

RAÚL M. GRIJALVA
7TH DISTRICT OF ARIZONA

COMMITTEE ON NATURAL RESOURCES
Subcommittee on National Parks, Forests and Public
Lands, Chair
Subcommittee on Water and Power

COMMITTEE ON EDUCATION AND LABOR
Subcommittee on Workforce Protections
Subcommittee Early Childhood, Elementary and
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CONGRESSIONAL PROGRESSIVE CAUCUS,
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Congress of the United States
House of Representatives
Washington, DC 20515-0307

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Dr. Jane Lubchenco
Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue, NW, Room 5128
Washington, D.C. 20230

Dear Administrator Lubchenco,

As Chairman of the House Subcommittee on National Parks, Forests, and Public Lands, I have a constitutionally mandated responsibility to oversee public and private activities that impact the quality of our federal lands. As part of that responsibility, I write to you today concerning questionable scientific data released by your agency as part of the BP Deepwater Horizon cleanup and response effort. The National Park Service has been intimately involved in spill response activities, and the spill has affected or could affect multiple national parks, preserves and other protected areas, including Big Cypress National Preserve (FL), Biscayne National Park (FL), Canaveral National Seashore (FL), De Soto National Memorial (FL), Dry Tortugas National Park (FL), Everglades National Park (FL), Gulf Islands National Seashore (FL and MS), Jean Lafitte National Historical Park & Preserve (LA), Padre Island National Seashore (TX) and Big Thicket National Preserve (TX).

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, apparently provided exclusively to the *Times*, entitled "BP Deepwater Horizon Oil Budget: What Happened to the Oil?" The report explained its origin and purpose in a single paragraph:

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 data to support the findings, as well as the findings themselves, had been subjected to a scientifically rigorous peer review process. The initial public reaction was relief that such a thorough review had found reduced risks to the Gulf of Mexico and its ecosystems and economic resources.

Subsequently, those assurances were brought into question in ways that greatly concern me. As a *Wall Street Journal* article published August 19 explained, White House energy and climate advisor Carol Browner initially claimed the Oil Budget Report and supporting material had been extensively peer reviewed, only to be contradicted by one of your top staffers at a recent Congressional hearing:

Bill Lehr, a senior scientist with the NOAA, told Mr. Markey’s panel that the report had not yet been peer reviewed because “our priority was to get an answer as quickly as possible to incident command.”

A peer review had been “delayed by a week because I’m having to come here,” Mr. Lehr said. “We’re hoping to get it out in two months.”

At [the August 4] White House news conference earlier this month, Ms. Browner said the report had “been subjected to a scientific protocol, which means you peer review, peer review and peer review.”²

Your agency, along with several others, has a troubling history of premature assurances that the Horizon disaster was small and easily containable. Early statements by the President and agency heads, often citing NOAA data, estimated the flow of oil at 5,000 gallons per day in the early days of the spill³ 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.⁴ 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 entirely inaccurate and unreliable.

In addition to the widely varying estimates of the spill’s magnitude – always revised significantly upward after questions were raised about the previous figure – there have been disturbing reports of attempts to silence or discredit independent analysts studying the Horizon spill. As the *Huffington Post* reported June 2:

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

² <http://online.wsj.com/article/SB10001424052748704476104575439833542718518.html>

³ http://articles.cnn.com/2010-04-28/us/louisiana.oil.rig.fire_1_rig-explosion-oil-spill-transocean?_s=PM:US

⁴ http://www.huffingtonpost.com/2010/06/03/gulf-oil-spill-latest-fed_n_599615.html

[O]ne independent scientist is telling the Rachel Maddow Show that in return for being allowed aboard a NOAA boat, he's being forced to submit to a gag order.

"I'm essentially being told that the data I'm collecting on my hypoxia cruise may or may not be subject to quarantine," Steven DiMarco, a professor in the oceanography department at Texas A&M, told Maddow. "Which means that we will not be able to publish it, pending the liability litigation. Oh, yeah, 20 years from now, we may be able to publish it."

This is not the only instance. According to a Sept. 16 report by WWL-TV, the CBS affiliate in New Orleans, two independent researchers, Marco Kaltofen and Dr. William Sawyer, were hired "by a New Orleans-based law firm to collect and analyze samples of water, sand and sea life that had been affected by the oil spill." Sawyer told the network that the two had found "an alarming pattern of hydrocarbons maintained in the water column, at levels that are hazardous to the marine environment." The government's response is striking:

"We were contacted by the national commission on the BP oil spill," Kaltofen said.

President Barack Obama created the commission to look into the oil spill, hold hearings and eventually make recommendations based on their findings. Yet, the two scientists said the phone calls were unsettling.

"I explained the work, but there seemed to be a grave concern as to why we were finding contamination," Sawyer said. "It was sort of a loaded question – and then the questions were geared towards sampling permits."

The question: did they have the proper permits to do their sampling? The scientists said they did.

"The second thing we were asked is, 'Do we believe that our data shows that the federal data is wrong?'" Kaltofen said. "The last thing, of course, is the National Commission impugned my reputation and said that they were trying to determine if we were sampling illegally."⁵

Taken together, this attitude toward independent analysis and the widely varying spill estimates do not paint an acceptable picture. 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. I am concerned that NOAA and its partner agencies have fallen short in this regard.

We must ensure the credibility of the Oil Budget Report and NOAA's work responding to the spill. Accordingly, please send me the following material no later than Thursday, Oct. 14.

- 1) All NOAA staff emails regarding the release, analysis, preparation or dissemination of the Oil Budget Report.
- 2) All supporting scientific documentation regarding the Oil Budget Report, including but not limited to pre-publication draft estimates of the flow rate and oil budget.

⁵ <http://www.wwltv.com/news/gulf-oil-spill/Scientists-Investigating-Oil-Spill-Unsettled-By-Calls-From-Federal-Commission-103095444.html>

- 3) All NOAA staff communications with outside experts regarding peer review or potential peer review of the Oil Budget Report.
- 4) All records of NOAA staff communications with news outlets on the Oil Budget Report.
- 5) All NOAA information regarding the phone calls made by oil spill commission representatives to Marco Kaltofen and William Sawyer.
- 6) NOAA's written standards for allowing outside experts to participate in agency research efforts, such as the one Steven DiMarco joined on the condition that he sign a gag order.

I thank you for your attention in this matter and look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Raúl M. Grijalva". The signature is written in a cursive style and is positioned above a horizontal line.

Rep. Raúl M. Grijalva