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Gulf oil spill: Obama's regulatory response falls short

Splitting the federal agency that oversees oil and gas production isn't enough.

Eric Biber and Holly Doremus

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Before April 20, most Americans had probably never heard of the Minerals Management Service, the federal agency that oversees oil and gas production in federal waters. Now, with oil from the Deepwater Horizon blowout closing wildlife refuges and fishing grounds in the Gulf of Mexico, the MMS is facing tough questions about its role in the disaster. Its cursory environmental review minimized the prospects of a large spill, and it failed to demand that BP have a realistic response plan in place before drilling.

While Congress holds hearings, the Obama administration has announced its intent to split MMS into two agencies — one with responsibility for offshore leasing and development permits, the other for environmental and safety enforcement. That split may be desirable, but it wouldn't be enough to protect workers or fragile coastal environments from another catastrophe.

It certainly sounds like the right approach. After all, maximizing oil and gas development — and the revenues they bring to the federal treasury — mix with protecting worker safety and the environment like oil and water. The proposal follows the lead of Norway, Britain and Australia, all of which have independent safety enforcement agencies. Moreover, the administration has promised to ask Congress to double MMS' current enforcement budget.

Still, there are two important reasons why the proposed reforms fall short of what's needed.

First, the MMS is not solely responsible for the heavy emphasis on approving oil and gas development. Remember the calls to "drill, baby, drill"? Congress, the White House and coastal state politicians have all had their eyes on the money offshore production brings into government coffers (more than \$10 billion in 2009), the hope of energy independence and, no doubt, the political contributions of oil and gas interests. The political pressure to prioritize rapid development over safety won't evaporate if the MMS is split. The new safety agency would still be under the supervision of the Department of Interior, where it would have to compete with its bureaucratic sibling. Environmental and safety interests have been losing that competition for years. Giving them a new name and logo won't automatically change that outcome.

Second, environmental protection is not just a matter of enforcing a clear set of regulations as wells are being drilled or operated. The key environmental questions come much earlier, when the MMS decides where to offer leases, sells those leases and approves permits for exploration and development. That's when the fateful decision was made to allow oil production in ultra-deep waters, on the basis of what turned out to have been absurdly rosy predictions about the likelihood and magnitude of spills and about the efficacy of response measures. Under the administration's plan, those key decisions would remain with the leasing agency, not with the newly independent enforcement arm.

If this plan is not the answer, what is?

Environmental and safety review of proposed operations must be much more rigorous. The administration says it will seek new oil spill legislation extending the current 30-day deadline for the MMS to review exploration plans. That's good; it will provide some time for environmental analysis of

those plans. But we doubt that extra time would have changed the verdict on BP's plan. That plan was quickly approved without site-specific environmental analysis, relying on the fact that the MMS had prepared an environmental impact statement for the leasing program as a whole, and another for the lease sale. The real problem was that those environmental impact statements were woefully inadequate. That's not likely to be discovered, much less corrected, when an exploration plan is being reviewed.

What's needed is a wholesale shift in the agency's culture. Culture change is not as simple as creating a new agency. But it can be accomplished, with determined leadership and sustained outside oversight.

Interior Secretary Ken Salazar has already halted new offshore drilling until the end of this month, while his staff prepares a report on the Deepwater Horizon disaster. That moratorium should be extended until the MMS prepares new environmental impact statements that include explicit analysis of worst-case spill scenarios and the technically daunting challenges of responding to a deepwater blowout. Even better, since the MMS apparently can't be trusted to do an independent environmental analysis, that task should be assigned to an agency with an environmental protection mission, such as the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration or the Environmental Protection Agency (with an accompanying budget transfer).

Better environmental analysis would allow more effective citizen oversight. Congress and Interior's internal watchdog, the inspector general's office, could also do a better job of checking the MMS' environmental and safety reviews.

Of course, no agency can ever be completely insulated from politics. Whatever its future structure, the MMS will continue to face pressure from a powerful industry and its allies. That kind of pressure must be battled at the very top. Until the president and Congress clearly renounce the "drill, baby, drill" approach, there will inevitably be oil on the water.

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