The SCEP’s disbandment and assumption into MNR entailed severe staff reductions. Many employees left in indignation, others were fired, and a small fraction—estimates range from one tenth to one fourth—regained positions in the MNR (Jørgensen and Honneland, pg. 46). For example, before the disbandment the SCEP’s regional branch for Murmansk, Oblast had 150 employees working all over the Kola Peninsula. By fall 2003 17 remained, working primarily in the MNR’s Murmansk city office (Hønneland & Jørgensen, 2005, pg. 38).

The final agency reshuffling would come in 2004. This pivotal act famously verticalized the entire federal bureaucracy, but most relevant for this discussion was the divesting of pollution monitoring and control competencies from the MNR’s Department of Environmental Protection, which was renamed The Federal Service for Surveillance in Ecology and Resource Use, Rosprirodnadzor. Incredibly, these responsibilities were transferred to independent, federal services answering directly to the President (Hønneland & Jørgensen, 2005, pg. 35).

The balkanization of monitoring tasks between the MNR and the two federal services directly answerable to the President indicates that federal policy regarding environmental protection is, at best, disinterested, and at worst, outright hostile (Hønneland & Jørgensen, 2005, pg. 40). Having summarized Putin’s 2000 and 2004 federal reorganizations, we will now turn to the contemporary situation on the ground in the Russian North, where federal policy interacts with a matrix of regional governments, NGO’s, and socioeconomic forces.

**Status Quo in Russian North: Regional Powers and Weaknesses**

The 1993 Russian Constitution, adopted in December 1993, distributes environmental responsibility between the federal and regional governments (Hønneland & Jørgensen, 2005, pg. 37). Article 72 provides for shared jurisdiction over
“issues of possession, use, and management of the land, mineral resources, water and other natural resources.” Federal power was nonetheless expanded during the 1990s. After initially failing to eradicate direct elections for regional governors in 1993, Yeltsin created the office of “presidential representative” in the regions in order to streamline regional implementation of federal programs. By 2004, Putin would fulfill Yeltsin’s attempted centralization by finally abolishing direct elections for governors. The effect of recentralization has resulted in a wide web of federal agencies, ministries and committees distributed in the regions (Hønneland, 2010, pg. 48).

Geir Hønneland’s surveys of the Russian North stress, however, that Russia’s centralized federal structure is not omnipotent, especially as embodied in the regional offices of the Ministry of Natural Resources. The Northern regions have varying levels of autonomy, often correlating to their possession of key power industries. For example, Khanty-Mansiysk Autonomous Okrug and the Sakha Republic are relatively rich in resources – hydrocarbons and diamonds, respectively – and both regions have their own environmental protection agencies. In Khanty, oil wealth has endowed the governor’s department of environmental protection with better funding than even the regional MNR offices, to the extent that the MNR reportedly even received financial assistance from the regional agency (Jørgensen & Hønneland, 2006, pg. 50). The Sakha Republic allegedly was able to repulse the MNR’s attempt in 2000 to take over the republic’s local environmental agency. The MNR failed and never established an office in Sakha (Hønneland, 2005, pg. 38).

According to Hønneland (2005), the situation is markedly different in Arkhangelsk Oblast, the Nenets Autonomous Okrug, Karelia and Murmansk, where no regional environmental authorities existed—save for regional nuclear protection agencies—until the entrance of the MNR in 2005. The latter two regions comprise the northern nuclear energy and weapons complex, and the critical Murmansk Shipping Company and the Russian Navy’s partly-nuclear-powered Northern Fleet. These regions thus worked hand-in-hand historically with federal environmental authorities, and have seen no need to establish their own environmental protection organs (pg. 39). One did finally form in Murmansk in 2005, but under the office of a federally appointed governor. Federal and regional interests do sometimes coincide. Tax revenues drawn from Gazprom projects in fact supply the entire budget of the Yamalo-Nenets regional government (Orttung, 2013). Taken as a whole, the North’s regional authorities do not necessarily pay greater attention to environmental protection than the federal government, and their attitudes towards it have less to do with geographic proximity to natural resources, and more to do with who is likely to benefit from their exploitation Jorgenson et al., 2006, pg. 51).

Economic dependence, whether on resource extraction or industrial enterprises, is key to understanding the place that environmental protection has taken—
and can take—in the Russian North. Russia’s provincial economies are characterized by one-industry towns that, in Soviet times, had been subsidized. According to Crotty & Crane (2004) The “paternalistic” nature of Soviet industrial development also meant that industrial enterprises were not just economic but also the social and political cores around which their respective regions developed (pg. 417). During Soviet times, the residents of such one-company towns demonstrated a collective sense of mutual vulnerability to the pollutants their factory produced. This shared sense of vulnerability manifest in a surprising level of environmental awareness (pg. 427). However, beginning in the 1980s, the will and capacity for environmental protection plummeted as government subsidies evaporated, enterprises were rapaciously coopted, and job insecurity became extreme. After the Soviet collapse, industrial enterprises lost their Soviet-era “environmental directors” and had to delegate pollution control tasks to engineers (pg. 427), a local scale iteration of the aforementioned SCEP’s assumption into the MNR in 2000. The aforementioned study found that federal environmental regulators appointed to the regions were underfunded and powerless in the face of working populations’ collective need to keep one-company town enterprises operational at nearly any cost.

Environmental Assessment in Russia

Federal law permits regional governments to develop their own unique environmental assessment procedures. In the 1990s however, there was neither the money nor the incentive to industrial pollution, either by regional populations or by the oligarchs running their enterprises (Crotty & Crane, 2004, 422). The need to attract foreign investment culminated, in 2000, in the near repeal of the environmental impact assessment (EIA) stipulation of the Federal Law on Environmental Protection (Cherp & Golubeva, 2004, pg. 127). It should be said that the existing Russian EIA procedures, established in the 1980s, were “hierarchical and technocratic” Soviet relics, and were, arguably, genuine obstacles for foreign investors (pg. 122).

EIAs as such would remain, however, after the World Bank intervened under threat of withdrawing all loans to Russia and spearheaded the creation of the “2000 EIA Regulations” (Cherp & Golubeva, 2004, pg. 126). The redrafting process was a model of international collaboration, but the results were mixed. The new regulations permit regional governments to “simplify” EIA procedures for certain vaguely defined “environmentally insignificant categories of activities” (pg. 126). They also permit the federal and regional governments to appoint “independent” expert commissions to conduct project-level impact analyses (Solodyankina and Johann Koeppel, 2009, pg. 78). The new EIA regulations do not produce a real, coercive pressure not to pollute in the Russian North, especially in light of regional governments’ overwhelming reliance on industrial enterprises.
The Success of Nuclear Cleanup

Russia’s implementation of international and bilateral agreement regarding nuclear energy and waste provides a good model for understanding how the oil and gas industry might behave in the future. Both hydrocarbons and nuclear energy were interlinked cornerstones of the Soviet economy. In fact, the Shotkman gas deposit was considered an important alternative energy source when the Kola nuclear power plant was under consideration for closure in the early 90s (Hønneland, 2003, pg. 116). Putin’s 2004 administrative reshuffle, discussed above, also placed the nuclear monitoring agency, Gasatomnadzor, under the direct control of the Russian federal government. This of course mirrors the verticalization of the environmental bureaucracy discussed above. Nuclear and hydrocarbon extraction are power industries, and their managerial hubs have always been in Moscow. As such, federal agency offices in the capitol often have more de facto weight in the regions than do their own regional branch offices (pg. 126).

Additionally, both industries are subject to certain, but limited, international environmental obligations. Oil and gas is subject to UNCLOS, MAPROL, OPRC, etc., while nuclear waste management adheres to the International Atomic Energy Agency Convention on Nuclear Safety (IAEA Convention), the London Convention prohibiting the dumping of nuclear waste at sea, and the START 1 and II Treaties with the US.

The maritime regimes over oil and gas transport are “sectoral,” in that they apply restrictions to specific industry actions within specific geographic (marine) areas, and thus do not encompass industry practices in their entirety. Such regimes implicate extraction practices only insofar as energy is transported at sea, leaving land-based extraction and transport the prerogative of Russia’s national regulatory agencies. Russian nuclear waste cleanup in the 1990s illustrates the power of more holistic, legal regimes. The START, London, and IAEA Conventions demanded, and variously achieved, wholesale compliance across the Russian nuclear industrial complex, not just within its maritime component. It must be said, however, that this was the Yeltsin years, when paper implementation was, arguably, a key means to court international largesse to counteract Russia’s perpetual sense of economic collapse (Clem, Zimmerman, & Nikitina, 2000, pg. 24). Hønneland stresses (2003, pg. 143) that nuclear waste regimes’ relative strength was their international financial underwriting, particularly from the US and Norway. Norway had yet another reason to invest in cleaning up Russia’s nuclear industry: an Arctic nuclear waste scare could ruin the market for Barents fish (Hønneland, 2004, pg. 117). In sum, regulation of the nuclear complex was bolstered both by the relevant nuclear regimes’ comprehensive purview and by the Yeltsin government’s (bygone) cooperativeness with the international community. It is not likely that any hydrocarbon pollution regime will
come under a comparable set of circumstances. The current government is considerably less ecumenical, and the extant international regimes regulating oil and gas do not encompass land-based activities the way that nuclear energy regimes do.

Conclusion

The lack of transparency in the oil and gas industry in Russia’s northern regions leads to the undermonitored and underregulated pollution of the wider Arctic Ocean. Blokov’s devastating report for Greenpeace (2013) tabulates the reported number of accidents and their spilled tonnage. The discrepancies between NGO and MNR spill counts speaks to the opaqueness of the industry. In the Komi Republic, for example, the discrepancies range from 70 spills per year—as reported by the MNR—to 80 per month, according to Blokov’s own calculations (2013, pg. 3). Regional MNR branches, Blokov continues, often encounter problems gaining access to oil and gas fields legally within their purview to monitor. When energy companies do report to the MNR, Blokov continues, they report directly to the Moscow head office of the MNR, not to the regional branches. This confirms the picture of capitol office hegemony in Russian environmental monitoring, a clear product of verticalization (Hønneland, 2003, pg. 126).

The Arctic is not an official UN Regional Sea, and is not under the purview of any integrated, regional convention like those encompassing the Black and Mediterranean Seas. Oran Young argues that the variety of national interests impinging upon the Arctic preclude far reaching, multinational legal agreements, though he holds out hope for bilateral legal arrangements like Russia and Norway’s 2010 marine border delimitation agreement in the Barents (Young, 2011). Currently, though, little evidence shows that Russian energy companies’ landside explorations will fall subject to pressure from abroad or from Russia’s national regulatory bodies. These companies are answerable only to federally managed services and ministries (Hønneland & Jørgensen, 2005, pg. 36). And it is little wonder: by World Bank estimates, energy constitutes 25% of the Russian economy and, since 2000, an entire 50% of its GDP growth (Rutland, as quoted in Andrei P. Tsygankov, 2010, pg. 43). Arctic energy profits will thus naturally trump compliance with de jure national pollution laws in the sparsely populated North. Western energy companies’ willingness to partner with Gazprom in exploration do not help matters (Moe & Schei, 2005, pg. 118).

Liability remains the only incentive to improve extraction practices, though Shell’s declarations of its emergency cleanup capacity during its 2012 Chuckchi explorations (quoted in Pew, 2011, pg. 23) revealed how boldly even western energy companies manipulate the perception of danger. The Arctic Council’s standard-setting working groups could be valuable to this end. The Arctic Council is the Arctic’s
closest equivalent to the regional seas commissions implementing the Barcelona and Bucharest conventions. The integrated, land-encompassing concept of the marine ecosystem embodied in these conventions finds its philosophical equivalent in the AC’s “Regional Programme of Action for the Protection of the Arctic Marine Environment from Land-based Activities” (RPA). Just as the regional seas conventions are local iterations of UNEP’s wider regional seas program, so too is the Arctic Council’s RPA a local iteration of UNEP’s wider “Global Programme of Action for the Protection of the Marine Environment from Land-based Activities.” These Arctic Council’s land-based programs normative frameworks, however, and not legally binding. The enforcement of environmental laws in the Mediterranean and Black Seas is facilitated by the existence of legally binding conventions and the mutually acknowledged authority of the ECJ, neither of which obtains in the Arctic. What hope exists lies in the Arctic Council’s research programs acting as codifiers for best practices in hydrocarbon extraction, the way that MARPOL did for shipping. The RPA is just one among a substantial corpus of technocratic initiatives currently underway, all of which have the potential to establish norms of corporate social responsibility by which insurance companies might assess liability.

It is imperative that our understanding of Arctic marine pollution ultimately come to integrate land-based pollutants. Only then might pollution of one country’s landmass be legally recognized as pollution of an entire region.

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