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 often accompanies regulatory disasters, such tragedies can also present opportunities for improvements to the regulatory structures designed to control the risks that prompted the failure. On the other hand, precisely because they are calamitous, such events can create intense pressure for forceful action even when the set of solutions is inadequate to address the issues at hand (Kingdon 2003, Carrigan & Coglianese 2012). 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, aside from their purpose to present the appearance of being responsive, such actions can be seen as being of little use at best in effecting productive change and detrimental at worst in that they falsely convey a message that progress on the underlying problems has been made.

In this chapter, I ask which of these two boundaries describing a range of possible responses to regulatory disaster more closely resembles the reforms enacted in wake of the 2010 oil spill in the Gulf of Mexico. The Gulf oil 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. Specifically, I focus attention on how the Gulf disaster impacted public and political views of the appropriate balance between

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developing offshore oil and gas reserves, collecting the associated tax revenue from oil and gas companies, and ensuring that drilling was conducted in an environmentally responsible way. Moreover, I study these attitudes in the context of perhaps the most dramatic reform prompted by the Gulf tragedy—the disbanding of the Department of the Interior’s (Interior) regulator of offshore oil and gas development which employed roughly 1,600 workers, the Minerals Management Service (MMS), less than one month after the initial explosion (Minerals Management Service 2010).

I first demonstrate that the spill interrupted a pronounced long-term trend in which political and public attention had become more focused on promoting oil and gas production and less on whether it was being conducted safely and environmentally responsibly. Yet, while the Gulf disaster did encourage politicians and the public to question prior preferences, the effect proved only temporary, with public and political attention reverting quickly to controlling energy costs and ensuring adequate oil and gas supplies even before the well was capped. Second, in contrast to popular perception, the reorganization of government oil and gas management functions had been a source of continuing debate well before the onset of the spill. Still, the existing reform proposals envisioned a very different structure which, instead dividing MMS’s offshore leasing, regulatory oversight, and revenue collection missions into three agencies, would have streamlined minerals management activities and, in some cases, consolidated them at one government entity. The purpose of such a radically different structure was to attempt to resolve long-standing perceived inadequacies in Interior’s performance in collecting royalties from those companies extracting oil and gas. Third, contradicting its outwardly dramatic aura, the decision to reorganize government oil and gas functions had minimal impact on the existing interplay between the three associated missions which were formally combined at MMS. Rather, from an
operational perspective, the reorganization appears to have done little to change how governmental oil and gas management functions are conducted.

In combination, these insights demonstrate that the dismantling of MMS in response to the Gulf oil disaster does not neatly fit into the category of a reform that can be expected to substantially reduce the possibility of future breakdowns. Yet, neither is it one that in its role to placate the intense pressure for action in the wake of calamity offers little hope of promoting public interest. Rather, the disbanding of MMS in the aftermath of the *Deepwater Horizon* tragedy reveals the possibility that symbolic reactions to events can serve—either by accident or on purpose—a third objective, one which allows for the possibility to stave off further action until social preferences recalibrate completely. Particularly when the dramatic shift in risk perception is ephemeral and diverts attention from enduring efforts at reform, the extent to which an act is truly symbolic can limit the degree to which the reforms lock in policy shifts which move policy away from long-term social desires. In other words, precisely because it has little effect, a symbolic policy response can reduce the degree to which the reform reflects only temporary shifts in public and political preferences. Thus, dissolving MMS did not address long-standing concerns about the failure of Interior to collect royalties due the federal government. Even so, the design of 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 focus back to reducing energy costs and increasing oil and gas royalties as the environmental concerns raised by the Gulf tragedy began to fade.
Building Political and Social Pressure for Development

In compiling its top 10 U.S. stories at the end of 2010, Time Magazine named the Gulf oil spill number one (Tharoor 2010). The disaster—which began on April 20, 2010 with the initial 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 largest oil spill in U.S history (National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling 2011). In comparison, the Exxon Valdez spill in March 1989, which up to 2010 was the largest U.S. offshore spill, deposited roughly 250,000 barrels into the waters off the southern coast of Alaska (Skinner & Reilly 1989). While no small number, the Gulf disaster produced a spill of 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 capitated the nation and introduced people to a litany of new terms including “top-kill” and “junk shot” as BP, scientists, and the federal government tried frantically to stop the oil gushing from the Gulf of Mexico seafloor (Fountain 2010).

However, beyond merely capturing public attention, the spill at least temporarily reversed a gradual but marked trend which had begun at least 15 years earlier emphasizing oil and gas production relative to environmental and drilling safety. By the mid-1990s, Congress, as well as the executive office, had begun a push for greater exploration on the Outer Continental Shelf (OCS), which included all federally-owned submerged lands in the Gulf, along the Pacific coast, and surrounding Alaska (National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling 2011). In November 1995, Congress passed the Deep Water Royalty Relief Act which amended the 1953 Outer Continental Shelf Lands Act (OCSLA). The OCSLA had established federal jurisdiction over the OCS and set out basic procedures for leasing these lands
(Outer Continental Shelf Lands Act 1953). This same law had further described the balance needed in achieving the dual goals of development to support national economic and energy policy goals while providing for the protection of human, marine, and coastal environments.

Through the Deep Water Royalty Relief Act, Congress updated the OCSLA to suspend royalty payments on Western and Central Gulf deep water leases—those which required drilling in waters greater than 200 meters—offered through the middle of November 2000 until significant amounts of oil and gas had been produced on those leases. Once the associated company applied for relief, the Act also extended to existing leases in which “new production would not be economic in the absence of the relief from the requirement to pay royalties” (Outer Continental Shelf Deep Water Royalty Relief Act 1995, Section 302). Not surprisingly, this law had important impacts on the pace and focus of Gulf oil and gas operations. As recounted in MMS’s 2005 Budget Justification, the Act “triggered record-breaking lease sales in 1997 and 1998…and opened the door to increased deepwater production” (Minerals Management Service 2004, p. 80). As a consequence, it also had significant implications for MMS in approaching offshore oil and gas regulatory oversight.

Related to this development, a few years earlier, as part of his plan to produce a government that “works better, costs less, and get results Americans care about” (Kamensky 1999), President Clinton launched the National Partnership for Reinventing Government, an initiative emphasizing more innovative approaches to regulation. In response to the program, MMS began to experiment with negotiated rulemaking almost immediately. In addition to forming a committee to study and propose revised gas valuation rules (Cedar-Southworth 1996, p. 4; Minerals Management Service 1995, p. 8), MMS organized negotiations between itself, local governments, and industry to reach compromises on contentious leasing issues associated with
the Pacific OCS (Minerals Management Service 1995, p. 11). Moreover, MMS’s foray into more collaborative interactions with oil and gas participants was also backed by a broader set of actors. Responding to a 1993 report submitted by the OCS Policy Committee, which included representation from coastal states, environmental groups, and industry, Secretary of the Interior Babbitt indicated in a letter to the Committee that one of its most important recommendations was “that the OCS program should be regenerated based on consensus” (Minerals Management Service 1994).

MMS’s efforts to adopt a more collaborative approach to regulation was made more essential given that the Deep Water Royalty Relief Act permitted royalty relief with the explicit goal of encouraging deep water drilling even when the technology was not available to support it safely (National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling 2011). MMS participation in the DeepStar Research Project which brought together 16 oil and gas companies as well as 40 vendors to jointly develop technology and systems capable of extracting oil and gas in deep water was just one example (Minerals Management Service 1996, p. 85; OCS Policy Committee’s Subcommittee on OCS Legislation 1993, pp. 65-66). As described by Associate Director Carolita Kallaur at a 2001 talk at the Institute of Petroleum’s International Conference on Deepwater Exploration and Production:

An HSE [health, safety, and environmental] lesson learned from our early experience with GOM [Gulf of Mexico] deepwater development is that 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, and it is critical to be able to “think out of the box.” (Kallaur 2001)

In addition to legitimizing collaborative regulatory tactics initiated through Clinton’s Reinventing Government initiative, executive policy with respect to offshore energy—which was beginning to focus greater attention on development anyway—accelerated a push to expand oil
and gas exploration during the presidency of George W. Bush. Bush’s January 2007 Memorandum for the Secretary of the Interior made only minor alterations to existing congressional moratoria which prohibited oil and gas drilling in certain areas of the OCS including the Atlantic coast and eastern Gulf (Bush 2007). In contrast, his 2008 Memorandum resulted in drastic changes, opening up all areas of the OCS with the exception of those designated as marine sanctuaries (Bush 2008a). In his accompanying remarks, Bush noted, “One of the most important steps we can take to expand American oil production is to increase access to offshore exploration” (Bush 2008b). Only weeks before the Deepwater Horizon disaster, President Obama echoed Bush’s enthusiasm for further offshore drilling, removing only the Bristol Bay area in Alaska from leasing consideration and proclaiming in an associated speech that “today we’re announcing the expansion of offshore oil and gas exploration” (Obama 2010a, 2010d).

Congress continued to support this policy shift as well. Beginning with the Deep Water Royalty Relief Act in 1995, the primary focus of each law with important implications for offshore oil and gas drilling adopted over the subsequent 15 years was on either improving royalty collections or encouraging offshore development. 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, although it represented a compromise by extending moratoria on waters near the Florida coast, the Gulf of Mexico Energy Security Act required MMS to offer 8.3 million acres for leasing, 5.8 million of which were previously prohibited by either Congress or the president, within one year (Gulf of Mexico Energy Security Act 2006). With its emphasis on production relative to environmental preservation, this period stands in contrast with the 13 years before beginning with MMS’s creation in 1982 where acts
such as the 1986 OCSLA Amendments and the 1990 Oil Pollution Act clearly indicated a congressional desire for a more cautious approach to development in offshore waters.

Table 1 – Subject Matter of Congressional Hearings in Which MMS or Successor Agency Personnel Testified by Function (1982 – 2012)

<table>
<thead>
<tr>
<th>Period</th>
<th>Evaluation</th>
<th>Leasing</th>
<th>Environment</th>
<th>Regulation</th>
<th>Revenue</th>
<th>Total</th>
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<tr>
<td>1982-1985</td>
<td>14</td>
<td>12</td>
<td>14</td>
<td>5</td>
<td>8</td>
<td>25</td>
</tr>
<tr>
<td>1986-1989</td>
<td>7</td>
<td>6</td>
<td>12</td>
<td>10</td>
<td>6</td>
<td>22</td>
</tr>
<tr>
<td>1990-1993</td>
<td>5</td>
<td>7</td>
<td>12</td>
<td>6</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>1994-1997</td>
<td>4</td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>9</td>
<td>16</td>
</tr>
<tr>
<td>1998-2001</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>2002-2005</td>
<td>6</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>2006-2009</td>
<td>10</td>
<td>9</td>
<td>8</td>
<td>0</td>
<td>10</td>
<td>18</td>
</tr>
<tr>
<td>2010</td>
<td>0</td>
<td>4</td>
<td>8</td>
<td>13</td>
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<tr>
<td>2011</td>
<td>3</td>
<td>1</td>
<td>5</td>
<td>7</td>
<td>2</td>
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<tr>
<td>2012</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>5</td>
</tr>
</tbody>
</table>

Notes: Does not include budget hearings. The sum of subject counts can exceed the total because hearings can involve multiple functions. Evaluation refers to identifying areas for oil and gas exploration whereas leasing refers to leasing properties to oil and gas producers. As described in the text, the successor organizations to MMS include the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue. Source: Searches in Proquest Congressional database of congressional hearings. To categorize the subject matter of the hearings, each hearing’s title and summary description were examined. In some cases where clarification was required, the testimony was reviewed as well.

However, the congressional shift in focus is perhaps more clearly demonstrated by referring to Table 1 above. The table categorizes the subject matter of hearings which included testimony of an employee of MMS or one, after its breakup in 2010, of its successors over the period beginning with the agency’s creation in 1982 and ending in 2012. Over the years from 1982 through 1993, environmental and regulatory issues generated more combined interest than evaluation and leasing issues as measured by how often they were the subject of hearing during that period. In contrast, during the 12 years from 1998 through 2009, evaluation and leasing were roughly two and a half times more likely to be considered than environment and regulation. Yet, even these numbers for environment and regulation are artificially inflated because hearings associated with laws to expand production such as the Deep Water Royalty Relief Act still invited environmental groups to participate. Focusing specifically on regulation, one finds that
the numbers are even more striking. Whereas over the first 13 years of MMS’s existence, a total of 21 hearings involved an important discussion of offshore regulation, during its subsequent 15 years ending in 2009, only one hearing included any extended discussion of regulatory issues. Furthermore, even that case was fundamentally focused on a proposal to shift BLM’s onshore regulatory responsibilities to the affected states and included very little mention of MMS’s offshore regulatory program (Subcommittee on Energy and Mineral Resources of the Committee on Resources 1996).

Figure 1 – Gallup Opinion Poll Results Measuring Preference for Environmental Protection or Economic Growth (1984 – 2012)

Moreover, the shifting priorities of the executive office and Congress over this period reflected public sentiment on energy issues as well. Figure 1 above shows Gallup Poll results over repeated samplings from September 1984 through March 2012 where respondents were asked whether protection of the environment or economic growth should receive priority given that the other would suffer. Although the move toward greater interest in economic growth is not a continuous progression, the trend is evident. As the figure describes, while people prefered environmental protection to economic growth at almost a four to one ratio in 1991, the drift toward economic growth is accelerated beginning in 2000. By early 2010 just before the spill, the ratio dips below one, indicating for the first time in the poll’s history that more people favored economic growth over environmental protection. While Gallup later began to ask respondents specifically about prioritizing environmental protection or energy production, it only did so beginning in March 2001 and so the data are somewhat less instructive. Even so, except for a move back in 2007, these polls display a general shift toward greater emphasis on development relative to environmental protection as well. In the first year of the poll, 52% placed greater priority on the environment relative to 36% for energy production. By March 2010, only 43% favored environmental protection while 50% placed precedence on developing energy supplies.

Public and Political Response to the Gulf Oil Spill

Thus, while the oil and gas industry itself clearly supported efforts to expand production, so did Congress, the Executive Office, and the public over an extended period prior to the Gulf oil spill. Still, the dramatic images and sheer magnitude of the Gulf oil disaster had important short-term impacts on those preferences. As one consequence, the intensity of the media coverage in
the days following the April 20 explosion raised awareness of the technological sophistication required to drill for oil and gas in deep water. Prior to the spill, the U.S. had little recent experience with what can go wrong when drilling offshore. Relative to the 10 year period which preceded it in which over 430,000 barrels were deposited into offshore waters, during the entire 35 years from 1975 through 2009, OCS activities only accounted about 121,000 barrels spilled, well under one-third of the amount in 25 more years (Bureau of Ocean Energy Management, Regulation and Enforcement 2011). Perhaps more poignantly, the BP oil disaster deposited more than 40 times more oil into the Gulf over three months than what was spilled during the 35 years that preceded it.

Moreover, even considering a small uptick between 2004 and 2006 associated with the damage to offshore platforms from Hurricane Katrina, spillage rates did not display any measurable trend upward prior to the Deepwater Horizon accident despite climbing production and the move to deeper water (Bureau of Ocean Energy Management, Regulation and Enforcement 2011). A 1998 commissioned study by the Coastal Marine Institute studying offshore oil and gas producers aptly summarized these observations, concluding “it should be noted that the data available show a remarkable decline in accidents and oil spills over the past two decades” (Coastal Marine Institute 1998, p. 37). Further, in a question and answer session less than three weeks prior to the Deepwater Horizon explosion, President Obama reiterated this view, suggesting, “oil rigs today generally don’t cause spills. They are technologically very advanced” (Obama 2010b).

In addition to presenting an instance which was dramatically at odds from previous experience, the Gulf oil spill simply focused attention on offshore oil and gas drilling. The extent to which this is true is clearly demonstrated through Figure 2 below which shows monthly
the number of articles from the New York Times and Washington Post which mentioned either “offshore” and “oil” or “gas” over the period from January 2002 through December 2012. As the figure demonstrates—except for a brief period in 2005 which corresponded to coverage of the political controversy associated with China National Offshore Oil Corporation’s effort to buy Unocal (Lohr 2005)—the period between 2002 and 2007 demonstrated rather consistent levels of interest in oil and gas. Yet, the number of articles spiked again in the second half of 2008 in response to a Department of the Interior Office of Inspector General (OIG) communication released in September 2008 (Devaney 2008).

**Figure 2 – New York Times and Washington Post Offshore Oil and Gas Article Mentions (January 2002 – December 2012)**

Notes: Number of articles each month computed as the sum of all New York Times and Washington Post articles mentioning “oil” or “gas” and “offshore.” Source: Lexis Nexis Academic.

The memorandum and associated investigative reports principally focused on the unethical activities between 2002 and 2006 of members of the Royalty in Kind (RIK) Program, group of
roughly 50 employees in MMS’s Minerals Revenue Management (Revenue Management) division (Minerals Management Service 2007). The reports detail the extent to which nine of the 19 implicated employees accepted gifts from industry in the form of meals, parties, trips, and event tickets as well as the “brief sexual relationships” that two of the same employees engaged in with industry contacts (Devaney 2008, p. 2; Office of the Inspector General 2008c, p. 5). During the investigations, OIG also uncovered evidence that at least one RIK employee held outside employment that was not reported on internal disclosure forms (Office of the Inspector General 2008b). Furthermore, the last report described how three senior officials in the broader Revenue Management division “remained calculatedly ignorant of the rules governing post-employment restrictions” in awarding two consulting contracts to two employees after they retired from MMS (Devaney 2008, p. 2; Office of the Inspector General 2008a).

Even so, the increased interest in oil and gas development resulting from the indiscretions of some RIK Program employees paled in comparison to the dramatic increase in news coverage as the events unfolded beginning in April 2010. Relative to March when 20 articles mentioning oil and 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 in oil and gas with the onset of the spill, Figure 2 also demonstrates how quickly attention faded in the months immediately following the capping of the well in July 2010. In fact, while the well was still spilling oil into the Gulf during June and the first half of July, attention had already declined to a level which approximated the coverage when the OIG communication was first released in 2008. By August 2010, the volume of reporting in the two papers on offshore oil and gas topics had settled back to a much lower level which continued to exceed but began to approach what had been the long-term trend between 2002 and 2007.
Not only was the dramatic increase in interest in offshore oil and gas drilling short-lived, but so was the relative emphasis that the public placed on environmental protection relative to economic growth and energy development during the spill. Recalling Figure 1, the poll conducted in May 2010 while oil was still spewing into the Gulf did demonstrate a measurable increase among respondents who viewed environmental protection as more important than economic growth. Indeed, it prompted a greater percentage of respondents to indicate that the environment should be the relative priority. Yet, the Gallup poll conducted in March 2011 demonstrated that not only had particular concern for environmental considerations subsided less than a year after the initial explosion, but that attitudes toward energy development and environmental protection had largely returned to their longer-term trends prior to the spill. Relative to the poll conducted in March 2010 when 15% more respondents suggested that economic growth should be emphasized at the expense of the environment, despite the spill, by March 2011, the spread had actually widened to 18%. Moreover, the aforementioned second Gallup poll asking individuals to specifically prioritize energy production or the environment shows a similar but even more pronounced effect. At the end of May 2010, preference for the environment had overtaken development, and the spread between the two was again 16 percentage points as it had been when the poll was first created in 2001 (Gallup 2010). However, by March of the next year, 50% of respondents agreed that development was more important while only 41% opted for the environment, a difference which represented the largest in the poll’s history.

The same patterns found among the news media and the public are clearly reflected in congressional activity as well. The previously described Table 1, which categorizes non-budget hearings featuring testimony by personnel of either MMS or any of its successors, shows a
substantial increase in hearings which considered offshore regulation and the environment
directly after the onset of the spill. The number of hearings on regulatory issues in 2010 was
greater than the total number that considered regulation in the 20 previous years combined. Yet,
similar to media coverage and public opinion, this interest quickly tapered off. The number of
hearings declined somewhat from 14 to 12 in 2011 and tapered off more dramatically to 5 in
2012, as did the number specifically focused regulatory and environmental issues. Indeed, the
volume of hearings in 2012 looked remarkably similar to the patterns in congressional oversight
prior to the spill.

Driving Oil and Gas Royalty Collection through Reorganization

Unlike the shifting public and political views of the appropriate balance between energy
development and regulatory oversight, over a period of several decades, Congress remained
consistent in its criticism of Interior as federal government’s oil and gas tax collector. In fact,
such a view largely drove MMS’s creation in 1982. MMS was established primarily as a result
of the recommendations of what was known as the Linowes Commission. This Commission was
an independent panel formed in 1981 to investigate the performance of USGS as Interior
minerals revenue collector (Hogue 2010, Linowes 1998). USGS, authorized by Congress in
1926 to supervise performance of leases and royalty collection, was repeatedly criticized
beginning in the late 1950s by the Government Accounting Office (later renamed the
Government Accountability Office or GAO) as well as OIG for its inability to perform these
roles adequately (Commission on Fiscal Accountability of the Nation’s Energy Resources 1982,
At the core of the problem was the structure of the revenue management function within USGS which was decentralized in its 11 regional offices. According to the Commission, USGS’ failure, including its chronic inadequate collection of royalties as well as its inability to prevent oil companies from physically taking oil from the field without reporting it for tax purposes, was costing the federal government several hundred million dollars a year in lost revenue. In particular, the scientific focus of USGS was just not consistent with its mission to collect revenue and supervise leasing operations. Specifically, among its 60 recommendations, the Commission called for the creation of an independent agency focused on royalty collection and lease management and staffed with financial professionals to develop a centralized accounting system (Commission on Fiscal Accountability of the Nation’s Energy Resources 1982). This call was reinforced by the Federal Oil and Gas Royalty Management Act (FOGRMA), enacted in January 1983 (Congressional Research Service 1982). In it, Congress reiterated the need for the Secretary of the Interior to “establish a comprehensive inspection, collection and fiscal and production accounting and, auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed and account for such amounts in a timely manner” (Federal Oil and Gas Royalty Management Act of 1982 1983, Section 101).

Reacting to the perception that USGS had relegated minerals revenue collection to a secondary status within the agency, Secretary of the Interior James Watt established MMS in January 1982 through a series of Secretarial Orders and Amendments. The first moved revenue collection from the Conservation Division of USGS to the new organization (Department of the Interior 2008). Later in 1982, he further transitioned all offshore pre-leasing and lease management responsibilities to MMS from BLM and USGS respectively, which, at the time, had
split these duties (Department of the Interior 2008, Hogue 2010). Through his final Order and Amendment, Secretary Watt moved onshore management to BLM (Department of the Interior 2008). The end result was that BLM assumed the duties associated with onshore development, leasing, and regulation while MMS was tasked with the same functions for offshore energy as well as revenue collection for both onshore and offshore leases (Durant 1992).

Although not directly referenced in their report, consolidation of offshore functions into MMS was actually in the spirit of what the Linowes Commission had been seeking (Durant 1992). In addition, GAO, which had also been investigating the performance of the minerals management program, went even further in its recommendations. In a statement before the Interior Subcommittee of the House Appropriations Committee after the initial Secretarial Order, the Special Assistant to the Comptroller General stated:

As we understand it, the responsibilities of the Minerals Management Service may eventually go beyond accounting and collecting of oil and gas royalties, and may address the entire mineral management area. We have previously recommended that Interior evaluate the need to consolidate mineral management responsibilities. Establishment of the Minerals Management Service is consistent with this recommendation (Socolar 1982, p. 6).

The reality that BLM managed offshore pre-lease activities as well as initial sales while USGS maintained authority over lease management and revenue collection had created jurisdictional disputes and delays, resulting in application backlogs and facilitating the oil thefts discussed in the Commission report. It is not surprising that the House Appropriations Committee supported MMS’s creation, indicating in its report:

The reorganization was the result of the underreporting of oil and gas production from Federal and Indian lands, theft of oil from those lands, and underpayment and inadequate collection of royalties owed to the United States…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, p. 40)
Thus, the primary question at the time was not why these functions were combined in one agency, but rather why all minerals management functions—including the onshore functions still housed at BLM—were not all consolidated in one entity (Durant 1992).

To implement its dual charge to collect revenue for both onshore and offshore leasing as well as manage offshore oil and gas development, beyond centralizing some of the agency’s general administrative tasks, MMS was organized specifically around these two functions from the outset (Bonora & Gallagher 2001, Minerals Management Service 1984). In particular, under the broad activity Royalty Management, later renamed Minerals Revenue Management, MMS housed its Royalty Collections, Royalty Compliance, and Systems Development subactivities (Minerals Management Service 1984). Personnel associated with these functions were collectively charged with implementing FOGRMA, which had attempted to set a course for improved oil and gas revenue collection. While it maintained three field offices for audit purposes in Texas and Oklahoma, the bulk of Revenue Management’s operations were centralized in its Lakewood office located outside of Denver in an effort to “provide efficiency and economies of scale in the financial and data collection process and to ensure consistent guidance to lessees and operators” (Minerals Management Service 1993, p. 108).

The second function labeled Outer Continental Shelf Lands, and later renamed Offshore Energy and Minerals Management (Offshore Energy), included MMS’s Resource Evaluation, Leasing and Environmental, and Regulatory programs (Minerals Management Service 1984). Although each had a different responsibility corresponding roughly to their timing in the process of developing offshore lands, these three subactivities were held tightly together by their respective roles in carrying out the OCSLA. In fulfilling their joint charge, groups within Offshore Energy operated with a substantial degree of overlap, where, for example, an
environmental study could support evaluation, leasing, and regulatory decisions simultaneously. Further, although resource evaluation related activities were most closely associated with planning efforts to identify areas for oil and gas development, the program was “involved in all phases of OCS program activities,” even assisting “regulatory personnel to ensure that discoveries [were] developed and produced in accordance with the goals and priorities of the OCSLA” (Minerals Management Service 2004, p. 108). To the extent that federal offshore lands included the Atlantic and Pacific coasts as well as Alaska and the Gulf of Mexico, Offshore Energy maintained offices in all locations. Even so, beyond housing a number of administrative personnel in Herndon, VA, the bulk of the core Offshore Energy staff were situated in either the New Orleans office or one of the other district offices situated along the Gulf.

In many ways, MMS’s organizational design represented a complete reversal of what had preceded and failed before it. Rather than maintain separation between evaluation and leasing decisions and ongoing operations as was the case when BLM and USGS split these functions, at MMS, these were joined together into one tightly knit group. In addition, although USGS located revenue collection and leasing oversight in the same office for each region, MMS maintained a firm division between the two. Moreover, the separation between the Revenue Management and Offshore Energy groups was not something that simply characterized its initial creation. As Table 2 below suggests, a strong correlation between geographical location and function still characterized MMS in 2008, two years before its breakup. Even using broad employment categories, science and engineering functions—associated specifically with Offshore Energy—were predominantly carried out by employees located in Louisiana. On the other hand, accounting and business roles remained centrally focused with Revenue Management
in Colorado. These figures present a stark contrast to general administration and technology which, as would be expected, was needed in both locations.

**Table 2 – Percentage of MMS Employees by Category in Colorado and Louisiana in September 2008**

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<thead>
<tr>
<th>Employment Category</th>
<th>Colorado</th>
<th>Louisiana</th>
</tr>
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<tbody>
<tr>
<td>Biological, Physical and Social Sciences</td>
<td>4.0%</td>
<td>62.5%</td>
</tr>
<tr>
<td>Engineering and Investigation</td>
<td>4.9%</td>
<td>69.3%</td>
</tr>
<tr>
<td>Accounting and Budget</td>
<td>56.3%</td>
<td>0.4%</td>
</tr>
<tr>
<td>Business and Industry</td>
<td>73.5%</td>
<td>3.7%</td>
</tr>
<tr>
<td>Administration and Technology</td>
<td>18.6%</td>
<td>31.9%</td>
</tr>
<tr>
<td>Total</td>
<td>27.4%</td>
<td>33.8%</td>
</tr>
</tbody>
</table>

Notes: Percentages do not sum horizontally to 100% because MMS maintained offices in other locations as well, most notably Virginia and Washington, DC. Each figure reflects the percentage of total MMS employees in that employment category who were stationed in Colorado or Louisiana in September 2008. Source: Office of Personnel Management’s FedScope data.

In addition to pointing out the geographical separation of the two groups at MMS, Table 2 further highlights how different the core functions associated with Offshore Energy and Revenue Management were. Indeed, the fundamental reason that the Linowes Commission recommended the removal of the royalty function from USGS was that the “scientifically oriented” agency was never “able to supply the active sophisticated management that [was] needed” (Commission on Fiscal Accountability of the Nation’s Energy Resources 1982, p. xvi). In implementing the recommendation that properly collecting royalties required “top quality financial managers” (Socolar 1982), Revenue Management built its group by employing those with accounting and audit experience. On the other hand, Offshore Energy employed individuals with science backgrounds such as oceanographers and biologists in addition to engineers and those with experience on oil and gas platforms to fill its inspector roles.
Early Efforts to Spur Revenue Collection

Although MMS’s creation did provide a respite from the negative attention that Interior had received in connection with its efforts to collect oil and gas royalties, the calm veiled the investigations by GAO and OIG that were already in process at the time. By April 1985, when MMS appeared in front of the House Committee on Government Operations, Revenue Management was already under intense scrutiny for its perceived inadequate performance in collecting and disseminating royalties to states as well as Indian tribes and individuals (Subcommittee of the Committee on Government Operations 1985). In particular, a congressional inquiry had revealed numerous examples where Revenue Management—which also maintained responsibility for collecting payments from oil and gas production on Indian lands and distributing those monies appropriately—either completely missed making payments to Indians or made them late and inaccurately. The evidence further revealed the extent to which MMS was unresponsive to BIA requests for individual account audits, a task which the Compliance group within Revenue Management was mandated to do. In one case that later prompted affected Indians to camp outside of BIA’s Anadarko, Oklahoma office in protest, BIA had requested Revenue Management to perform reviews of 11 individual accounts based on land holder complaints. By the time of the hearing seventeen months later, only three reviews had been completed (Subcommittee of the Committee on Government Operations 1985). The remaining eight reviews were only initiated after the congressional investigation impelled MMS officials to do so. In its written response to a question about the delay, Revenue Management admitted that it was “an obvious case of something ‘falling through the cracks.’” The Anadarko request was lost in our Lakewood office for almost a year” (Subcommittee of the Committee on Government Operations 1985, p. 117).
By this time, these and other collection and dissemination problems identified by GAO and OIG had already led to numerous reforms within Revenue Management (Subcommittee of the Committee on Government Operations 1985, pp. 84-85). The changes included moving the head of Revenue Management from Washington, DC to Lakewood, further centralizing the revenue functions in that office. In addition, two committees were established in response—one would include Indian representation and advise the Secretary of the Interior on revenue improvement initiatives and another would be created to improve coordination between MMS, BIA, and BLM in carrying out onshore royalty collection and distribution.

However, these issues were just the beginning of the congressional inquiries into how MMS’s Revenue Management operations could be improved. Although the actual volume of hearings focused on revenue collection was not noticeably different from the corresponding numbers associated with oversight of Offshore Energy, the tone of the inquiries was. As Table 1 highlights, many hearings held between 1986 and 1993 emphasized environmental and regulatory issues related to oil and gas operations on the OCS. Still, much of the attention was driven by the aforementioned Exxon Valdez oil spill in 1989. Although not within Offshore Energy’s statutory authority as it involved an oil tanker and not a drilling rig or platform, the group did participate in the cleanup effort and received both regulatory authority to promulgate rules governing financial responsibility for oil spills as well as greater budgetary authority to conduct related research (Committee on Energy and Natural Resources 1989; Minerals Management Service 1990, pp. 36-37; Minerals Management Service 1991, pp. 81-83). Even so, the hearings which included Offshore Energy were not driven by perceived faults in the group’s performance.
In contrast, in 1989, officials from Revenue Management also testified in front of Congress about additional deficiencies in the agency’s efforts to collect royalties on behalf of Indian tribes and individuals (Special Committee on Investigations of the Select Committee on Indian Affairs 1989). Further, in the previous year, MMS officials had appeared before the Senate Committee on Energy and Natural Resources to discuss the findings of six DOI audits of revenue collections from 1986 through 1988. To open that hearing, Subcommittee Chairman Melcher declared:

As a result of the Linowes Commission recommendations in 1982, Congress passed...the Federal Oil and Gas Management Act...Unfortunately, progress in implementing those recommendations has been slow. To date, action by the Department [of the Interior] falls far short of adequately carrying out the requirements of the law” (Subcommittee on Mineral Resources Development and Production of the Committee on Energy and Natural Resources 1988, pp. 1-2).

In addition to the individual hearings, even a cursory review of GAO reports over the period reveals the extent to which congressional criticism of MMS remained squarely focused on revenue collection relative to offshore energy management. During the four year period from 1982 to 1985, royalties were the primary focus of three reports, offshore energy was the subject of nine, and one covered both. In contrast, over the next 24 years ending in 2009, in addition to eight reports which included a discussion of both groups, Revenue Management was GAO’s main target in 34 reports relative to only seven for Offshore Energy, almost a five to one ratio. Further, the titles of the reports confirm GAO’s dissatisfaction with the agency’s revenue collection efforts. Examples include a 1992 report that GAO titled “Royalty Compliance: Improvements Made in Interior’s Audit Strategy, But More Are Needed” as well as a 2007 report with the heading “Royalties Collection: Ongoing Problems with Interior’s Efforts to Ensure A Fair Return for Taxpayers Require Attention.”

While Revenue Management’s issues were numerous, in large part, they were exacerbated by 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. Given the vast differences in functions and backgrounds between operations personnel in Revenue Management and Offshore Energy as well as their geographical dispersion, it may not be surprising that they had difficulty coordinating their activities to the extent to which it was required. A December 2007 report by the Subcommittee on Royalty Management—a committee appointed by the Secretary of the Interior to study minerals revenue collection following an OIG investigation of the audit and compliance program—suggests the difficulties MMS had in this regard (Subcommittee on Royalty Management 2007). In recommending improvements prospectively, the Subcommittee noted the particular complications associated with having three bureaus involved in onshore minerals revenue collection. As BLM as well as the Bureau of Indian Affairs (BIA) were responsible for relaying data on onshore production to MMS’s Revenue Management group, the Committee was able to identify numerous instances where the information was either incomplete or incorrect, resulting in excess costs, delays, and errors.

However, beyond noting the need to improve coordination among the three agencies, the Committee also observed that procedures needed to be established for “intra-Bureau coordination” as well (Subcommittee on Royalty Management 2007, pp. 83, 86). In examining the systems used for sharing information between BLM and Revenue Management, the report documented that manual and paper-based transmissions between the two bureaus were “a major impediment to efficient royalty collection operations” (Subcommittee on Royalty Management 2007, pp. 21, 26). Somewhat surprisingly, the Committee also described how relaying data between Offshore Energy and Revenue Management demonstrated similar problems, as computer systems were not completely linked within MMS. The report went on to conclude, “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, p. 27).

A September 2008 GAO report further documented difficulties Revenue Management was having coordinating efforts with respect to certain aspects of its royalty collection processes (Government Accountability Office 2008). For example, when discrepancies between company reported oil and gas volumes and BLM or Offshore Energy measurements were uncovered, the affected companies would often need to submit corrected production statements. However, after receiving the updated information, those in Offshore Energy did “not relay this information to the royalty reporting section [Revenue Management] so that staff [could] check that the appropriate royalties were paid” (Government Accountability Office 2008, p. 5). As a result, only through a reconciliation process several years later or in the case that an affected lease was selected for audit would Revenue Management be able to verify whether the royalty payment was correct or incorrect (Government Accountability Office 2008, pp. 10-11). To mitigate these coordination problems, GAO indicated that it was “making several recommendations aimed at improving [MMS’s] royalty IT system and royalty collection and verification processes” (Government Accountability Office 2008, p. 5).

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 Royalty in Kind group only intensified Congress’ desire to reform MMS during the first decade of the 21st century. As described in Figure 3 below which shows a timeline of proposals to
revise MMS’s organizational structure as well as the broader organization surrounding it, prior to the April 20 explosion, various bills were introduced in Congress with the goal of addressing through restructuring MMS’s revenue collection problems and the associated coordination issues between MMS and BLM. Moreover, no less 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 MMS’ roles in collecting oil and gas revenue and managing offshore development (see, e.g., Deep Ocean Energy Resources Act of 2008 2008). Moreover, as the timeline suggests, for those bills that sought to reform MMS by redesigning or repositioning it in the larger organization of the federal government prior to the onset of the spill, none proposed breaking up MMS into its component parts.

Figure 3 – Timeline of Select Congressional Bills Proposing Reorganization of MMS and Related Functions (2008 – 2012)

Notes: Timeline tracks all 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.
The Clean, Affordable and Reliable Energy Act and the Minerals Management 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 ongoing problems at MMS, the second set of proposals attempted to directly address the coordination issues described by GAO, OIG, the Subcommittee on Royalty Management, and Congress that were plaguing Revenue Management’s ongoing operations. In September 2008, Senator 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, p. 1). By creating an independent agency called the Office of the Federal Oil and Gas Permit Coordinator, the reorganization would both “promote process streamlining” and eliminate “duplication of effort” by tasking the office to more formally coordinate BLM and MMS activities (US House of Representatives 7032 2008, p. 1).

While 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 an agency to be called the Office of Federal Energy and Minerals Leasing. In a hearing before the House Committee on Natural Resources, the bill’s sponsor 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, p. 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 respond to the long history of perceived failure in royalty collection. In fact, the proposed reorganization was fully in the spirit of what GAO had hoped for when MMS was originally created in 1982. Thus, like Senator Barton’s earlier 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 well-known and long-standing impediment for the federal government’s oil and gas management program.

Examining the Disbanding of MMS

At a press conference on May 27, 2010—a little over one month after the onset of the spill—President Obama announced a series of reforms to address growing criticism that his administration was not in control of the spill which was quickly spiraling out of control. Fundamental to those reforms was the decision that MMS must be disbanded. As President Obama explained, following the first Inspector General communication describing the unethical activities within the Revenue Management group:

Secretary Salazar immediately took steps to clean up that corruption. But this oil spill has made clear that more reforms are needed. For years, there has been a scandalously close relationship between oil companies and the agency regulates them. 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
In effect, BOEM inherited Offshore Energy’s leasing and resource evaluation functions, BSEE inherited regulatory oversight from Offshore Energy, and MMS’s Revenue Management group became known as ONRR. In the accompanying press release describing the rationale for MMS’s breakup, Secretary Salazar reiterated President Obama’s comments, noting that MMS “has three distinct and conflicting missions that—for the benefit of effective enforcement, energy development, and revenue collection—must be divided” (Office of the Secretary of the Interior 2010).

On the surface, this action 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 to increase tax collections. 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. Moreover, while the narrative describing MMS’s conflicts of interest was largely absent from discussions of MMS’s issues prior to the spill, it was generally supported by Congress and a larger set of commentators with the onset of the disaster (Flournoy et al. 2010, Forbis 2011, Honigsberg 2011, National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling 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 made it difficult for the agency to fulfill its role as regulator, as doing so effectively would limit offshore development. Thus, in restricting MMS’s ability from the outset to regulate effectively, the agency readily became a partner of industry as
the two were never really at cross-purposes (Honigsberg 2011). However, conflict was not only present between the offshore management and revenue collection groups. It could also be identified within the management group itself. Divided into leasing and offshore operations, the first would oversee development and the second regulation. In the same way that revenue collection stymied regulation, having MMS manage offshore development further weakened its impetus to engage in effective regulation of offshore oil and gas activities, 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 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 described in the timeline, only one, the Oil Spill Prevention Act introduced by Congressman Buchanan in June 2010, intended to retain the revenue collection, leasing, and regulatory oversight functions in one organization. Although, for example, 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 as well. The bills supported 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 in July 2010, stated, “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, Section 305).
Yet, while the disbanding of MMS appeared on the surface to both make dramatic changes to the government oil and gas infrastructure and diverge substantially from pre-spill proposals, in its implementation, the reorganization was much less so. In a report submitted by Secretary Salazar to Congress on July 14, 2010, two months after his announcement of the breakup, he described the implementation plan associated with his decision to divide MMS into three organizations (Department of the Interior 2010). In planning for the transitions, the document highlighted the divide between Offshore Energy and Revenue Management, noting, “The Office of Natural Resources Revenue can be transitioned most quickly and will begin operations on October 1, 2010, with the transfer of the largely intact Minerals Revenue Management function” (Department of the Interior 2010, p. 4). On the other hand, the report explained that the “creation of the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement will be more complex. The two Bureaus will be created from a single bureau in which functions and process are tightly interconnected, making the separation complicated and demanding” (Department of the Interior 2010, p. 6). The document called for six months of planning, followed by a phased implementation which only resulted in the actual separation of the two functions in October 2011, almost a year and a half after the plan was first introduced. Even then, the recognition remained that “close program coordination” is necessary between the two organizations to “maintain a functioning and effective process” (Department of the Interior 2010, p. 11).

Salazar’s report affirms how disconnected Offshore Energy and Revenue Management were. The extent to which the evaluation, leasing, and regulatory functions, all housed in Offshore Energy, relied on each other to operate properly presented a stark contrast to the independence maintained between Offshore Energy and Revenue Management, an independence that was
embedded in MMS’s creation. The fact that Revenue Management was a free-standing unit within MMS would allow it to transition within two and a half months of the initial implementation plan, a deadline which Interior easily met. However, 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 as a result of the reorganization. As described, both the 2007 Subcommittee on Royalty Management and 2008 GAO reports along with a plethora of hearings had identified that the two groups were already operating as two entities. In formalizing the separation and renaming the Revenue Management group, the division did little to change how the organizations already effectively interacted.

Yet, 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 (Government Accountability Office 2012). In addition to determining that both would continue to use the same IT system, BOEM and BSEE each retained their headquarters in the same New Orleans office which had housed them both prior to the split. Moreover, employees of the newly formed agencies reiterated 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” (Government Accountability Office 2012, p. 27). The report further indicated, “Interior officials…stated that the initial reorganization will not significantly change the bureau’s work processes” (Government Accountability Office 2012, p. 27). Finally, 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 upheld Salazar’s mandate in his 2010 plan that the development and regulation missions would need to continue to interact quite closely (Department of the Interior 2010). As a consequence, on the one hand, Salazar’s Order 3299 simply formalized the division between Revenue Management and Offshore Energy that already existed and that had plagued MMS’s ability to effectively audit oil and gas company tax remittances from its creation. On the other hand, the process of allocating the regulatory and development functions to BSEE and BOEM included a plethora of provisions to allow them to continue as work as closely as they did while 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 (Edelman 1967, Mayhew 1974). As described, alternative reorganizational proposals, embodied in bills at various stages in Congress, existed prior to the spill. Each addressed longstanding coordination failures that existed both between MMS and BLM as well as within MMS itself, failures which were instrumental in explaining Interior’s difficulties in collecting offshore and onshore tax revenue. By either making MMS an independent agency, adding additional organizational layers to encourage collaboration, or consolidating additional functions with the agency, each of these reforms at a minimum retained MMS’s existing responsibilities and at a maximum provided it with additional functions. 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.
On the other hand, a reorganization which disbanded MMS conveyed a strong message that significant action had been taken, a particularly important aim given the criticism that the Obama administration was being subjected to for its lack urgency in reacting to the spill. Moreover, as described by GAO after the restructuring was complete, similar reforms had been enacted with success elsewhere and so could be defended as a legitimate response. As one senior Interior official noted, “Separating resource management from the safety and environmental functions had been a best practice used by some European nations such as Norway” (Government Accountability Office 2012, p. 25). Thus, the decision to separate MMS into its component parts was swift, dramatic, and outwardly responsive.

Even so, in implementation, the reform itself did little to change existing practices, retaining both the strengths and limitations of the particular 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 interplay between how the government leases offshore lands, regulates those same leases, and collects revenue is much the same as it was before MMS’s breakup. In addition to the fact that MMS’s revenue collection and offshore management missions were already effectively divided prior to the official split, the process by which BSEE and BOEM were created took great pains to ensure these agencies could operate as they did when they jointly 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, as scholars of the policy process have long explained, must be both in the existing stream of possibilities and reasonable (Baumgartner & 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 those same reforms in the works prior to the spill which intended to resolve enduring impediments in how Interior managed revenue collection. 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, p. 2).

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 which reflected persistent congressional interest in oil and gas revenue reform. The CLEAR Act amendment which passed the House in July 2010 presents one example. Although, as Congressman Rahall explained in associated testimony before the House Committee on Natural Resources (Committee on Natural Resources 2010), the amendment represented an effort to bolster Secretary Salazar’s administrative action through statutory action, unlike that action, the CLEAR 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).

In contrast to the persistence interest in royalty reform, despite the dramatic and vivid images of oil soaked birds and tar balls washing on shore 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 where 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, 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 interest in energy security and economic growth relative to environmental protection prior to the spill was interrupted only temporarily. Thus, unlike the continuous attention given to revenue collection at least within Congress, renewed interest in regulatory oversight and environmental stewardship lasted only a short time.

Given the ephemeral nature of the push to take environmental safety more seriously, symbolic action—such as a decision enact a reorganization which did little to move the infrastructure in a direction that could not be easily reversed—offered value. In providing 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 U.S. energy independence when the status quo returned. Yet, this may not be a bad outcome. Although tragedies like the Gulf oil spill are incredibly destructive and potentially debilitating, dramatic reform enacted during those moments can have costs (Carrigan & Coglianese 2012). Moving too far one way or the other in response to a dramatic—but temporary—reshaping of attitudes toward risk is not necessarily the best option.

A reorganization—as 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
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, p. 24). As the analysis has demonstrated, organizational decisions can have real consequences and, furthermore, involve real tradeoffs. By enacting reform that did not truly respond to the transitory public uproar and, thus, 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 Interior’s revenue collection program over at least the last sixty years is any indicator, ensuring that it collects all federal oil and gas taxes due appears to be one of the government’s top priorities. In the context of this assertion, the largely symbolic disbanding of MMS in the wake of 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 simply 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 response, a possibility which is not unusual in disaster (Carrigan & Coglianese 2012). 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 return to the fore. Such actions like the Interior organizational response which serve as
placeholders can delay real action until the right action—guided by both introspection and attention to true public preferences—is clearly understood.

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