

Chapter 4: Subversion or Coordination? Examining the Role of Regulatory Agency Design in the Gulf Oil Disaster

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Abstract:

As the agency responsible for oil and gas revenue collection as well as offshore development and regulation prior to the disastrous Gulf oil spill, the Minerals Management Service (MMS) provides for many observers a textbook illustration of how mixing incompatible goals can lead regulators to neglect their regulatory responsibilities. In this chapter, I examine MMS's creation and development to evaluate the claim that its role as tax collector restricted MMS's ability to regulate offshore drilling. The analysis reveals that even when the goals associated with the regulatory and non-regulatory functions do appear to clash, the achievement of legitimate governmental objectives sometimes requires extensive coordination that justifies combining regulatory and non-regulatory tasks in a single agency. As the operations of MMS's tax collection and offshore management divisions illustrate, agencies can be structured to mitigate the impact of conflicting purposes, but these measures can come at the expense of achieving advantages from the synchronization of multiple tasks. In contrast to the social science literature which has often focused attention on the dysfunctional aspects of assigning policy to agencies, the case of MMS reveals that even tasks associated with conflicting goals can be assigned to a single agency for valid reasons. Thus, it should not surprise us that the broad evidence supplied in chapters two and three indicated that regulators which also manage non-regulatory functions tend to perform worse on average, for this may be driven by the tradeoff between task coordination and underlying goal conflicts inherent to these agencies.

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Of all the recent regulatory failures including the worldwide financial collapse, the Japanese nuclear crisis, and the Toyota auto safety recalls, Minerals Management Service (MMS) and its role in the Gulf oil spill might present the best example, at least superficially, of how agency goal conflicts can lead to regulatory failure. A now defunct agency of the Department of the Interior that employed roughly 1,600 federal workers (Minerals Management Service 2010), MMS collected onshore and offshore oil and gas tax revenue and also facilitated oil and gas production in federal waters. However, at the same time, the agency was tasked with regulating the companies responsible for that production. According to most observers, MMS was a classic case where collocating conflicting regulatory and production oriented tasks restricted the agency's ability to foster a common purpose among its employees (National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling 2011, p. 78). Further, this arrangement is said to have encouraged MMS to neglect its regulatory function in an effort to overcome its organizational shortcomings (Flournoy et al. 2010, Forbis 2011, Honigsberg 2011).

Confirmation of MMS's failure is tangible given its association with the April 2010 *Deepwater Horizon* oil rig fire and 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 (Fahrenthold & Mui 2010, United States Geological Survey 2010). Perhaps even more telling, behavior at MMS provides support for the notion that the agency may have been a key contributor to the Gulf disaster. One only has to review the findings of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling to find plenty of examples of shortcomings in MMS's approach to regulating (National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling 2011). In addition, recent Department of the Interior Office of Inspector General (OIG) investigative reports present evidence that MMS not only neglected its oil and gas oversight responsibilities but at some point became captured (Flournoy et al. 2010)—a condition whereby the agency regulates in favor of the regulated industry rather than for the public interest (Huntington 1952, Bernstein 1955, Carpenter & Moss 2011). Behavior at the agency provided rare public evidence of the types of activities including bribery and excessive gift exchange that theorists have insisted occurs in captured regulatory relationships (Stigler 1971, Peltzman 1976). In addition, soon after the onset of the spill, reports began to emerge that some MMS scientists did not believe that their findings of potential environmental risks associated with oil and gas drilling were sufficiently considered

in agency decisions to lease certain offshore properties to oil and gas companies (Eilperin 2010, Urbina 2010b).

Given the evidence and MMS's outwardly conflicting functions, it is not surprising that most observers regard the experience of the agency as a reaffirmation of the conclusions of the goal ambiguity literature summarized in chapters two and three. That literature warns of the perverse effects of combining too many functions in one organization (Wilson 1989, Locke & Latham 1990, Chun & Rainey 2005). It is also not surprising that the Secretary of the Interior Salazar announced on May 19, 2010 that he was disbanding the agency, one month after the initial explosion on the *Deepwater Horizon* drill ship. Citing conflicts of interest in fulfilling its goals associated with revenue collection, regulatory oversight, and 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).

In this and the next chapter, I examine MMS's organizational and political development to critically evaluate the claim that its roles to collect oil and gas tax revenue and facilitate development restricted MMS's ability to adequately oversee offshore drilling. To preview the results of the next two chapters, an analysis of the history and development of MMS reveals that even to the extent that the goals associated with MMS's regulatory and non-regulatory tasks did conflict, the underlying tasks themselves required extensive coordination. Further, as shown through the operations of MMS's Offshore Energy and Revenue Management divisions, MMS was structured to mitigate the impact of conflicting purposes—but to the detriment of their synchronization where necessary. Finally, as much as or more than its internal structure, political and public policy preferences were important drivers of the policy mix chosen by MMS. Thus, one should not overlook these preferences and the role of political demands in evaluating whether MMS failed to achieve its purpose.

As a consequence, the case of MMS has important implications for the literature on goal ambiguity and conflict. The creation of MMS clearly demonstrates a fundamental choice in regulatory agency design between either focusing on clarifying goals or focusing on supporting the execution of the underlying tasks. Interestingly, the structure and operations at MMS reveal a relative emphasis on each simultaneously. With regard to the conflict between regulatory oversight and revenue collection, in reaction to the failings of its predecessor—the U.S. Geological Survey (USGS)—to adequately consider revenue collection, MMS was organized to

separate its core missions of revenue collection and offshore energy management into two independent units within the agency. Yet, this decision to some extent limited MMS's ability to coordinate the activities of these functions where it was necessary. On the other hand, the decision to combine offshore regulatory oversight and development in a single division was a reaction to the failings of USGS and the Bureau of Land Management (BLM) to adequately coordinate these tasks when they were split between the two agencies. However, as described in the next chapter which examines the effects of MMS's political environment on its decision-making processes, this paved the way for MMS to emphasize development relative to environmental protection and safety in reaction to public and political preferences. Finally, while a discussion of the role of goal conflict between oil and gas development and regulatory oversight is left to the next chapter, the evidence in this chapter shows that MMS's conflicting revenue collection and regulatory goals had much less of a role in promoting its regulatory lassitude than is generally believed. Given that MMS was designed with this exact issue in mind, the fact that much of the evidence contradicts the hypothesis that revenue collection led to regulatory failure actually follows quite naturally.

The purpose of the analysis in this and the following chapter is not necessarily to suggest that conflicting goals played no role in the Gulf disaster. It is rather to warn against overemphasizing this characteristic while dismissing other factors that are also important. The case of MMS's creation and recent disbanding suggests that we need to be careful in prescribing remedies that solely focus on more salient goal conflicts to the detriment of both the complementarities associated with the underlying tasks as well as the external social and political policy preferences that may drive agency choices. Unlike common discourse in political science which has focused attention on the often dysfunctional process of assigning policy to agencies (Mayhew 1974, Pressman & Wildavsky 1984, Moe 1990), the case of MMS reveals that sometimes tasks—even those associated with conflicting goals—are combined in one agency for a reason. Thus, it should not surprise us that the broad evidence supplied in chapters two and three indicated that regulators which also engage in non-regulatory functions do worse on average, for this may be driven by the inherent complexity associated with carrying out their tasks. To the extent that such multiple purpose regulators organize themselves to minimize goal conflict, this structure can exacerbate difficulties associated with coordinating the underlying tasks which might be the purpose of collocating the functions in the first place.

The Origin of Goal Ambiguity and Conflict at MMS

The magnitude of the disaster precipitated by the *Deepwater Horizon* oil rig fire and subsequent oil spill has generated great interest in determining its causes. In addition to the literally dozens of House and Senate hearings on the subject, numerous commissions have been tasked to investigate the accident. Naturally, as regulator for offshore oil and gas production, MMS's approach to regulating has occupied a central place in these inquiries. Through these investigations, critics have almost universally lamented MMS as an agency impeded by inadequate separation between itself and its regulated entities. This closeness is alleged to have precipitated MMS's lax efforts to oversee oil and gas production.

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 have nonetheless agreed that MMS presents a clear example of a captured agency (CATO Institute 2010, Flournoy et al. 2010). Politicians' opinions are similarly unified in their view of MMS. This view is perhaps best exemplified in President Obama's remark during his May 2010 press conference temporarily halting deepwater drilling that "the oil industry's cozy and sometimes corrupt relationship with government regulators meant little or no regulation at all" (Obama 2010). The many commissions tasked to investigate the accident have also often reached the same conclusion. When asked to comment on Interior's reorganization plan for the agency, a co-chairman of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling commented that MMS was "overly susceptible to industry influence, certainly outgunned and possibly captured" (Peters 2010). Further, during hearings conducted by the National Commission, former MMS Director Elizabeth Birnbaum even acknowledged the "close connection" that existed between the agency's inspectors and oil and gas industry employees (Birnbaum 2010).

The near consensus view that MMS maintained insufficient distance between itself and its regulated entities is no doubt at least partially prompted by tangible evidence of the indiscretions of some members of MMS. These indiscretions are revealed through two Department of the

Interior Office of Inspector General (OIG) communications (Devaney 2008, Kendall 2010). The first, released in September 2008 to summarize 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 and gas on the open market (Devaney 2008, Office of the Inspector General 2008c, p. 2). The memorandum and 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 (Devaney 2008, p. 2; Office of the Inspector General 2008c, p. 5). Further, two of the cited employees admitted to "brief sexual relationships" with industry contacts and confided that 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, one report describes how three senior officials in the broader Revenue Management division "remained calculatedly ignorant of the rules governing post-employment restrictions" in awarding two consulting contracts to two 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 2010). 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 2010, Office of the Inspector General 2010b). When asked about the events, one employee noted, "Almost 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). The earliest reference to such

activities is in 2000. However, they ceased in 2007 after MMS's Regional Director for the Gulf in New Orleans alleged that 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 reacting to the report, Secretary of the Interior Salazar reaffirmed the general perception of MMS, 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).

In addition to the OIG investigations, within weeks of the initial explosion and fire on *Deepwater Horizon*, accusations that agency scientists were not able to exert enough influence over some recent MMS offshore leasing decisions 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, "There 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 when their studies highlighted environmental risks (Urbina 2010b). As one scientist indicated, "You simply are not allowed to conclude that the drilling will have an impact" (Urbina 2010b). Coupled with the evidence revealed through OIG investigations that at least some at MMS maintained extremely close relationships with oil and gas company employees, downplaying environmental risks would seem a natural behavior for an agency so tied to its industry.

Associated with the belief that MMS did not maintain sufficient distance between itself and its regulated entities is the view that when MMS did engage the industry, it did so in an overly collaborative way. Critics have remarked that the fact that MMS invited 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 concern is of fundamental importance 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 on the need for operators to have management systems in place to direct various operational activities, the resulting American 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 oversight and close ties to industry as intimately connected to its perceived lack of vigilance and capture. 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). Although the question of which came first—whether collaboration preceded laxity or vice versa—is unclear, the implication remains that a more adversarial and distant 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).

Given the widely held view that MMS indeed played an important role in facilitating the Gulf disaster, many have turned attention to explaining the origin of MMS's "coziness" with industry and associated regulatory torpor. One influential explanation has centered on MMS's charge to fulfill multiple and generally regarded as conflicting goals (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 failure (Flournoy et al. 2010, Forbis 2011, Honigsberg 2011, National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling 2011). Within the context of the goal

ambiguity and conflict literature reviewed in chapters two and three, it is not difficult to see why. By initially structuring 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 in 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 a partner of the industry as the two were never really at cross-purposes anyway (Honigsberg 2011). In a sense, MMS was doing exactly what one might expect an agency tasked with conflicting goals would do—subvert one to focus on the other. 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 leases on federal lands (Flournoy et al. 2010). As a result, to the extent it accomplished its environmental protection and safety goals, 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 itself. Divided into leasing and offshore operations, the first would oversee development and the second regulation. In the same way that revenue collection stymied regulation, having MMS manage offshore development further weakened its impetus to engage in effective regulation of offshore oil and gas activities.

In addition to its theoretical relevance, this view of MMS has been accompanied by substantial practical implications. 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). In describing the reorganization, 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). Still, some do not think that such reforms are enough, advocating more radical reorganizations, including 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).

The Policy Process and Goal Conflict at MMS

Without considering the politics of the process by which policy is designed and assigned, it might not be immediately clear how MMS could be set up with such an apparently dysfunctional

structure. However, as scholars of the process have long understood, creation and execution of policy is anything but smooth (Mazmanian & Sabatier 1983, Kingdon 1984, Sabatier 1999). For one thing, in its development, it is impossible to foresee all of the potential issues that may arise in implementation (Bardach 1977, Pressman & Wildavsky 1984). Furthermore, because it is forged in the political arena, multiple stakeholders are likely to have a say in the creation of policy. The result is that statutes and other guidance may be riddled with vacuities, conflicts, and unresolved issues (Majone & Wildavsky 1984, pp. 168-172). In the end, these problems are primarily dealt with by the agency assigned to implement the statute or directive. Adding to the problems, assigning policies to agencies is often an afterthought for politicians, both because politicians do not know how to best do it and because such decisions lack salience to voters (Mayhew 1974, pp. 132-136). These problems appear particularly acute with regulatory policies, where statutes are typically vague and often placatory reactions to public outcry when problems occur (Edelman 1967, pp. 23-29). Thus, consideration of policy assignment ends up receiving little consideration since the directive itself is what garners constituent attention—not its implementation which can occur over a period of years.

The result of this process is that agencies can be tasked with vague, unrelated, and even conflicting goals (Wilson 1989). Moreover, this problem can become worse over time as additional responsibilities are placed with agencies through new statutes. From the perspective of the goal ambiguity literature, this ad hoc process of policy assignment can lead to exactly the type of ambiguity these authors bemoan (Locke & Latham 1990, Chun & Rainey 2005). Agencies, attempting to assimilate the various functions placed with them, are likely to be forced to set very broad goals in order to incorporate everything. Alternatively, in response, the agency may decide to simply increase the number of goals to correspond with the increasing number of tasks (Gormley & Balla 2008). In this scenario, the agency is then faced with the dilemma of determining which of these goals to focus on in an attempt to avoid the impossible situation of implementing all of its assignments simultaneously (Drucker 1980, Wilson 1989). Such a response can then result in the type of neglect alleged to have occurred at MMS with regard to its oil and gas oversight function. In fact, some observers have suggested that the political process is intended to result in such outcomes—that in the spirit of democracy which places special emphasis on the status quo, government organizations are actually designed to be inefficient (see, e.g., Moe 1989, 1990). This design feature makes these agencies less able to act

autonomously, and thus more likely to remain under the control of the president and Congress. The more inefficient the government agency is, the less likely it is to be able to act quickly and decisively, thereby making political oversight less challenging. To the extent that implementation is less important to these political principals, the cost in terms of poor execution may not be all that consequential.

When viewed in this context, a claim that MMS was structured with such goal conflicts between its offshore oversight, revenue collection, and offshore development functions should not raise serious conceptual concerns. Even so, as the rest of this chapter reveals, this characterization of MMS does not correspond well with the evidence. In fact, the analysis that follows—which starts with MMS’s creation in 1982 and follows the development of its two main divisions, Revenue Management and Offshore Energy—shows that the agency was established in response to existing problems in the implementation of oil and gas policy. It was based on a consensus within and outside of government that both oil and gas revenue collection and management of offshore development needed to be improved. Furthermore, although it was accompanied by the Federal Oil and Gas Royalty Management Act of 1983, the reorganization was not necessarily a response to the assignment of new responsibilities related to oil and gas policy. Instead, the changes were initiated by Interior primarily as a way to improve execution of existing policy. In other words, as the follow section describes, the core issue which precipitated MMS’s creation was the typically neglected aspect of the policy process, namely its implementation.

Interior Deficiencies and Organizational Development at MMS

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 Commission. This Commission was an independent panel formed in 1981 to investigate the performance of 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 Accounting Office (later renamed the Government Accountability Office or GAO) as well as OIG for its inability to perform these roles adequately (Commission on Fiscal Accountability of the Nation’s Energy Resources 1982, 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 amounts in a timely manner" (Federal Oil and Gas Royalty Management Act of 1982 1983, Section 101). Further, FOGRMA 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 revenue 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 BLM and USGS respectively, which, at the time, had split these duties (Department of the Interior 2008, Hogue 2010). Through his final Order and Amendment, Secretary Watt moved onshore management to BLM (Department of the Interior 2008). The end result was that BLM assumed the duties associated with onshore development, leasing, and regulation while MMS was tasked with the same functions for offshore energy as well as revenue collection for both onshore and offshore leases (Durant 1992).

Although not directly referenced in 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 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,

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)

Even a 1983 TIME article—highly critical of Secretary Watt after he was forced to resign—acknowledged that his reform of “the chaotic oil-lease payment system” was one of his “several” policy changes that were “sensible” (TIME 1983). In fact, at the time, the fundamental question was not why the functions were combined but rather why onshore development, leasing, and regulation were consolidated at BLM instead of MMS (Durant 1992).

To implement its dual charge to collect revenue for both onshore and offshore leasing as well as manage offshore oil and gas development, beyond centralizing some of the agency’s general administrative tasks, MMS was organized specifically around these two functions from the outset (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 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 1993, 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 their 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). The OCSLA had 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 goals of development to support national economic and energy policy goals while providing for the protection of human, marine, and coastal environments. In fulfilling 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 "involved in all phases of OCS program activities," even assisting "regulatory personnel to ensure that discoveries [were] developed and produced in accordance with the goals and priorities of the OCSLA" (Minerals Management Service 2004, p. 108). To the extent that federal offshore lands included the Atlantic and Pacific coasts as well as Alaska and the Gulf of Mexico, Offshore Energy maintained offices in all locations. Even so, beyond housing a number of administrative personnel in Herndon, VA, the bulk of the core Offshore Energy staff were situated in either the New Orleans office or one of the other district offices situated along the Gulf. This reality was further intensified 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 revenue collection and leasing oversight in the same office for each region, MMS maintained a firm division between the two. Moreover, the separation between the Revenue Management and Offshore Energy groups was not something that simply characterized its initial creation. As Table 4-1 below suggests, a strong correlation between geographical location and function still characterized MMS in 2008, two years before its breakup. Even using broad employment categories, science and engineering functions—associated specifically with Offshore Energy—were predominantly carried out by employees located in Louisiana. On the other hand, accounting and business roles remained centrally focused with Revenue Management in Colorado. These figures present a stark contrast to general administration and technology which, as would be expected, was needed in both locations.

Table 4-1 – Percentage of MMS Employees by Category in Colorado and Louisiana in 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 4-1 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” (Socular 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 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 MMS’s Revenue Management group, the Committee was able to identify numerous instances where the information was either incomplete or incorrect, resulting in excess costs, delays, and errors. However, beyond noting the need to improve coordination among the three agencies, the Committee also observed that procedures needed to be established for “intra-Bureau coordination” as well (Subcommittee on Royalty Management 2007, pp. 83, 86). In examining the systems used for sharing information between BLM and Revenue Management, the report documented that manual and paper-based transmissions between the two bureaus were “a major impediment to efficient royalty collection operations” (Subcommittee on Royalty Management 2007, pp. 21, 26). Somewhat surprisingly, the Committee also described how relaying data between Offshore Energy and Revenue Management encountered similar problems, as computer systems were not completely linked within MMS. The report went on to conclude, “Increased

sharing of electronic information between BLM and MRM [Revenue Management], as well as between OMM [Offshore Energy] and MRM, would dramatically increase the consistency of Federal lease status and production information across these agencies” (Subcommittee on Royalty Management 2007, p. 27).

A September 2008 GAO report further documented 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 whether the royalty payment was correct or incorrect (Government Accountability Office 2008, pp. 10-11). To mitigate these coordination problems, GAO indicated that it was “making several recommendations aimed at improving [MMS’s] royalty IT system and royalty collection and verification processes” (Government Accountability Office 2008, p. 5).

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 his announcement of the breakup, 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 divide between Offshore Energy and Revenue Management, noting, “The Office of Natural Resources Revenue can be transitioned most quickly and will begin operations on October 1, 2010, with the transfer of the largely intact Minerals Revenue Management function” (Department of the Interior 2010, p. 4). On the other hand, the report 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. Even then, the recognition remained that “close program coordination” is necessary between the two organizations to “maintain a functioning and effective process” (Department of the Interior 2010, p. 11). 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. This independence was embedded in MMS’s creation.

Balancing Goal Conflict and Task Coordination through MMS’s Design

Corresponding to the more general view that policy development and implementation are exceedingly complex, most modern scholars of the process caution against viewing its progression as a series of discrete and well timed stages (Nakamura 1987, Sabatier & Jenkins-Smith 1993, Sabatier 1999, p. 7). According to these researchers, the process rarely follows a neat progression whereby, for example, policy development leads to implementation and eventually to evaluation. Rather, often these stages occur simultaneously or even in reverse. Further, each is informed by the others throughout the policy lifecycle. For example, issues uncovered in implementation and also in evaluation will often lead to changes in policy design which in turn may lead to new refinements to resulting implementation strategies (Browne & Wildavsky 1984, pp. 181-205, Sabatier 1986).

Such a muddled view of the policy process conforms well to the reality of the formation of MMS. As described, the political dialogue surrounding oil and gas policy in the late 1970s and early 1980s was borne out of a series of retrospective investigations rather than a reaction to a brand new set of policy concerns. Further, the remedies prescribed were less concerned with developing novel policies relative to applying existing ones more effectively. In other words, at its core, the reorganization of oil and gas processes at Interior was aimed at correcting problems in policy implementation. These observations are perhaps most clearly demonstrated in the legislation that accompanied the reforms. Rather than establishing predominantly new duties for Interior, FOGRMA was primarily focused on outlining improvements to Interior’s legacy

systems and processes for collecting oil and gas revenue (Federal Oil and Gas Royalty Management Act of 1982 1983).

Thus, the policy process that led to the formation of MMS was predicated on an inspection of existing oil and gas operations rather than the creation of new responsibilities, a process which ultimately led to changes in how the established policies were executed. Given this focus, the policy discussion surrounding MMS's formation provides a good opportunity to examine in greater depth issues associated with implementation of oil and gas policy. Furthermore, since Interior's remedy in 1982 included consolidating many of the associated functions at MMS—including both regulation and leasing of offshore properties as well as revenue collection for onshore and offshore production—the case offers insights into costs and benefits of collocating potentially conflicting regulatory and non-regulatory functions.

Even so, when viewed solely from the standpoint of goal ambiguity and conflict, from an efficiency standpoint it is hard to understand why one should ever want to combine conflicted functions such as offshore management, regulation, and oil and gas revenue collection in a single agency. As the literature has aptly demonstrated, the cost of imprecise and disparate goals is relatively poor organizational performance overall (Drucker 1980, Chun & Rainey 2005). As described in chapter three, not only does combining tasks associated with conflicting goals lead to confusion among agency personnel (Locke & Latham 1990), such arrangements also encourage agencies to subvert certain tasks for others (Biber 2009) as is alleged with MMS. Moreover, keeping functions separate can bring other benefits as well. For example, to the extent task division creates some level of redundancy among agencies, splitting inconsistent goals may also insulate politicians from a failure of one of the associated agencies to perform its assigned functions (Landau 1969, Bendor 1985).

Given the advantages of splitting incompatible functions, one might logically conclude that dysfunctional structures which do combine such tasks must be borne out of the political process described earlier. In this characterization, politics are to blame for the conflicted regulatory agencies we observe in the world since the associated processes and compromises produce the conditions for ineffective organizational structures (Olson 1982, pp. 41-47; Moe 1989, 1990). If we could remove politics from the policy decision-making process and simply focus on performance, this viewpoint would imply that we would certainly not want to consolidate tasks with conflicting goals in a single agency. As a result, if feasible politically, dividing the tasks

associated with the divergent goals among multiple agencies would appear to be the appropriate remedy. Not surprisingly, this is the response that is most often prescribed in the social science literature (Wilson 1989, Dewatripont et al. 1999, Dixit 2002, Ting 2002, Biber 2009).

The MMS case is therefore significant because it presents an example which highlights the role of a second factor—coordination—which can help explain the existence of multiple purpose regulatory agencies. Although considered more generally in investigations of organizational structure (see, e.g., Thompson 1967), this factor is typically absent in discussions of agency goal conflicts. However, given its applicability even to a case which has so universally focused attention on goal discord underscores its importance. Incorporating a role for task coordination suggests that when we observe regulators saddled with conflicting goals, we should neither assume that the political process produced the inefficient structure nor that the structure is even inefficient at all. Applied to the creation of MMS, consolidating offshore oil and gas management functions then was not necessarily just the result of a dysfunctional political process. Rather, the organization of Offshore Energy reflected a premium placed on task coordination, a premium predicated on the salient failure of BLM and USGS to achieve such harmonization previously. However, to the extent that joining these functions did produce conflict and confusion as alleged, this new structure would sacrifice the organizational separation needed to ensure that neither the regulatory nor the development function would be neglected. Analogously, structuring MMS such that Offshore Energy and Revenue Management remained firmly divided was an attempt to avoid repeating the experience of its predecessor USGS, which subverted its revenue management charge by integrating it into its scientifically oriented regional offices. Mitigating conflict between the goals of revenue collection and environmental protection and safety thus did not mandate that the functions be placed in different agencies. Rather, as described in greater detail below, it was achieved within MMS by introducing greater separation between the groups than was present at USGS. Of course, MMS's division of revenue collection and offshore management was not without cost as documented in both the December 2007 Subcommittee on Royalty Management and September 2008 GAO reports. These reports revealed that Revenue Management and Offshore Energy had difficulty synchronizing their activities to the extent necessary.

In addition to illustrating the tradeoff between goal conflict and task coordination, examining the nuances of the creation and development of MMS has implications for the cross

section results from chapters two and three. These results presented strong evidence that multiple purpose regulators perform relatively poorly on average. They also demonstrated that the poor performance could not be explained by solely appealing to the tendency of these agencies to exhibit greater goal ambiguity and conflict. The tradeoff presented by MMS reveals one possibility why. Like MMS, multiple purpose regulators in general may perform worse not only because of goal ambiguity and conflict, but also because of the importance of task coordination to these agencies. Stated differently, holding constant the extent to which employees know how their tasks relate to agency goals, one might still expect such agencies to achieve relatively less because they require extensive coordination of different functions to achieve agency goals. Organizational arrangements—such as firmly dividing the tasks that might conflict—to help with goal discord would then simultaneously increase the difficulties inherent in coordinating these same tasks when needed.

Moreover, the tradeoff revealed through MMS's creation is also important for evaluating Interior's order to divide MMS into three entities. Because it returns the offshore energy development functions to a structure which closely resembles the heavily criticized system prior to MMS's creation, the benefits of doing so must be weighed against the historically demonstrated failings of that structure. 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. These problems may thus exacerbate 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, "Coordination of activities associated with managing offshore oil and gas leases is more straightforward because only a single bureau 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 organizational structures to facilitate improved intra and inter agency coordination (Subcommittee on Royalty Management 2007, Government Accountability Office 2008).

Finally, such a revelation also underscores the importance of carefully evaluating the extent to which goal conflict at MMS played a prominent role in the *Deepwater Horizon* tragedy. 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 crucial role that perceived goal conflict and regulatory neglect played in driving the reform. As suggested during his May 2010 press conference, following the first Inspector General communication, "Secretary Salazar immediately took steps to clean up that corruption. But this oil spill has made clear that more reforms are needed. For years, there has been a scandalously close relationship between oil companies and the agency regulates them. That's why we've decided to separate the people who permit the drilling from those who regulate and ensure the safety of the drilling" (Obama 2010). Given the costs, it seems that one should be reasonably confident that goal conflict precipitated MMS's regulatory laxity, that this causal mechanism played an important role in the oil spill, and that the remedy will solve the problem. In the remainder of this chapter, these issues are further examined in the context of the interplay between MMS's revenue collection and regulatory functions.

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 focus of at 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 of 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. These 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 front of the House Committee on Government Operations, Revenue Management was already under intense scrutiny for its perceived inadequate performance in collecting and disseminating royalties to states as well as Indian tribes and individuals (Subcommittee of the Committee on Government Operations 1985). In particular, a congressional inquiry had revealed numerous examples where Revenue Management—which also maintained responsibility for collecting payments from oil and gas production on Indian lands and distributing those monies appropriately—either completely missed making payments to Indians or made them late and inaccurately. The evidence further revealed the extent to which MMS was unresponsive to BIA requests for individual account audits, a task which the Compliance group within Revenue Management was mandated to do. In one case that later prompted affected Indians to camp outside of BIA’s Anadarko, Oklahoma office in protest, BIA had requested Revenue Management to perform reviews of 11 individual accounts based on land holder complaints. By the time of the hearing seventeen months later, only three reviews had been completed, revealing \$59,000 in additional monies owed to the individual Indian land owners (Subcommittee of the Committee on Government Operations 1985). The remaining eight reviews were only initiated after the congressional investigation impelled MMS officials to do so. In its written response to a question about the delay, Revenue Management admitted that it was “an obvious case of something ‘falling through the cracks.’ The Anadarko request was lost in our Lakewood office for almost a year” (Subcommittee of the Committee on Government Operations 1985, p. 117).

By this time, these and other collection and dissemination problems identified by GAO and OIG had already led to numerous reforms within Revenue Management (Subcommittee of the Committee on Government Operations 1985, pp. 84-85). The changes included moving the head of Revenue Management from Washington, DC to Lakewood, further centralizing the revenue functions in that office. In addition, two committees were established in response—one would include Indian representation and advise the Secretary of the Interior on revenue improvement initiatives and another would be created to improve coordination between MMS, BIA, and BLM in carrying out onshore royalty collection and distribution. The investigations also identified the

need to acquire a new mainframe computer system as well as install 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. 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 4-2 below reflects, many hearings held between 1986 and 1993 emphasized environmental and regulatory issues related to oil and gas operations on the OCS. Regardless, 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). Offshore Energy did participate in the cleanup effort and received both regulatory authority to promulgate rules governing financial responsibility for oil spills as well as greater budgetary authority to conduct related research (Committee on Energy and Natural Resources 1989; Minerals Management Service 1990, pp. 36-37; Minerals Management Service 1991, pp. 81-83). Even so, the hearings were not driven by perceived faults in Offshore Energy’s performance.

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

Table 4-2 – 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
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. Evaluation refers to identifying areas for oil and gas exploration whereas leasing refers to leasing properties to oil and gas producers. 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 testimony was reviewed as well.

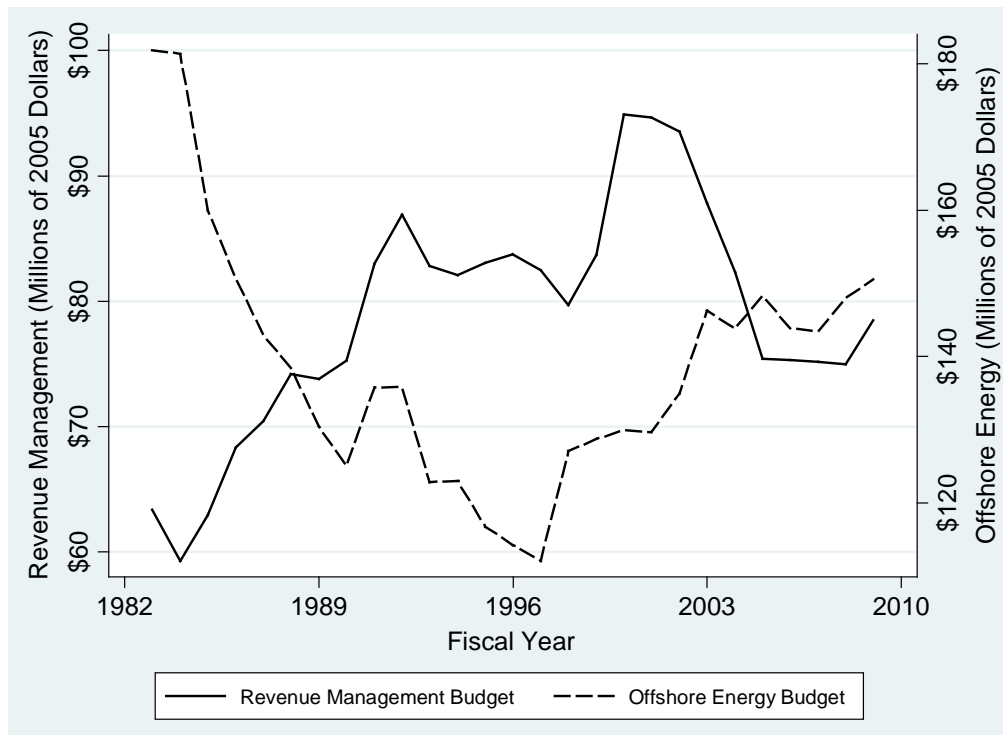
In addition to the individual hearings, even a cursory review of GAO reports over the period reveals the extent to which congressional criticism of MMS remained squarely focused on revenue collection relative to offshore energy management. During the four year period from 1982 to 1985, royalties were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

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 its work units (Minerals Management Service 1993, 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 1993, 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, 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 Revenue Management was being scrutinized, this oversight was not complemented by any overt actions by Congress or the president to discipline the group through budget cuts. In fact, Figure 4-1, which shows MMS’s real budget by program over time, 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 from 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).

Figure 4-1 – MMS’s Offshore Energy and Revenue Management Funding Levels (1983 – 2009)



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.

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 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. The 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.

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 4-3 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 table shows, in those years in which it 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.

Beyond shifting MMS's budget between its two functions, during the 1990s Congress also made the decision to allow MMS to increase its 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). 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 4-1 above, 1997 also represented the beginning of a reversal in the previous 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). Furthermore, this growth was shared by all functions, ranging from a 50% budget increase for Leasing and Environment to 28% growth for the Regulatory program. Finally, 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).

Table 4-3 – Relative Budget Changes and Revenue Management Appearances before the House Committee on Oversight and Government Reform (1984 – 2009)

Category	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
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.

The observations of this section are further summarized in Table 4-4 below which displays the results of a 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 of 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. In other words, the increases in dollars directed to Revenue Management had a statistically significant and numerically substantial negative 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 increases in oil and gas leasing rental rates. 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. Thus, the regression supports earlier observations that (1) budgets for Revenue Management and Offshore Energy moved in opposite directions; (2) this effect was moderated once Congress began to allow MMS to use rental receipts; and (3) this same congressional decision at least partially contributed to the general increases in Offshore Energy’s funding beginning in the late 1990s.

Table 4-4 – OLS Regression of Offshore Energy Budget on Revenue Management Budget and Congressional Decision to Allow Rental Budget Offsets (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.

Evaluating the Role of Revenue Management on Regulatory Subversion at MMS

As described, numerous commentators have conjectured that MMS's dual functions as revenue collector and regulator of offshore development led it to neglect the latter, an effect intensified by the authority granted by Congress to Offshore Energy to offset its budget with a portion of those tax dollars it collected. Furthermore, I have shown that within the context of the goal ambiguity and multi-task literatures, such evaluations appear logical. Given that revenues were generated from oil and gas leasing and resulting production, steadfast regulatory oversight which would impede production would seem to simultaneously reduce revenue collected. In addition, as many scholars have noted, conflicts such as this can lead an agency to focus on one task to the detriment of the other. In the case of MMS, critics assert that the agency chose to subvert its role as regulator to focus on collecting taxes.

However, when viewed within the context of the historical organizational development of MMS, such claims are less convincing. 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 collection goals as they performed their jobs. Instead of operating as a single entity, MMS's dual structure reflected a desire to develop an independent and cohesive revenue management group in Colorado, where some of the function's most senior officials resided. Even so, this does not preclude subversion at MMS's highest levels where involvement in the two groups was certainly more likely. Regardless, the evidence relied upon by critics to allege that conflict encouraged regulatory neglect within Offshore Energy 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 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 the rental rates of 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 that a competition existed 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 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 described in the next chapter including increased political and industry interest in deep water drilling which occurred around the same time might have also been important in bolstering Offshore Energy's funding. Regardless, a general consensus exists 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). Therefore, expansion of resources, which is strongly associated with the congressional authorization and which stemmed the massive reductions in Offshore Energy personnel occurring 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.

Additionally, the congressional authorization only applied to rental receipts which, as described, were industry payments on non-producing leases. Thus, even if Offshore Energy did consider oil and gas revenue receipts in its regulatory decision making, it would not apply to producing leases which were the primary target of ongoing oversight, thus dampening any direct connection between lax oversight and the congressional approval. Equally as important, Congress—and not MMS—determined the gross level of the offset. As a result, the degree to which the agency would reap the benefits of the rental increase was not directly influenced by even its own leasing decisions. Because congressional budgetary decisions established the authorized level in advance, to the extent that level was set below the expected increase in rental receipts, MMS's leasing decisions on the margin would not affect its funding. Given that even after netting out its offset, in fiscal year 1998 for example, MMS was expected to return \$27

million in increased rental payments to the general Treasury (Minerals Management Service 1998, p. 92), one may wonder how the authorization could have had any impact on Offshore Energy decisions. Not only did the congressional offset have very little to do with its oversight function, the inability of MMS to control the funding level blurs any causal connection between the offset and its leasing decisions.

However, when viewed within the context of the pattern of congressional oversight of MMS over its almost 30 years, even the logic associated with the core argument that the competing revenue collection and regulatory tasks caused MMS to neglect its latter function is weakened. Recalling the evidence garnered from oversight hearings and GAO reports, the vast majority of MMS's problems were associated with its function as oil and gas revenue collector. Offshore Energy, on the other hand, received little critical attention from Congress throughout most of its existence as part of MMS. Instead, as described in detail in chapter four, until 2010, the group was widely regarded as successfully performing its functions as demonstrated through the numerous awards and general approval it received politically. Therefore, to the extent that MMS was struggling, it was struggling in the opposite way relative to the prediction of a theory that suggests MMS's conflicting revenue collection and regulatory goals encouraged regulatory neglect. 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. Stated differently, 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 failure as a regulator 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 as well as the support from the academic literature that task subversion can occur under broadly similar conditions. Rather, the evidence demonstrates 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 such 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.

Conclusion

In this chapter, I have shown that an agency's organizational structure can have important implications for how we interpret outward signs of its behavior. Common discourse has suggested that MMS presented a clear case where collocating two conflicting purposes, revenue collection and oil and gas regulatory oversight, led to the subversion of the latter in an effort to overcome these organizational deficiencies (Flournoy et al. 2010, Forbis 2011, Honigsberg 2011). Within the context of the academic literatures on goal ambiguity and the policy process, this view of MMS seems to follow quite logically. However, a review of the organizational divide between Revenue Management and Offshore Energy as well as the historical patterns of congressional oversight and appropriations decisions has revealed several inconsistencies with the hypothesis that consolidating these functions led to MMS's subversion of its regulatory goals. This division between the two groups has simultaneously revealed the role that internal structure can play in mitigating potential conflicts. It has shown that combining tasks with conflicting goals in one agency may not always lead to subversion if the organization is designed with enough separation between them.

Within the context of the historical origin of MMS, these conclusions should not surprise us. Rather the analysis has highlighted the importance of a second factor, task coordination, which should be considered when examining an agency that appears to be impeded by conflicting goals. In many ways, MMS was an agency which, while it existed, represented the two extremes of organizational design simultaneously. At the one limit, the "tightly interconnected" resource evaluation, leasing, and regulatory functions of Offshore Energy reversed the previous division of these tasks between BLM and USGS, a separation which encouraged "neglect, duplication, and turf wars" (Department of the Interior 2010, p. 6, Committee on Appropriations 1982, p. 40). Offshore Energy's structure placed less emphasis on potential goal conflicts to facilitate coordination, which at the time was the more salient issue. At the other limit, the division geographically and functionally between Revenue Management and Offshore Energy represented a sharp contrast to its predecessor—the integrated USGS—which failed to "supply the active sophisticated management" necessary to overcome its scientific bias, resulting in a

chronic failure to adequately collect royalties (Commission on Fiscal Accountability of the Nation's Energy Resources 1982, p. xvi). Thus, in order to encourage revenue collection as a viable goal, MMS's Revenue Management group was created to operate independently of Offshore Energy, thereby alleviating the concern at the time that the latter may overshadow the former. However, while MMS's separation of its offshore oil and gas management operations from its revenue collection functions reduced the potential for goal subversion, it did so at the expense of the agency's ability to synchronize the tasks where necessary. Citing coordination problems between BLM, BIA, and MMS for onshore revenue collection as well as between MMS's Offshore Energy and Revenue Management missions for offshore collection, the December 2007 report of the Subcommittee on Royalty Management stressed the need for greater—not less—intra and inter bureau coordination by creating cross organizational teams and syncing computer systems (Subcommittee on Royalty Management 2007).

Finally, although primarily focused on MMS's internal structure, the analysis in this chapter has also hinted at the importance of external political forces in explaining behavior at MMS. Patterns associated with congressional oversight and appropriations—including the decision to allow MMS to offset its appropriations with rental receipts—have yielded important evidence to evaluate the extent to which MMS subverted offshore oversight for revenue collection. However, a very large literature in political science, focused on the political control of administrative agencies, has shown that political actors also have independent effects on agency decision-making (see, e.g., Wood & Waterman 1991). In the next chapter, I focus on the role of these external forces as they relate to the second set of goal conflicts at MMS, that between oil and gas development and regulation within Offshore Energy. In particular, I show that presidential directives, congressional lawmaking, and public preferences all need to be closely considered in any serious evaluation of whether MMS's conflicts impeded its ability to fulfill its regulatory oversight and oil and gas development functions. Moreover, these political influences can also help us to assign an appropriate role to MMS's goal conflicts in explaining the causes of the disastrous Gulf oil spill.

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