

House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies Holds Hearing on Oversight of the National Weather Service

WOLF:

Good morning. The hearing will come to order. Welcome Dr. Lubchenco. You're accompanied by -- this morning by Dr. Kathy Sullivan, deputy administrator and assistant secretary of Commerce for Environmental Observation & Prediction for the National Oceanic and Atmospheric Administration.

Dr. Sullivan, along with the Department of Commerce Deputy Assistant Secretary for Resource Management led the investigative team to look into the matter we will be discussing today.

We're here hopefully this morning to discuss the finance of the joint Department of Commerce and National Oceanic and Atmospheric Administration internal inquiry into the alleged mismanagement of appropriate funds within the National Weather Service.

The Department Deputy General Counsel submitted this report to the committee on June 5, 2012. The committee hearing will focus on internal inquiry; next steps in investigating and auditing the Weather Service; steps taken and plan to correct these lapses; and assure that similar situations are not occurring elsewhere, you know or elsewhere in the Department of Commerce.

We will also have questions on the ramifications of the proposed fiscal year 2012 reprogramming including impacts on critical Weather Service programs and when fiscal year 2013 funding request for the National Weather Service.

The report brings to life some very serious and disturbing allegations. The subcommittee will be asking you a series of questions about the impacts of this financial mismanagement on the current weather forecast and the future forecasting improvement.

In summary, the report found that NOAA personnel engaged in the unauthorized reprogram in an appropriate funds in violation of the fiscal year 2010 and fiscal year 2011 Appropriations Act and possibly -- and possibly Antideficiency Act. It was also found that significant management leadership, budget, and financial control problems led to the environment of when these unauthorized reprogrammings took place.

The Department of Commerce's Inspector General had to receive the internal investigation report and in reviewing whether there may have criminal violation of the Antideficiency Act. Under the Inspector General Act of 1978 as amended and the Inspector General is required to report

expeditiously to the Attorney General whenever there are reasonable grounds for believing there was a violation of the Federal Criminal Law.

According to the Office of the Inspector General, they intended to promptly engage the Department of Justice in discussions on this matter. In order to be (inaudible) account for these previous unauthorized funding shifts on May 24, 2012, the Department of Commerce submitted a reprogramming for fiscal year 2012 to reallocate 35.6 million within NOAA.

This reprogramming is required to ensure that the National Weather Service has the funds necessary to provide continuity in operation for the remainder of this fiscal year and to provide funds for the deployment of previously planned upgrades to weather radars.

Of the 35.6 million request, the National Weather Service is seeking approval to increase its local warnings and forecasts based by 26.2 million. The other increase, the 9.4 million is for the next generation radar program. These increases are offset by a number of small or decreased, totaling that total of that 30 million, for within the National Weather Service while the remaining 5.5 million would be cut to other programs within NOAA.

The subcommittee will ask you to review with us the specific increases and decreases, why the increases are necessary and the impact on the programs that you're proposing now to reduce. In particular, we would ask you to review the list of reductions, your requesting approval to cut programs that have previously been rated by these unauthorized reprogrammings that were be the subject of the -- this inquiry.

It is my understanding that the committee does not approve this reprogramming, that the National Weather Service would have to begin furloughing employees on July 1 in order to avoid deficiency. We will work to ensure that furloughs do not occur.

When emphasized, pointed out that the fiscal year of 2012 of Appropriations Act and I think it's important for everybody to understand included more funding and requested by the administration for National Weather Service.

That was done in a bipartisan way here. So there's nothing that give a hard pressed moment of struggle as there was more funding and if the House pass the fiscal year 2013 funding available for the National Weather Service, it's again more than the request. And that is highly unusual and isn't an economic environment to have more than the request. Even in fiscally constrained times, the committee remains fully supportive for the National Weather Service.

In fact, the National Weather Service funding is one of our highest priorities and it was one of only a few areas that saw a significant increase in the fiscal year 2013 bill.

Over the last five fiscal years, funding for local warnings and forecast and programs within the National Weather Service that pays for the bulk the salaries of the Weather Services has grown from 579 million in fiscal year '08 to 631 million in fiscal year 2012; an increase of 52 million or 9 percent.

Clearly this committee, on both sides of the aisle, has been supportive on the National Weather Service and for good reasons. The men and women of the National Weather Service provide a vital daily round-the-clock service, serving a vital life and safety role.

It is really unfathomable that employees resorted to this sort of illegal movement of appropriations in order to fully fund agency operations. If the Department of Commerce had come to the committee and asked the reprogramming for these funds, we would have worked with you in the National Weather Service to ensure that basic requirements were met and program impacts were acknowledged and understood.

We've also asked you to discuss, quote, "structural deficit" within the National Weather Service. It appears from the report that the "structural deficit" was discussed within the Weather Service for number of years.

And then in September 2010, a presentation was made to the National Weather Service Corporate Board on the structural deficit but that nothing -- nothing ever came of this discussion about additional funding need of the National Weather Service. The structural deficit was apparently perceived shortage of funds within the agency that compelled Weather Service staff to illegally moved funds out of the key Weather Service operating programs in order to pay common services and salary expenses.

The committee is particularly concern about the impact of these unauthorized cuts to the core forecasting capabilities of the National Weather Service, namely to the Advance Weather Inactive -- Interactive Processing System, the next generation weather radar and NOAA weather radar radio programs.

For the investigation, we will discuss today (inaudible) fiscal year 2010 and 11, it is my understanding and I think that it's appropriate that the audit will be conducted to look at additional prior fiscal years. We will actually comment on this also. We also want to stress the seriousness of this matter to the committee. Adherence to the law, in this case, to the department's annual Appropriations Act is a very serious matter.

It was well understood by Congress and by this committee that unforeseen circumstances may arise and call for reallocation among the purpose of funds have been appropriate. It is for this reason that we include bill language laying out the procedures for such programming; ensuring that Congress withholds the constitutional power of the first; is notified of any consents to any such reallocation.

It seems clearly that what went on to the National Weather Service was a very serious violation of these procedures. We're hoping we'll get your commitment to get at the bottom of this matter in order to ensure that this never happens again not only with the National Weather Service, but - - know what -- in the entire Department of Commerce and quite frankly the entire government of all the committees, of all the agencies, of all bureaus that come before this committee.

Before I recognize Mr Fattah, I want to say one other thing. We're going to have a series of votes about 10:30, quarter of 11. So in order to not keep you here, we have about 65 other questions, very deep -- detailed.

We either have the option of coming back at 2:30 or 3:00 or submitting them. So what we're going to do is we will ask the questions, we're going to keep the hearing to this issue and then ask you and your staff to bring the answers back to the committee by 5 o'clock on Monday.

And based on the response, we will then deal with the reprogramming. So that's the way -- unless you have a difference with that and would like to stay, we will give you the questions but whereas they'd be answered fully by 5 o'clock on Monday.

With that, I turn to Mr. -- Mr. Fattah.

FATTAH:

Let me thank the chairman. I wasn't aware we have a vote but quickly -- so I'll abbreviate my opening statement so we can get to the questions at hand. But this is a unique among Washington and I see no personal gain of any sort but that still is a very important issue.

And I think that's why you've taken action, you've taken Madam Administrator, to go after this so aggressively because it is very, very important that the congressional appropriations process and the rules related here too are followed in each and every agency so we can have orderly processes of government.

But what apparently took place here was a -- the Chairman referenced that this concern around the structural deficit in the Weather Service led to some what I think were accounting methods that -- I think give rise to the concern of the committee into your own investigative team. That in order to supplement accounts that were unimportant to the Weather Service, maybe not all costs were recognized appropriately. So we want to get to these but you're in a town full of scandals, this is unique and rare among them.

So I thank you, Chairman and I -- and I appreciate the thoroughness of the chairman and his staff at moving at this very aggressively and the agency's willingness to turn over information so that we can be fully prepared for today's hearing.

Thank you, Mr. Chairman.

WOLF:

Thank you, Mr. Fattah.

You can proceed on your statement -- full statement will appear on the record and if you can summarize, I'd appreciate it.

LUBCHENCO:

Thank you, Mr. Chairman, the Ranking Member Fattah and members of the committee. I want to begin by thanking you for your very strong support for NOAA and for the Weather Service in particular.

We share your admiration for the men and women of the National Weather Service that day in and day out provides life saving, property saving services to all of us.

I'm here today to testify on the misconduct in budget formulation and execution carried out by a few individuals at the Weather Service. I want to be absolutely clear the life and property saving forecasts and warnings and the core mission of the Weather Service were not jeopardized by this misconduct.

Nonetheless, what happened was very wrong and in my view, was gross misconduct. I first learned of the alleged misconduct in late November 2011. I took decisive action immediately. Within 24 hours, I notified the Deputy Secretary Becky Blank, of placing the government employee on administrative leave and to reassign the (inaudible) to serve as National Weather Service Acting CFO.

Within the next 48 hours, Dr. Blank and I launched an internal investigation, informed the Department of Commerce Inspector General and notified this committee and your counterpart in the Senate. The investigation concluded in May.

The findings were as followed -- One, the Weather Service reprogram fund in FY '10 and '11 without appropriate congressional notification; Two, the mechanism used were complex, clever and undetectable by existing financial controls; Three, there was a lack of transparency and oversight in the Weather Service budget execution; and four, importantly, the report did not find fraud or personal financial gain by any employees.

Further, the Weather Service was not operating in the red or as a whole with insufficient funds to accomplish its core mission. However, it is clear that the Weather Service did not have the right amount of money in the right account for its labor and operating cost.

On May 25, then Deputy Secretary Blank and I issued decision memos directing a series of congressional -- of corrective actions. We've now ensured that all financial misconducts within the Weather Service had stopped.

I directed the Weather Service to try -- to change the supervision of the CFO. We are expanding the NOAA CFO supervision of one of the accounting mechanisms used inappropriately. And we have initiated steps to contract for an independent financial review and analysis. I ordered in total 12 corrective actions, increased transparency and financial control.

I've heard three questions that remained unanswered. The first is how much money was moved inappropriately? I assure you I want this answered as much as you do. Because our investigative

team was not equipped to make this determination, I ordered an outside financial review and analysis.

The second question is what motivated this misconduct? I cannot speculate an individual's motive but from the report, it would appear that the actions were intended to protect warning and forecast operations.

This leads to the third question. Why did we not ask for more funds in the right accounts in the first place? The answer to this is simple. Prior to this investigation, I did not know that the level of requested funds for certain programs were insufficient for those programs. Had I known, NOAA could have requested the accurate levels of funding in the right places. Now that we know, we are acting decisively to address the problems.

As you know, we submitted a reprogramming to balance the account and protect our employees and core mission. This reprogramming will sustain current levels of weather forecast and warning services to the nation.

The reprogramming moved funds out of research and spare parts inventories and it delayed some improvements. These cuts minimized risk to core operations and will not jeopardize the existing warnings and forecasts. Importantly, these cuts can be implemented this late in the fiscal year. We are here to discuss this investigation in reprogramming. But I hope that this can be a starting point for a longer dialogue.

This investigation shows that the Weather Service has been living with unsustainable operations model. One that is too inflexible to adapt and adjust to different physical environments and changing demands for services.

The Weather Service must become more resilient and flexible. In the coming months, we need a dialogue in formulating a strategic vision for what the nation needs for the 21st century Weather Service. One that enables employees, operations and technology to evolve while continuing to deliver services that protects public safety.

Thank you again for opportunity to testify. Dr. Sullivan and I are here to answer your questions to the best of our abilities.

WOLF:

Thank you very much.

Can you assure us that the National Weather Service's ability to accurately forecast the weather has not been compromised given what had been revealed in the investigation that you've just outlined?

LUBCHENCO:

To the best of my knowledge, yes, Sir.

WOLF:

Funding for three other Weather Services cornerstone systems were rated (ph) during at least the last two fiscal years and perhaps longer. And probably, must have had some impacts because you just -- otherwise, if it didn't make any difference, why was it even there?

Would you please briefly describe the Advanced Weather Interactive Processing System and why it is important? Funds requested and appropriated for this program were rated (ph) during at least for the last two fiscal years. So what is the status of this -- this system and how long do you think this went on?

LUBCHENCO:

Mr. Chairman, the...

WOLF:

Before -- before?

LUBCHENCO:

The investigation focused on fiscal years '10 and '11 because that's what the complaints that have alerted us to the problem.

WOLF:

Are more points coming over to transit now saying that it actually goes back long?

LUBCHENCO:

We do not know if it goes back and that is one of the reasons that I have ordered an outside financial review and analysis to go that would go back a number of years so that we have a better handle of when this -- if it started earlier, when and what exactly the full impact is.

Your first question, we -- the investigation was unable to discover the full impact which is why this outside fiscal analysis is so important.

WOLF:

Who is doing the outside investigation?

LUBCHENCO:

We will be issuing a contract for an outside firm to come in and help us with it. That has not been -- we put together what the contract looks like, what the specifications are. We'd be happy to share that with you and at this point, it would be an open contract.

WOLF:

Would you describe the Advance Weather Interactive Processing Systems and why it's important?

LUBCHENCO:

This -- the -- AWIPS is the acronym for that program. It is a combination of hardware and software that pretty much underpins everything that happens at the weather forecast offices. It enables the forecasters to analyze, process, see in real time what's happening and be able make weather forecast based on that.

WOLF:

What is the status of Next Generation Radar Program? This -- this was also rated.

LUBCHENCO:

NextGen is a program that is designed to significantly improve -- I'm sorry. Yeah, I was thinking of NextGen. The two programs have had similar names. NextGen is a program that is a collaboration with FAA that's designed to improve the quality of the forecasting that we can provide to the aviation industry, vitally important, and independent on our operation.

In this particular case, we are on track with our part of the bargain for what needed to deliver for NextGen. FAA is delayed in its part of the program by a year. And so we believe that we can push the pause button if you will on our operations so that we can then be synced up with FAA without any adverse impact to this particular program. It's a very important program.

WOLF:

NOAA's Weather Radio program was also the victim of these unauthorized transfers of funds. We all know how important the Weather Radio program is in times of severe weather.

Does NOAA have an agreement with the Department of Homeland Security to use this system in the event of a national security emergency and what is the status of our Weather Radio system?

LUBCHENCO:

The NOAA Weather Radio system is utilized to disseminate information about both weather and warnings that we issue and it is also utilized by FIMA and Department of Security to issue more general alert.

WOLF:

But you said before that this was not impacted and that was not impacted. Who gave you the assurances that these were not impacted?

LUBCHENCO:

The -- are you asking specifically about the...

WOLF:

The Weather Service's capacity to provide warnings and forecasting.

LUBCHENCO:

(inaudible) programming?

WOLF:

Yes.

LUBCHENCO:

For the reprogramming?

WOLF:

Right.

LUBCHENCO:

In this picture case, we believe that -- for these transmitters, we have spare parts that are on hand. They're stockpiled if you will and what we would do for the rest of this fiscal year is not replace those spare parts as they are used. So we believe that we can reprogram those funds without adverse impact to the programs.

WOLF:

What was negatively impacted as a result of this activity.

LUBCHENCO:

We don't completely...

WOLF:

I mean, we can't say nothing because if there's nothing then we don't -- we can just forget it at this place because you can do whatever so there must be some impact. So what impact?

LUBCHENCO:

Dr. Sullivan is asking to -- in respond to this one.

SULLIVAN:

Mr. Chairman, the program from which -- against which expenses were transferred is the Weather Radio Improvement Program and the core of that is a -- both the hardware and software improvement effort to the current radio system that will allow automatic conversion of the text forecasting warning that the AWIPS system generates very speedily off of templates.

Today, those are actually voiced into the radio by a human being. There's a delay, it's slower. The new improvement is intended to let that be automatic text to voice.

The pacing of that improvement, the progress of that improvement was -- probably was affected. Again we needed to do more detailed program audit of deeper scope that we were able to accomplish during the financial investigation.

So what was slowed? What was not impacted is the current radio system. Then -- the coverage that we have -- the transmitters across the United States which is 97 or so percent of U.S. territory. The existing weather radar -- radios still work as intended. They will still function for the Homeland Security function. But the greater efficiency and effectiveness of letting AWAP -- AWIPS generated products converts directly, automatically into the broadcast has been slowed.

WOLF:

Have these prior unauthorized transfers had any negative impact on the future stability or the future improvements to any of these programs other than the one that you just mentioned?

LUBCHENCO:

We don't completely know what the full impact is. We suspect there are delays in a number of them and that's why we're doing a deeper drive to totally understand what the consequences have been.

WOLF:

Do you have...

LUBCHENCO:

Mr. Chairman, there was no obvious indications that something was wrong. There were no red flags. The forecast and warnings are going out as they're supposed to. The Weather Radio system was working out as they were supposed to. There were no obvious red flags when this was going on.

There was no clear signal that there was something amiss. It really took individuals from the inside that knew about the reprogramming that found the alert. There were no external indicators that there was something going on.

WOLF:

A couple more of and then I'll yield to Mr. Fattah.

Do you have confidence in the senior managers in place now at Weather Service? And were any of them involved or aware that funds were being siphoned away from operational forecasting?

Did none of them express concern that the National Weather Service was violating the reprogramming law and also possibly the Antideficiency Act? And did any ever express concern

about the health or the reliability of the system for which the funds were being transferred? Did anyone ever say anything? And do you have confidence in the people?

LUBCHENCO:

I do have confidence in the people that are in place now. The investigation was a -- a significant, thorough investigation. They interviewed over 20 people, over 30 interviews, poured through thousands of pages of documents and I believe that we have indentified individuals that were involved but it was...

(CROSSTALK)

WOLF:

How many are there? How many?

LUBCHENCO:

Handful -- handful of individuals.

WOLF:

Handful meaning five, four, three, two?

LUBCHENCO:

Two.

WOLF:

Are any of them working there now?

LUBCHENCO:

I have to be careful on how I respond to that because the federal protections that are given to all federal employees through the Privacy Act prevent me from saying anything that would identify individuals.

I can tell you that we have taken or initiated appropriate administrative action against those individuals and in some cases that continues to proceed today. If you wish additional information, I will be happy to provide that that in private.

WOLF:

OK. I wanted to ask questions that shifts from reprogramming. The reprogramming that was submitted to the committee is proposing to release funds from programs previously rated programs that are the cornerstone of the National Weather Service. We took from there and now we will reprogram it. Why would you take even more funding from these programs again? Again, are they indeed overfunded as some of the National Weather Service personnel had thought? Can you give the committee any assurances that these further reductions will not harm the operations of the Weather Service?

LUBCHENCO:

Mr. Chairman, as you know very well, it's very late in the fiscal year. We only have 10 days left to end quarter of three.

This late in the fiscal year, we have very few options for how to do reprogramming. Our goal in doing that was two folds; to not jeopardize the critically important mission of weather forecast and warning and number two, to avoid furloughs. So that gave us not a lot of options.

We chose those options that would not cause any adverse impact to weather forecast and warnings. Where though we could have -- take funds from programs without significant impact and put them in the programs so that we can actually avoid furloughs and maintain a high caliber of the warnings and forecasts.

So I believe that reprogramming that we have proposed can in fact be executed on -- in a way that accomplishes those goals. There would be some delays, we're not doing some research that we would like to be doing that will have future benefits, we're not replacing spare parts -- as those kinds of things that were the best options at this point in this fiscal year.

WOLF:

And you're pretty sure that nothing will result in the loss of life or the impact of a locality that if only there had been for one of the nail the shoe was lost if you will. You're pretty confident that and I'm not going to put words in your mouth but you all -- are you pretty confident that none of these will have any impact on public safety?

LUBCHENCO:

Mr. Chairman, we...

WOLF:

Are you giving up the cookie or you've given up the vegetables? The spinach.

(LAUGHTER)

LUBCHENCO:

We believe that these -- the reprogramming that we have proposed to you will not have any significant adverse impact on saving lives and properties. It's a very important mission.

WOLF:

One last question and I would to go to Mr. Fattah.

What is the so-called structural deficit of the National Weather Service that you believe exists?

LUBCHENCO:

Mr. Chairman, different people mean different things with language. What -- I believe the investigation found is that there's no evidence that there were insufficient funds overall in the Weather Service.

There is evidence that there were insufficient funds in certain programs within the Weather Service and the actions -- the misconduct was moving funds from one program to another.

Had we known that, we could have fixed that. Now that we do know it, we can. And that's part of what's this reprogram is -- it's intended to rebalance those funds. Doing that in '13 will be equally important.

And to fully inform how we need to think about rebalancing those programs in the future, that will be informed by this outside financial analysis in review and a study that the National Academy of Sciences is undergoing to help us think about what the future of the weather service would look like.

WOLF:

OK.

Mr. -- Mr. Fattah.

FATTAH:

Thank you, Mr. Chairman.

Madam Administrator, it's good to see you again. And I guess that you try to put in context when (inaudible) author, Jim Stuart and being one of the world's leading scientists and now being here in Washington, you know, with some of our challenges.

These rules and regulations in particularly the antideficiency, the reprogramming, these are very complex arcane set but very, very important institutional safeguards for our government operations. My interest is in, rather this less than a handful of group of people who are shipping moneys from one Weather Service program to another, not for any personal gain but to -- in their view, deal with the challenges of the Weather Service.

The have the training necessary to understand the rules as it relates of reprogramming and the regulations as to, you know, when is it management flexibility to move a dollar from one account to another and -- and a violation of the appropriation's process to move money from one account to another.

So if there've been almost a billion dollars in the operational account here. So -- and I'm not trying to minimize this matter at all. Again, these rules are in place for a reason. But my interest is in -- because a lot of different terms have been used. We've heard the word illegal, you used the word misconduct, and I'm not one to rush the judgment.

So -- especially, you know, because we - we've had some discussions about what accounts were harmed by this summary level transfers. We haven't gotten into what account benefitted, which I want to get to first.

But -- but before we go that, I want to know rather as part of your review, you take it might be useful to not only have your -- the team at the National Weather Service but throughout NOAA, not just understanding their areas of expertise but also get more grounded and how it is that the Congress expects, particularly the Appropriations Committees that to be informed and notified about various transfers from account to account.

I knew that, when yesterday, we successfully got your reprogramming request from the -- from the other chamber or the upper chamber depending on one's perspective, which sometimes had to do whether you're running for the Senate or not, right? But -- and this committee has been, you know, very supportive of the chairman in his leadership of NOAA and other National Weather Service.

So, I mean, it's not -- you're not able to negotiate your way through this process. But I'm concern about, you know, where we are in this particular process relative to what these employees knew about their responsibilities vis-a-vis how they check it out.

LUBCHENCO:

Thank, Mr. Fattah. You have identified a number of very important issues.

Regardless of the individual's motivation, what they did was wrong. And we have acted decisively and quickly to put things right. It is clear that the investigation uncovered a number of things that touched on the different elements of what you mentioned.

And the actions -- the corrective actions that we have put in place are designed to address those issues; the understanding of Appropriations Law, we're going to be doing new training to make sure that all individuals who are involved in financial transactions fully understand Appropriations Law, what is and is not allowed.

Two; the report -- the investigation also uncovered that there -- it would -- some people who were trying to alert that there was misconduct underway -- their complaints were not handled as - - were not handled the way they should be. And so we are going to be having trainings so that all managers understand completely how to deal appropriately with and track complaints that come in. Only -- NOAA received one anonymous complaint and it was not handled the way it should have been. So there was an alert to us and we dropped the ball on that. So we will fix that.

In addition to that, the lines of supervisions for individuals in the CFO's office had been identified as part of the problem and are being fixed and we are changing...

FATTAH:

You mean too large to span of a control of two?

LUBCHENCO:

Oversized by one individual instead of multiple individuals and so that also -- it is being changed.

The department is taking this very, very seriously as well. Dr. Blank has been very involved throughout and her decision memo mirrors many of the things that we are doing internally in NOAA but are looking more broadly across the department, have the kind of training, make sure that we have the right kind of training, the right kind of supervisory structure, and finally, better financial controls over the very clever misappropriate use of a legitimate financial accounting mechanism. The transfer of funds was very clever. It was hidden. It was difficult to figure out.

And the normal kinds of financial control did not pick that up. We've changed that. We now have financial control in place to alert us and elsewhere in the department if this kind of financial transaction is being misappropriately used.

So all of those things have been set in motion.

FATTAH:

Thank you very much.

Dr. Sullivan, maybe you could help me. I'm -- we've heard in the questions and answers from the chairman about which accounts these transfers harmed. Which accounts that these transfers benefited?

SULLIVAN:

Mr. Fattah, they primarily benefited an account that's called Local Warnings and Forecast. That is -- that is the large account -- it's largest single account within the National Weather Service's budget.

It funds basically our...

FATTAH:

Can you quantify that and give us, in terms of percentage? When you say that it's the largest, is it half?

SULLIVAN:

It's greater than half. It's about 680-some million out of just 1 billion.

FATTAH:

Not hundred. OK.

SULLIVAN:

So it's closer to two thirds. Significantly it's 80 percent of the Weather Service's total labor costs are contained within the Local Warning and Forecast.

We have a network, as you know, of 122 weather forecast offices, 13 bureau of forecast centers, two tsunami warning centers, a space weather prediction center across the country, telecommunications to and from those offices, which are required unless we high bandwidth

because we run the core models for all of our services here in the Washington metro area and that data flows out to those centers.

Telecommunications, rents, salaries, benefits -- all of that combined or in the Local Warning and Forecast.

FATTAH:

So the -- so that are these accounting mechanism was being utilized as summary level transfer process and it was taking money from certain accounts and then was moving money into this account, which represents about two thirds of the operating accounts as all the local weather forecast is a warning. So it is -- it's a big (inaudible), right?

SULLIVAN:

It is the largest account.

FATTAH:

OK. So now, in the way this process that the administrator says was clever, I did this so that it -- in identifying cost in these other accounts, it gave them a lower profile than they are to have. Therefore, freed up dollars and recognized more significant cost in this larger account.

SULLIVAN:

Effectively yes, expenses that were initially charged and legitimately do local warnings and forecasts were transferred over and charged against a different code so the money that has been depleted if you will from the local warnings and forecasts bank account now was not depleted and a charge was leveled against the program was not normally involved in those activities, so that was the tranche of expenses that freed up...

FATTAH:

This is concurrent with the increase in severity of whether that's in so much of this -- the pressure or the perceived pressure on the local warning or forecasting was that there was more of a -- I'm not trying to ask you to discern people's motivation but that they're there -- I assume the only reason you'll be trying to move more money into local forecasting and warning is there are some either real draw on that account that was more severe or a perceived need. Did the account fluctuate or whether it increased?

As we lived through this past 24 months, we've had the most severe number of severe weather, the billion dollar plus events, you know, calamities, hurricanes, and the like, but would this create additional costs that needed to be recognized in the local warning and forecast program account or operating account.

SULLIVAN:

I can't of course speculate as to people's motives, but I will say I know from my visits to our field offices, men and women of the National Weather Service put the top quality of service at the highest priority among the staff. They are absolutely passionately dedicated as we take life and property protecting (inaudible) weather service. It is the case that certain severe weather events, tornado outbreaks come to mind immediately do deplete some consumables. They -- we launched more weather balloons to get timely detailed profiles through the atmosphere as convective masses are bearing down (inaudible).

FATTAH:

And NOAA flies more flights into hurricane...

(CROSSTALK)

SULLIVAN:

In hurricane, we will fly flights as the storm season requires, half of this year is forecasted to be lower than average season.

FATTAH:

Yeah, again, I appreciate the administration's point that moving this money between accounts is wrong and is definitely concerned as an appropriator that when we were appropriating by accounts, then we want the accounts followed but again, this is a unique circumstance in which what was being done that was wrong wasn't being done for any personal gain. This was being done to put more dollars into local forecasting and warning.

Rightly or wrongly, in some perceived need that there were more dollars needed there. So I just think that the chairman and staff have done an excellent job in getting to, you know, all of the information and data and we shall -- we'll all brief on this and I think that the administrator's immediate actions within 24 hours of notification were entirely appropriate.

But I do think that the chairman, the most important question I guess, it is very structural deficit in the weather service. This is -- because at the end of the day, this is really about the technical loss and in giving appropriate warnings to communities because we can't actually control the

weather, so forecasting is important and the ability to -- in very tough places like my colleague who suffered greatly in Alabama, maybe the notification on a -- you know, in forecasting accuracy, which is improved over the last three years, quite significantly.

I mean this means a lot in terms of moving families out of harm's way, active forecasting is critically important. So I just think that whatever the result of all of these, I don't want anyone to think that the Congress is not prepared to make sure that the weather forecasting and the local warning systems (inaudible) are not very high priority for us.

Thank you, Mr. Chairman.

WOLF:

(inaudible) and Mr. Bonner, let me just say I appreciate Mr. Fattah's comments too. I -- you know, I worry a little bit about, you know, we are a nation of laws. I mean the founding fathers, whether you like it or not, made this decision as this is the way it was going to be and even something can be a meritorious action in the sense that if you only knew why they were doing that, you would understand.

That's not the process. The process requires and you know, you have Democratic Congresses here and you also have Republican Congress and all who will want to do the best interest as they see fit for the American people. But the people that are working in ages can't just really, really decide as meritorious as sounding maybe the next time may be not meritorious. I mean -- the weather bureau, I -- I usually before I go to bed I listen to the weather, it's kind of the last thing you do but in the future people's lives can depend so if the person had done something that was bad that put it in a -- maybe they put it in and I'm not saying they did put in the building or putting it in something and didn't put it, whereby the importance of weather -- so that's what this is all about.

And if agencies can just (inaudible) take up and change or do whatever and I am...

FATTAH:

I totally agree with the chairman.

WOLF:

Oh, I know you do and Mr. Mohan would have guaranteed.

Mr. Mohan (ph) was one of the finest guys. He would have reprogrammed that money. I don't have any doubt.

I spoke to him the other day.

I don't have any doubt that he would have said and the same way for (inaudible) is that but I think it's the principle behind and I worry where else is this going on in other places -- I don't mean in NOAA but in other places.

But with that, Mr. Bonner?

BONNER:

Well, Mr. Chairman, I want to follow your comments and Ranking Member's as well.

I doubt very seriously that tomorrow's Washington Post is going to have a 72 point headline that says, "Scandal in the Weather Service Caused Lives that did not Happen." But just to be perfectly clear, this isn't a matter of hurting our feelings. This a matter about potentially breaking the law and it's not just appropriations law. It really goes back to the constitution itself, which gives Congress -- Democrat Congress and Republican Congress. The first step in the process is the purse strings.

And Mr. Fattah is right. For those of us who live on the Gulf Coast and deal with hurricanes or for those of us who live in states like Massac, Texas, Kansas, Missouri -- any state is vulnerable to tornadoes. The sad thing is over the last few months, I think there were two agencies that in the minds of most Americans who represent the gold standard of public service -- the secret service, which we have for years believed in most instances I think we have every right to continue to literally risk their lives to take a bullet for the president of the United States.

And the weather service -- as the chairman said, when we go to bed at night or wake up in the morning, well the first thing most of us do is to check to see what the forecast of the day is. And so the concerns that I have and the chairman has indicated that because of the constraint on time that we will submit questions and you all have agreed to get us the answers back. We appreciate you're taking these matters seriously and no one is saying that you're not. We appreciate you taking this seriously but it should be taken seriously.

Because quite vocally, if these were isolated incident, we would probably just have a conversation and move on but for some here this yet the latest example of an administration that seems to just basically give the finger to Congress -- whether it is withholding information that the legislative branch of government asked for, whether it's -- you know, there are more czars appointed. This is not -- but this is (inaudible) but there've been more czars appointed in this administration than existed during Russia, from 1613 to 1918, the (inaudible) problem.

They let that occur since they have the constitutional authority to concept and to confer with regard to appointments. There's just been a lot of disappointment where it looks like people are keeping information from the legislative branch of government. Again, we appreciate you being here. We appreciate you taking this seriously. At the end of the day, the American people should have no question though what the National Weather Service is doing its work on behalf of the American taxpayer, on behalf of the American people, to provide the information we need.

And I -- you know -- we were -- some of us were troubled in light of some of the other things that have taken place when the president said last week to his (inaudible) Rights Group that "I'd like to pay bypass Congress and change the law as my own. Believe me God is -- doing this on my own is very tempting." I'm not suggesting these rises to the otherwise but it does seem to be an added to you of just ignoring Congress when it pleases those who in a position to do so and that's really troubling -- it should be troubling to all of us.

So again, I will submit my questions to the chairman. They will go into the listed questions and he and other members or -- this is something. Mr. Mollohan would have gladly done this. Mr. Wolf would have gladly done this. But there has to be a relationship built on trust and respect where the administration -- when leading to seeking program and comes to Congress and we work together and I think that that would have happened.

So thank you very much.

BONNER:

Mr. Chairman would yield just for a second. Another sheer important administration in a couple of time. Not all the handful people of people involved here comes down with this administration. So it is not political (inaudible) administration. These are employees of the National Weather Service from eras up from which there were Republican president.

So in the action that they took, rather illegal or misconduct or wrong or well intentional, whatever the case it may be, I don't think we'll call it by a political consideration. They will take your money from an improvement program for the weather radio system and putting it into local warnings and forecasting. I can't discern any political motivation that (inaudible). I just want to make a recommendation to my friend the Ranking Member, I was just trying -- there is a pattern to some at least.

You know, some can find a pattern on anything. I just want to make it clear in this matter, that these handful of people were not part brought as part of the administration. In fact, the people that the administration brought in are the ones who brought this to the attention of the Congress to stop it and the administrator have 12 corrective steps within the 24 hours starting from the corrective steps within -- that the 24 hours starting from the funds you fund about.

So we -- to try to ascribe this to the administration, I think is as with many of the things going on around here, a little maybe slightly came into something that's not relevant -- relevant to the weather service.

Thank you.

LUBCHENCO:

Congressman, may I comment...

BONNER:

Sure.

LUBCHENCO:

...briefly. One thing you mentioned that I think is extremely important and about which I want there to be no misunderstanding. I take Congress' role on this very, very seriously. You should not have any concerns about had I known there was a problem, I would come and we would request it -- a solution to this.

I do believe completely that what was happening, what's wrong, what's inappropriate, and when we learned about it, I was outraged. I was just furious that this is happening. I think it is good news that the gold standard of our weather forecast, what have not been compromised, that there's vast majority of individuals from the weather service are doing what they are supposed to be doing but those individuals that did this was in the wrong and we are acting very decisively to fix that.

But I completely respect this committee. I greatly appreciate the very collaborative, cordial, cooperative interactions that we have had, respecting each other's responsibility and I think it is that's very positive interaction that gives us a way to move forward and to address the problems that exist to continue to respect the committee's appropriate jurisdiction and oversight and to do a better job on my part of making sure that all of our employees fully understand what is and is not appropriate and what is Congress' role.

BONNER:

And Dr. Lubchenco, I would say that I can't speak for the chairman or any other member of the committee but I remember when I met you for the first time and looked at your very impressive background and felt comfortable that the president have picked someone with an impeccable character and reputation to take over your very important position.

Again, I was not suggesting that this a scandal that rises to the level but I didn't even use the word scandal. My friend Mr. Fattah did in his opening comments. But it is an unfortunate instance that potentially is breaking the law. And I do think it's kind of like when your children see the parents misbehaving then sometimes it is -- and I'm not in any way suggesting that the people who were the 2.6 to 2.8 million people who are working in the federal bureaucracy of the government, our children.

But when people see others ignoring the rule of law, then maybe they think and as Mr. Wolf said, this might have been for double purpose but what if other things are happening and it's not. So your reputation in bringing this to us I think is consistent with the reputation that you have when you are appointed and we do want to have confidence to the National Weather Service. It

is doing its job and the people who work here -- most, 99 percent -- were extremely talented and loyal but they don't get tired or scarred by this unfortunate incident.

Thank you.

I'm going to go to Mr. Graves. But let me just say I think what was saying and I kind of share the concern. You triggered a thought. That was a pretty powerful column. I read in the Wall Street Journal by Peggy Noonan about two weeks ago -- I'll get it for everybody to show. She made the very comment, I don't know if you read the column but she made a comment that -- and I want the strongest defenders of federal employee in the Congress more than any on this side. We are (inaudible). They organized whether it's (inaudible). They don't think it did for federal employees.

But I think the Peggy Noonan piece made the comment who would have ever thought that the Secret Service, the day of Timothy McCarthy, candidly thought he was a hero in my mind. Timothy McCarthy stopped the bullet that would have killed one of the greatest president with (inaudible), Ronald Reagan. And the Secret Service was always just revered. I mean -- I in my district, many Secret Service agents live and I know many of them and then I will send you (inaudible) sort of in -- I think Mr. Bonner is sort of saying that and I'll share the Peggy Noonan piece with him. I'll show everybody here.

There is -- and I don't think it's a Republican or Democratic thing. I think it's that this shifting change and I can only see the person saying, well, you know, it's a good thing so we'll just kind of do it and they'll understand and I know there were tension. I used to work for (inaudible) who used to be a member of Congress who I think Mr. (inaudible) knew very, very well -- Roger CB Morton.

The agencies really don't like Congress. They go to sort of -- so but I think what Mr. Bonner was saying as we see the shift and I don't think it's your fault and we're not doing it but I think it is important and I guess how we deal with it will send a message to other agencies. I don't think this committee wants to be rude now and finding people and putting people in jail and but just so the message goes forth that whether it's a Republican Congress, Republican administration, Democratic Congress, Democratic administration, it is important to sort of follow the law regardless of their own opinion to achieve this.

And (inaudible) in these rules (inaudible). This is what it kind of says and that's the way it's supposed to be served.

Ranking Member?

DICKS:

Thank you very much. First of all, I appreciate the very decisive action that you did take in dealing with this problem. I think our committee should be supportive of Jane Lubchenco's growth for the way she's dealt with this and I think, you know, obviously, we do not like these

situations where there is a violation of the reprogramming rules and -- but apparently in this case, there's no indication anyone personally financially benefitted.

It was somebody trying to do what they thought was the right thing for a program that is very important and there was no indication of any personal gains. So I think she's handle this well. I appreciate the chairman having a hearing.

Can I ask just one brief question on another question on another subject?

WOLF:

Sure, why not?

DICKS:

Yeah, thank you. I want to talk about debris on the West Coast from the Japanese tsunami. Can you tell us kind of what you're doing on this?

LUBCHENCO:

Certainly, Congressman. There was....

DICKS:

I understand there was an interagency group.

LUBCHENCO:

There is -- the NOAA has the Marine Debris Program, which this committee and other committees have supported through the years. We are doing a number of things. We're working with many local communities in your states and other states (inaudible), the West Coast as well as the Pacific Islands to give them information about what they can expect, how to handle debris should it come ashore.

We are in the process of working with other federal agencies to try to identify what assets exist in terms of resources, personnel, knowledge to tackle this problem. Our scientists had been modeling, where the debris is and where it is most likely to go so that we can have a good understanding of what's the likely possible outcomes are.

When the debris was washed in, it was a big degree field that was a very significant mass. Through times, as it's moved to Coast to Pacific, it has become more and more dispersed, some

cases moving frequently if they're blown faster by the winds and other things that are sitting low in the water. And as you know so well in your state, some of it has begun washing up and started coming over in December and January. We're seeing more and more objects and will likely continue to see objects of a variety of sizes and constitution for further years.

DICKS:

But you could advance it. The states are saying, well, this wasn't our problem and they're looking to the federal government, the governor of our state, Governor Gregoire who I have great respect for. The state don't have enough money and no emergency fund to deal with this and now, as I understand, how much do we have to deal with debris, ocean debris in this bill? It's like 4 or 5 million. That's a very modest amount of money.

LUBCHENCO:

It's a very modest amount of money congressman and it's nowhere near what is likely to be needed to deal with this fact.

DICKS:

We're talking about tens of millions, right or hundreds of millions?

LUBCHENCO:

Oh, how much -- it's likely to be a very big number but we don't know exactly how much.

DICKS:

Will FIMA be involved in this? Is FIMA part of your interagency group?

LUBCHENCO:

FIMA is part of the interagency group that has been convened by the center for (inaudible) quality -- FIMA and other agencies.

DICKS:

But isn't there a big of a concern that this won't quite be disaster? This stuff will just come in randomly and therefore FIMA, doesn't, may not have the ability or the legal authority to get in the middle. They're kind of backing away from this. That's very disconcerting.

LUBCHENCO:

I agree with you.

DICKS:

There's just got to be somebody who's going to take responsibility and it's -- this is a national issue.

LUBCHENCO:

It's actually a national issue. There are, you know, different agencies, that different responsibilities -- this is unprecedented and it's presenting new challenges for us and we would like to not only have the discussion within the administration but with Congress about what kinds of opportunities there are for us to be collectively addressing this very important thing.

DICKS:

And we have serious scientific concerns here about invasive species that could be attached to these things. There's all kinds of particles on these things. How big was -- or there's a big that came in? Just to give my colleagues some impression of the magnitude of what we're talking about.

LUBCHENCO:

There was a very significant dock that washed up along the Oregon Coast a week and a half ago or so. Pardon me? I'm sorry, up to you. It was larger than this room and it had -- it was clearly had been in the water in Japan for a long time and had a lot of marine life on it that is potentially invasive. There is very real reason to be concerned about not only the physical damage but also the potential for invasive species. This a very real problem.

DICKS:

And we got to dispose of that. I mean -- there's -- what do you with this stuff once you get it. I guess all I'm saying here is that I have been worried about this. It is not only affecting my state but it's Alaska. It's California, Oregon. It's a serious matter and I just -- I know you're engaged. I

know there's an interagency group but I just hope that we can -- and I would hope that we would look to our international friends too here who are involved -- to be involved in this -- in some possible way.

(UNKNOWN)

(OFF-MIKE).

DICKS:

Oh it's huge.

(UNKNOWN)

(OFF-MIKE).

DICKS:

It's huge. It's all because of the tsunami in Japan. I mean all these stuff -- this was torn and ripped off the shores of Japan and out in the ocean and just like what happened with Mt. St. Helens, I've been there. The debris here was unavailable. This is -- this is huge and you know, we already have, you know the size Texas out there in the Pacific Ocean with debris.

This debris thing is a serious matter to ocean health and this just adds to that and some things that could be very dangerous

(UNKNOWN)

Would the gentleman yield?

DICKS:

I yield.

(UNKNOWN)

(OFF-MIKE).

DICKS:

Well, I just said -- I said that the debris field that was there before is about the size of the state of Texas, not to say it was the state of Texas but...

(LAUGHTER)

(UNKNOWN)

Would the gentleman yield?

DICKS:

I yield.

(UNKNOWN)

(OFF-MIKE)

DICKS:

Right.

(UNKNOWN)

(OFF-MIKE)

DICKS:

Maybe we could borrow some EPA drones and have it go out and take what -- now that was a joke.

(UNKNOWN)

Mr. Culberson?

DICKS:

Also, we got a possibility just of radiation reaching in my town. I mean -- if there's -- you know you got to check these things to see if they're radioactive too and that's being done as I've been told.

LUBCHENCO:

Congressman, we don't believe that most of the debris is likely radioactive it was washed well before the radiation would have been contaminating things in the near shore water. Out of an abundance of caution, we have been checking just to make sure; however, some of the debris is potentially hazardous, if not radioactive. It may be petrochemicals or may be sharp objects, there may be hazardous chemicals that are there and part of our training to local communities is informing them about how to -- what to do or what not to do with any debris they find because first and foremost, we want to protect lives.

DICKS:

Any other closing suggestions on what should be done?

LUBCHENCO:

I think the challenge is partly one of scale, both in space and in time. When the debris field was washed in, it was a field. You could see it from -- it could fly over with plane and see it. It is now so dispersed that when you fly over, you don't see -- you might see one thing here, one thing way over here. It is waste -- most of it sunk. What's left is very, very spread out. And so it's difficult to go out and see exactly where it is and track it through time. So that presents an additional challenge in anticipating exactly what's going to happen when.

We can give probable list of ideas about when most of it is likely to arrive and it's going to be two times because some things stands up like a fishing boat, stands up out of the water, gets blown by the wind faster than just the piece of wood that is right at the surface.

So the problem has spread out in space, it spread out in time, and is a very significant issue on top of -- as Congressman Honda has very appropriately pointed out that the existing marines (inaudible), which was already significant and not as appreciated than it needs to be.

DICKS:

Thank you, Mr. Chairman.

WOLF:

And Mr. Culberson?

CULBERSON:

Thank you -- thank you, Mr. Chairman. We appreciate your responses on -- to the chairman on this.

When did you first learn of this misappropriation funding (inaudible)?

LUBCHENCO:

I learned of the allegations of misconduct on November 29 when I was informed of a very preliminary investigation that had been done within the Weather Service in response to anonymous complaint with this issue.

CULBERSON:

Did the -- how many people were involved in making these summary line transfers?

LUBCHENCO:

Just a handful.

CULBERSON:

And it's?

LUBCHENCO:

We believe that there were just a few individuals involved?

CULBERSON:

Two, three, four?

LUBCHENCO:

That ballpark?

CULBERSON:

How many?

(CROSSTALK)

CULBERSON:

You don't have to give me names on who -- I mean how many?

LUBCHENCO:

Yeah. There are three individuals who were involved.

CULBERSON:

OK. Have any of the three been fired?

LUBCHENCO:

As I mentioned to the chairman, we are -- have taken or in the process of appropriate administrative action. Both are underway or has been completed.

CULBERSON:

What's an appropriate administrative action for misallocation of \$35 million or 4 percent -- that's 4 percent of your total annual budget misappropriated by three individuals and obvious, an intentional violation of the law?

LUBCHENCO:

The magnitude of the problem -- the...

CULBERSON:

It's OK.

LUBCHENCO:

The appropriate administrative action, it might be different, depending on what individuals did.

CULBERSON:

Well, let's look at this case in particular. What's an appropriate administrative action for these three people?

LUBCHENCO:

There are range of actions that might be taken. We have set those in motion. I'd be more than happy to brief you in private on this. I'm being careful here because I don't want to do anything that could jeopardize those actions or to violate the privacy protection afforded to federal individuals.

CULBERSON:

But we're not asking about anyone individually. It's just an important question because this is, and I think the chairman's right in going on all over the whole federal government. I think this is the tip of the iceberg.

I think this is just -- it's an evidence of a pattern of behavior, I've discovered in my subcommittee on the V.A. with military construction that the V.A. is moving money around. The law says, one, two, three -- I mean, flat out, statutory one, two, three and they just go to four, five, six. I think it's bigger than just NOAA.

(CROSSTALK)

LUBCHENCO:

I can't comment on that...

CULBERSON:

But what can you do? What type of administrative action is possible?

I could not even get by the way, members, the cemetery director in Houston, Texas who deliberately and repeatedly interfered with veteran's right to have a prayer said over their grave, over and over and over again. They wouldn't fire her. I can only get her transferred.

So, there's really a fundamental, I think systematic problem in the federal government. If this were the private sector, if you misallocated 4 percent of a private company's total annual budget, you'd be fired immediately. Yes, sir?

(OFF-MIKE)

CULBERSON:

Yes, sir. Absolutely, because you're...

(UNKNOWN)

It's not that we -- we do this in a very professional way without you know, making (inaudible) or to make allocations, as I hold office. You know, we have some evidence but you know, (inaudible).

(UNKNOWN)

I think so. Particularly with the scale of the problem that -- that Chairman Dicks...

(OFF-MIKE)

(UNKNOWN)

It's unbelievable.

(UNKNOWN)

Yes, it's huge.

(OFF-MIKE)

CULBERSON:

Right. I think it's a much bigger problem. In particular, the scale of the -- in your jurisdiction on the Army Services Subcommittee...

(UNKNOWN)

It's a much longer -- well, I'll tell you the problem.

(OFF-MIKE)

(UNKNOWN)

Would the gentleman yield to that, please?

(UNKNOWN)

Sure, please.

(UNKNOWN)

That's a good idea. Mr. Rogers mentioned that about a week ago. He mentioned the surveys and the investigation and I think, and you came to the same thing. I think for the (inaudible), that's really -- that is a very good. That way it takes it...

(OFF-MIKE)

CULBERSON:

Sure, so we can get an idea to the scale of the problem, it's a superb idea. Where does it happen? Does it appear to be a pattern? Instinctively, I feel like it's a pattern because I'm seeing it under a jurisdiction of my committee and we see it here. To my knowledge, no one's ever been -- when you think about it, no one has been fired for 9/11.

And can anybody identify anybody the federal government fired for 9/11? Nobody. I mean, the entire federal government, it's like there's a phantom parallel universe government out there that's driving -- we appropriate the money and say, very clearly, the law has to be used in this way or whether there's another statute that says -- that, you know, one, two, three has to happen.

What are the consequences? In the private sector, it's very clear. You get fired immediately. There's several criminal liability in the event of a personal profit. I understand nobody would personally profit from this but there was clearly a pattern. This one goes back to 2006 apparently.

So, these folks have been doing it for a long time.

LUBCHENCO:

Congressman, I obviously don't know about those instances. I can tell you that for NOAA...

(UNKNOWN)

Well, in fact the general's report says this has been going on as far back as 2006.

LUBCHENCO:

In NOAA?

(UNKNOWN)

Yes.

LUBCHENCO:

We do not how...

(UNKNOWN)

But that is what the inspector general concluded. It appeared that it has been going on since 2006, correct?

LUBCHENCO:

I believe that those were allegations that were made by individuals who were interviewed. And that is exactly why we are -- I have ordered an independent financial review and analysis to understand if this was happening earlier than the period that was the focus of our investigation which was 2010 and 2011.

CULBERSON:

And I appreciate that. What are the consequences though? Talk to me about consequences. In the private sector, it's just immediate, dramatic, "You are fired." And there will be either civil or criminal consequences. What are the consequences?

LUBCHENCO:

The consequences are very real and very serious.

CULBERSON:

Such as?

LUBCHENCO:

And we have -- are taking the appropriate steps. I would be delighted to brief you in private and to describe what's being done. I want to be careful because there were so few individuals involved. I want to be very careful here.

CULBERSON:

What prevents -- what civil service law prevents them from being just fired immediately? Why can't you fire -- fire them immediately.

LUBCHENCO:

There are appropriate steps to take in taking administrative actions. I cannot just fire someone I want.

CULBERSON:

That's my question. Why? Why can't you just fire somebody?

LUBCHENCO:

Because of the legal protections that exist for the federal employee.

CULBERSON:

Such as? Such as?

LUBCHENCO:

I'm not completely familiar with all of the appropriate laws. I know that there is a process that is to be followed and that we have followed.

CULBERSON:

What are you told? What's the reason -- for example, the cemetery director in Houston, I mean, we got -- I even went out and saw it myself because they were lying to me, and I knew they were lying. And I went out and actually sat in on a funeral in Houston, and she did it again.

And she actually told the veterans, the honor guards, that they had to intercept the widow as she is being lifted out of the vehicle, sobbing, going to the gravesite, and ask her, "Are you sure you want the ritual said over the grave because it has the word God in there three times? Are you sure?" It's insane. And I couldn't get her fired.

All I could do, and I'm chairman of the subcommittee on V.A., all they would do is transfer her to headquarters and she's not in charge of proofreading memos, I'm told. But they would not fire.

So, the chairman's on to something really much, much bigger here and we appreciate what you've done. I understand that you're handcuffed to a certain extent by federal law. What federal law? What do you lawyers tell you to prevent you from just firing somebody who would misappropriate 4 percent of your entire annual budget?

LUBCHENCO:

Congressman, I am happy to give that information to you. I don't know that on the top of my head. I'm happy to get that to you for matter -- for the record.

CULBERSON:

Did you ask if somebody be fired? I mean, was your response -- once you found out that this had actually happened, was your response to fire them.

LUBCHENCO:

Congressman, I think what it behind your question is outrage that this behavior occurred at all. And secondly, a desire to have justice to be done and to not only fix the problems that caused it but make sure that this doesn't happen again by dealing with individuals appropriately. I completely concur with all of that.

I was outraged. I was furious.

CULBERSON:

Was your response was that some of them would be fired? Did you ask that someone be fired?

LUBCHENCO:

I have taken steps to do appropriate -- to deal with those individuals in the most aggressive (inaudible) possible.

CULBERSON:

I think what this proves is that truly between (inaudible) and the Houston cemetery; I mean if you can't fire somebody for interfering with prayers said over a veteran's grave, you can't fire anybody for anything.

If you can't fire someone for misappropriating 4 percent of your entire annual budget, you can fire anybody for anything.

So, everybody's a lifer. Everybody in the federal government is a lifer. The post office can be as incompetent as they want and nobody can be fired. It's the biggest disaster. I want to ask when I was on the Transportation Subcommittee; we had the head of Union Pacific Railroad and several of the major railroads. And I said if we gave you Amtrak, would you take Amtrak for free? And they said, no.

You'd have to change the law so we can fire people and we can hold them accountable. You really can't obviously hold anyone accountable. No one in the federal government can be held accountable. That's where the root of the problem I really -- and I genuinely -- I'm not picking on you and I generally appreciate it.

This is a vivid illustration of a fundamental and systemic crippling problem where our federal government is beyond -- it's obviously the social safety net has gotten out of control which is gonna bankrupt this but there's a whole other parallel problem, I think, Mr. Chairman. You can't fire anybody. The civil service laws have gotten so out of control and the (inaudible) between them, I don't what it is, the unions? Please I would like a memo. Would you please have -- whoever -- I bet there's a lawyer out there behind you somewhere. I bet there's a personnel lawyer somewhere out there behind you.

I really -- is there anybody personnel lawyers out -- somebody in your organization. I'm a lawyer by training, and I really wanna see a detailed legal memo from you, please why can't you fire any of these people? Why civil service laws or protections prevent you from firing people for misallocation of fundings, this blatant, deliberate, intentional, repeated, systematic violation of the law.

(UNKNOWN)

Would the gentleman yield for a second?

CULBERSON:

Yes, please. I really wanna understand this.

(UNKNOWN)

I understand your motion and your outrage and everything but it seems to me as an attorney, what I understand that one goes about gather information before they pass judgment. And it feels like this judgment is being passed in asking if there's any kind of finality in personnel rumors that someone's gonna get fired when it appears that it's not complete yet.

And I think I hear her saying that they've done everything as aggressively as they can, and I don't know of the issue either. But it would seem to be the more prudent you keep in check our emotions until such time that we get complete information so we can...

(CROSSTALK)

CULBERSON:

...suggestion that the chairman I think supports and (inaudible) look at this in a comprehensive way.

My instincts have rarely failed me, and my instincts tell me there's a -- this is just an indication of a far-larger problem in the federal government is what I'm driving at. And if I could get a memo from your personnel lawyers explaining to me that I've obviously would share to the chairman, I mean, directed to the chairman about -- I know he'd like to know. Our staff would like to know.

What laws prevent you from holding people accountable, in the same way that would occur obviously in the private sector because they've clearly misallocated \$36 million -- almost \$36 million. It's \$35.4.

(UNKNOWN)

Will the gentleman yield?

CULBERSON:

Yes, please.

(UNKNOWN)

I appreciate the point you're bringing up because, I mean, this is everywhere.

(UNKNOWN)

It's all over.

I mean, we're the Department of Justice. Any action been taken there -- and we know that we have an American citizen who is guarding our borders killed.

CULBERSON:

Right.

(UNKNOWN)

No action has been taken in the administrative perspective.

CULBERSON:

No one's been fired.

(UNKNOWN)

And proper administrative actions don't seem to be proper.

CULBERSON:

Yes.

(UNKNOWN)

This even from the statement -- hearing from the statement the gentlelady's giving us is November 29th of last year is when this was discovered.

CULBERSON:

She knew about it, right, seven months.

(UNKNOWN)

I guess. Now -- and still no actions. So you're -- I'd be happy to support you in this effort to find out why is it that the federal government employees are protected...

FATTAH:

If the gentleman would yield, I think that what she is putting on the record is completely inaccurate. That once this was found out within 24 hours, this administrator took corrective action. So, I just wanted...

(CROSSTALK)

CULBERSON:

(inaudible)

(UNKNOWN)

And we got conclusions already but let's just see if we can keep the facts straight, and that's completely inaccurate.

(CROSSTALK)

LUBCHENCO:

Let me keep the record straight here. November 29, I learned about the allegations. I immediately placed individuals on administrative leave.

FATTAH:

OK.

LUBCHENCO:

I brought in replacements for them. I set in motion an investigation that looked into the allegations, due process, looking into very complicated things that have been done. Received the

reports in May and initiated immediately, the rest of the appropriate administrative actions as well as all the other things that are detailed in what I've described.

I think that it is not appropriate to conclude from what I said that one cannot fire individuals. It is appropriate that due process be followed, and that's exactly what we are doing.

(UNKNOWN)

Well, thank you for clarifying that. Administrative leaves still intact, I assume today with those same individuals? And I know I'm on the gentleman's time here a second. When would you suspect that a conclusion would be reached and...?

LUBCHENCO:

I am not in control of that. I hope it is as soon as possible. I can tell you that -- and Congressman, I wanted to make sure you heard what I said earlier which was that it is possible to fire people when has to follow due process. And that's what we are in the middle of doing, whatever the appropriate administrative actions for different individuals is -- is underway or has been concluded.

CULBERSON:

And will you have your lawyers please; send me a detail, a memo that lays that all process out. What does it take to fire somebody in the federal government and what prevents you from doing so like they do in the private sector?

WOLF:

Mr. Honda.

HONDA:

Thank you, Mr. Chairman and thank you very much for this opportunity to air some of these issues that I've heard about and read about. And I haven't finished reading all the details but I really would anticipate the rest of the information on some timelines.

I appreciate the fact that you made a distinction between what would be considered a conscious criminal kind of action versus you know, some administrative kinds of action that was not very wise, I suppose.

And you know, I think that distinction be made, you know, gives me the sense that you know, you'd be following some process that will make sure that the truth will come out and then out of that truth, some corrections to be made at the administrative so that this will not occur again.

We have a lot of processes, accounting processes in place already which move moneys around not to break the law and so some things with the funds that perhaps could cause some controversy but it's not illegal. And so, you know, I think that we just need to keep that in mind.

I don't want to have you or your office become a political football but I think what the chairman is -- I assume to speak for the chairman but what I think his intent is to get down to the bottom of it because he's got a real strong sense of ethics.

So, having said that, I'd like to go back to the issue of the debris, and when we talk about the debris, it may seem to me a little uncomfortable when we see Japanese debris as if it were an intentional action. So, I think we need to go back in time, and say, this is a natural disaster that was a result of a 9.0 Richter scale movement of the earth's -- the ocean bottom that created a series of tsunamis that created devastation on the eastern coast of Japan.

Much of what's in the debris was washed into the ocean. But I guess the question I have is, if we know that it's out there and we understand tidal movements, currents, wind, and wave action, is there anybody that was following this to be able to anticipate -- I know I've heard news saying that we anticipate the arrival of the debris off Hawaii, off Alaska, off the Oregon and Washington shores.

It seems to me that if we can anticipate that, that somewhere along the line, we should've been calling up folks to anticipate its arrival or do something anticipatory before it does hit land.

And so, you know, and I guess, the question is, you know, did we do that? Did we know that? And do we send their red flag up so that we have somebody in our system that will respond to it or get to legislators and say, this is the issue, this is what we need. Now, it's up to you because you are the government, we're the civilians that are responsible to give you the information but you have to make the decision both, as a nation, as a country, and to allocate appropriate funds to do that.

Second question I have is it seems to me that the movement of the debris is just a small part of a larger human habit that we have, disposal of trash. And if you talk about Texas, it would be the placid vortex that exists in the Pacific is twice the size of Texas. And we're not sure whether, how deep it goes anymore because the particles have become smaller but not biodegradable.

And that seems to be a potential problem both in the health of the ocean and human health, eventually because we eventually eat something that comes out of that area. And if it's embedded in an animal or marine fats, most would be transferable to us in a very (inaudible) form. So, I don't know if you have any comments to that or any paperwork that's been built up over time that you can share with us, too.

Thank you, Mr. Chairman for this opportunity to ask a question (inaudible) response.

SULLIVAN:

Congressman, I greatly appreciate you're drawing our attention to language because it's very important. We typically say that tsunami debris, and I think that you've very (inaudible) articulate that more appropriate language. So, thank you for that.

We have in fact done extensive modeling that takes into account real-time winds and currents that have happened since the disaster. So, we have a reasonably good idea of where most of the debris is likely to be now. We also are modeling where it is most likely to go and those models are completely consistent with what we have seen in terms of when it started to arrive.

HONDA:

Let me interrupt just a second. You used the word modeling. There are so many information that you derive from modeling. Do they come from technology that Chairman Wolf had insisted on putting out into the ocean as an addition to that, and then he's advocated for more. Are those the kind of technologies that we are dependent upon to be able to model the movement of the water and the currents?

SULLIVAN:

The technology that I believe the chairman was referring to are tsunami buoys that he has championed putting his (inaudible) and maintaining very appropriate. We have other instruments in the ocean that give us information about where the water is moving and at what rate?

And also on land, measurements of wind, and if you put the ocean movements and wind movements together, those are part of our observing systems that helps us understand what typical conditions are, and what they're like at any one particular time.

So, we've utilized that information in our modeling, and we have worked closely with many of the coastal communities, members of Congress, members of the press to alert them, this is what you can expect and this is how you should be dealing with any debris that you find. Because we want to keep people informed and safe. So, we have been doing all of those.

Our resources are significantly stretched in doing that. We have a very small core team of people that typically deal with marine debris. It's not really at the magnitude that's needed for this particular disaster which why we are reaching out to our state partners and other federal partners to put together a larger group that can really begin to address the magnitude of this problem.

HONDA:

Is there a specific (inaudible) team that you're looking at that would not rely just upon our Pacific coastlines but to engage the other -- other Pacific Rim countries and entities.

SULLIVAN:

We have indeed engaged them. We have also engaged fishermen and shippers to our -- we've also engaged fishermen, commercial fishermen as well as shippers who are -- we have a hotline setup and so, when they are moving across the ocean and they encounter something, they alert us so we can track and know, get real time information.

We've been utilizing satellites to the extent that it's possible to try to see where different, big pieces are. Most of it is so small; you can't see it from the satellite. But we've been sort of pulling out the stops with every different possible thing that we can imagine to get a better handle on exactly what is it, where is it, when will it appear, and trying to get everyone informed.

We would be happy to get materials to you. We have information that we have developed in the map of where it is now, and where we think it's likely to go over time.

HONDA:

So, the Pacific Rim kinds of team -- teamwork is something I'm looking at a lot of this concern about the tsunami monitoring came about because of the chairman's concern about the aftermath of information on the tsunami. And just extrapolating those whole concerns to the rest of the Pacific Rim because the ocean floor is gonna continue to be active.

You know, if we think that 9.0 was big, wait until some of the plates start, really start to move. I think that if we do it right now, then the chairman's anticipation would save a lives and lobby economists too. So, I appreciate it. Thank you.

WOLF:

Thank you, Mr. Honda. And maybe we can have a good # and brief Mr. (inaudible).

SULLIVAN:

I'd be delighted to do that.

WOLF:

And also somebody from the staff will go too (inaudible).

SULLIVAN:

We'd be happy to do that.

WOLF:

We have votes on and there's just one other last question that we want to ask and then we're gonna submit the rest. Does the department intend to make available a redacted version of the internal investigation, the committee requests that the department submit a redacted version for inclusion in the record?

LUBCHENCO (?):

I would be happy to discuss with the department what we're able to provide to you. I know that the committee an unredacted copy, obviously, that's not for the record.

WOLF:

No, right.

LUBCHENCO (?):

I understand what you're asking.

WOLF:

OK.

LUBCHENCO (?):

And I will see -- we would like to be as helpful as we can on this but we want to make sure that to protect privacy information that's in the primary report that we've seen is a challenge, to be able to protect that and also have a report that makes any sense. So, that's sort of the struggle. And we're happy to have a conversation with you about how we can best meet the intent which is, you know, what you're describing it and at least to have something in the record.

WOLF:

And I'm gonna go to Mr. Fattah. What we're gonna do is we're asking that we have about 65 other questions but obviously take the time and I thought it was inappropriate to keep to the administrator here and everyone for two and a half hours, and then come back.

So, we will submit them and if any other member has any other questions that you would like to have submitted, if you will give it to the staff by close of business today. And we would ask that if you could get the responses back by, say 5:30 on Monday. And then, because we wanted then to do the reprogram. We wanna reassure the employees that we're not looking to tie their program -- their reprogramming up. We wanna make sure that that can be done whereby there'll be no if's and (inaudible) and nobody can say there has been a storm that's (inaudible).

So, if we can do that, we would appreciate it. And I would just submit all info for the record and the Mr. Fattah, if you have anything.

FATTAH:

I wanna thank the chairman for the (inaudible).

(OFF-MIKE).

(LAUGHTER)

FATTAH:

I appreciate it. Thank you very much, Mr. Chairman.

WOLF:

And Mr. Graves.

GRAVES:

One quick clarification. Thank you, Mr. Chairman. Back to the administrator, in your written statement it say, "that and employee was placed on administrative leave," for clarification, you also indicated there were three employees. Were all three employees placed on an administrative leave or just a single employee?

LUBCHENCO (?):

A single employee was placed on administrative leave.

GRAVES:

OK. And that single employee, is it paid administrative leave or unpaid?

LUBCHENCO (?):

It was paid.

GRAVES:

Thank you. Thank you, Mr. Chairman.

CQ Transcriptions, June 21, 2012

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