



Robin Bullock

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VIA EMAIL AND U.S. MAIL

Fredy Hernandez
Claims Manager
Natural Resource Damage Claims Division
U.S. Coast Guard MS 7100
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100

Re: February 13, 2012 Letter regarding Department of the Interior claims

Dear Mr. Hernandez,

This letter is in response to the above-referenced correspondence relating to the Department of the Interior's (DOI) request for funds for Pelagic Oiled Bird Photographic Evaluation and the Turtle Analytical Plan.

With respect to funds requested for the Pelagic Oiled Bird Photographic Evaluation, BP has declined to fund this effort. As explained in previous correspondence,¹ DOI seeks funds to evaluate photographs taken by its contractor during the implementation of a cooperative natural resource damages assessment (NRDA) study and use the results of this independent effort to controvert data from cooperative, real-time observations. BP does not believe that such re-evaluation would be useful or appropriate in these circumstances. First, the parties had previously agreed to a cooperative protocol that required trained observers to go into the field and visually evaluate the amount of oil observed on birds at designated study sites. This protocol was properly implemented in the field by expert participants. Second, the photographs are not representative of the range of conditions that were actually observed in the field under the cooperative assessment protocol. They were taken opportunistically and without a standardized protocol and cannot be used to draw conclusions about the range of conditions observed in the field. Third, the ability to identify phenomena such as feather wear based on a photograph is questionable, and worn feathers are not always evidence of exposure to oil. In sum, the proposed Pelagic Oiled Bird Photographic Evaluation is not consistent with the original cooperative protocol and would not improve the ability to determine oiling rates or estimate potential mortality among pelagic seabirds. Accordingly, the proposed evaluation is not a reasonable assessment cost pursuant to OPA.

To the extent that DOI's claim requests funds to conduct avian NRDA efforts independent of photographic re-evaluation, such as data analysis, statistical estimation of pelagic bird populations, and development of a live oiled bird model, BP has repeatedly indicated its willingness to discuss joint participation and funding of these types of cooperative interpretive activities.

BP will fund DOI's assessment costs for five components of the Turtle Analytical Plan (the "Plan"): Petroleum and PAH Analyses, PAH Metabolites, Hatchling Gonad Histopathology, Isotopic Ratios in Maternal Scut Biopsies, and Clinical Chemistry and Hematology for Maternal Blood Samples. BP's agreement to fund the above-referenced components of the Plan assumes that the Plan will be developed, like other cooperative studies, through the cooperative NRDA process. Among other things,

¹ See letter from Robin Bullock to Cynthia Dohner (September 28, 2011) (attached).

this means that BP and DOI will share all data relating to the Plan and will work together to establish appropriate procedures for prioritizing and analyzing samples. We do not have enough information from DOI at this time to determine the costs of the components of the Plan that BP supports, and with this letter, request that detailed documentation.

As described in my October 14, 2011 letter,² BP is declining to fund the assessment costs for the remaining components of the Plan for the following reasons:

1. Cytochrome P450 Immunohistochemistry Analyses. CYP1A may be activated by a number of natural and anthropogenic factors and is therefore not a useful indicator of exposure to MC252 oil. In addition, the presence of CYP1A is not an indicator of potential health effects. The proposed analyses for Cytochrome P450 will therefore not assist in understanding the potential effects of the MC252 accident.
2. HAH (halogenated aromatic hydrocarbon) Compounds. Based on previous discussions with DOI, it was our understanding that these analyses had been withdrawn from immediate consideration due to sample size issues. During a December 6, 2011 teleconference, DOI informed us that no samples had been identified for these analyses, and we have received no further correspondence from DOI on this issue. Regardless, BP cannot support these analyses because they appear to be related to the Cytochrome P450 tests described above, which BP does not support.
3. Maternal and Hatchling Tissue DNA Analyses. For the reasons stated previously, we recommend that these analyses be delayed until the results of all other analyses are complete and have been interpreted.
4. Satellite Transmitter Data Analyses. In our previous comments, we indicated that we could not evaluate this component of the Plan because insufficient information had been provided. To date, many aspects of the proposed analyses remain unclear. We are also concerned that there are apparently multiple efforts underway to analyze satellite data for a number of different species. We believe it is premature to undertake the proposed analyses, given that there is not agreement regarding how to consistently address the data. We are not disputing that transmitter analyses should be completed, and we are not asserting that BP would refuse to participate in or fund cooperative transmitter analyses. We do believe, however, that such work should be completed consistently and with forethought as to data usability and interpretation. Therefore, we deny this request, at least until we have a better understanding of the proposed work.

According to your letter, DOI has removed two proposed analyses, Kemp's Ridley Tissue Culture Assessment and Dispersants, from the Plan. BP supports that decision.

BP funded the cooperative collection of the samples that will be analyzed pursuant to the Plan and, therefore, expects to receive the results of laboratory tests on those samples. We look forward to discussing the cooperative aspects of the Plan with DOI, including how to expedite the work that both DOI and BP support.

In summary, BP agrees to fund the five components of the Plan mentioned above through the cooperative NRDA process. In addition, funding should be denied for the areas which we dispute, for either lack of direct connection to NRD injury, or because DOI has provided insufficient information to enable BP to make a decision about funding.

Please do not hesitate to contact me with any questions.

Sincerely,



Robin Bullock
Director of Natural Resource Damage Issues
BP Gulf Coast Restoration Organization

² See letter from Robin Bullock to Cynthia Dohner (October 14, 2011) (attached).

cc via email: Administrative Record
Cynthia Dohner (DOI)
Debora L. McClain (DOI Deepwater Horizon Case Management)
Troy Baker (NOAA)
Robert Haddad (NOAA)
Dr. Nick Tew (Geological Survey of Alabama)
N. Gunter Guy (Alabama Department of Conservation and Natural Resources)
Lee Edmiston (Florida Department of Environmental Quality)
Garret Graves (Louisiana Coastal Protection and Resource Authority)
Roland Guidry (Louisiana Oil Spill Coordinator's Office)
Peggy Hatch (Louisiana Department of Environmental Quality)
Robert Barham (Louisiana Department of Wildlife and Fisheries)
Bob Harper (Louisiana Department of Natural Resources)
Trudy D. Fisher (Mississippi Department of Environmental Quality)
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