

Reform in Real Time

Evaluating Reorganization as a Response to the Gulf Oil Spill

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Notwithstanding the human, economic, and ecological suffering that accompanies regulatory disasters, such tragedies present opportunities for improvements to the regulatory structures designed to control the risks that prompted the failure.¹ Still, precisely because they are calamitous, such events create intense pressure for forceful action even when the set of solutions is inadequate to address the issues at hand (Kingdon 2003; Carrigan and Coglianese 2012; Chapter 5 in this volume). While outwardly dramatic, the political response in such cases can be merely symbolic, doing little to actually address the public's desire that its government better manage the associated hazards (Edelman 1967; Mayhew 1974). In these situations, apart from presenting the appearance of being responsive, the resulting actions will be of little use in effecting productive change and, worse still, can convey the false message that the underlying problems have been remedied.

In this chapter, I ask which of the two boundaries along the range of possible reactions to regulatory disaster – effective change or symbolic action – more closely describes the US response to the tragic 2010 oil spill in the Gulf of Mexico. The disaster began with the death of 11 oil rig workers after the April 2010 explosion and fire on the BP-leased Deepwater Horizon drilling rig and ended with several million barrels of oil being spilled into the Gulf. I consider how the disaster impacted public

¹ I am grateful to participants at the Kenan Institute for Ethics' *Recalibrating Risk* seminars held at Duke University for their insightful comments on earlier drafts. I also thank Lori Benneer for her helpful feedback as well as Mike Brooks and Stefan Roha for their excellent research assistance and valuable conversations in writing this chapter.

and political views of the appropriate balance among competing objectives: developing offshore oil and gas reserves, collecting the accompanying tax revenue from oil and gas companies, and ensuring that drilling was conducted in an environmentally responsible way. Moreover, I review the range of US government and industry responses to the tragedy before specifically linking public and political attitudes to perhaps its most dramatic permanent reform – the disbanding of the Department of the Interior’s (DOI) regulator of offshore oil and gas development. Prior to its breakup one month after the onset of the spill, the Minerals Management Service (MMS) employed roughly 1,600 workers (MMS 2010d), not only to regulate offshore production but also to lease federal offshore properties and collect taxes from private oil and gas production on all government-owned property.

I first demonstrate that the spill interrupted a pronounced long-term swing in political and public attitudes toward emphasizing oil and gas production relative to ensuring that drilling was conducted safely and environmentally responsibly. Yet, while the Gulf disaster did persuade politicians and citizens to question their previous views, the effect proved transitory. Even before the well was capped, attention again shifted to finding ways to encourage exploration to control energy costs. Second, contrasting popular perception, I describe how the reorganization of government oil and gas management functions had been a source of ongoing debate well before the onset of the spill. Still, these reform proposals envisioned a very different structure that, instead of dividing MMS’s missions between agencies, would have streamlined minerals management activities and potentially consolidated all of them in one government entity. The purpose of the proposals for such a radically different structure was to resolve perceived long-standing inadequacies in DOI’s performance as tax collector. Third, contradicting its outwardly dramatic aura, I show that the decision to formally divide the three missions had little impact on how the personnel charged with achieving them interacted. Rather, from an operational standpoint, the reorganization appears to have done little to alter governmental oil and gas management processes.

In combination, these insights demonstrate that the dismantling of MMS in reaction to the Gulf oil disaster does not fit neatly into the category of a reform that can be expected to significantly reduce the possibility of future breakdowns. Neither is it one that in its role to placate the intense pressure for action in the wake of calamity offers no hope of promoting the public interest. Rather, the disbanding of MMS in the

aftermath of the Deepwater Horizon tragedy reveals the possibility that symbolic responses can serve – either by accident or on purpose – a third objective, one which staves off meaningful action until social preferences completely recalibrate.

Particularly when a dramatic swing in popular perceptions of risk is ephemeral and diverts attention from more durable reform efforts, a truly symbolic act can limit the degree to which associated actions lock in programs that move policy away from true social preferences. This is true precisely because symbolic responses have few measurable effects. Dissolving MMS did not address long-standing concerns about the failure of DOI to collect royalties due the federal government. Even so, the reorganization also did little to impede the federal government's ability to remain politically responsive given the possibility (and resulting reality) that the public and its political representatives would shift their attention back to finding ways to reduce energy costs and increase oil and gas taxes as environmental concerns raised by the disaster began to fade.

BUILDING POLITICAL AND SOCIAL PRESSURE FOR DEVELOPMENT

In compiling its top 10 US news stories of 2010, *Time* magazine named the Gulf oil spill number one (Tharoor 2010). The disaster, which began on April 20, 2010 with an explosion aboard the Deepwater Horizon drilling rig, resulted in an estimated 4.9 million barrels of oil being dumped into the Gulf of Mexico, making it far and away the biggest oil spill in US history (National Commission 2011). In comparison, the Exxon Valdez spill in March 1989, which up to 2010 was the largest US offshore spill, deposited approximately 250,000 barrels into Alaska's Prince William Sound (Skinner and Reilly 1989; see also Chapter 7 in this volume). While no small number, the Gulf tragedy created a spill more than an order of magnitude greater than *Exxon Valdez*. By the time the well was more or less capped in mid-July 2010, the story had captivated the nation, introducing people to a litany of new terms including "top-kill" and "junk shot" as BP, scientists, and the federal government tried frantically to stop oil from gushing from the Gulf seafloor (Fountain 2010).

The accident occurred in a political climate fraught with tension among two competing narratives (see Chapter 6 in this volume). The first, captured by the political chant "drill, baby, drill," views the

US as a nation of abundant natural resources that have been used, and should continue to be used, to further economic growth and political stability. The second narrative derives from the environmental movement of the 1970s (see Chapter 7 in this volume) and sees ongoing use of fossil fuels as a key component of continued environmental degradation both locally and globally, thus arguing for significant government regulation to stem this degradation.

In the period leading up to the Gulf oil spill, political and social preferences had evolved, in a gradual but pronounced manner, toward emphasizing oil and gas production (consistent with narrative 1) over environmental and drilling safety (narrative 2). Prompted by President Bill Clinton's National Partnership for Reinventing Government, MMS began to experiment with more cooperative ways of regulating drilling and production in the early to mid-1990s, forming committees to propose gas valuation rules and settle issues connected to controversial Pacific Outer Continental Shelf (OCS) leases² (Cedar-Southworth 1996; MMS 1995). MMS's interest in collaboration was encouraged by a broad set of interests. Reacting to a 1993 report by a group tasked to study OCS policy that included representatives from the oil industry, coastal states, and environmental organizations, Secretary of the Interior Bruce Babbitt noted the significance of the committee's recommendation that OCS operations "be regenerated based on consensus" (MMS 1994).

While MMS's efforts to adopt a more cooperative approach were already in motion, the November 1995 Deep Water Royalty Relief Act (DWRRA) – which amended the 1953 Outer Continental Shelf Lands Act (OCSLA) – accelerated the process, promoting deep-water drilling despite the fact that the technology to support it safely was not yet available (National Commission 2011). The DWRRA waived royalty payments on western and central Gulf leases offered for sale until near the end of 2000 as long as the associated lease was in deep water (i.e. required drilling in water deeper than 200 meters) and had not produced substantial oil and gas. The act also provided royalty relief for existing leases if the company could show that it was not able to extract oil and gas from the property economically without it (DWRRA 1995).

Not surprisingly, the law had important effects on Gulf oil and gas operations. MMS noted in a later budget justification that it "triggered record-breaking lease sales in 1997 and 1998 . . . and opened the door to

² The OCS includes all federally owned submerged lands in the Gulf, along the Pacific coast, and surrounding Alaska.

TABLE 9.1 *Subject matter of congressional hearings in which MMS or successor agency personnel testified by topic (1982–2012)*

Period	Evaluation	Leasing	Environment	Regulation	Revenue	Total
1982–1995	28	25	41	22	24	77
1996–2009	20	14	13	1	20	41
2010	0	4	8	13	1	14
2011	3	1	5	7	2	12
2012	0	3	1	3	0	5

Notes: The table does not include budget hearings. To categorize a hearing, its title and summary description were reviewed. Where clarification was necessary, the testimony was examined as well. For each table row, the sum of the topic count exceeds the total because hearings often involve multiple topics. Evaluation refers to identifying areas for oil and gas exploration, and leasing refers to leasing properties to oil and gas producers. The Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue are the successor organizations to MMS.

Source: Proquest Congressional.

increased deepwater production” (MMS 2004, 80). In recounting the lessons from initial efforts to oversee deep-water exploration, Carolita Kallaur, MMS’s Associate Director at the time, explained, “there is tremendous value from collaboration between government, industry and the scientific community in the area of research and operational requirements. This is particularly true if it is found that the operating environment is totally different from what one is used to” (Kallaur 2001).

Subsequent congressional lawmaking continued to support this policy shift. Each law Congress passed during the 15 years from 1995 through 2009 primarily focused on either encouraging offshore exploration or boosting tax collections. Beginning with the 1995 DWRRA, this list included the 1996 Federal Oil and Gas Royalty Simplification and Fairness Act, the 2005 Energy Policy Act, and the 2006 Gulf of Mexico Energy Security Act. For example, despite extending moratoria near Florida’s coast, the Gulf of Mexico Energy Security Act concurrently mandated that MMS attempt to lease 8.3 million acres within one year, of which close to 70 percent had been previously off limits to drilling (Gulf of Mexico Energy Security Act 2006).

This congressional shift is further illustrated in Table 9.1. The table categorizes the subject matter of hearings, which included testimony of an MMS employee or, after its breakup, one of its successors over the period from MMS’s creation through 2012. Over the 14 years from 1982 to 1995, environmental and regulatory issues generated more combined

interest than evaluation and leasing issues as measured by how often they were the subject of hearings over the period. In contrast, during the 14 years from 1996 through 2009, evaluation and leasing were close to two-and-a-half times more likely to be considered than the environment and regulation.

The numbers for regulation are even more striking. From 1982 through 1995, 22 hearings included a substantial discussion of offshore regulation. In contrast, only one hearing involved an important consideration of regulatory issues over the 14 years leading up to the Gulf spill. Even that hearing was primarily focused on the Bureau of Land Management's (BLM) onshore regulatory program and included relatively little mention of MMS's offshore responsibilities (Subcommittee on Energy and Mineral Resources 1996).

Like Congress, the White House accelerated its push for greater exploration during the presidency of George W. Bush. President Bush's 2008 Memorandum for the Secretary of the Interior represented a significant break from previous policy, opening up all areas of the OCS except marine sanctuaries for exploration (Bush 2008a). The president noted, "One of the most important steps we can take to expand American oil production is to increase access to offshore exploration" (Bush 2008b). Prior to the onset of the Gulf spill, the Obama administration shared this enthusiasm for offshore drilling. Accompanying his 2010 Memorandum, which removed only Alaska's Bristol Bay from leasing consideration (Obama 2010a), President Barack Obama declared "today we're announcing the expansion of offshore oil and gas exploration" (Obama 2010d).

Shifting political priorities over the period reflected public sentiment on energy issues as well. Figure 9.1, which summarizes repeated Gallup polls asking respondents their preference for environmental protection or economic growth, reveals a growing concern for the economy, particularly beginning around 2000. In April 1990, respondents favored focusing on environmental protection even if it caused the economy to suffer by close to a four to one margin. By early 2010, those that prioritized economic growth exceeded those for the environment by 15 percentage points. This dramatic reversal is consistent with the results of a related Gallup poll which, beginning in March 2001, asked people specifically about whether energy production or the environment should be prioritized. Although environmental protection held a 16 percentage point margin in 2001, the March 2010 poll showed a similar reversal, revealing a seven percentage point advantage for energy development (Gallup 2013).

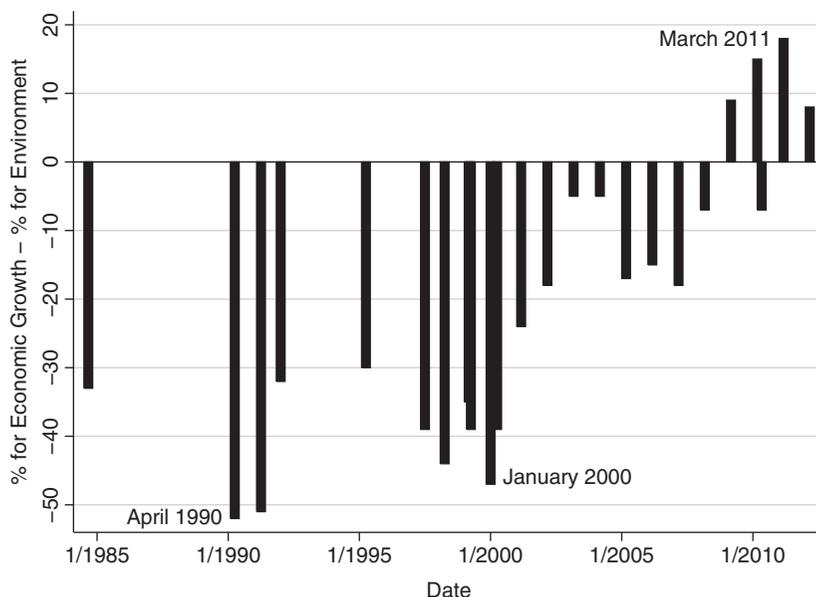


FIGURE 9.1 Gallup poll results measuring public preference for economic growth or environmental protection (1984–2012)

Notes: The percentages were compiled using all Gallup polls conducted from 1984 to 2012 that asked: “With which of these statements about the environment and the economy do you most agree – [ROTATED: protection of the environment should be given priority, even at the risk of curbing economic growth (or) economic growth should be given priority, even if the environment suffers to some extent?” % for Economic Growth – % for Environment was computed by subtracting the percent of people that preferred environmental protection from the percent that placed greater importance on economic growth.

Sources: Gallup 2010, 2012.

PUBLIC AND POLITICAL RESPONSE TO THE GULF OIL SPILL

While the oil and gas industry itself certainly supported efforts to expand production, the previous section demonstrates that politicians and the public did as well over an extended period prior to the Gulf oil spill. The dramatic images and sheer magnitude of the disaster had important short-term impacts on those preferences. As one consequence, intense media coverage in the days following the explosion raised awareness of the technological sophistication required to drill for oil and gas in deep water.

Prior to the spill, the US had few recent examples to draw upon that would demonstrate what could go wrong when drilling for offshore oil.

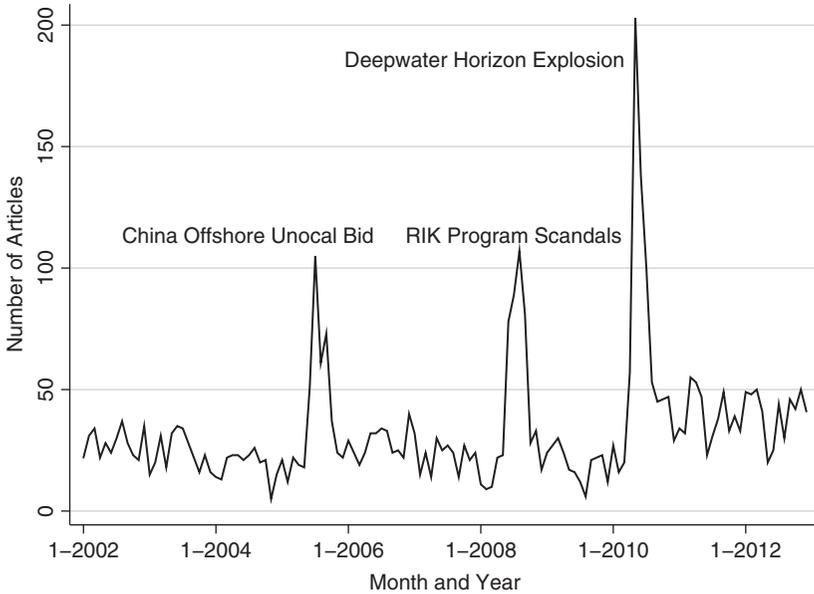


FIGURE 9.2 *New York Times* and *Washington Post* article mentions of offshore oil and gas (January 2002–December 2012)

Notes: The number of articles each month was computed as the sum of all *New York Times* and *Washington Post* articles which included the words “offshore” plus either “oil” or “gas” in them. The RIK Program refers to the Royalty in Kind Program, overseen by a subgroup within MMS’s Minerals Revenue Management division, which accepted tax payments from oil and gas producers in kind.

Source: Lexis Nexis Academic.

Relative to the 10-year period that preceded it in which over 430,000 barrels were deposited in offshore waters, during the entire 35 years from 1975 through 2009, OCS activities only accounted for about 121,000 barrels spilled, under a third of the amount in 25 more years (BOEMRE 2011, see also Chapter 7 in this volume). Perhaps more poignantly, the BP disaster deposited more than 40 times more oil into the Gulf in three months than what was spilled during that same 35-year period (Carrigan 2014). Reflecting a broadly held view drawn from several decades of experience, President Obama declared less than three weeks before the Deepwater Horizon fire that “oil rigs today generally don’t cause spills. They are technologically very advanced” (Obama 2010b).

In addition to presenting an instance intensely at odds with prior history, the Gulf oil spill simply focused attention on offshore oil and gas drilling. Figure 9.2 shows monthly the number of articles from the

New York Times and *Washington Post* that included the words “offshore” and either “oil” or “gas” over the period from January 2002 through December 2012. As the figure demonstrates, the period between 2002 and the beginning of 2010 demonstrated a consistent level of interest in oil and gas with the exception of two spikes. The first corresponded to coverage of the political controversy associated with China National Offshore Oil Corporation’s effort to buy Unocal. The second spike, which occurred during the second half of 2008, was in response to a DOI Office of the Inspector General (OIG) communication released in September 2008 (Devaney 2008).

The memorandum and associated investigative reports principally focused on the unethical actions during the first half of the 2000s of members of the Royalty in Kind (RIK) Program, a group of roughly 50 employees in MMS’s Minerals Revenue Management (hereafter, Revenue Management) division (MMS 2007). The reports documented the large volume of industry gifts – including invitations to parties, trips, and event tickets – that nine of the 19 accused workers received, in addition to the sexual relationships that two of these employees had with industry contacts (OIG 2008c). During the investigations, OIG uncovered evidence that at least one RIK employee held another job that was not disclosed (OIG 2008b) and that three senior Revenue Management employees ignored “post-employment restrictions,” organizing opportunities for two retired employees to provide consulting services to MMS (Devaney 2008; OIG 2008a).

Still, the attention resulting from RIK Program employees’ indiscretions paled in comparison to the surge in news coverage as the events unfolded with the onset of the spill in April 2010. Relative to March, when 20 articles mentioning offshore and oil or gas appeared in the *New York Times* and *Washington Post*, by May, coverage had increased by 10 times to over 200 articles. However, almost as dramatic as the spike in interest, Figure 9.2 also shows how quickly attention waned in the months following the capping of the well in July 2010. While the well was still releasing oil into the Gulf during June and the first half of July, the number of articles had already declined to a level that approximated the coverage when the OIG communication was released in 2008. By August 2010, reporting on offshore oil and gas in the *New York Times* and *Washington Post* had settled back to a much lower level that continued to exceed, but began to approach, what had been the long-term trend between 2002 and 2010.

Not only was the dramatic increase in newspaper coverage of offshore operations short-lived, but so was the relative emphasis that the public placed on environmental protection relative to economic growth and energy development during the crisis. Recalling Figure 9.1, the Gallup poll conducted in May 2010 while oil was still pouring into the Gulf did demonstrate a measurable increase in respondents who viewed environmental protection as more important than economic growth. Yet, the poll conducted in March 2011 – less than a year after the initial explosion – showed that attitudes toward energy development and environmental protection had already largely returned to their longer-term trends. Relative to the poll conducted in March 2010 when respondents emphasizing economic growth exceeded those for the environment by 15 percentage points, by March 2011, the spread had actually widened to 18 percentage points despite the Gulf disaster in between.

Gallup polls asking individuals to specifically prioritize energy production or the environment show a similar rebound. A month after the onset of the spill, concern for the environment outpaced development by 16 percentage points, which represented exactly the same spread as the first poll in 2001. By March of the next year, 50 percent of respondents agreed that development was a greater priority while 41 percent opted for the environment, a nine-point difference, which represented the largest in the poll's history. Although the spread shrank in subsequent polls, even in April 2013, respondents still showed a slight preference for energy development relative to environmental protection (Gallup 2013).

Congressional activity reveals analogous patterns to those found for the news media and in public opinion polls. As displayed in Table 9.1, the number of hearings that considered offshore regulation and the environment substantially increased directly after the onset of the spill. In fact, the volume of hearings on regulatory issues in 2010 was greater than the total that considered regulation in the 20 previous years combined. But similar to media coverage and public opinion, interest quickly tapered off. The total number of hearings declined slightly from 14 to 12 in 2011 and decreased more quickly to 5 in 2012, as did the number that specifically focused on regulatory and environmental issues. By 2012, the volume and makeup of hearings looked remarkably similar to patterns of congressional oversight prior to the spill.

This same pattern can even be seen in the Obama administration's approach to conducting offshore lease sales following the spill. Citing

a focus on ensuring drilling and production were conducted safely, Secretary Salazar announced in December 2010 a much more cautious plan for leasing federal offshore property to oil and gas companies than the strategy released in March, just prior to the Deepwater Horizon explosion. In modifying its strategy, DOI removed the eastern Gulf of Mexico and mid- and south Atlantic from consideration for development through 2017, and Alaska's Chukchi and Beaufort Seas until at least 2012. The revised schedule also called for delayed sales in the western and central Gulf until at least late 2011. In announcing the changes, Secretary Salazar noted, "Our revised leasing strategy lays out a careful, responsible path for meeting our nation's energy needs while protecting our oceans and coastal communities" (Office of the Secretary of the Interior 2010a).

Still, by early 2012, President Obama's "all-of-the-above" energy strategy had renewed the federal government's interest in offshore leasing. The president's statement during his January 2012 State of the Union address that, "tonight, I'm directing my administration to open more than 75 percent of our potential offshore oil and gas resources" (Obama 2012) spearheaded a series of DOI announcements regarding future leasing activity. Just two days later, the Department announced a June 2012 sale of "all available unleashed areas in the Central Planning Area offshore Louisiana, Mississippi and Alabama" (Office of the Secretary of the Interior 2012c), which would eventually attract \$1.7 billion in high bids on close to 39 million acres (Office of the Secretary of the Interior 2012d). In two separate March announcements, DOI asked for industry's interest in potentially including the coast of south-central Alaska in the 2012 to 2017 leasing plan while also indicating its plans to assess the available oil and gas reserves in the mid- and south Atlantic (Office of the Secretary of the Interior 2012a; 2012e). By June 2012, the administration had announced that its final leasing program for 2012 to 2017 had made "all areas with the highest-known resource potential – including frontier areas in the Alaska Arctic – available for oil and gas leasing in order to further reduce America's dependence on foreign oil" (Office of the Secretary of the Interior 2012b). Contrasting the much more cautious approach to development in late 2010, Secretary Salazar noted, "Put simply, this program opens the vast majority of known offshore oil and gas resources for development over the next five years ... President Obama has made clear his commitment to expanding responsible domestic oil and gas production in America as part of this all-of-the-above energy strategy" (Office of the Secretary of the Interior 2012b).

REFORMING OIL AND GAS OPERATIONS AFTER THE SPILL

Despite the fleeting political and public reaction to the Gulf spill, as summarized in Table 9.2, the disaster did spawn reforms within both government and the industry, particularly during the period when collective attention fixated on the spill. Just over three weeks after the initial explosion, on May 14, 2010, President Obama announced his intention to place a temporary moratorium on offshore drilling. By the end of that month, DOI had released a directive outlawing drilling of new wells in waters greater than 500 feet and mandating those operators currently drilling in deep water to stop and secure the associated wells (MMS 2010c). The directive further stipulated that applications to drill would not be considered for six months with the idea that the moratorium would give a key presidentially created committee – the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling – time to complete its investigation (DOI 2010a). The order was subsequently successfully challenged in a federal district court, which characterized the moratorium as overly expansive in granting a preliminary injunction (Feldman 2010b). Although the ruling was upheld by an appeals court, DOI quickly replaced that moratorium with another one in the same spirit (Salazar 2010a). Because the revised suspension focused on drilling that relied on the types of technologies utilized to prevent blowouts in deep water, it had a very similar effect as the overturned broader suspension.

Under pressure from the oil and gas industry as well as the affected states, DOI lifted the suspension approximately a month and half before its original estimate (Salazar 2010b). Yet, it did so while imposing a series of new requirements, including two directives and an interim final rule. Although shallow-water applications were approved (albeit at a reduced rate) during the period beginning with the initial moratorium, the additional measures effectively meant that drilling in deep water only resumed with the first permit approval at the end of February 2011 (Broder and Krauss 2011). The more stringent requirements had effectively extended the suspension for over four more months, even prompting the aforementioned district court in New Orleans to order the first agency created to replace MMS prior to its permanent breakup, the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE), to respond to drilling applications (Feldman 2011).

Central to the new requirements were two Notices to Lessees (NTLs), issued within 10 days of each other in June 2010, that implemented

TABLE 9.2 *Reforms enacted in response to Gulf oil spill (May 2010–May 2013)*

Action	Date	Summary
<i>Drilling Safety</i>		
Interim Final Rule	October 2010	Imposed requirements for drilling including those to maintain both bore integrity and blowout preventer
Final Rule	August 2012	Affirmed interim rule and formalized API's Recommended Practice (RP) 65 mandating process for isolating potential flow zones
<i>Workplace Safety</i>		
Workplace Safety Final Rule	October 2010	Codified API's RP 75 requiring operators to prepare plans to identify, address, and manage safety and environmental hazards
SEMS II Final Rule	April 2013	Empowered any and all industry personnel to halt operations due to dangerous activity
<i>Moratorium</i>		
Initial	May 2010	Suspended pending, approved, and current offshore drilling of new deep-water wells in Gulf and Pacific for six months
Revised	July 2010	Restricted moratorium to drilling operations utilizing types of blowout preventers used in deep water
Lifted	October 2010	Repealed moratorium but stipulated that operators comply with NTLs and Drilling Safety Interim Final Rule before resuming
<i>Directives</i>		
Safety NTL	June 2010	Implemented recommendations from DOI's May 2010 "Safety Measures Report" including CEO certification of operations
Environmental NTL	June 2010	Required operator exploration plans submitted to BOEM to include blowout scenario and description of steps taken to prevent blowout
Safety NTL Judgment	October 2010	District court in New Orleans declares NTL unlawful because violated APA. Vacated officially by BSEE in April 2012

(continued)

TABLE 9.2 (continued)

Action	Date	Summary
<i>Institutions</i>		
Disbanding of MMS	May 2010	Divided MMS into three DOI agencies, each separately focused on tax collection, offshore leasing, and offshore oversight
Center for Offshore Safety	March 2011	Organized to promote effective practices for operators and to focus on implementing API's RP 75
Ocean Energy Safety Institute	May 2013	Created to spur offshore safety research and identification of "Best Available and Safest Technology"

Notes: The reforms listed include those specifically enacted and not those contemplated but not implemented. API refers to the American Petroleum Institute. SEMS refers to a Safety and Environmental Management System. An NTL is a Notice to Lessees and Operators. APA refers to the Administrative Procedure Act of 1946.

a series of DOI recommendations made in response to President Obama's directive for Secretary Salazar to conduct a review of the incident soon after the initial explosion (DOI 2010b). The first notice, referred to as the Safety NTL, applied to both shallow-water operations and deep-water production platforms, as well as those drilling activities suspended by the moratorium (MMS 2010a). The Safety NTL mandated an increased focus on testing and inspecting drilling and blowout prevention equipment as well as ensuring that well design met stricter standards. Moreover, the NTL required CEO certification of the associated company's operations as well as independent verification and additional reporting to MMS before the end of the month in which the notice was issued to avoid the possibility of having the associated operations shut down.

The second, referred to as the Environmental NTL, centered on improving responsiveness to a blowout like the one that prompted the Gulf spill (MMS 2010b). Specifically, for each new or pending exploration or development plan, the directive required that the company present a more detailed assessment of the worst-case scenario with respect to the amount of oil that could be spilled as part of the activity. In addition, the operator needed to describe the resources and strategies available to minimize and respond quickly to such a situation.

Roughly four and a half months later, because MMS had not followed the notice-and-comment procedures outlined in the 1946 Administrative

Procedure Act (APA) in issuing the directive, the Safety NTL was declared to be “of no lawful force or effect” by the same court which overturned the initial moratorium (Feldman 2010a). Regardless, by that time, MMS’s initial replacement, BOEMRE, had already issued an interim final rule covering many of the aspects of the NTL (BOEMRE 2010a). First announced on the last day of September, the Drilling Safety Rule became effective upon its publication in the *Federal Register* on October 14, 2010. Building from a report issued by Secretary Salazar to President Obama recommending ways to make offshore operations safer, the rule strengthened requirements surrounding procedures for readying and maintaining wells during drilling. Moreover, it mandated increased testing of blowout preventer components designed to stop oil from escaping in an accident and further required that a combination of professional engineers and independent experts audit operator well design and control equipment. The final version, which replaced the interim rule two years later, largely affirmed while also clarified its predecessor. In addition, it extended the requirements to include operations associated with preparing wells for production as well as closing them when they were no longer producing (BSEE 2012).

One day after its interim Drilling Safety Rule was published, BOEMRE’s Workplace Safety Rule, addressing human error in oil and gas operations, appeared in the *Federal Register* (BOEMRE 2010b). The rule made mandatory existing American Petroleum Institute (API) recommended practices surrounding the creation of a Safety and Environmental Management System (SEMS), requiring oil and gas companies to develop plans to identify, respond to, and minimize ongoing offshore risks as they arose. This more proactive regulatory approach had its origins in collaborations between MMS and API dating back to the early 1990s, with MMS’s preliminary rulemaking efforts commencing in 2006 (MMS 2006). Still, only the spill provided the impetus to make SEMS mandatory. In addition to annual reporting requirements beginning in March 2011, operators were required to have their SEMS plans in place by November 2011.

DOI consequently supplemented the Workplace Safety Rule through further rulemaking activity. Promulgated in April 2013, SEMS II mandated that, by June of the following year, operators implement additional procedures and plans through which employees could assist in identifying hazards, reporting violations, and stopping activities which posed serious safety and pollution risks (BSEE 2013b). The added requirements also obligated operators to both define exactly who had authority for a project

at all phases and use independent and accredited providers to perform required SEMS audits.

Beyond new regulatory requirements, the spill also prompted the creation of a multitude of commissions to study various aspects of the disaster. In addition to the teams directly involved in the response such as those led by National Incident Commander Thad Allen and Energy Secretary Steven Chu (Obama 2010c), soon after the explosion, multiple committees were tasked with identifying the causes of the disaster. These included the aforementioned National Committee created by President Obama as well as a National Academy of Engineering committee and the DOI-led Outer Continental Shelf Safety Oversight Board, both commissioned by Secretary Salazar (Office of the Secretary of the Interior 2010b; 2010c).

Yet, the catastrophe also provided the impetus for more permanent organizational responses, both within industry and the federal government. To respond to an immediate need to develop technologies capable of containing spills of the unprecedented size of the Deepwater Horizon disaster, oil and gas operators in the Gulf formed joint ventures to produce the needed containment equipment. For example, the Marine Well Containment Company, formed by ExxonMobil, Chevron, ConocoPhillips, and Shell, was designed as an independent firm to both develop a spill containment system and make it available to member companies to encourage DOI to allow deep-water drilling to resume in the Gulf (Marine Well Containment Company 2014). In fact, based on its ability to tap into the well-capping system designed by another consortium called the Helix Well Containment Group, Noble Energy was able to secure the first deep-water permit in late February 2011 following the moratorium (Broder and Krauss 2011).

A month later, API announced the oil and gas industry's intent to fund a safety institute modeled after existing organizations such as the nuclear industry's Institute for Nuclear Power Operations (Porter 2011). Named the Center for Offshore Safety and positioned within API, the institute was to initially focus its efforts on the development of the safety management systems required through the aforementioned Workplace Safety Rule. After officially opening its doors in October 2011, the Center also began work to certify auditors to conduct the independent audits of these systems as would be eventually required by SEMS II (Dlouhy 2012).

By May 2013, DOI had announced that it was creating a safety institute of its own, with the goal of "help[ing] federal regulators keep pace with new processes employed by the industry" (BSEE 2013a). While initially proposed by Secretary Salazar in late 2010 (Wald 2010), the creation of

the Ocean Energy Safety Institute was further endorsed by the Offshore Energy Safety Advisory Committee, a permanent federal advisory board established in January 2011 to advise the secretary on offshore safety issues (Office of the Secretary of the Interior 2011). While not given regulatory authority, the Institute, housed at Texas A&M, was intended to both be a source of independent advice for government agencies and train offshore government employees on the latest offshore technologies (BSEE 2013a).

DISBANDING THE MINERALS MANAGEMENT SERVICE

Still, the most outwardly dramatic of these organizational responses was the decision to disband MMS. As President Obama explained at a press conference a little over a month after the onset of the spill, following the Inspector General communication describing the aforementioned unethical activities in the RIK group, “Secretary Salazar immediately took steps to clean up that corruption. But this oil spill has made clear that more reforms are needed . . . That’s why we’ve decided to separate the people who permit the drilling from those who regulate and ensure the safety of the drilling” (Obama 2010c). The restructuring was more fully described in Secretary Salazar’s Order 3299, which was released eight days prior to President Obama’s news conference. In the Order, Secretary Salazar outlined the creation of three separate organizations from MMS – the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), and the Office of Natural Resources Revenue (ONRR) (Salazar 2010c). BOEM would inherit Offshore Energy’s leasing and resource evaluation functions, BSEE would assume regulatory oversight, and the Revenue Management group would become known as ONRR.

Given the difficulties in separating offshore leasing from regulatory oversight, as an interim step, MMS was replaced by BOEMRE. By early October 2010 when ONRR began operations, BOEMRE still managed all of the remaining functions of the former MMS. The desire to complete the reorganization, which would take almost a year and a half to finish, as well as to strengthen offshore oversight brought with it a resultant need to increase DOI’s resources. Just three weeks after the onset of the spill, the Obama administration requested (and Congress approved) \$29 million in emergency funds (Salazar 2010d). Four months later, the Obama administration submitted a supplemental request to amend DOI’s 2011 budget (Obama 2010e). The request provided for \$91 million in additional resources, of which \$25 million would be funded through additional

inspection fees. The additional \$66 million in budget authority represented a 36 percent increase over the original request. Its purpose was “to address safety and environmental concerns highlighted by the Deepwater Horizon oil spill” and to divide BOEMRE “based on the premise that the missions within BOEMRE – including Outer Continental Shelf management, safety, and environmental oversight and enforcement, and revenue collection – need to be clearly defined and distinct from each other” (Obama 2010e).

By the end of 2011, the US had joined other major offshore oil countries in the OECD, particularly the UK and Norway, in separating the leasing and safety components of offshore oil regulation (Benneer 2015). Given that other OECD countries had separated these functions much earlier in response to similar concerns about conflicts of interests, one may wonder why the US waited until a major oil spill to make this change. But the history of MMS reveals a far more nuanced dynamic between the leasing and safety branches of MMS that had, heretofore, not been viewed as problematic. To understand the turnaround in perspective one must go back 28 years to the founding of MMS.

DRIVING OIL AND GAS ROYALTY COLLECTION THROUGH REORGANIZATION

Interestingly, the decision to combine the leasing, safety and environmental oversight, and tax collection missions to form MMS some 28 years earlier was borne from a different – but also dramatic – crisis. Over a period of several decades, Congress and other commentators remained persistent in their criticism of DOI as the federal government’s oil and gas tax collector. By the late 1950s, the US Geological Survey (USGS) – the agency within DOI authorized in 1926 to collect royalties associated with energy and minerals extraction on government-owned land – was the object of intense scrutiny by the Government Accounting Office (later renamed the Government Accountability Office or GAO) and the OIG (MMS 1995). An independent panel known as the Linowes Commission, formed in 1981 to study royalty collection, accused USGS of costing the government hundreds of millions each year in lost tax revenue. Beyond habitually collecting too little in royalties, USGS proved incapable of combating efforts by oil companies to remove oil from fields without declaring it to avoid paying taxes (Linowes Commission 1982).

In the view of many, USGS’s organizational design contributed to its failure. Because tax collection was independently conducted in each of its 11 regional offices, the function never gained traction in the “scientifically

oriented” agency (Linowes Commission 1982). Hoping to spur the creation of a strong, independent minerals revenue collector, the Linowes Commission recommended that the function be split from USGS and located at a new agency that would be staffed with finance professionals working with a centralized accounting system (Linowes Commission 1982).

Reacting to this perception that USGS had relegated minerals revenue collection to a secondary status within the agency, Secretary of the Interior James Watt established MMS in 1982 by moving all oil and gas revenue collection functions from USGS to the new agency. He further transitioned all offshore leasing responsibilities, which had been formerly split between USGS and BLM, to MMS and shifted these same functions for onshore leases to BLM (Hogue 2010). The effect was that BLM assumed all responsibilities connected to onshore development, leasing, and regulation, and the newly created MMS was tasked with all duties for offshore oil and gas operations as well as revenue collection for all leases.

Secretary Watt’s reorganization plan was broadly supported. Merging offshore functions into one agency was both consistent with the Linowes Commission’s recommendations (Durant 1992) and advocated by GAO. In fact, GAO actively lobbied for greater consolidation (Socolar 1982). The House Appropriations Committee concurred, suggesting in its bill, “The bulk of the appropriation . . . is associated with the . . . evaluation of resources, regulations, and activities associated with Federal and Indian lands. These are functions formerly divided between the Geological Survey and the Bureau of Land Management. That division of function often caused problems of neglect, duplication, and turf wars. The Committee agrees with the consolidation” (Committee on Appropriations 1982).

As described by the House Appropriations Committee, the view at the time was that the prior structure – in which BLM administered offshore lease sales while USGS managed offshore lease management and revenue collection – was responsible for the issues that plagued DOI. These included functional disputes, application backlogs, and the “underpayment and inadequate collection of royalties owed to the United States” (Committee on Appropriations 1982). For most commentators, any concern surrounding the formation of MMS was not about the combination of leasing, revenue, and safety in one agency, but rather why that agency had not also been assigned BLM’s onshore minerals management functions (Durant 1992).

From the outset, MMS was designed specifically to implement its two core functions, tax collection and offshore management, based on the view that the prior structure had failed. It is thus not surprising that MMS's organizational design reversed what had preceded it. Rather than assimilate tax collection with its other functions as USGS had, personnel and operations associated with MMS's Royalty Management (later renamed Minerals Revenue Management) activity were consolidated and housed in Lakewood, Colorado, separate and distant from offshore management which was centered in the Gulf region. The goal was to "provide efficiency and economies of scale in the financial and data collection process" (MMS 1993).

At the same time, to combat the "problems of neglect, duplication, and turf wars" (Committee on Appropriations 1982) that plagued DOI's offshore program when it was divided between USGS and BLM, MMS joined the associated sub-activities into one tightly knit program. Outer Continental Shelf Lands, eventually renamed Offshore Energy and Minerals Management (hereafter, Offshore Energy), combined resource evaluation, leasing, and regulation. Corresponding roughly to their timing in the process of developing offshore lands, the overlap was nevertheless substantial. For example, although studies to identify the location of oil and gas reserves were primarily intended to aid leasing decisions, these efforts also supported "regulatory personnel to ensure that discoveries [were] developed and produced in accordance with the goals and priorities of the OCSLA" (MMS 2004, 108). Because offshore oil and gas drilling primarily occurred in the Gulf of Mexico, the personnel associated with these functions were stationed in New Orleans or one of MMS's other offices near the Gulf.

MMS's organization design – which separated revenue collection from offshore energy management at the same time it integrated the elements of the offshore program – maintained much the same structure over its entire lifespan (Carrigan 2014). Just prior to its breakup in 2010, the vast majority of MMS's scientists, engineers, and inspection personnel, as members of the Offshore Energy program, were still located in Louisiana. In contrast, MMS's Colorado operations, which housed Revenue Management, were overwhelmingly staffed with tax and business professionals. In implementing the calls for "top quality financial managers" (Socolar 1982) and a more integrated offshore program, MMS had developed into an organization whose core functions were not only separated geographically but also through the competencies of those charged with carrying out the two programs.

EARLY EFFORTS TO SPUR REVENUE COLLECTION

Although MMS's creation did provide DOI with a respite from the criticism it received for its revenue collection difficulties, the effect proved temporary. When MMS testified in April 1985 before the House Committee on Government Operations, it was to scrutinize Revenue Management's performance in collecting and disseminating royalties associated with oil and gas production on Indian lands (Subcommittee of the Committee on Government Operations 1985). In addition to missing payments or making them for incorrect amounts, a congressional inquiry had unearthed multiple examples where Revenue Management had not responded to requests by the Bureau of Indian Affairs (BIA) to audit individual Indian accounts, a task MMS was required to perform. In response to questions about delays in responding to specific inquiries, Revenue Management revealed that it was "an obvious case of something 'falling through the cracks'" (Subcommittee of the Committee on Government Operations 1985).

The 1985 inquiry marked the beginning of a pattern of congressional oversight predicated on the idea that Revenue Management needed to do better. The quantity of hearings focused on oil and gas tax collection did not stray noticeably from those focused on offshore operations. Table 9.1 reveals that at least during the first half of MMS's existence, regulatory and environmental issues commanded significant attention in Congress. Still, the tone of these inquiries was different. Many of the hearings were prompted by the 1989 Exxon Valdez oil spill, which was not within the purview of Offshore Energy's statutory authority. While the group became intimately involved in the cleanup effort, garnered appropriations to conduct spill research, and received authority to write associated rules (Committee on Energy and Natural Resources 1989; MMS 1990, 1991), Offshore Energy's inclusion in these hearings was not because of any failure of drilling regulation.

At the same time Offshore Energy was testifying in the aftermath of Exxon Valdez, Revenue Management was again reporting to Congress on the problems it was having collecting royalties for Indian tribes (Special Committee on Investigations of the Select Committee on Indian Affairs 1989). Similarly, one year earlier, to open a hearing to review audits of MMS's revenue collection efforts, subcommittee chairman John Melcher noted, "To date, action by the Department falls far short of adequately carrying out the requirements of [the] law. Today, we are going to hear

attempts to explain why” (Subcommittee on Mineral Resources Development and Production 1988).

Further evidence for Congress’ dissatisfaction with Revenue Management is also displayed through GAO reports covering MMS’s tenure as tax collector. In the first four years of its existence, nine GAO inquiries focused on offshore management issues while only three centered on royalty collection and one on both missions. In contrast, from 1986 through 2009, seven reports centered on offshore energy management relative to 34 on revenue management and eight on both. Moreover, even a cursory look at the titles confirms GAO’s dissatisfaction, including a 2007 report titled “Royalties Collection: Ongoing Problems with Interior’s Efforts to Ensure A Fair Return for Taxpayers Require Attention.”

Revenue Management’s issues were numerous, but an important source of many of the problems was the initial design of MMS, which allowed the accounting and auditing function to build expertise but impeded its ability to collect needed data from BLM and Offshore Energy. The geographical separation and the divergent backgrounds of operations personnel in Revenue Management and Offshore Energy suggest the difficulties the groups had in collaborating were not necessarily surprising. Multiple reports document these concerns (see, e.g., Subcommittee on Royalty Management 2007; GAO 2008). For example, in a December 2007 communication, a committee commissioned by DOI on the heels of an OIG investigation described the coordination problems created by having BLM and BIA as well as Offshore Energy and Revenue Management all involved in the royalty collection process. In addition to documenting how BLM’s manual process for sharing onshore production data with MMS was inefficient, the report went on to note how similar issues existed even within MMS. The committee concluded, “Increased sharing of electronic information between BLM and MRM [Revenue Management], as well as between OMM [Offshore Energy] and MRM, would dramatically increase the consistency of Federal lease status and production information across these agencies” (Subcommittee on Royalty Management 2007).

REFORMING REVENUE COLLECTION IN THE WAKE OF SCANDAL

Coupled with the ongoing operational problems within Revenue Management, the previously described 2008 OIG investigative reports describing the scandalous activities in the RIK group only intensified

Congress' desire to reform MMS during the first decade of the 2000s. As described in Figure 9.3, prior to the explosion on Deepwater Horizon, various bills were introduced in Congress with the purpose of restructuring MMS and the broader organization surrounding it. Each had the goal of addressing, through design, MMS's revenue collection problems and the associated coordination issues between MMS and BLM in particular. No fewer than eight bills were introduced between November 2005 and April 2009 that proposed to rename MMS as the "National Ocean Resources and Royalty Service" to emphasize the agency's roles in collecting oil and gas revenue and managing offshore development (see, e.g., Deep Ocean Energy Resources Act of 2008 2008). For those bills that sought to reform MMS by redesigning or repositioning it in the federal government prior to the onset of the spill, none proposed breaking up MMS into its component parts.

The Clean, Affordable and Reliable Energy Act as well as the Minerals Management Service Reform Act, both introduced in 2009, sought to increase congressional control over MMS by either making it an independent agency or reforming the appointment process so that the secretary of the Interior could not directly name MMS's director without congressional approval. While also reacting to the RIK scandal, a second set of proposals attempted to directly address the coordination issues that were plaguing Revenue Management's ongoing operations as well. In September 2008, Representative Joe Barton introduced a bill "to improve interagency coordination and cooperation in the processing of Federal permits for production of domestic oil and gas resources" (US House of Representatives 7032 2008). By creating an agency called the Office of the Federal Oil and Gas Permit Coordinator, the reorganization would have both "promote[d] process streamlining" and eliminated "duplication of effort" by tasking the office to more formally coordinate BLM and MMS activities.

Addressing the same ongoing issues that were plaguing MMS royalty collection, the Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act, introduced in the House, went even further. Instead of simply creating a federal coordinator, the CLEAR Act sought to combine BLM's Oil and Gas Management program with MMS. In a hearing before the House Committee on Natural Resources, the bill's sponsor Representative Nick Rahall explained:

This bill would establish the Office of Federal Energy and Minerals Leasing, combining the energy development work currently split between the MMS and the Bureau of Land Management. Having one agency doing the leasing and one

agency collecting the money is inefficient, unnecessary, complex, and potentially costs the American people millions in lost royalties (Committee on Natural Resources 2009, 3).

By joining the BLM's onshore minerals management functions with the Revenue Management and Offshore Energy groups at MMS, the new agency would be better positioned to overcome the long history of shortcomings in royalty collection. Interestingly, the proposed reorganization mirrored GAO's recommendation to consolidate oil and gas functions when MMS was originally created in 1982. Like Senator Barton's proposal to create a federal oil and gas coordinator, the CLEAR Act was specifically focused on improving coordination and information flow to Revenue Management – a long-standing impediment to the success of the federal government's oil and gas management program.

EXAMINING THE DISBANDING OF MMS

On the surface, the decision to disband MMS appeared to be a dramatic step away from the congressional organizational reform efforts that preceded the disaster which had generally sought to consolidate government oil and gas management functions. For example, in contrast to the proposal in the 2009 version of the CLEAR Act which sought to unite onshore and offshore functions, the administration's decision – enacted not through legislation but through Secretary Salazar's Order 3299 – actually appeared to further divide these administrative functions. While the narrative describing MMS's conflicts of interest was largely absent from discussions of its issues prior to the spill, the story was largely supported by Congress and a broader set of commentators after the onset of the disaster (see, e.g., Flournoy et al. 2010; Honigsberg 2011).

By initially structuring the agency such that it was tasked to collect revenue – and given that revenue could not be collected without production – the logic behind the conflict narrative rested on the idea that MMS's original design impeded its ability to regulate effectively since doing so would require limiting oil and gas production. A similar story described the discord that existed within the Offshore Energy group. In its role as government offshore leasing agent, MMS would have an incentive to promote oil and gas development. Just as tax collection allegedly hindered regulation by encouraging development, having MMS oversee that development process directly further weakened MMS's desire to be an effective regulator, thereby creating the conditions for a disaster like the Gulf spill.

In addition to the broad agreement among commentators that MMS needed to be divided, as Figure 9.3 demonstrates, the intent of congressional proposals to formalize the structure of oil and gas operations through organic legislation also clearly shifted after the spill. Of the six bills initiated after its onset, only one, the Oil Spill Prevention Act, intended to keep the revenue collection, leasing, and regulatory oversight functions in one organization. For example, although both the Outer Continental Shelf Reform Act and the Clean Energy Jobs and Oil Company Accountability Act sought to place limits on the number of organizations that could be responsible for various aspects of the oil and gas management process, each still supported dividing offshore management and separating it from revenue collection. The bills backed the administration's stated rationale for the imposed reform as well. The Clean Energy Jobs and Oil Company Accountability Act, introduced by Senator Harry Reid, provided that, "the Secretary [of the Interior] shall ensure, to the maximum extent practicable, that any potential organizational conflicts of interest related to leasing, revenue creation, environmental protection, and safety are eliminated" (Clean Energy Jobs and Oil Company Accountability Act 2010).

While the disbanding of MMS appeared on the surface to both diverge substantially from pre-spill proposals as well as institutionalize dramatic changes to the government oil and gas infrastructure, in its implementation, the reorganization did much less. Secretary Salazar's report to Congress two months after announcing the breakup described his implementation plan (DOI 2010a). Highlighting the existing division between Revenue Management and Offshore Energy, the plan noted, "The Office of Natural Resources Revenue can be transitioned most quickly . . . with the transfer of the largely intact Minerals Revenue Management function" (DOI 2010a). In contrast, the report documented the complexity associated with dividing Offshore Energy into BOEM and BSEE. It indicated that the "two Bureaus will be created from a single bureau in which functions and process are tightly interconnected, making the separation complicated and demanding" (DOI 2010a). Salazar's plan called for a protracted implementation schedule that resulted in the formal separation of the offshore management and regulatory groups almost a year and a half after the process began. Furthermore, the recognition remained that ongoing "close program coordination" was necessary between the two organizations to "maintain a functioning and effective process" (DOI 2010a).

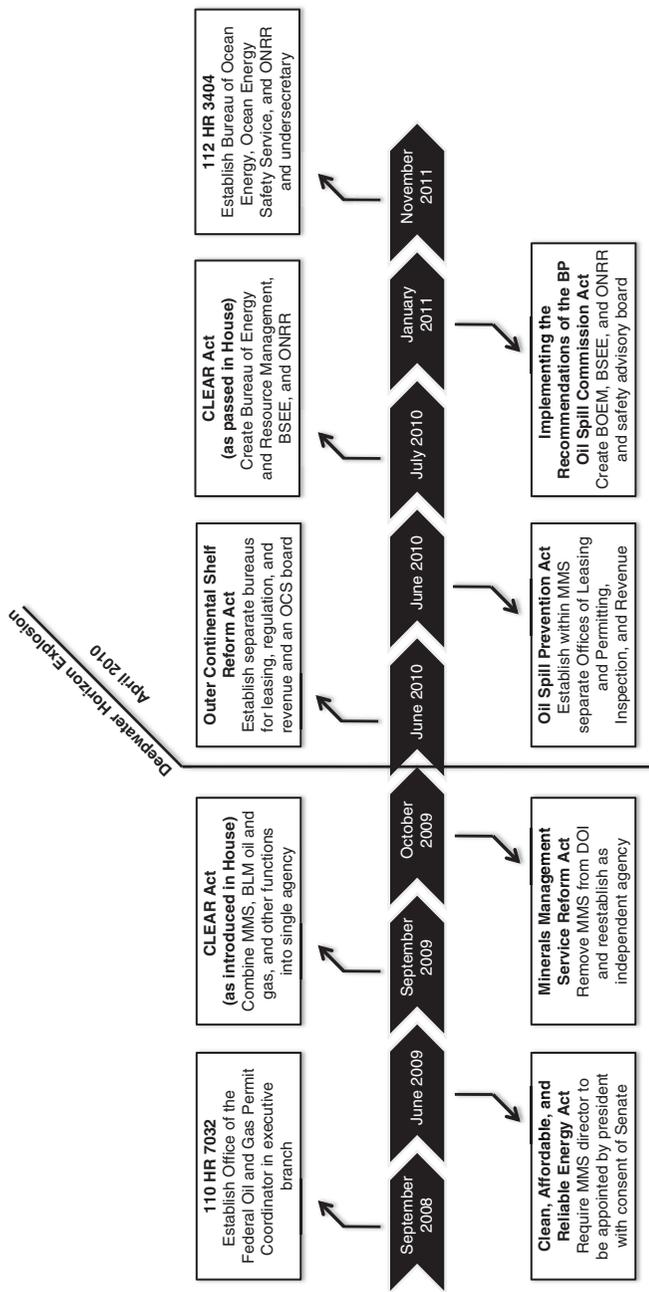


FIGURE 9.3 Timeline of select congressional bills proposing reorganization of MMS and related functions (2008–2012). Notes: Timeline tracks bills that proposed to reorganize the functions of MMS, sought to move it, or introduced new organizational arrangements to interact with it. All relevant bills are listed except those that included a proposal which duplicates another bill that preceded it. In that case, only the first bill that mentioned the proposal is included. Source: Searches in Proquest Congressional database of bills.

Salazar's report underscores the division between Offshore Energy and Revenue Management. The degree to which the Offshore Energy programs relied on each other clearly contrasted the independence maintained by the Revenue Management group, an independence embedded in MMS's creation. The fact that Revenue Management was a freestanding unit within MMS would allow it to transition within two and a half months of the initial implementation plan, a deadline that DOI easily met. In addition to further demonstrating the organizational divide within MMS, the actual implementation also reveals how little actually changed operationally with respect to oil and gas revenue collection through the reorganization. Numerous reports along with a plethora of hearings suggested that the two groups were already operating as separate entities. In simply formalizing the separation and renaming the tax collection function, the reorganization did little to change how the organizations operated.

Moreover, a GAO report released in July 2012, recapping the separation of Offshore Energy's leasing and regulatory functions, showed that – like the creation of ONRR from Revenue Management – little had changed with the formation of the two offshore energy bureaus (GAO 2012). In addition to continuing to use the same IT system, BOEM and BSEE each retained their headquarters in the same New Orleans office that had housed them both prior to the split. Employees of the newly formed agencies indicated their intention to continue to collaboratively manage the federal offshore process. As one senior official highlighted, “the split would not ‘put up a wall’ between the two bureaus” and “that staff would be able to ‘walk down the hall’ to discuss and resolve issues with colleagues in both bureaus” (GAO 2012: 27). The report further indicated, “Interior officials . . . stated that the initial reorganization will not significantly change the bureau's work processes” (GAO 2012: 27). In orchestrating the reorganization effort, a taskforce identified no less than 49 interdependencies to ensure that information and processes would flow between the organizations. Thus, GAO's description of how the reorganization was implemented clearly supported Salazar's hope in his 2010 plan that the development and regulation missions would continue to work closely with each other (DOI 2010a).

In the end, Salazar's Order 3299 simply formalized a division between Revenue Management and Offshore Energy that already existed and had impeded MMS's ability to effectively audit oil and gas company tax remittances from the outset. At the same time, the process of allocating the regulatory and development functions to BSEE and BOEM included

a plethora of provisions that would allow them to continue as work as closely as they had while they were both part of the Offshore Energy group at MMS.

DIVIDING MMS AS PURPOSEFUL SYMBOLIC REFORM

In many ways, the breakup of MMS presents a classic example of symbolic political action. As described, alternative reorganizational proposals, embodied in bills at various stages in Congress, existed prior to the spill. Each addressed long-standing coordination failures both between MMS and BLM and within MMS itself, failures that were instrumental in explaining DOI's difficulties in collecting offshore and onshore taxes. By making MMS an independent agency, adding additional organizational layers to encourage collaboration, or locating additional functions at the agency, each of these reforms proposed that MMS retain its existing roles while potentially garnering new ones. However, because it would seem hard to argue that any agency should receive more authority if it was perceived to act recklessly with what it already had, none of these actions was politically palatable as a response to the Gulf disaster.

In contrast, a reorganization that disbanded MMS conveyed the message that strong action had been taken, a particularly important aim given the criticism that the Obama administration was receiving for its lack of urgency in reacting to the spill. Similar reforms had been enacted with success in other countries (Bennear 2015; GAO 2012). One senior DOI official noted, "Separating resource management from the safety and environmental functions had been a best practice used by some European nations such as Norway" (GAO 2012: 25). Thus, the decision to separate MMS into its component parts was swift, outwardly dramatic and responsive, and easily defended.

Even so, in implementation, the reform itself did little to change existing practices, retaining both the strengths and limitations of the organization of oil and gas functions that characterized the structure of MMS as it existed prior to the Gulf disaster. Although it did create independent agencies with separate budgets, the process by which the government leases offshore lands, regulates those same leases, and collects revenue is much the same as it was before MMS's breakup. MMS's revenue collection and offshore management missions were already effectively divided prior to the split. Moreover, in creating BSEE and BOEM, substantial

effort went into ensuring these agencies could operate much as they did when they collectively comprised the Offshore Energy group at MMS.

Still, underneath the symbolism was a useful side-effect, either intended or not, that made the reform more than simply a political response which met the need to respond with policy actions that were available and acceptable (Baumgartner and Jones 1993; Kingdon 2003). Because it did not change the underlying infrastructure in any dramatic way, the reorganization also did not close the door to the reforms, which were intended to remove impediments to how DOI managed revenue collection, that had been in the works prior to the spill. Congressman Rahall's statement to open the July 2009 hearing to discuss the CLEAR Act underscored how deeply many felt reform was needed to correct deficiencies in royalty collection and leasing processes. He indicated, "Just this week, three – count them, three – new GAO reports detailing major flaws in the Federal oil and leasing program are being released. The reports add significantly to the massive body of investigative work done over the past 25 years calling into question the management of the entire Federal oil and gas program" (Committee on Natural Resources 2009).

Many of the bills introduced in the House and Senate after the onset of the disaster supported Secretary Salazar's decision to break up MMS. Still, in some cases, they incorporated subtle but important differences that reflected a persistent congressional interest in oil and gas revenue reform. The CLEAR Act amendment that passed the House in July 2010 presents one example. Although the amendment represented an effort to affirm Secretary Salazar's administrative action through statutory action, the act also sought to combine offshore and onshore regulatory functions in one agency and offshore and onshore development functions in another (Consolidated Land, Energy, and Aquatic Resources Act 2010).

Despite the dramatic and vivid images of oil-soaked birds and tar balls washing onto Gulf beaches during the summer of 2010, the evidence presented in this chapter has shown that political priorities as well as social views have largely returned to what they were before the Gulf disaster. In this way, the tragedy shares a feature of many others that have come before it (Birkland 2006). Patterns of congressional oversight, administration leasing decisions, media coverage, and shifts in public opinion polls all demonstrate that not only did the Gulf oil spill hold people's interest for only a short time, the long-term trend reflecting a growing preference for energy security and economic growth over environmental protection was interrupted only temporarily. Unlike the

persistent attention on revenue collection, renewed interest in regulatory oversight and environmental stewardship was only fleeting.

Given the ephemeral nature of the push to take environmental safety more seriously, symbolic action – such as the decision to enact a reorganization that did little to shift the infrastructure in a direction that could not be easily reversed – offered value. In presenting the impression that action was being taken swiftly and dramatically, the disbanding of MMS served its purpose and, yet, provided the opportunity to revisit ways to improve revenue management and promote US energy independence when the status quo returned. And this may not be a bad outcome. Although tragedies like the Gulf oil spill are potentially debilitating, dramatic reform enacted during those moments can have costs (Carrigan and Coglianese 2012). Moving too far one way or the other in response to a dramatic, but temporary, reshaping of attitudes toward risk is not always the best option.

A reorganization like what was recommended by various commentators which would have spread MMS's missions among different federal departments (e.g. Flournoy et al. 2010) would likely have made it more difficult to resurrect the reform efforts proposed before the spill. In a hearing to examine the Outer Continental Shelf Reform Act of 2010, Michael Bromwich, who was tapped by President Obama to oversee MMS's dissolution, acknowledged the potential perils of creating additional organizational units. In response to an inquiry by Senator Lisa Murkowski questioning the usefulness of further fragmenting oversight of oil and gas operations when the Gulf spill had provided evidence of the difficulties of having multiple players involved, Bromwich responded, "I agree with you and understand the reluctance to believe that creating yet more pieces is a cure-all" (Committee on Energy and Natural Resources 2010). As the analysis has demonstrated, organizational decisions can have real consequences and, furthermore, involve real trade-offs. By enacting reform that did not truly respond to the temporary public uproar and preserved the opportunity to consolidate activities in one federal oil and gas agency, the reform was able to achieve an end while costing very little.

If the intense congressional focus on the perceived shortcomings of DOI's revenue collection program over at least the last 60 years is any indicator, ensuring that the government collects all federal oil and gas taxes due is one of its top priorities. From this perspective, the largely symbolic disbanding of MMS in the wake of the Gulf oil spill did more than simply reaffirm the Obama administration's control over the

failure. Rather, it demonstrated that, in the wake of disaster, true symbolic action can serve an important purpose that extends beyond ensuring the political survival of those forced to act when such regulatory disasters occur. Through the very act of doing nothing, unlike true reform, symbolic reform eliminates the possibility that the action is only responding to an emotional but fleeting public display, a possibility which is not unusual in disaster. Particularly when truly responsive action undercuts other actions more reflective of longer-term preferences, only symbolic reform can limit the damage. As this analysis has demonstrated, while the Gulf tragedy fueled intense demand for regulatory reform and greater environmental accountability, this pressure quickly receded as concerns about energy and economic growth returned to the fore. Such actions like the DOI's organizational response, which serve as placeholders, can delay real action until the right action – guided by both introspection and a focus on more deep-rooted public preferences – is clearly understood.

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