

THE DENVER POST

June 6, 2010

Tracking down Minerals Management Service's dysfunctional history of drilling oversight

By Mark Jaffe and David Olinger
The Denver Post

From its creation in 1982, the Minerals Management Service at the center of the Gulf of Mexico oil disaster has been a conflicted agency.

Charged both with collecting revenue generated by oil and gas drilling to fund the government, and with approving the permits that generate that revenue, the MMS has always been torn between whether to be a regulator or friend to industry.

"This has been a troubled agency in every administration," said Marilyn Heiman, a former Interior Department official in the Clinton administration who is now director of the U.S. Arctic Program for the Pew Environment Group.

MMS plans, documents, e-mails, memos and databases reviewed by The Denver Post show an agency quick to sell offshore and approve drilling plans, while downplaying the potential for environmental damage and the risk of oil spills. For example:

- MMS accepted a BP oil-spill response plan that failed to discuss how to stop a deepwater blowout and that listed walrus as a Gulf of Mexico marine mammal.
- When a consultant reported six years ago that the fail-safe device to stop drilling-rig blowouts might not work in deep water, MMS required

no changes or remedy.

- The service suppressed warnings from its own scientists that offshore drilling in the Arctic Ocean could harm fish, polar bears and whales.
- MMS employees routinely accepted gifts and sometimes sex and drugs from oil companies they regulated, according to two reports from Interior's inspector general.

After the oil-rig explosion April 20 led to the country's largest-ever spill, Interior Secretary Ken Salazar moved to reshape the agency.

Elizabeth Birnbaum, Salazar's MMS director, resigned under pressure.

Salazar unveiled a plan to divide the service into three agencies to erase potential conflicts.

But reforming the service may be impossible, said an MMS scientist who requested anonymity because he still works there. "The only solution for MMS is basically to scatter it to the winds," he said.

The problems started with the way the agency was created under Interior Secretary James Watt in the Reagan administration. They have multiplied since then, former Interior Department officials say.

"MMS has an uncertain foundation," said Rebecca Watson, a former assistant secretary of the interior in the George W. Bush administration.

"It doesn't have a statutory mandate giving it a mission.

"This has led to an insecure and rather secretive management style."

That was compounded by a lack of scrutiny from Congress, state governments and environmental groups.

"MMS has flown under the radar for so long," said Kieran Suckling, director of the Tucson-based Center for Biological Diversity, an environmental group suing the service.

While other federal agencies such as the National Forest Service and the Bureau of Land Management improved their environmental reviews, in part because of environmentalists' challenges and lawsuits, MMS received little oversight and was stuck in its ways.

"If you went into one of their offices, you'd probably find them watching 'Leave It to Beaver' and rubber-stamping permits," Suckling said.

As decades passed without a drilling disaster, few people paid attention to this ad hoc federal agency.

"The industry and regulators became complacent because they assumed that since nothing had gone wrong, nothing could go wrong," Tom Strickland, Salazar's chief of staff, said in an interview.

Even after BP's Deepwater Horizon

rig exploded, MMS approved 20 more drilling plans, according to a service database.

And so out of the limelight, MMS created a regulatory framework with a set of chronic problems that include:

Underestimating risk of oil spills

In its 583-page gulf spill response plan, BP calculated the worst spill would last up to 30 days with a 20 percent chance of oil reaching sensitive parts of the Louisiana coast.

“They were lowballing the risk,” said Rick Steiner, a marine biologist and former University of Alaska professor. “Not only that, neither BP nor the MMS paid any attention to it whatsoever.”

Steiner noted that the BP plan lists walruses, sea otters, seals and sea lions as gulf “wildlife resources” and nowhere addresses how to respond to a deepwater blowout even though stopping the source “is the No. 1 priority in any oil spill anywhere.” There are no walruses, seals, sea lions or sea otters in the gulf.

In the 2006 environmental impact statement for the Gulf Central Planning Area, the 48-million-acre area that includes the the BP lease, the largest likely spill was calculated as 4,600 barrels less than a day’s flow from the BP well.

The estimate was based on spills recorded between 1985 and 1999, before companies began using larger, more complex rigs to drill in deeper water farther from shore.

In Alaska, Shell Oil Co. hoped to begin exploratory drilling this summer of the state’s north coast in the Chukchi Sea and Beaufort Sea.

The environmental assessment for the project said the most likely spill was a 48-barrel spill of diesel fuel

transferred from a barge.

“A very large spill from a well-control incident is not a reasonably foreseeable event,” the assessment said. “Therefore, this EA does not analyze the impacts of such a worst-case scenario.”

On May 27, Salazar announced that consideration of Shell’s plan would be postponed.

Rubber-stamping approvals

The MMS has relied on a broad environmental impact statement covering millions of acres to establish a basis for approving hundreds of exploration and development plans.

Since 2004, 67 percent of the more than 6,200 exploration and development plans submitted have received so-called categorical exclusions, enabling them to proceed without further analysis, according to an agency database.

The MMS says on its website it determined that individual environmental-impact statements were not needed after “hundreds” of less formal environmental assessments showed no need.

The service also developed a system of 18 deepwater grids in the gulf based on “biological similarity,” according to the Grid 12 environmental assessment. The first project in the grid receives an environmental assessment that is then used as the basis for all subsequent drilling applications.

In Grid 5, an environmental assessment was done for Shell Exploration and Production’s Perdido project in 2007. That became the standard for the 14 other companies with leases in the 4-million-acre grid an area the size of New Jersey.

In 2009, when Kerr-McGee Oil &

Gas Corp. submitted a development plan for a block in the grid, about 150 miles away from the Shell project, it received a categorical exclusion, according to MMS records.

Limiting environmental analyses

In July 2004, MMS did an environmental assessment of gulf seismic exploration, which involves ships traveling across the sea towing airguns firing into the ocean with explosive force every 10 to 12 seconds.

The service concluded the seismic work would not have a significant impact on marine mammals.

An environmental assessment is a less formal analysis that does not require public notice or input.

The National Marine Fisheries Service, not accepting the MMS assessment, said four months later that it would do a more detailed review, called an environmental impact statement, on seismic exploration.

Such a decision is published in the Federal Register and open to public review.

The NMFS said it would not issue the “incidental taking permits” required by the Marine Mammal Protection Act for seismic permits until the environmental impact statement was completed.

That statement is still under review. But even without the take authorizations, MMS has issued 639 seismic permits since 2004 to oil companies in the gulf, according to a service database.

“Those permits are not in legal compliance with federal statute,” said Michael Jasny, a senior policy analyst with the Natural Resources Defense Council, a national environmental group.

“It’s more than just bureaucratic red tape,” Jasny said. “Those requirements are there to protect wildlife.”

Suppressing scientists’ concerns

In 2006, service biologist Jeff Childs analyzed the impact of the Exxon Valdez spill on fish populations in Alaska’s Prince William Sound, according to documents obtained by Public Employees for Environmental Responsibility, a Washington, D.C.-based advocacy group.

Childs found that the spill had harmed generations of fish and concluded “a large oil spill . . . is likely to result in significant adverse effects on local populations requiring three or more generations to recover.”

That finding, under the National Environmental Policy Act, would have required MMS to conduct a more detailed environmental impact statement before auctioning leases in the Beaufort Sea.

Both Deborah Cranswick, chief of the environmental assessment section, and Paul Stang, Alaska’s MMS regional supervisor for leasing and environment, balked at Childs’ findings, e-mails show.

Stang left a handwritten note on Childs’ desk saying, “As you know, a conclusion of significance under NEPA means an EIS and delay in sale 202. That would, as you can imagine, not go over well with HQ and others.”

Childs, who no longer works for MMS, did not rewrite the section. A manager in the Alaska office did, and the lease sale went ahead in July 2007, fetching \$42 million in bids.

Concerns raised by another MMS biologist, James Wilder, that the impact on polar bears was not adequately addressed in Shell’s Alaska exploration plan, also were

rebuffed, according to e-mails.

“Now we are in extreme time crunch and under intense pressure to get this EA done regardless,” Wilder wrote in an e-mail.

Cranswick was out of the MMS Anchorage office and could not be reached for comment. Stang did not return a message seeking comment.

Revolving door with oil industry

In December 2006, Stang left MMS and set up Stang Consulting. From 2007 through 2009, Stang was a principal adviser to Shell Exploration and Development Co. one of the major bidders on leases off the Alaska coast.

Randall Luthi, the director of MMS in the Bush administration, in March became head of the National Ocean Industries Association, a trade group that includes offshore drilling companies. Luthi succeeded Tom Fry, who was a director of MMS in the Clinton administration.

The Project on Government Oversight, a Washington watchdog group, identified nine other federal officials who left MMS or the Department of Interior for oil industry jobs or law firms that represent extractive industries.

Among them was Jimmy Mayberry, who worked in an MMS program for three years, then left to create an energy consulting firm.

After winning a rigged bid from MMS, Mayberry pleaded guilty to a violation of federal conflict-of-interest law.

A May report from the Interior Department’s inspector general highlights the ingrained culture of friendship between offshore oil producers and MMS inspectors.

The inspector general investigated MMS inspectors in Lake Charles, La., who had accepted gifts from an

offshore oil company.

The agency’s district manager, Larry Williamson, explained to investigators that many inspectors had worked for oil and gas companies and remained friends with industry representatives.

“Obviously, we’re all oil industry,” Williamson said. “Almost all of our inspectors have worked for oil companies out on these same platforms.

“They’ve been with these people since they were kids. They’ve hunted together. They fish together. They skeet shoot together. . . . They do this all the time.”

Lax approach to safety issues

The last line of defense in accidents such as the Deepwater Horizon explosion is a device called the blowout preventer, which has a emergency shear ram designed to slice through the drilling pipe and seal it.

Six years ago, a consultant hired by MMS noted that newly built rigs might be unable to shear pipe “at their maximum rated water depths.”

The consultant, West Engineering, faulted “the lack of preparedness in the industry to shear and seal a well with the last line of defense against a blowout.”

MMS alerted offshore oil companies to this potential problem but never required a more reliable last-ditch safety system.

As offshore drilling expanded, fines and civil penalty cases for violating safety and environmental standards declined. Last year, MMS collected penalties in 20 cases, down from a high of 66 in 2000. Fine amounts also dropped from a high of \$3.1 million in 2007 to \$919,000 last year.

One factor that limits MMS fines: By rule, it cannot charge more than \$35,000 a day for any single violation.

It is this litany of deeply ingrained problems in environmental and risk assessment, safety oversight and agency culture that must be addressed by any overhaul of MMS, critics say.

“Separating the activities without looking at the culture of MMS is a superficial step,” said Heiman, an Interior official in the Clinton administration.

What Salazar would change

Salazar’s plan is to take the service’s 1,700 employees and reassign them to:

- A Bureau of Ocean Energy Management, responsible for planning, permitting and leasing, with a staff of about 700.

- A Bureau of Safety and Environmental Enforcement, with 300 staffers, responsible for comprehensive oversight, safety and environmental protection of offshore oil operations.

- The Office of Natural Resources Revenue, which, under the supervision of the assistant secretary for policy, management and budget, would collect and audit royalties and revenues. The office would have a staff of about 700.

“The problem is that if you just move the same people into new agencies, you still end up with the same behavior,” said Jeff Ruch, director of Public Employees for Environmental Responsibility, which has helped MMS scientists publicize their experiences.

Some critics contend that many of MMS’s duties should be transferred to other agencies: royalty collection to the Treasury Department, environmental assessments to the National Oceanic and Atmospheric Administration.

“We want to get this right,” Interior’s Strickland said. The reorganization, he said, would be “open and transparent.”

As for the “lackadaisical and insufficient” environmental assessments that riddle the agency, Strickland said, they would all be reviewed.

“This is a pivotal moment,” Strickland said, comparing it to the 1986 space shuttle disaster. “This is like the Challenger for the oil industry.”