

“Minerals Management Service and *Deepwater Horizon*: What Role Should Capture Play?”

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Abstract

At first glance, the demise of the Minerals Management Service (MMS) presents perhaps the clearest case of regulatory capture in recent history. Not only did behavior at the agency provide rare public examples of the types of activities including bribery and excessive gift exchange that capture theorists have predicted does occur in poorly functioning regulatory relationships, allegations of drug use and sexual misconduct involving MMS employees and their industry counterparts reveals actions that extend beyond those that even captured agencies typically display. Still, closer examination of the circumstances surrounding MMS raises questions that challenge us both to be precise regarding how the mechanisms commonly cited might have contributed to the oil and gas industry’s capture of MMS and to critically examine the role that capture might have played in the Gulf oil spill. A narrow focus on capture as the primary cause of the *Deepwater Horizon* tragedy can limit the search for deeper reasons, leading to solutions that actually exacerbate other important difficulties that beset a regulator. In particular, citing conflicts of interest within MMS, the Department of the Interior’s decision to disband the agency, splitting its planning, regulatory, and revenue collection functions into three separate organizations one month after the oil spill may reflect such thinking. A closer examination of the external political and social forces affecting MMS’s operations as well as the agency’s organizational characteristics implies the reorganization will not necessarily improve how the government manages oil and gas operations on federal offshore lands.

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As this volume so aptly illustrates, regulatory capture—which is described by Daniel Carpenter and David Moss (2011) in chapter one of this book as a condition whereby the regulator begins to regulate for the benefit of the industry as opposed to the public interest—has occupied the fascination of researchers from a wide variety of academic fields for a long time (Huntington 1952, Bernstein 1955, Stigler 1971, Peltzman 1976). However, in terms of salient examples, at first glance the plight of the Minerals Management Service (MMS), a now defunct agency of the Department of the Interior that employed roughly 1,600 federal workers (Minerals Management Service 2010), presents perhaps the clearest case of capture in recent history. Not only did behavior at the agency provide rare public evidence of the types of activities including bribery and excessive gift exchange that theorists have predicted does occur with captured regulatory relationships, allegations of drug use and sexual misconduct involving MMS employees and their industry counterparts reveals actions that extend beyond those that even captured agencies typically display. Given the organization faced a well-organized lobby that had little opposition and which also functioned as the regulated industry, the situation fits the conditions for capture quite well. Evidence of MMS's failure is tangible given its association with the April 2010 *Deepwater Horizon* oil rig fire and subsequent spill that deposited roughly 4.9 million barrels of oil into the Gulf of Mexico and has historians debating its place on the list of biggest environmental disasters in U.S. history (Farenthold & Mui 2010, United States Geological Survey 2010).

With these facts in hand, it is not surprising that a large number of observers regard capture as an important factor in explaining both the oil spill and the role of MMS in facilitating it. As a result, most of the attention has been on why MMS was captured and what we should do about it,

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relative to serious consideration of both the extent to which the agency was captured and how important this factor is in understanding why the oil spill occurred. As such, two popular theories have surfaced to explain the apparent failure of MMS, one emphasizing the role of the agency's outwardly conflicting functions and the other focusing on the cooperative stance adopted by the agency towards its regulated industry. In fact, similar thinking has contributed to Secretary of the Interior Salazar's announcement on May 19, 2010 to disband the agency, only one month after the initial explosion on the *Deepwater Horizon* drill ship. Citing conflicts of interest in fulfilling its functions to collect revenue, provide regulatory oversight, and facilitate energy development, the Secretary outlined a plan to reorganize MMS by separating these functions into three discrete organizations within Interior (Department of the Interior 2010).

Still, closer examination of the circumstances surrounding MMS raises questions that force us to be precise about how the mechanisms commonly cited might have contributed to the oil and gas industry's capture of MMS. Further, in contrast to initial impressions, a review of the historical evidence raises uncertainty regarding both the role that capture might have played in the Gulf oil spill as well as the extent to which MMS was in fact captured. This does not suggest that one should discount the obvious evidence of inappropriate and unethical activity by some MMS employees. Such behavior is clearly wrong and, to the degree it favors the regulated industry, can be associated with a captured agency. However, inspection reveals the need to be careful in focusing only on the set of newsworthy events to characterize the behavior of the entire organization, both currently and historically. Further, overemphasizing capture and the vague connotations associated with the concept underscores the potential for such overarching claims to obscure plausible alternative explanations, which can lead to potentially misguided policy responses

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that neither correct existing problems nor properly account for unintended side effects associated with their implementation. In short, focusing on organizational characteristics such as MMS's conflicting functions and cooperative regulatory approach solely from the capture lens precludes the possibility that such characteristics may have cause and effect relationships quite unrelated to capture. Although it may well explain some portion of what happened, focusing solely on capture does not reveal the whole story.

The Basis for the Oil and Gas Industry's Capture of MMS

The primary and most direct evidence for the oil and gas industry's capture of MMS is derived from two Department of the Interior Office of Inspector General (OIG) communications released in September 2008 and May 2010 respectively (Devaney 2008, Kendall 2010b). The first, summarizing the results of three separate investigations, focused primarily on the activities between 2002 and 2006 of members of the Royalty in Kind (RIK) Program within MMS's Minerals Revenue Management (Revenue Management) division. The RIK Program was an initiative designed to allow MMS to receive royalty revenue from industry by taking possession of a portion of the oil and gas produced rather than the monetary equivalent and subsequently selling that oil on the open market (Devaney 2008, Office of the Inspector General 2008c, p. 2). The memorandum and the associated investigative reports detail the extent to which nine of the nineteen implicated employees accepted industry gifts in the form of unreimbursed meals, parties, trips, and attendance at events such as golf tournaments. Although OIG noted that none were individually large, these individuals received gifts frequently and often did not report them internally (Devaney 2008, p. 2; Office of the Inspector General 2008c, p. 5). Further, two of the cited employees admitted to "brief

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sexual relationships” with industry contacts and confided that the industry events often included alcohol consumption (Office of the Inspector General 2008c, p. 8). OIG also uncovered evidence of drug abuse by some members of the group as well as outside employment that was not reported on internal disclosure forms. In one case, the individual appears to have deliberately withheld his involvement in a firm that consulted to oil and gas companies interacting with the RIK Program (Office of the Inspector General 2008b). Finally, although not necessarily evidence of capture but still unethical, one report describes how three senior officials in the broader Revenue Management division “remained calculatedly ignorant of the rules governing post-employment restrictions, conflicts of interest and Federal Acquisition Regulations” in awarding two consulting contracts to two of these employees after they retired from MMS (Devaney 2008, p. 2; Office of the Inspector General 2008a).

The other memorandum from May 2010 summarizes the results of an investigation of the Lake Charles, LA district office, one of five offices charged with overseeing oil and gas operations in the Gulf of Mexico (Kendall 2010b). The communication and associated report describes the extent to which MMS employees in the office accepted gifts from offshore operators such as lunches and admission to sporting events in addition to participating in events with industry personnel including golf outings, hunting and fishing trips, and skeet-shooting contests (Kendall 2010b, Office of the Inspector General 2010b). When asked about the events, one employee noted that “[a]lmost all of our inspectors have worked for oil companies out on these same platforms. They grew up in the same towns...Some of these people, they’ve been friends with all their life” (Office of the Inspector General 2010b, p. 3). Although the earliest reference to such activities is in 2000, they ceased in 2007 after MMS’s Regional Director for the Gulf in New Orleans alleged that

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his Regional Supervisor had accepted fishing and hunting trips from an offshore drilling operator, prompting the Supervisor to issue a letter supporting a \$90 million insurance claim by the company for a drilling rig that sunk during Hurricane Rita (Office of the Inspector General 2010a, Office of the Inspector General 2010b). In addition to accepting gifts, a confidential source alleged that some MMS inspectors allowed companies to fill out inspection forms although OIG examined a number of reports and did not find evidence to support that allegation (Office of the Inspector General 2010b, p. 7). Finally, the report chronicles a series of e-mail exchanges between a former inspector and an employee of an offshore operator discussing his potential employment at the company. During this period, the inspector was responsible for overseeing operations of this firm, a conflict that appears to have affected the extent to which he was willing to cite the firm for noncompliance (Office of the Inspector General 2010b, p. 7).

In addition to the OIG investigations, within weeks of the initial explosion and fire on *Deepwater Horizon*, allegations that agency scientists were not able to exert enough influence over some recent MMS decisions to lease offshore properties began to surface as well (Eilperin 2010, Urbina 2010b). Although similar accusations were levied at Interior more broadly, MMS was singled out in particular as an agency where such decisions lacked adequate consideration of possible environmental impacts. As Deputy Interior Secretary Hayes indicated in an interview, “[t]here are certainly historical issues there [at MMS] that we’re interested in addressing and reforming. I think we’re in the process of getting a cultural change in the scientific part of MMS. We’re making sure the science is not a means to an end, but an independent input to the process” (Eilperin 2010). Furthermore, one news article reported that some current and former staff scientists, on condition of anonymity, contended that MMS managers “routinely” overruled them

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when their studies highlighted environmental risks (Urbina 2010b). As one scientist suggested, “You simply are not allowed to conclude that the drilling will have an impact” (Urbina 2010b).

Given the nature of these and especially the OIG findings, it is not surprising that many observers have railed MMS as a clear case of a captured agency. Further, these assertions have originated from a broad set of commentators. Media outlets including the New York Times and Washington Post have chronicled the exploits of MMS, citing its “partnership” and overly “cozy ties to industry” as important factors in explaining MMS’s inadequate performance of its regulatory duties (Eilperin & Higham 2010, Urbina 2010a). Referencing these stories, research institutions as ideologically varied as the Center for Progressive Reform and CATO, while offering substantially different remedies for the problem, have nonetheless agreed that MMS presents a clear example of a captured agency (CATO Institute 2010, Flournoy et al. 2010). Political opinions are similarly unified in their view of MMS. This is exemplified in President Obama’s remark during his May 2010 press conference temporarily halting deepwater drilling that “the oil industry’s cozy and sometime corrupt relationship with government regulators meant little or no regulation at all” (Obama 2010c). In addition to the literally dozens of House and Senate hearings on the *Deepwater Horizon* oil spill evaluating the role of MMS in the disaster, the OIG allegations even prompted the Senate Judiciary Committee to hold a hearing directly addressing capture, entitled “Protecting the Public Interest: Understanding the Threat of Agency Capture” (Subcommittee on Administrative Oversight and the Courts of the Committee on the Judiciary 2010).

The many commissions tasked to investigate the accident have also often reached the same conclusion. When asked to comment on the Interior’s reorganization plan for the agency, a co-chairman of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling

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commented that MMS was “overly susceptible to industry influence, certainly outgunned and possibly captured” (Peters 2010). Perhaps even more telling, during hearings conducted by the National Commission, former MMS Director Elizabeth Birnbaum described the “close connection” that exists between the agency’s inspectors and oil and gas industry employees (Birnbaum 2010a). Secretary of the Interior Salazar echoed Birnbaum’s comments in reacting to the aforementioned OIG report on activities at the Lake Charles office, suggesting it was “further evidence of the cozy relationship between some elements of MMS and the oil and gas industry” (Office of the Secretary of the Interior 2010a).

Given the degree of consensus associated with the notion that the oil and gas industry had captured MMS, commentators have turned their attention to identifying why MMS was susceptible to capture. These investigations have tended to focus on two aspects of MMS operations that contributed to its failure as a regulator. The first relates to the collaborative stance toward regulatory enforcement by MMS. Critics have suggested that the fact that MMS engaged the industry to jointly develop standards for offshore operations positioned it as an industry partner rather than a regulator with its own independently informed views (Eilperin & Higham 2010). This position is crystallized in Congressman Waxman’s reference to the limited role of Obama’s reforms to change “the laissez-faire approach of MMS in regulating the BP well” (Waxman 2010). MMS’s laissez-faire style is also a fundamental concern for those who bemoan the fact that the agency left some of its standards voluntary, undercutting their effectiveness (National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling 2011, pp. 71-72). For example, although it began discussions in 1991 with the oil and gas industry over the need for operators to have management systems in place to direct various operational activities, the resulting American

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Petroleum Institute Recommended Practices, RP75, were only made mandatory after the agency's breakup in 2010 (Rosenbusch 2001, Office of Public Affairs 2010).

Many view such examples of MMS's collaborative approach to regulating as a precursor to its capture. At some point, this stance caused the agency to become captive to its regulated entities rather than its overseer. Although the direction of causation—whether collaboration caused capture or vice versa—is somewhat unclear, the implication remains that a more adversarial regulatory body would have limited the potential for a spill like that associated with the *Deepwater Horizon* explosion (Eilperin & Higham 2010, Neill & Morris 2011). At a recent talk at the International Offshore Oil and Gas Law Conference, Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) Director Bromwich stressed the need for the successor to MMS to “strike a new balance that fully involves industry in the regulatory process but that recognizes the need...to exercise independent judgment” (Office of Public Affairs 2011).

The second explanation for MMS's capture centers on its charge to fulfill multiple and generally regarded as conflicting functions (Bagley 2010). When it was created in 1982 by then Secretary of the Interior James Watt, MMS was tasked with the role of collecting and distributing the revenue generated from onshore and offshore leases of federal property to companies who used these lands to extract oil and natural gas for private sale (Durant 1992). However, Secretary Watt simultaneously entrusted the agency with overseeing the orderly development and regulation of offshore oil and gas production on the Outer Continental Shelf (OCS), which included the Atlantic and Pacific coasts as well as the waters of the Gulf and those surrounding Alaska (Durant 1992).

Many commentators have pointed to this design issue as one which laid the foundation for MMS's capture (Flournoy et al. 2010, Forbis 2011, Honigsberg 2011). Specifically, by structuring

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the agency such that it was tasked to collect revenue—and given that revenue could not be collected without production—the decision to place both functions within one agency made it difficult for MMS to fulfill its role as regulator, as doing so effectively would limit offshore development and resulting production. Thus, in restricting MMS’s ability from the outset to regulate effectively, the agency readily became captured by the industry as the two were never really at cross-purposes anyway (Honigsberg 2011). However, to make matters worse, the agency was also allowed to offset a substantial portion of its budget appropriations using the revenue it collected from oil and gas production on federal lands (Flournoy et al. 2010). As a result, to the extent it accomplished its mission as regulator, it limited its own budget. However, conflict was not only present between the offshore management and revenue collection groups. It could also be identified within the management group as well. 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.

In addition to its theoretical relevance, this view of MMS has been accompanied by substantial practical implications as well. As described, it prompted Secretary Salazar’s Order 3299 which separated the components of MMS into three agencies, one focused only on collecting revenue, another on offshore management, and the third on safety and environmental protection (Salazar 2010). Accompanying the change, Salazar noted 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 2010b). Even so, some do not think that such reforms are enough, advocating more radical reorganizations, including

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moving revenue collection to a separate department and dividing the tasks of MMS even more finely to create additional independent bureaucratic units (Flournoy et al. 2010).

Interior Deficiencies and Organizational Development at MMS

In this and the following five sections, the discussion turns to an examination of the political and operational history of MMS, starting with its creation in 1982 and following its progress through the beginning of 2010 before the disaster. Even so, the review is centered less on the progression of MMS over time and more on its development with regard to several broad themes. These include recognizing that MMS was (1) created in response to coordination failures among existing Interior agencies; (2) organized by separating its core missions, revenue collection and offshore energy management, into two independent units; (3) embroiled from its inception in difficulties associated with revenue collection that were matched by curious trends in agency funding; (4) facing a broad shift in political and public policy preferences over time; and (5) operating in a radically changing offshore environment with emerging technologies. Collectively, these themes reveal that MMS's original organizational design had a purpose, that MMS's mixed mission may have had less of a role in its capture than originally thought, and that, even to the extent MMS was captured, this feature may not be of fundamental importance in understanding the historical progression of offshore oil and gas policy in the U.S. Given that the purpose of MMS's recent disbanding is to mitigate its perceived organizational inadequacies, this review raises questions about the wisdom of that choice.

MMS was created primarily as a result of the recommendations of the Commission on Fiscal Accountability of the Nation's Energy Resources, otherwise known as the Linowes

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Commission, which was an independent panel formed in 1981 to investigate the performance of the U.S. Geological Survey (USGS) as Interior minerals revenue collector (Linowes 1998, Hogue 2010). 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 Accountability Office (GAO) as well as OIG for its inability to perform these roles adequately (Commission on Fiscal Accountability of the Nation's Energy Resources 1982, Minerals Management Service 1995). 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's 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 as a result of a bill introduced by Representative Markey of Massachusetts in December 1981 (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

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amounts in a timely manner” (Federal Oil and Gas Royalty Management Act of 1982 1983, Section 101). Further, FOGPMA required yearly inspections of those leases producing “significant quantities of oil or gas in any year” or having “a history of noncompliance” (Federal Oil and Gas Royalty Management Act of 1982 1983, Section 101).

Against this troubled backdrop, Secretary Watt established MMS in January 1982 through the first of a series of Secretarial Orders and Amendments during 1982 and the beginning of 1983, moving royalty collection from the Conservation Division of USGS to the new organization (Department of the Interior 2008). Later in 1982, the Secretary further transitioned all offshore pre-leasing and lease management responsibilities to MMS from the Bureau of Land Management (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 became responsible for the same components for offshore energy as well as revenue collection for both onshore and offshore leases (Durant 1992).

Interestingly, although not directly referenced in the Linowes Commission report, consolidation of offshore functions into MMS was actually in the spirit of what the 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

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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). The fact that BLM had managed offshore pre-lease activities as well as initial sales while USGS had 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. Thus, it is not surprising that the House Appropriations Committee supported the MMS reorganization, indicating in its report that, “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).

To implement its dual charge to collect revenue associated with both onshore and offshore leasing as well as manage offshore oil and gas development, beyond centralizing some of the agency’s general administrative functions, MMS was organized specifically around these two functions from the beginning (Minerals Management Service 1984, Bonora & Gallagher 2001). 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). These functions were

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collectively charged with implementing FOGRMA, which had attempted to set a course for improved oil and gas revenue collection. While it maintained field offices for audit purposes in Dallas, Houston, and Tulsa, 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 1993b, p. 108).

The second function labeled Outer Continental Shelf Lands, and later renamed Offshore Energy and Minerals Management, included MMS's Resource Evaluation, Leasing and Environmental, and Regulatory programs (Minerals Management Service 1984). Although each had a different responsibility corresponding roughly to its timing in the process of developing offshore lands, these three subactivities were held tightly together by their respective roles in carrying out the Outer Continental Shelf Lands Act of 1953 (OCSLA) which established federal jurisdiction over submerged lands and set out basic procedures for leasing these lands (Outer Continental Shelf Lands Act 1953). The Act further described the need to balance the objectives of development to support national economic and energy policy goals while providing for the protection of human, marine, and coastal environments. As a result of their joint charge to carry out the OCSLA, 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 also "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

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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, in addition to 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, a reality further exacerbated by the decision to close the Atlantic office following President Bush’s 1990 declaration of a moratorium on drilling in the region after the Exxon Valdez oil spill (Minerals Management Service 1995).

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 broad group. In addition, although USGS located royalty 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 1 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 1 – Percentage of MMS Employees by Category in Colorado and Louisiana in

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September 2008

Employment Category	Colorado	Louisiana
Biological, Physical and Social Sciences	4.0%	62.5%
Engineering and Investigation	4.9%	69.3%
Accounting and Budget	56.3%	0.4%
Business and Industry	73.5%	3.7%
Administration and Technology	18.6%	31.9%
Total	27.4%	33.8%

Notes: Percentages do not sum horizontally to 100% because MMS maintained offices in other locations as well, most notably Virginia and Washington, DC. Source: Office of Personnel Management's FedScope data.

In addition to pointing out the geographical separation of the two groups, Table 1 further highlights how different the core functions associated with the two entities within MMS were. In fact, 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. Even a cursory review of recent job openings confirms the extent to which the functions of the two programs differed. As one might expect, whereas auditing and accounting

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positions in Lakewood required significant prior experience in accounting and a CPA or Certified Internal Auditor certificate, undergraduate and graduate degree requirements for those applying for positions on the OCS specified chemistry, engineering, biology, geology, and related fields (Bureau of Ocean Energy Management, Regulation, and Enforcement 2011a, 2011b, 2011c, 2011d; Office of the Secretary of the Interior 2011a, 2011b).

Given the vast differences in functions and backgrounds between operations personnel in the two groups as well as their geographical dispersion, it is not 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 mineral 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 prospectively recommending improvements to increase the efficacy of mineral collections, the Subcommittee noted the particular complications associated with having three bureaus involved in onshore minerals revenue collection. As both the Bureau of Indian Affairs (BIA) and BLM were responsible for relaying data on onshore production to the 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 emphasizing the need to improve coordination among the three agencies, the Committee also noted 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

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operations” (Subcommittee on Royalty Management 2007, pp. 21, 26). Somewhat surprisingly, the Committee also described how relaying data between the Offshore Energy and Revenue Management functions encountered similar problems, as computer systems were not completely linked within MMS. The report went on to conclude, “[i]ncreased 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 some of the difficulties MMS was having internally 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 that the royalty payment was, in fact, correct or incorrect (Government Accountability Office 2008, pp. 10-11). To mitigate these coordination problems, GAO suggested 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).

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Situating Capture in the Context of MMS's Creation and Development

Even so, the extent to which Offshore Energy and Revenue Management operated independently might be best revealed in their recent separation through Secretary Salazar's aforementioned Order 3299. A report submitted by Salazar to Congress on July 14, 2010, two months after the announcement, describes both the rationale for and implementation plan associated with the Secretary's decision to divide MMS into three organizations, the Office of Natural Resources Revenue, the Bureau of Ocean Energy Management, and the Bureau of Safety and Environmental Enforcement (Department of the Interior 2010). In planning for the transitions, the document highlights the division between Offshore Energy and Revenue Management, noting that 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 explains 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). In further detailing the plan, the document called for six months of planning, followed by a phased implementation continuing until at least the end of December 2012. In this way, 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.

Beyond revealing the extent of the division between Offshore Energy and Revenue

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Management, examining the nuances of the implementation plan has implications for evaluating the decision to reorganize as well. Recounting the impetus for the creation of MMS, the documented ease with which the Revenue Management function can transition relative to the difficulties of dividing Offshore Energy should not be surprising. MMS was created both because USGS's integrated structure did not allow it to develop sufficient expertise in revenue collection and because the sharp division between USGS and BLM caused infighting and neglect in managing offshore oil and gas production. Of course, MMS's organization was not without cost as revealed by the December 2007 Subcommittee on Royalty Management and September 2008 GAO reports revealing that even Revenue Management and Offshore Energy had some difficulty harmonizing their activities to the extent necessary.

Thus, evaluating the order to divide MMS into three entities which returns the offshore energy development functions to a structure which closely resembles the heavily criticized system prior to MMS's creation implies that the benefits of doing so must be weighed against the previously demonstrated failings of that structure. Further, more formally dividing the revenue collection and offshore operations functions by creating separate bureaus can be expected to expose offshore royalty collection to the same difficulties already evident with onshore royalty collection as displayed through the interactions of MMS, BLM, and BIA, thus exacerbating the less extensive coordination issues already evident within MMS. As the December 2007 report suggests, despite the problems within MMS, relative to onshore royalty management, "[c]oordination of activities associated with managing offshore oil and gas leases is more straightforward because only a single bureau [MMS] is involved" (Subcommittee on Royalty Management 2007, p. 82). As a result, the Subcommittee as well as GAO recommended computer system enhancements and more formal

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organizational structures to facilitate improved intra and inter agency coordination (Subcommittee on Royalty Management 2007, Government Accountability Office 2008).

Such a revelation underscores the importance of carefully evaluating the oil and gas industry's capture of MMS. In addition to the costs in terms of financial resources directed to and employee dislocations associated with implementing the reorganization, the demonstrated problems in coordinating the activities of multiple bureaus accentuate the importance that the benefits of increased independence, particularly in oversight, are real. President Obama's announcement of the restructuring demonstrates the central role capture plays in driving the reform. As suggested during his May 2010 press conference, following the first Inspector General report, "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 that 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). Given the costs, it seems that one should be reasonably confident of MMS's capture, that this capture played an important role in the oil spill, and that the remedy will solve the problem. In the sections that follow, these issues are further examined.

Congressional Oversight and MMS Appropriations

The Department of the Interior's 1982 reorganization which created MMS appeared on the surface to divert political attention away from royalty management for a short period. In fact, Revenue Management was not the subject of a single oversight hearing independent of those associated with setting MMS's budget in 1983 and 1984. In contrast, Offshore Energy was the

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focus of least 12 congressional hearings in which personnel from MMS appeared during that same two year span. The issues associated with the hearings ranged from considering amendments to the Coastal Zone Management Act to ensure federal agencies acted in ways consistent with state coastal zone management plans to the potential environmental impacts associated with possible offshore production in Georges Bank, located in the North Atlantic between Cape Cod and Nova Scotia (Committee on Commerce, Science, and Transportation 1984, Subcommittee on Oversight and Investigations of the Committee on the Interior and Insular Affairs 1984). In addition, during this same period, the House Committee on Merchant Marine and Fisheries held a series of hearings on offshore regulatory issues which included reviewing procedures for emergency evacuations as well as discussing safety and training requirements for offshore drilling rigs (Subcommittee on Panama Canal/Outer Continental Shelf of the Committee on Merchant Marine and Fisheries 1983, 1984).

However, the apparent congressional focus on Offshore Energy veiled the investigations by GAO and OIG that were already in process at the time. By April 1985, when MMS appeared in the 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

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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, revealing \$59,000 in additional monies owed to the individual Indian land owners (Subcommittee of the Committee on Government Operations 1985, p. 116). 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 the Revenue Management group 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 over onshore royalty collection and distribution. Equally as important, the investigations also identified the need for acquiring a new mainframe computer system as well as installing remote terminals to provide Indian tribes and states with greater data access.

However, these investigations would turn out to represent only the beginning of a series of congressional inquiries into the activities of Revenue Management over the next 25 years.

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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. For example, as Table 2 below reflects, many hearings held between 1986 and 1993 emphasized environmental and regulatory issues associated with oil and gas operations on the OCS, but this attention was primarily driven by the Exxon Valdez oil spill in March 1989—an accident in which an oil tanker as opposed to a platform or drill ship had deposited over 250,000 barrels of oil into the waters off the southern coast of Alaska (Skinner & Reilly 1989). As a result, the Coast Guard and not MMS was the primary government agency with regulatory authority (Skinner & Reilly 1989, Subcommittee on Water, Power and Offshore Energy Resources of the Committee on Interior and Insular Affairs 1989). The Offshore Energy 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; Minerals Management Service 1992, pp. 91-92). Even so, the hearings were not driven by perceived faults in Offshore Energy’s performance.

Table 2 – Subject Matter of Congressional Hearings in Which MMS Personnel Testified by Function (1982 – 2009)

Period	Evaluation	Leasing	Environment	Regulation	Revenue	Total
1982-1985	14	12	14	5	8	25
1986-1989	7	6	12	10	6	22
1990-1993	5	7	12	6	5	20
1994-1997	4	0	3	2	9	16

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1998-2001	2	3	2	0	5	9
2002-2005	6	2	3	0	1	8
2006-2009	10	9	8	0	10	18

Notes: Does not include budget hearings. The sum of subject counts can exceed the total because hearings can involve multiple functions. Source: Searches in LexisNexis 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 actual testimony was reviewed as well.

In contrast, in 1989, officials from Revenue Management again testified in front of Congress about additional allegations of 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, "[a]s 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

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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."

Similar to the first hearing on Indian royalties in 1985, subsequent investigations were often accompanied by reform efforts by Revenue Management, including reorganizations. From 1992 through 2000, the group underwent two major and at least three minor reorganizations. In particular, with congressional approval in October 1992, Revenue Management, which had been previously organized around the functions Collections, Compliance, and Systems, completed the first of these major restructurings by dividing these work units (Minerals Management Service 1993b, p. 7). Collections were folded into Operations and Compliance; some portions of Compliance moved to Audit; and Systems was divided into parts that were moved into each of the new functions, Audit, Operations, and Compliance (Minerals Management Service 1993b, pp. 108-109). Even so, by spring of 1994, these three units were reorganized into two: Valuation and Operations as well as Compliance (Minerals Management Service 1995, p. 30). In addition, around the same time, Revenue Management opened offices in Oklahoma and New Mexico to manage Indian royalty issues (Minerals Management Service 1995, p. 7). Later, with the 1996 Appropriations Bill, Congress directed Revenue Management to centralize administrative support functions such as budget reporting in its Program Services Office (Minerals Management Service 1996, p. 32, 139). In the following fiscal year, Revenue Management again revised its structure,

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centralizing Valuation and Operations with Compliance under one Deputy Director while at the same time combining two subdivisions and renaming another (Minerals Management 1997, p. 119). Finally, effective October 2000, Congress approved another major restructuring which created the Revenue and Operations as well as Compliance and Asset Management subactivities to better reflect “extensive changes to organizations and functional processes resulting from [Revenue Management’s] program-wide reengineering effort that began in FY 1996” (Minerals Management Service 2001, p. 22).

Somewhat counterintuitively, although MMS’s revenue group was under intense scrutiny, this oversight was not complemented by any overt actions by Congress or the president to discipline Revenue Management through budget cuts. In fact, Figure 1, which shows MMS’s real budget by function over the period, suggests exactly the opposite was occurring during the period. From fiscal years 1983 through 1992, Revenue Management’s real budget increased by 37%. Although it then stagnated and decreased somewhat through 1999, as the figure describes, this was followed by another dramatic increase in 2000 through 2002. In all, from 1983 to 2002, MMS saw its appropriations associated with its Revenue Management group increase by almost 50%. While this period was followed by a decline associated with the completion of projects to develop computer systems to both support the redesign “of virtually every aspect of [Revenue Management] operations” as well as the newly formed RIK program, throughout the bulk of the period, Royalty Management enjoyed substantial budget growth (Minerals Management Service 2002, p. 4; Minerals Management Service 2003, p. 219).

In direct contrast, during most of the same period, Offshore Energy’s budget was moving in the opposite direction. With the exception of a brief period in 1991 and 1992 where appropriations

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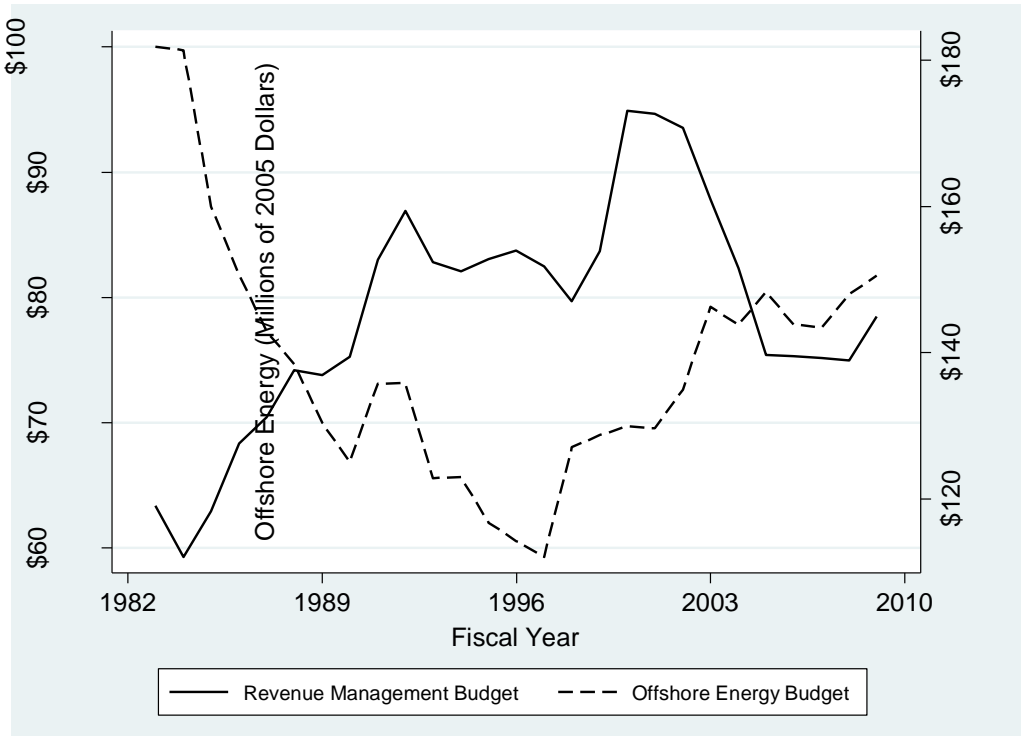
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for MMS's Offshore Energy functions increased in response to heightened environmental concerns associated with Exxon Valdez, the group's budget showed a steady decline through the mid 1990s. In total, the change amounted to a 38% decrease during the 15 year period ending in 1997. Further, these reductions, while more concentrated in the Resource Evaluation and Leasing and Environmental programs within Offshore Energy, significantly impacted the Regulatory program as well which experienced a 24% drop in congressional appropriations during the same timeframe. These declines were also associated with reductions in headcount. Although Offshore Energy employed almost 1,100 individuals in 1983, by 1997, staffing had been reduced by 22% to 853 (Minerals Management Service 1984, Minerals Management Service 1998). On the other hand, Revenue Management increased its personnel by 48% from 466 to 691 over the same interval.

**Figure 1 – MMS's Offshore Energy and Revenue Management Funding Levels
(1983 – 2009)**

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Notes: Actual budget amounts in millions of 2005 dollars. Does not include general administrative funding for tasks such as administrative support and executive direction. Source: Minerals Management Service Budget Justifications for fiscal years 1985 through 2011.

Closer inspection of the changes in Revenue Management appropriations relative to those associated with Offshore Energy reveals further evidence that Congress did not view budgetary decisions as a tool to discipline the perceived inadequacies in the former group’s performance. Table 3 below shows a differences in means test for relative changes in current and next fiscal year budgets associated with the Revenue Management group relative to the Offshore Energy group. The row Did Appear Before the Committee references years in which MMS appeared before the House Committee on Oversight and Government Reform (formerly the Committee on Government Operations) in response to revenue management issues, and Did Not Appear Before the Committee references years in which the agency did not appear. As the figure shows, in those years in which it

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did appear, Revenue Management enjoyed budget increases in that and the following year that were over \$9.3 million greater than the corresponding changes in appropriations targeted to Offshore Energy. In contrast, in those years in which MMS was not called by Oversight and Government Reform to testify regarding revenue problems, the relative increase in Revenue Management appropriations was not significantly different from zero. In other words, instead of lowering its budget in response to the problems it was having, Congress actually appears to have shifted more dollars to Revenue Management from Offshore Energy in an attempt to supply the revenue group with resources to deal with these problems. This observation is further bolstered by examining budget changes associated with the aforementioned major reorganizations of Revenue Management effective early in fiscal years 1993 and 2001. In the two fiscal years leading to the completion of each of these restructurings, Revenue Management’s budget increased by an average of \$3.3 million more than Offshore Energy’s budget. In the years in between, the revenue group enjoyed relative increases averaging only \$259,000 more than Offshore Energy.

Table 3 – MMS Relative Budget Changes and Appearances before the House Committee on Oversight and Government Reform (1984 – 2009)

Group	Observations	Relative Budget Change (\$1,000)	Standard Error	Statistic
Did Appear before Committee	6	9,352.23	3,800.20	
Did Not Appear before Committee	20	-484.28	1,823.02	
Combined	26	1,785.69	1,815.62	
Difference Between Did & Did Not		9,836.50	3,913.09	
t-statistic				2.5137

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p-value for Ha: Did ≠ Did Not				0.0191
p-value for Ha: Did > Did Not				0.0095
p-value for Ha: Did Not > Did				0.9905

Notes: Relative Budget Change represents the difference between Revenue Management and Offshore Energy budget increases for any given year. Figures are in thousands of 2005 dollars. Did Appear Before Committee represents budget years in which MMS personnel appeared before the House Committee on Oversight and Government Reform to discuss revenue management issues. The computation of Relative Budget Change includes both the budget in the year in which MMS personnel appeared as well as the budget in the subsequent year. 2006 committee appearances are not included as Did Appear because these involved leasing and revenue functions. However, their inclusion does not materially change the results. Sources: Minerals Management Service Budget Justifications for fiscal years 1985 through 2011 and searches in LexisNexis Congressional database of congressional hearings.

Beyond shifting MMS’s budget between its two functions, during the 1990s Congress also made the decision to allow MMS to increase rental rates—or payments on non-producing leases—by \$2 per acre on each of its lease sales for the express purpose of offsetting the costs of developing a new computer system for its Offshore Energy group (Minerals Management Service 1995, p. 109). In addition to not applying to royalty payments on properties actually producing oil and gas, the maximum aggregate amount that MMS could use was determined by Congress through the budgeting process (Subcommittee on Interior Appropriations, Committee on Appropriations 1995, p. 508). Even so, although the revenue offsets in budget years 1994 through 1996 were targeted specifically to the creation of this new system and related information management functions (Subcommittee on Interior Appropriations, Committee on Appropriations 1995, pp. 508-509), in 1997 Congress authorized MMS to use the rental increase to partially offset costs associated with running its core Resource Evaluation, Leasing and Environment, and Regulatory programs (Minerals Management Service 1996, p. 107; Minerals Management Service 1997, p. 108). Not coincidentally, as shown in Figure 1, 1997 also represented the beginning of a reversal in the previous

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downward trend in Offshore Energy's budget. Over the next twelve years, the group's real budget increased by 34%, ending in 2009 at the level it last achieved in 1986 (Minerals Management Service 2010). Finally, this growth was shared by all functions, ranging from a 50% budget increase for Leasing and Environment to 28% growth for the Regulatory program. Further, although total personnel did not increase during this period, the relative changes in budgets did enable Offshore Energy to stem the previous decline, ending in 2009 with roughly the same number of civil servants as it had in 1997 (Minerals Management Service 2010).

These observations are further summarized in Table 4 which displays the results of a simple regression of the level of MMS's Offshore Energy budget from 1983 through 2009 on the level of Revenue Management's budget in the same fiscal year, Congress' decision to allow MMS to use rental receipts to offset its Offshore Energy budget, and the interaction between the two explanatory variables. As the coefficient on the Revenue Management budget variable confirms, throughout MMS's history, Revenue Management and Offshore Energy engaged in something akin to a zero sum game where increases in one area were often accompanied by declines in the other. The increases in dollars directed to Revenue Management appear to have had a negative and substantial effect on those directed to MMS's energy management efforts. Further, as the coefficient on the interaction suggests, this relationship was only weakened after Congress began authorizing MMS to offset its Offshore Energy budget through oil and gas leasing receipts. Finally, combining the coefficient on the interaction term with that for the congressional decision to broadly allow rental offsets indicates that the independent effect of the authorization by Congress was to increase the average Offshore Energy budget by a little over \$14 million per year. Summarizing, the regression appears to support earlier observations that budgets for Revenue Management and Offshore Energy

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moved in opposite directions, this effect was moderated once Congress began to allow MMS to use rental receipts, and this same congressional decision appears to have at least partially contributed to the general increases in Offshore Energy's funding beginning in the late 1990s.

Table 4 – OLS Regression of Offshore Energy Budget on Revenue Management Budget and Congressional Decision to Allow Use of Revenue Receipts (1983 – 2009)

Variable	Coefficient	Standard Error
Revenue Management Budget	-2.095***	0.338
Revenue Management x Authorization	1.442**	0.538
Congressional Authorization	-105.364**	43.180
Constant	296.954***	25.510
F-statistic (3,23)	13.73	
R-squared	0.6416	
Adjusted R-squared	0.5949	

Notes: The dependent variable is Offshore Energy's budget in a given fiscal year. All budget figures are shown in millions of 2005 dollars. Congressional Authorization represents the 1997 decision by Congress to allow MMS to use a \$2 rental rate increase on its lease sales to partially fund the core functions of its Offshore Energy group. Revenue Management x Authorization represents the interaction between the Revenue Management Budget and Congressional Authorization variables. Tests of significance are tests of difference from zero. Significance levels: *** implies $p < 0.01$; ** implies $p < 0.05$; * implies $p < 0.10$. Regressions substituting funding for each of Offshore Energy's core functions—Resource Evaluation, Leasing and Environment, and Regulatory—as the dependent variable reveal similar results. Sources: U.S. Department of the Interior Budget Justifications for fiscal years 1985 through 2011.

Overlaying the Dual Mission Theory of Capture

As described at the outset, numerous commentators have observed that MMS's dual mission as revenue collector and regulator of offshore development led to its capture, a result exacerbated by the authority granted by Congress to Offshore Energy to offset its budget with a portion of those rental dollars it collected. However, although logical on the surface, such claims become somewhat

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less certain when viewed within the context of the historical organizational development of MMS described in the previous sections. At least at the operational level, the vast separation between Revenue Management and Offshore Energy with regard to geography, functions, and systems complicates any claim that inspectors, for example, considered rental collections as they performed their jobs. Even so, this does not preclude capture at MMS's highest levels where involvement in the two groups was more likely. Regardless, the evidence relied upon by critics to allege capture of the regulatory arm of Offshore Energy as a result of Revenue Management's pursuit of revenue is not focused on these employees. Rather, it is focused on both the inappropriate gifts from industry representatives to employees in the Lake Charles, LA office as well as the allegations by Offshore Energy scientists that they did not exert enough influence over leasing decisions (Eilperin 2010, Office of the Inspector General 2010b, Urbina 2010b). To the extent unethical behavior was uncovered at higher levels within MMS, it was associated with Royalty Management, and, in particular, a situation where three employees orchestrated a contracting arrangement which awarded consulting work to two of them after they retired (Office of the Inspector General 2008a). Furthermore, congressional decisions related to funding the agency, especially before Congress authorized MMS to offset its appropriations by increasing rental rates to oil and gas companies, highlight the extent to which gains to Revenue Management were offset by budget reductions for Offshore Energy. If anything, this might more plausibly suggest a competition between the two for resources, rather than a joint effort to maximize revenue receipts.

Moreover, these same appropriations data can be used to shed further light on the extent to which the congressional decision to allow rental revenue offsets was a negative development, only serving to exacerbate conflict within MMS. The evidence that Offshore Energy in general and the

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Regulatory program in particular began to experience a reversal of their freefalling budgets once Congress allowed MMS's rental rate increase to broadly offset budgetary demands suggests that the effects of this change are somewhat more complicated. Other factors including increased political and industry interest in deep water drilling described below which occurred around the same time might have also been important in bolstering Offshore Energy's funding. Regardless, given the wide acknowledgement even among MMS's critics that the agency was severely understaffed (Eilperin & Higham 2010, Flournoy et al. 2010, National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling 2011), expansion of resources which is strongly associated with the congressional authorization and at least stemmed the massive reductions in Offshore Energy personnel through the mid 1990s was a positive effect associated with what most regard as a development that precipitated MMS's failure. Especially when one considers how operationally separated revenue collection and offshore development were, an argument could be made that the practical result of allowing such an arrangement in a world of contracting appropriations vastly outweighed any perceived negative consequences associated with it. Further, the congressional authorization only applied to rental receipts, associated with non-producing leases. Thus, even to the extent Offshore Energy did consider oil and gas revenue in its decision making, it would not apply to producing leases which were the primary target of ongoing regulatory oversight, thus lessening the connection between lax oversight and revenue collection. Finally, as described, Congress—and not MMS—determined the level of the offset, mitigating the ability of the agency to directly affect funding through its leasing decisions.

However, even the logic associated with the core argument that these dual missions caused MMS to relax its oversight function becomes more blurry when viewed within the context of the

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pattern of congressional oversight of MMS over its almost 30 years. Recalling the evidence ascertained from oversight hearings and GAO reports, the vast majority of MMS's serious problems were associated with its function as oil and gas revenue collector. In fact, throughout most of its existence within MMS, Offshore Energy was widely regarded as successfully performing its functions as indicated through the numerous awards and general approval it received politically. Therefore, to the extent that MMS was failing, it was failing in the opposite way relative to the prediction of a theory that suggests MMS's conflicting revenue and regulatory functions caused its capture. In such an account, MMS's subversion of its function as OCS steward to succeed as a revenue collector would be expected to show some outward signs that this was occurring. In other words, one should expect to see indications that MMS's regulatory structure was being compromised to promote its efficiently performing revenue functions—not the reverse.

Combining these data points, a story that MMS's capture and failure was precipitated by its initial organizational structure which linked offshore oversight and revenue collection becomes somewhat less convincing. This is not to say that such a hypothesis is completely false or impossible given the reality of the environment surrounding MMS. Rather, it merely suggests that we should remain guarded to assertions that the initial decision to consolidate offshore regulatory functions with revenue collection was a primary driver for MMS's behavior, bound to eventually lead to something like the *Deepwater Horizon* disaster. Given that similar thinking triggered an organizational solution through Order 3299 that has been shown to have significant costs of its own, it merely reminds us that it can be important to consider the complete set of evidence before advancing with a radical policy shift such as the decision to eliminate MMS.

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Political Trends, Changing Technology, and Balancing Multiple Objectives

At the same time it was experiencing dramatic changes to its budget structure, other political developments were affecting MMS's Offshore Energy operations as well. As noted earlier, although it did not directly involve OCS operations, the Exxon Valdez spill in 1989 had important implications for drilling and production on offshore lands. In addition to prompting congressional hearings related to environmental and regulatory concerns, the associated Oil Pollution Act of 1990 bestowed additional responsibilities on MMS for oil spill response planning and research while at the same time expanding Offshore Energy's ability to use penalties to enforce its regulations (Minerals Management Service 1991, pp. 31, 81-83 & 91; Minerals Management Service 1993b, pp. 82-83). In addition, interest in OCS operations after the spill prompted a short-lived increase in Offshore Energy's budget.

However, perhaps the most substantial impact on MMS's operations during this period was a series of moratoria issued through Congress and President George H.W. Bush. In his Statement on Outer Continental Shelf Oil and Gas Development in June 1990, Bush directed bans on drilling and development for the southwest coast of Florida, 99 percent of the California coast, and Oregon and Washington waters until 2000 under the authority granted him through the OCSLA (Bush 1990). In addition, he declared a moratorium on development in the North Atlantic and authorized the buyback of leases already issued in Florida. These moratoria were both supported and subsequently expanded by Congress. For example, the Department of the Interior and Related Agencies Appropriations Act passed in 1993 prohibited funds from being used to support leasing activities in additional areas in the Eastern Gulf as well as the remainder of the Atlantic coast (Department of the Interior and Related Agencies Appropriations Act, 1994 1993, Section 107). A

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subsequent Appropriations Act from 1997 further extended this prohibition to the North Aleutian Basin off the Alaska Peninsula (Department of the Interior and Related Agencies Appropriations Act, 1998 1997, Section 109). President Clinton's June 1998 Memorandum for the Secretary of the Interior both extended George H.W. Bush's moratoria and added to the list additional leasing areas already identified through congressional legislation (Clinton 1998).

Even so, the early 1990s appear to have marked the high point for presidential environmental and regulatory policy emphasis with regard to OCS development. At a broader level, as part of his plan produce a government that “works better, costs less, and get results Americans care about” (Kamensky 1999), in 1993, President Clinton launched the National Partnership for Reinventing Government, an initiative emphasizing performance based and other more innovative approaches to regulation. These efforts were further exemplified through Clinton's Executive Order 12,866 that explicitly established a role for market based regulatory methods such as marketable permits, performance standards, and negotiated rulemaking (Clinton 1993). However, in addition to setting out a blueprint for regulatory innovation, Clinton's initiative—which also aimed to consolidate and eliminate unnecessary government functions—targeted MMS as an agency subject to termination by October 1997 (Bonora & Gallagher 2001). In particular, as late as March 1995, the House Interior Appropriations Subcommittee was still considering the possibility that the functions of MMS would be dispersed throughout Interior, with oversight for state and Indian royalty collection in particular being outsourced to the beneficiaries themselves (Subcommittee on Interior Appropriations, Committee on Appropriations 1995, pp. 500-501). Even so, after a series of hearings during 1995 in which several observers noted the “irony” of the proposals since they would in effect represent a return to the situation that prompted MMS's initial creation, Congress

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ultimately decided not to “devolve the functions of the MMS” (Subcommittee on Energy and Mineral Resources of the Committee on Resources 1995a, 1995b; Bonora & Gallagher 2001).

In response to Clinton’s Reinventing Government program, MMS began to experiment with negotiated rulemaking almost immediately. In addition to forming a committee to study and propose revised gas valuation rules (Minerals Management Service 1995, p. 8; Cedar-Southworth 1996, p. 4), 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). However, this experimentation with negotiated rulemaking was part of a broader plan by MMS to update its regulatory strategy in reaction to broader political and industry developments.

By the early 1990s, oil and gas operations in the Gulf, as well as on the Pacific OCS, were changing in two associated ways. The first related to an increasing role for small development companies, referred to as independents by MMS and the industry, as integral players in bringing oil and gas to the market. During the seven years from 1985 to 1992, the number of operators producing in the Gulf roughly doubled from 64 to 133 (Minerals Management Service 1993b, p. 82). Independents often entered the market during this period by purchasing producing oil and gas leases from large companies called majors with the hope that lower levels of overhead would enable them to operate these maturing properties more profitably. Partially as a result of the moratoria on drilling in parts of Alaska and the eastern Gulf, issued after the Exxon Valdez accident (Bush 1990), majors increasingly focused their attention on more promising overseas markets, a move which intensified the influx of independents (Minerals Management Service 1993b, p. 82).

However, as majors’ interest in the shallow waters of the Gulf waned, these companies

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simultaneously began to look to deep water production in waters greater than 200 meters as a potential source of new growth. Figure 2, which shows the average water depth of oil and gas production in the Gulf of Mexico weighted by total output, reflects this trend. As the figure suggests, instrumental in this growth was the Deep Water Royalty Relief Act, passed in November 1995, which amended the OCSLA to suspend royalty payments on Western and Central Gulf deep water leases offered through the middle of November 2000 until significant amounts of oil and gas had been produced on those leases. Upon applying 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). In the five years leading up to the Act, the average water depth of oil production in the Gulf increased by less than a four feet per month. In the five years after, average water depth increased by almost 18 feet per month, well over a fourfold increase. However, the relative numbers were even more dramatic for natural gas where the pace of monthly increases was over eight times greater in the 60 months after the congressional legislation.

In response to the changing political and operational environment associated with Gulf oil and gas development in the early to mid 1990s, Offshore Energy made two changes to its regulatory strategy. First, it shifted its regulatory focus toward overseeing the operations and developing rules to ensure the financial viability of the newly arriving independents. As described in its Budget Justification prepared in 1995, “[s]ignificant resources will continue to be employed in the offshore inspection program with particular emphasis on small operators to ensure operations are conducted in a safe and environmentally sound manner. Many small operators are underfunded or understaffed, thus necessitating a higher level of inspection effort and monitoring of operations to

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ensure compliance with applicable safety and environmental regulations and requirements” (Minerals Management Service 1995, p. 86). The shift also extended to rule promulgation where, for example, MMS updated its bonding rule to require supplemental protection to ensure that small companies would have sufficient resources to clear their sites at the end of leases (Minerals Management Service 1993a). As a complement to this approach, Offshore Energy began to also experiment with random sampling techniques to determine who to inspect as a mechanism to manage the increasing number of operators since staffing was declining at the same time (Minerals Management Service 1993b p. 89). A subsequent 1998 MMS commissioned study analyzing oil spill data to test whether independents actually did perform worse than majors did not find evidence to support this fear. However, importantly, the study reiterated that such a view was common among industry observers, referencing the “widespread concern that an expected increase in the independents’ relative share of exploration and production...operations in the Gulf OCS region will be detrimental to worker safety or the marine environment” (Coastal Marine Institute 1998, p. 35).

The second change involved perhaps a more important as well as equally public decision to cooperatively develop standards with industry for deep water drilling and production. Fundamental to that effort was MMS’s 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 (OCS Policy Committee’s Subcommittee on OCS Legislation 1993, pp. 65-66; Minerals Management Service 1996, p. 85). However, because the large oil and gas companies were those with the financial resources and capabilities to consider drilling in deep water, MMS’s effort amounted to a more collaborative stance toward major producers in this regard. Even so, the move toward a cooperative relationship with industry to develop standards and

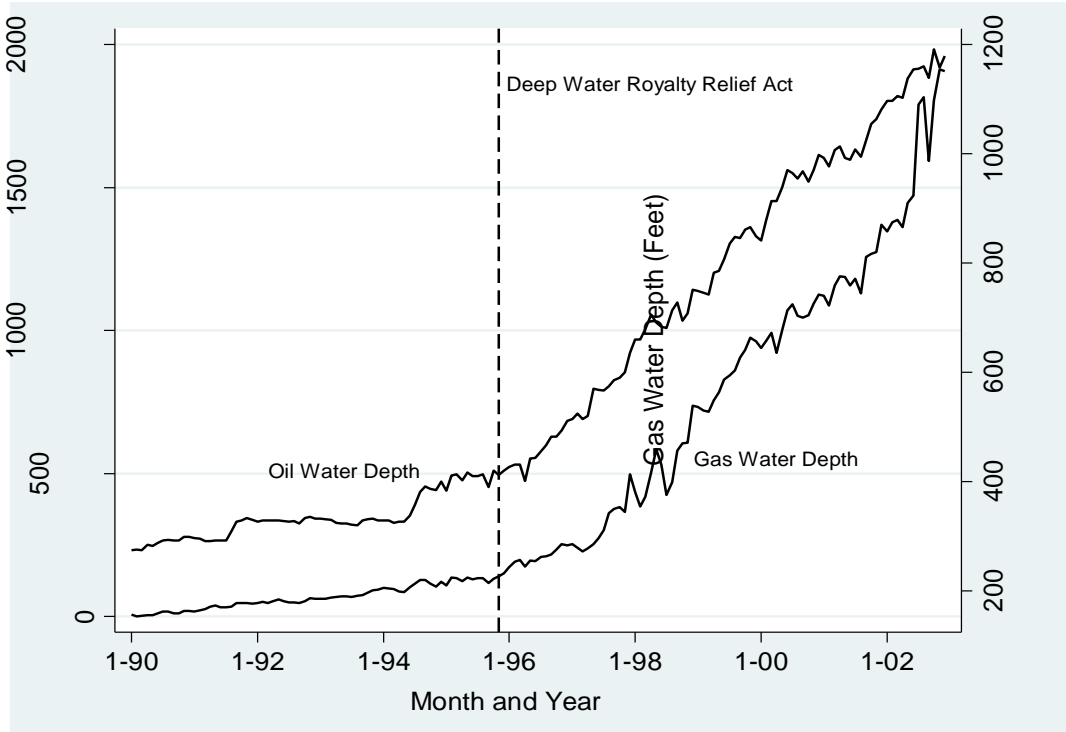
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a regulatory infrastructure was also a function of the nascence associated with deep water technology at the time. As described by Associate Director Carolita Kallaur at a 2001 talk at the Institute of Petroleum’s International Conference on Deepwater Exploration and Production, “[a]n 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). Given that neither MMS nor its regulated entities knew how to conduct deep water operations, the agency determined that the best way to develop the capabilities was to work with industry in doing so. In response to the move to deep water and the increasing role for independents, the Regulatory program developed a two-part formal inspector training program aimed at dealing with these developments (Minerals Management Service 1995, p. 92).

**Figure 2 – Average Water Depth of Oil and Gas Production in the Gulf of Mexico
(January 1990 – December 2002)**

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Notes: Oil Water Depth refers to the average weighted water depth of oil production in the Gulf during that month. Gas Water Depth is the same measure for gas. The average monthly water depth is computed as the average water depth of all producing wells weighted by each well’s production in that month. Sources: MMS’s OGOR-A Well Production data and BOEMRE’s Offshore Statistics by Water Depth database.

In some ways, the shift toward collaboration represented a new approach to regulation for Offshore Energy. 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). Regardless, this was not the first time that the energy management function had used a collaborative approach to deal with emerging technologies. As early as the mid 1980s, MMS was cooperating with oil and gas companies to test and develop technologies to deal

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with the extreme conditions in the waters surrounding Alaska (Minerals Management Service 1984, p. 66). Further, at that time, the Technology Assessment and Research Program element within Offshore Energy was even engaging industry to test platforms destined for deeper water around California and in the Aleutian area of southwest Alaska (Minerals Management Service 1984, p. 66).

As evidence of the broad support for its programs, Offshore Energy garnered several awards during the mid to late 1990s including two Vice Presidential Hammer Awards, two Environmental Quality Awards, the Interior's Steve Kelman award for procurement franchising, and the Los Angeles Federal Executive Board's Heroes of Reinvention for its collaborative approach toward oil and gas development in the Pacific OCS region (Minerals Management Service 1995, p. 11; Bonora & Gallagher 2001). In particular, its 1997 Hammer Award was received for its "several major reinvention streamline processes" and its efforts to "become customer focused" (Hammer Awards 1997). One year earlier, MMS received one of two 1996 Federal Environmental Quality Awards given out by the Council on Environmental Quality for "its actions to integrate environmental values into its agency mission and its commitment to excellence in environmental decision making" (Office of Communications 1996).

Simultaneously, as shown in Figure 3, oil spills from OCS activities were at an all-time low in the mid 1990s as measured in barrels of crude oil, condensate, and other chemicals spilled as a percent of the total spilled during the entire period from 1965 to 2009 (see also Minerals Management Service 1995, p. 43). More dramatically, relative to the six year period from 1965 through 1970 when drilling and production resulted in almost 380,000 barrels being deposited into offshore waters, the period from 1992 to 1997 resulted in only 10,000 barrels spilled. Furthermore,

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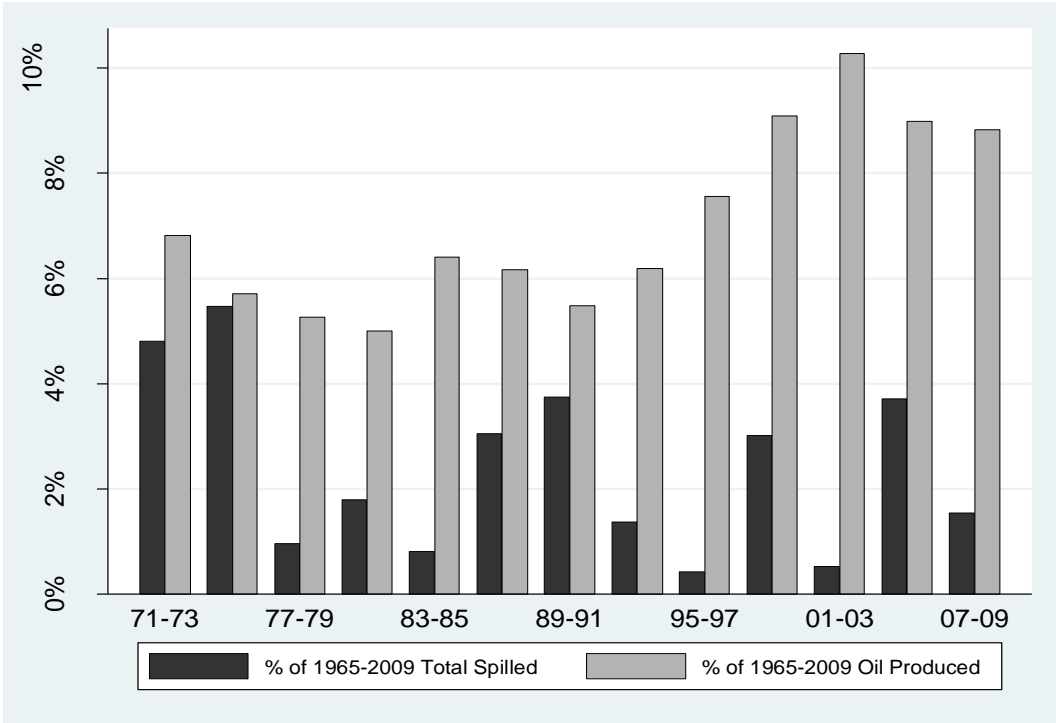
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except for a brief uptick between 2004 and 2006 associated with the damage to offshore platforms from Hurricane Katrina, despite climbing production and the move to deeper water, spillage rates did not display any associated trend upward prior to the *Deepwater Horizon* accident. The aforementioned commissioned study of independent oil and gas companies aptly summarized these observations, suggesting “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 oil spill, President Obama reiterated this view, suggesting “oil rigs today generally don’t cause spills. They are technologically very advanced” (Obama 2010b).

**Figure 3 – Percent of Total 1965 – 2009 OCS Barrels Spilled and Oil Produced in Successive
Three Year Periods**

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Notes: For each three year period from 1965 through 2009, the vertical axis measures the percent of total barrels spilled as well as oil produced during that period relative to the entire 45 years. Barrels spilled is defined as total crude oil, condensate, and other chemicals spilled for spills of one or more barrels associated with OCS activities. Total oil production is defined as total OCS crude oil and condensate production in barrels. The periods 1965 to 1967 and 1968 to 1970 are removed to facilitate exposition as those periods were marked by relatively high spillage and would otherwise obscure differences in later periods. The period from 2004 to 2006 includes spills resulting from damage attributed to Hurricane Katrina. Sources: BOEMRE spreadsheets titled Federal OCS Oil & Gas Production as a Percentage of Total U.S. Production: 1954 – 2010 and All Petroleum Spills ≥ 1 Barrel from OCS Oil & Gas Activities by Size Category and Year, 1964 to 2009.

Accompanying the changing offshore oil and gas industry environment, in addition to legitimizing collaborative regulatory tactics through Clinton’s Reinventing Government initiative, executive policy overall and especially during the presidency of George W. Bush became much more focused on energy development. The Bush efforts began in January 2001 with the creation of the controversial National Energy Policy Development Group, chaired by Vice President Dick Cheney, which, according to subsequent media allegations, did not allow for balanced

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environmental input in developing its recommendations for a national energy strategy four months later (Abramowitz & Mufson 2007, Eilperin & Higham 2010). Further, while Bush's January 2007 Memorandum for the Secretary of the Interior made only minor alterations to the existing congressional moratoria to make it consistent with the Gulf of Mexico Security Act (Bush 2007), 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 that "[o]ne of the most important steps we can take to expand American oil production is to increase access to offshore exploration" and, further, implored Congress to relax its restrictions associated with its appropriations bills (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 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).

Contrary to George W. Bush's claim for the opposite, Congress appears to have supported this policy shift as well. Table 5—which summarizes the important laws directed at either Offshore Energy or Revenue Management enacted during MMS's existence—demonstrates that beginning with the Deep Water Royalty Relief Act in 1995, the primary focus of each law Congress adopted for the subsequent 15 years was on either improving royalty collections or encouraging offshore development. For example, although it represented a compromise by extending moratoria on waters near the Florida coast, the Gulf of Mexico Energy Security Act required Offshore Energy 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. Especially with its emphasis on production relative to environmental preservation, this 15 year period stands in contrast with the first 13 years of MMS's existence where

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acts such as the 1986 OCSLA Amendments and the 1990 Oil Pollution Act suggested a congressional desire for cautious development of oil and natural gas in offshore waters.

However, the congressional shift in focus is perhaps more clearly demonstrated by recounting Table 2 which provided a tabulation of hearings by the associated agency function or functions in which MMS personnel appeared. Although the relatively large numbers for the environmental function are somewhat misleading because even hearings associated with laws to expand production such as the Deep Water Royalty Relief Act still invited environmental groups to participate, those for the regulation mission are nevertheless striking. Whereas over the same first 13 years of MMS's existence, a total of 22 hearings involved an important discussion of offshore regulation, during its subsequent 15 years ending in 2009, only one hearing included any role for 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).

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Table 5 – Summary of Important Statutes Enacted Pertaining to Offshore Energy or Revenue Management (1982 – 2010)

Public Law	Name of Act	Year	Summary
97-451	Federal Oil and Gas Royalty Management Act	1983	Provided for accounting and auditing systems to determine oil and gas payments
99-272	Outer Continental Shelf Lands Act Amendments	1986	Established policy for providing information to coastal states related to development
101-380	Oil Pollution Act	1990	Established fund for oil pollution damages and provided for oil spill research
102-486	Energy Policy Act	1992	Required Interior to disburse monthly to states all mineral leasing payments
104-58	Deep Water Royalty Relief Act	1995	Provided royalty rate relief for offshore drilling in deep water of Gulf
104-185	Federal Oil and Gas Royalty Simplification and Fairness Act	1996	Established statute of limitations on royalty collections and appeal limits
109-58	Energy Policy Act	2005	Authorized Interior to develop alternative energy program on OCS
109-432	Gulf of Mexico Energy Security Act	2006	Required lease offerings for certain areas in Gulf previously under moratoria

Sources: Various Congressional Research Service Summaries, Minerals Management Service Budget Justifications for fiscal years 1985 through 2011, and the public laws themselves.

Finally, evidence from public opinion surveys suggests that the shifting priorities of politicians may have been reflective of preferences more broadly, indicating that Congress and presidents over this period represented public sentiment on energy issues. Figure 4 shows Gallup

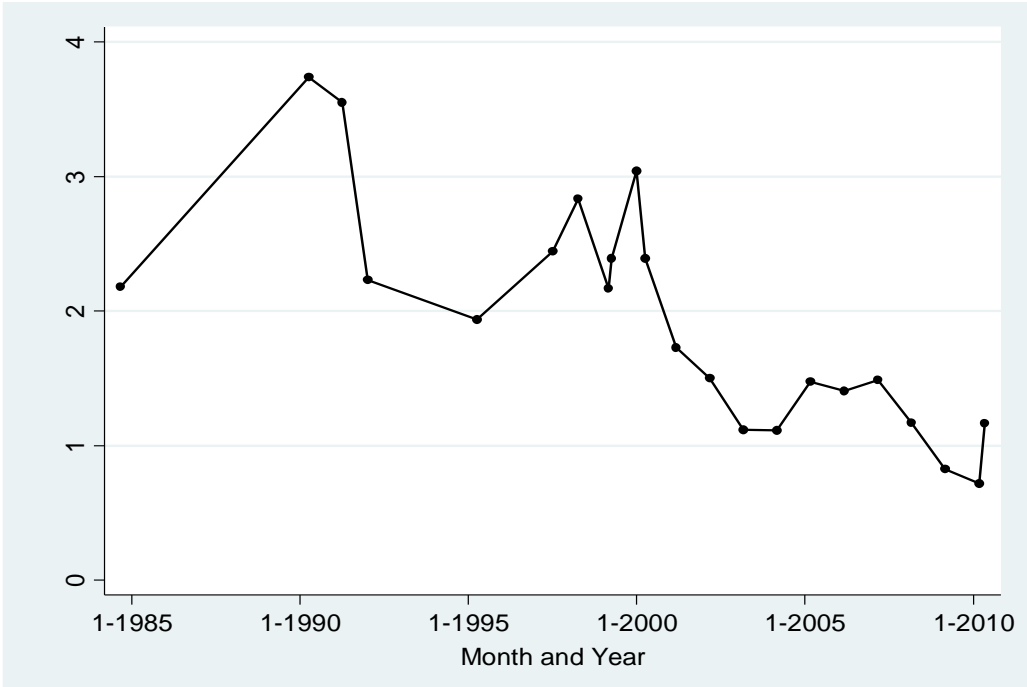
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Poll results over repeated samplings from September 1984 through May 2010 where respondents were asked whether protection of the environment or economic growth should receive priority given that the other would suffer. Although the move toward greater interest in economic growth is not a continuous progression, the trend is evident. As the figure describes, while people preferred 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, the ratio dips below one, indicating for the first time in the poll's history that more people actually favored economic growth over environmental protection. Even after the *Deepwater Horizon* spill, when people's interests shifted back toward the environment, the relative imbalance was nowhere close to that displayed in the wake of Exxon Valdez. While Gallup later began to ask people specifically about prioritizing environmental protection or energy production, it only did so beginning in March 2001 and so the data are much 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. Like the former poll, at the end of May after the oil spill, preference for the environment had again overtaken development, and the spread between the two was again 16 percentage points as it had been when the poll was first taken in 2001 (Gallup 2010).

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Figure 4 – Gallup Opinion Poll Results on Preference for Environmental Protection or Economic Growth (1984 – 2010)



Notes: Data from Gallup polls taken between 1984 and 2010 which 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?” Preference for Environment Over Economic Growth is a ratio computed by dividing the percent of people that placed greater importance on environmental protection by the percent that preferred economic growth. Source: Gallup. 2010. *Energy Environment*. Poll. <http://www.gallup.com/poll/137888/Energy-Environment.aspx>.

Inserting Political and Public Preferences into a Theory of MMS’s Capture

As this book has aptly illustrated, the challenges in detecting capture are substantial. Thus, it should not be surprising that differentiating between a productive cooperative regulatory

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relationship and a captured one is also difficult. It is certainly true that there exists a fine line between collaboration and capture, and much research has attempted to detail that division since there are potential gains to both parties as well as the public from cooperative regulatory structures (Wilson 1980, Kelman 1981, Bardach & Kagan 1982; Scholz 1984, 1991; see Carrigan & Coglianese 2011 for a review of this literature). Further, even when a regulator appears to treat certain incumbent regulated entities preferentially, such evidence does not necessarily imply that the agency is captured by those same entities (Carpenter 2004, Carpenter et al. 2009). Rather, given a history of solid interactions with these firms, even a public spirited regulator will favor them if it is attempting maximize public welfare.

Faced with an influx of independents and congressional legislative action intended to stimulate a move to deep water, Offshore Energy's decision to focus more of its dwindling budgetary resources on the inexperienced actors while relaxing its oversight of those with whom it was most familiar represents in many ways a clear application of the aforementioned logic. Regardless of whether subsequent analysis indicated that newcomers were not more prone to spills, the decision to shift is properly evaluated within the context of available data and the common perception that independents were not as safe when MMS actually made the decision. Further, the circumstances under which it did so exactly mirror its decision to participate with established producers at least 10 years prior—an emerging technology where all players had little knowledge of how to predict or overcome potential obstacles. Thus, Offshore Energy's decision to center its inspection efforts on new industry players given the changing conditions of oil and gas production in the 1990s appears both consistent with its previous behavior when faced with untested technologies as well as plausible even if it were a regulator whose intent was to maximize public

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welfare. Further, it would explain why in justifying its collaborative stance with the major producers, MMS pointed repeatedly to the industry's aforementioned excellent safety record with regard to oil spills and accidents (Minerals Management Service 1995, p. 43; Subcommittee on Interior Appropriations, Committee on Appropriations 1995, pp. 481; Francois & Bonora 1998; Quarterman 1998; Velez 1998; Bonora & Gallagher 2001, p. 9; Minerals Management Service 2002, p. 108).

Regardless, as highlighted at the outset, the 2008 and 2010 DOI memoranda and associated reports chronicling the activities of members of the RIK Program within MMS's Revenue Management group as well as Offshore Energy's Lake Charles district office certainly provide reason to suspect that MMS was captured, at least in specific cases. Even setting aside these two salient examples, it is hard to imagine that James Kwak's conception of "cultural capture"—described in this volume as the condition whereby regulators and regulated entities develop closely aligned understandings of the world which encourages regulatory action that favors industry—is not at all applicable to the interplay between at least some MMS inspectors and their industry counterparts (Kwak 2011). The fact that relationships between oil and gas workers and MMS employees "were formed before they joined industry or government" (Kendall 2010c) certainly implies that these individuals were likely to share some common ground in their perceptions of offshore operations and safety. This does not mean that there was necessarily even any conscious intent that drove these views. As acting Inspector General Kendall explained, "the MMS employees I have met who have come from industry are highly professional, extremely knowledgeable, and passionate about the job they do" (Kendall 2010c). Even so, the well known centrifugal forces that can drive regulators in the field to empathize with their industry counterparts would seem to be

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important factors in understanding the dynamics of the interplay between MMS and the oil and gas industry (Kaufman 1960, Selznick 1984). In fact, Director Birnbaum's testimony at the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling hearings implies that a mutual understanding was inherent to the job. As she described, "the training necessary to understand the operations of oil and gas drilling rigs and platforms is not available in schools. It's something like being an auto mechanic. In order to understand how things work, you have to spend some time under the hood" (Birnbaum 2010b). In a sense, part of the purpose of utilizing collaborative regulatory approaches is to facilitate such shared conceptions.

Ultimately, however, any discussion of the extent to which MMS's behavior reflected capture or collaboration cannot be divorced from the political and social circumstances in which it operated. As described, this history presents clear evidence that Offshore Energy's decision to cooperate with industry was not made on its own. Not only was the choice to proactively engage industry in developing deep water production standards a public one, the strategy was broadly supported as evidenced through the variety of awards MMS received in the mid to late 1990s for its innovative regulatory methods. As MMS's foray into negotiated rulemaking suggests, in many cases, such efforts were even directly prompted by political policy choices. Further, such prompting was not necessarily solely relegated to the executive office or Congress. The aforementioned OCS Policy Committee which, in 1993, stressed the need for MMS's strategy with regard to oil and gas development be "regenerated based on consensus" (Minerals Management Service 1994) incorporated the views of broad set of interested parties.

Beyond simply influencing MMS's choice of regulatory strategy, presidential and congressional policy decisions suggest MMS followed its broad political mandate even if one

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believes the group overemphasized expansion of offshore oil and gas production during its last 15 years. As described, beginning by at least the mid 1990s, congressional and executive attention was focused on exploration, production, and revenue collection, with little regard for MMS's regulatory functions. Weakening presidential moratoria and a pattern of lawmaking after the Oil Pollution Act of 1990 that emphasized production provided clear direction to MMS on political priorities. Perhaps this is best exemplified through the Deep Water Royalty Relief Act which 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). As recounted in MMS's 2005 Budget Justification, this law "triggered record-breaking lease sales in 1997 and 1998...and opened the door to increased deepwater production" (Minerals Management Service 2004, p. 80). Moreover, public opinion data appears consistent with presidential and congressional preferences as well. The Gallup poll results indicate that during the latter half of the 1990s and throughout the 2000s, public preferences also shifted toward favoring the expansion of production. In addition to being concordant with the actions of relevant political actors, this evidence further supports the notion of a more general desire to shift policy away from environmental protection. Recognition of this shift is also echoed in MMS Director Luthi's comments associated with a controversial lease sale in Alaska's Chukchi Sea in 2008. He stated, "[o]ur nation's demand for energy is increasing. Meeting that demand through carefully managed domestic production has to be a priority. Our first priority, though, is that all activity on the OCS be conducted safely and in an environmental responsible manner" (Luthi 2008).

As a conceptual matter, traditional capture theory proposes that an agency is captured when it regulates for the industry in opposition to the public interest (Huntington 1952, Bernstein 1955,

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Carpenter & Moss 2011). To the extent that elected presidents and legislative mandates reflect that interest, the activities of Offshore Energy do not appear to have satisfied the second part of the definition. Of course, this does not eliminate the possibility that politicians were the actors actually captured (Stigler 1971, Peltzman 1976), and MMS simply followed their lead. Even so, the fact that the public was also firmly behind a move toward emphasizing energy development substantially limits the applicability of even this definition of capture. Thus, to the extent that MMS was actually fulfilling its mandate and a broad view of the public interest, categorizing MMS's collaborative stance as capture requires a definition that emphasizes the notion that the agency's relationship with oil producers made it impossible for MMS to do what ought to have been the public preference. This seems to fall outside of the common definition of what capture is (Levine & Forrence 1990).

Even so, possibly a more important implication of the shift in political and public preferences beginning in the early to mid 1990s is that it renders determining whether MMS's behavior reflected capture or cooperation less consequential. To conclude MMS was captured because it emphasized production over environmental protection and regulation requires the simultaneous acknowledgement that it was—in all practicality—fulfilling its mandate and supporting the public interest by doing so. In other words, in order to choose a path which limited drilling and emphasized safety, MMS would have needed to do so in the face of opposing statutory, political, industry, and public pressure. Yet, if it had done that, the debate would instead likely have centered on whether MMS was a rogue agency that needed to be corralled. From this perspective, it is perhaps not surprising or alarming that some scientists at MMS felt that environmental risks were not being given enough consideration (Eilperin 2010, Urbina 2010b). Furthermore, it is unclear—even if one was able to reconstruct the world in such a way as to ensure MMS was not captured—

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how the agency's behavior would have been substantially different. From this perspective, the discussion about whether, how, and to what extent MMS was captured through its collaborative stance with industry is relegated to a second order issue.

Implications for MMS's Restructuring

Recognizing the importance of political and public preferences to defining MMS priorities does not imply that the activities outlined in the 2008 and 2010 OIG reports are in any way consistent with the notion of the public interest or inconsistent with most views of what a captured agency looks like. What it does suggest is that the general application of the term capture to MMS may be too encompassing. In labeling the agency as captured, one implicitly assumes that the problems are pervasive enough that delineating between subpopulations within the agency is just not necessary. However, as the organizational history of MMS has shown, distinguishing between various groups within this agency is as important here as it can be more generally (Allison & Zelikow 1999). A closer examination of the evidence also appears to support the view that such captured behavior was less prevalent than a more cursory analysis may suggest. In fact, the OIG report detailing the unethical behavior uncovered through its investigation of the Lakewood RIK Program pointed to as much. As summarized by OIG, "Our investigation revealed that many RIK employees simply felt that federal government ethics standards and DOI policies were not applicable to them because of their 'unique' role in MMS" (Office of the Inspector General 2008c, p. 5). In addition, the investigation revealed these employees "took steps to keep their social contacts with industry representatives a closely held secret." When the investigators questioned one of the employees as to why they attempted to keep their social activities from other MMS

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personnel, he responded, “[t]hey might have, you know, contacted the [Inspector General]” (Office of the Inspector General 2008c, p. 6).

Indications that behavior that corresponds to capture may not have been pervasive at MMS are not just confined to the RIK investigation. Although it did take issue with an MMS policy that required inspectors to contact some regulated entities prior to visiting their facilities, a subsequent September 2010 OIG report, investigating allegations that employees in the Lake Jackson, TX district office misused helicopters to attend lunches with industry personnel, rescinded notices of safety violations, and falsified inspection reports, did not reveal evidence of misconduct among inspection personnel (Kendall 2010b). Further, a broader investigation commissioned by Secretary Salazar, while providing an extensive set of recommendations to improve regulatory operations, noted that the team performing the review “found the BOEMRE employees it interviewed to be a dedicated, enthusiastic cadre of professionals who want nothing more than to do their jobs effectively and efficiently” (Kendall 2010a, p. 2). Perhaps, this is best summarized by the Inspector General in his memo attached to the RIK investigation, “As you know, I have gone on the record to say that I believe that 99.9 percent of DOI employees are hard-working, ethical and well-intentioned. Unfortunately, from the cases highlighted here, the conduct of a few has cast a shadow on an entire bureau” (Devaney 2008, p. 3). Given this evidence, it does not seem overly optimistic to suggest that the unethical behavior observed at MMS was just not symptomatic of the agency as a whole.

However, regardless of whether one believes that the evidence uncovered through the prior DOI investigations as well as the perception that scientific opinions were not properly considered is enough to demonstrate that MMS was broadly captured, it does not necessarily follow, of course,

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that the theories regarding how it became so are necessarily accurate. Further, it also does not necessarily follow that capture can explain a significant portion of what might have led to the *Deepwater Horizon* disaster or that other factors are not more important. By incorporating an appreciation of the details surrounding MMS's organizational structure and political history, this paper has attempted to provide evidence regarding both of these notions. First, an examination of MMS's organizational division between Revenue Management and Offshore Energy as well as the historical patterns of congressional oversight and appropriations decision making associated with the groups has revealed inconsistencies with the hypothesis that MMS's revenue function led to the capture of its regulatory charge. Second, a review of important political developments as well as the political and public push for oil and gas development has underscored the important role of such influences on regulatory decision making at MMS. Third, these same patterns of congressional oversight, executive office preferences, and public opinion reveal that the question of MMS's capture might be less important in explaining the *Deepwater Horizon* tragedy than is widely believed. At a minimum, a review of the political and operational history of MMS has suggested that it is not unreasonable to think that there are other important factors that might have been driving behavior at MMS as well.

Even so, these insights represent more than just an academic exercise since such prevailing views of internal conflict and capture have, in large part, driven efforts to correct flaws in how the government manages offshore oil and gas operations. Reorganizations, particularly those on the scale of what has begun at the Department of the Interior, cost money, take time, and impose dislocations on employees. In speculating on how the restructuring is likely to affect agency operations, it is instructive to recall the impetus for the creation of MMS in the first place. Instead

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of citing conflicts of interest as a reason to separate minerals management functions, GAO, as well as the Linowes Commission and Congress, pressed for the establishment of one agency to oversee “the entire mineral management area” given that the existing “division of function often caused problems of neglect, duplication, and turf wars” (Commission on Fiscal Accountability of the Nation’s Energy Resources 1982, Committee on Appropriations 1982, Socolar 1982). Not only did having BLM conduct pre-leasing functions and sales while locating lease management at USGS create jurisdictional problems, it was also cited as the cause for Interior’s inability to prevent oil companies from fraudulently removing oil without reporting it as production. As described by the Director of GAO’s Energy and Minerals Division at a 1981 hearing before the House Committee on Interior and Insular Affairs, “[t]he fragmentation of authority and accountability for implementing the mineral leasing laws contributes to the weakness of Federal minerals management. Such a weakening factor is central to any consideration of how to improve the revenue potential of Federal resources” (Peach 1981, p. 6). Thus, at the time, the fundamental question was not why the functions were combined but rather why onshore development, leasing, and regulation were separately housed at BLM instead of MMS (General Accounting Office 1982, Durant 1992).

Analogously, citing coordination problems between BLM, BIA, and MMS for onshore revenue collection as well as between MMS’s Offshore Energy and Revenue Management groups for offshore collection, as recently as December 2007, the Subcommittee on Royalty Management stressed the need for more—not less—intra and inter bureau synchronization by creating cross organizational teams and syncing computer systems (Subcommittee on Royalty Management 2007). Moreover, given the extensive overlap associated with the functions that characterized Offshore Energy, even Secretary Salazar’s July 2010 implementation report recognized the inherent

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limitations in trying to create separate offshore planning and operations management organizations. Even after the two and a half year restructuring process currently underway is completed, the plan emphasized the need for the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement to maintain ongoing “close program coordination” to operate effectively, as “functions and process are tightly interconnected” between these components (Department of the Interior 2010, p. 6).

Given that a closer investigation of the evidence has raised some doubt about the role that capture played in the Gulf oil spill, the mechanisms commonly cited that provided the impetus for capture, and the extent to which MMS was captured, one might be skeptical of reforms designed to address those issues. However, when the reforms return governmental oil and gas management to a structure which history has revealed to have substantial coordination costs along with many similar outward signs of failure including oil and gas theft, one might become more concerned. Further, even to the degree that community ties between industry and Offshore Energy inspectors as well as MMS’s collaborative style facilitated a common set of assumptions and prejudices surrounding oil and gas operations, there are few indications that separating offshore oversight from leasing and development decisions can or is even intended to deal with these deeper issues. As former MMS Director Birnbaum testified, there is “no silver bullet to eliminate the close connections between offshore inspectors and the employees of the industry they regulate. They will still live in the same communities” (Birnbaum 2010b).

In his January 2011 State of the Union address, President Obama highlighted the redundancy associated with having 12 bureaus participate in managing exports, at least five for housing policy, and two for salmon conservation. Citing the need to get “rid of waste,” the

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President promised a plan to “merge, consolidate, and reorganize” government to increase efficiency (Obama 2011). With this goal in mind, the breakup of MMS based on less than clear evidence of how or even whether its capture led to failure that is likely to resurrect old problems of “neglect, duplication, and turf wars” and complicate implementation of energy policy might be a step in the wrong direction.

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