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November 30, 2010

Dr. Jane Lubchenco
Under Secretary for Oceans and Atmosphere and Administrator,
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW, Room 5128
Washington, D.C. 20230

Dear Administrator Lubchenco:

We write to you today to request specific information related to the *Deepwater Horizon* oil spill. As Chairmen of the House Committee on Natural Resources and the Subcommittee on National Parks, Forests and Public Lands, respectively, we have jurisdiction over energy development issues in the Outer Continental Shelf and take seriously our constitutionally mandated oversight duties. To date, significant information we have requested from NOAA related to those duties has not been provided.

On August 4, the *New York Times* published a story headlined "U.S. Finds Most Oil From Spill Poses Little Additional Risk." The story referenced a federal report, provided to the *Times*, entitled "BP Deepwater Horizon Oil Budget: What Happened to the Oil?" As it explained:

The National Incident Command (NIC) assembled a number of interagency expert scientific teams to estimate the quantity of BP Deepwater Horizon oil that has been released from the well and the fate of that oil. [. . .] One team calculated the flow rate and total oil released. Led by Energy Secretary Steven Chu and United States Geological Survey (USGS) Director Marcia McNutt, this team announced on August 2, 2010, that it estimates that a total of 4.9 million barrels of oil has been released from the BP Deepwater Horizon well. A second interagency team, led by the Department of the Interior (DOI) and the National Oceanic and Atmospheric Administration (NOAA) developed a tool called the Oil Budget Calculator to determine what happened to the oil. The calculator uses the 4.9 million barrel estimate as its input and uses both direct measurements and the best scientific estimates available to date, to determine what has happened to the oil.

The report suggested that approximately 74 percent of the leaked oil was, at the time the report was released, no longer an environmental threat:

In summary, it is estimated that burning, skimming and direct recovery from the wellhead removed one quarter (25%) of the oil released from the wellhead. One quarter (25%) of the total oil naturally evaporated or dissolved, and just less than one quarter (24%) was dispersed (either naturally or as a result of operations) as microscopic droplets into Gulf waters.

At an August 4 press conference to discuss the report, you said it “was produced by scientific experts from a number of different agencies, federal agencies, with peer review of the calculations that went into this by both other federal and non-federal scientists.”¹ This gave the clear impression that the findings and supporting data had been subjected to a scientifically rigorous peer review process. White House energy and climate advisor Carol Browner also claimed the Oil Budget Report and supporting material had been extensively peer reviewed.

That claim was later contradicted by one of NOAA’s senior scientists, Bill Lehr, at a Congressional hearing after the release where he explained that the report had not yet been peer reviewed. Indeed, on a November 23 conference call, you stated that you were “in error” when you said the report had been peer reviewed. “The August report had the benefit of outside consultation with a number of experts that helped prepare the report, but it was not peer reviewed,” you said on the call. Your revision of your earlier statements is of considerable public interest, and we feel your clarification should be made widely known.

The confusing statements made throughout the summer regarding the level of peer review of the report followed many weeks of confusion regarding the magnitude of the spill itself. Early statements by the President and agency heads estimated the flow of oil at 5,000 gallons per day in the early days of the spill² and 12,000 to 19,000 barrels per day on May 27 – a figure subsequently acknowledged as the lowest range of the lower bound of the spill’s potential size.³ By determining the actual rate to have been as high as 64,000 barrels per day at the beginning of the spill and 53,000 barrels per day before the well was capped, the Oil Budget Report showed the government’s own previously released numbers to be inaccurate.

In addition to the widely varying estimates of the spill’s magnitude, there have been reports of attempts to exercise control over efforts by independent analysts studying the Horizon spill. For example, media reports in June quoted a Texas A & M professor named Steven DiMarco as saying that in exchange for being allowed aboard a NOAA research boat, he was expected to sign a gag order and would not be able to publish his research on hypoxia “pending the liability litigation” on Deepwater Horizon, which could take decades.⁴

¹ <http://www.whitehouse.gov/the-press-office/press-briefing-press-secretary-robert-gibbs-admiral-thad-allen-carol-browner-and-dr>

² http://articles.cnn.com/2010-04-28/us/louisiana.oil.rig.fire_1_rig-explosion-oil-spill-transocean?_s=PM:US

³ http://www.huffingtonpost.com/2010/06/03/gulf-oil-spill-latest-fed_n_599615.html

⁴ http://www.huffingtonpost.com/2010/06/02/noaa-director-toes-bp-lin_n_598461.html

As you know, the Gulf economy was shattered by the Deepwater Horizon disaster, and the people of the Gulf States and the entire nation have rightly demanded an explanation not only of how the spill occurred but of the extent of the damage and the prospects for recovery. The public also deserves assurances that proper procedure was followed while the Oil Budget Report was prepared, and that independent scientists were able to collect data during the spill and its aftermath. Accordingly, please send us the following material and/or information no later than Wednesday, Dec. 15.

- All records dated between April 20 and August 4 regarding the analysis, preparation, release or dissemination of the flow rate and/or oil budget used to prepare the Oil Budget Report.
- All supporting scientific documentation relating to the preparation of the Oil Budget Report, including but not limited to pre-publication draft estimates of the flow rate and/or oil budget and any and all assumptions, models and calculations used in developing the report.
- All records and communications between April 20 and August 4, including with outside experts, regarding peer review or potential peer review of the Oil Budget Report, including the models used for estimating the oil spill flow rate.
- NOAA's published standards, restrictions, or requirements, if any exist, for allowing outside experts to participate in agency research efforts in the Gulf during the oil spill. Alternatively, if NOAA has no specific standards or requirements that outside experts must comply with, please stipulate that.

In addition, on May 19, Chairman Rahall sent you a letter requesting (1) unredacted copies of any and all documents related to potential impact to threatened and endangered species, marine mammals, Essential Fish Habitat, critical habitat and fisheries as a result of energy development activities in the Gulf of Mexico (including but not limited to leasing plans, lease sales, geological or geophysical exploration, exploration or development plans and drilling permits), as well as (2) unredacted copies of all formal or informal consultations under the Endangered Species Act and the Marine Mammal Protection Act for such activities.

After two months, your agency produced a large box of documents related to the *decommissioning* of oil rigs in the Gulf, but none of the information requested in (1) and (2) related to energy development activities. Please inform us whether it is NOAA's position that no documents exist related to this request or whether the agency chose not to provide them.

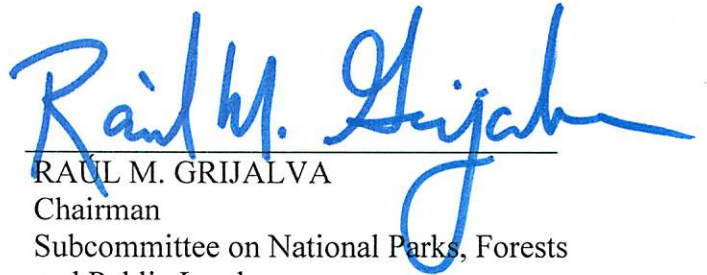
Dr. Jane Lubchenco
November 30, 2010
Page 4

We thank you for your attention in this matter and look forward to your prompt response. If you have additional questions, please contact Jean Flemma of the Subcommittee on Insular Affairs, Oceans and Wildlife at (202) 226-0200 or Adam Sarvana of Rep. Grijalva's office at (202) 225-2435.

Sincerely,



NICK J. RAHALL
Chairman
Committee on Natural Resources



RAUL M. GRIJALVA
Chairman
Subcommittee on National Parks, Forests
and Public Lands