



To: "Gayla D. Fornea" <Gayla.D.Fornea@noaa.gov>

Cc: Chad Lefferson <Chad.Lefferson@noaa.gov>, Charles Bergmann <charles.bergmann@noaa.gov>, James M Nance <James.M.Nance@noaa.gov>

Gayla,

I asked Chad to contact you in regard to the contractual issues (if any) that might surround IAP arranging any oil-spill related training. I am not qualified to determine if any of our reactions to this oil spill have contractual implications, which is why I asked him to contact you.

I have also attached for your documentation our program's safety policies which state our support of an observer's ability to refuse a vessel due to documented health or safety concerns.

Larry

Gayla D. Fornea wrote:

Larry,

Chad and I had a conversation this morning about your busy weekend with the BFT observers and oil spill related issues. Chad told me that one of the observers was in the oil spill area and that at least one of their catches had oil on the lines. I don't remember what he said about the catch, but the observer reported that he had experienced a sore throat after exposure to the oil and other chemicals in the water. I was also told that one of the hook study boats went out without an observer although their contract requires they carry an observer with them. The reason they didn't have an observer is because the observer refused to go out citing safety fears related to the oil spill. I was also told that you wanted me to determine what hazardous training was required by the observers and what PPE was needed.

I am concerned about the information I received on several areas: First, I am not qualified to tell anyone what kind of hazardous training or PPE is required for any work so I wonder if this was a misunderstanding.

But, I do question the wisdom of providing hazardous training to all of the observers when this program will end in less than 3 weeks and few boats are actually fishing. Second, I understand that the observer programs have always given the last word in Safety determinations to the observer in that if they felt a boat was unsafe or if the crew were threatening, they were to make the call and not go. But, I didn't know that they had been given the leeway to determine if the environment was safe. I don't believe this is the Safety determinations that have been encouraged by Government in the past, but if it is please advise me so that I can document the file that the observers have this power. Third, if an observer does not believe it is safe to work around the oily water, there is no contractual reason to retain that individual. It is costly to keep an observer on standby in Houma and the oil situation is not likely to change before the expected end date of your BFT program. This is not a punishment for reporting what the observer feels is a safety issue, it is just prudent spending to only retain those individuals who can support your program and provide the data that is so badly needed. In discussions with Charles Bergmann, he said you had told him that the observers were told how long the BFT program would last and that you thought you needed to keep them until the end of the program. But, I want you to know that there is no contractual reason to retain individuals that you will not need.

On the issue of PPE, Chad broached the subject as to who is responsible for providing PPE in response to the oil spill hazards. This is an area that is not spelled out in the contract since we had no way of knowing PPE would be an issue. Since there is no stipulation in the contract, then it is my opinion that this is an area that must be negotiated if the Government sees a need for the PPE.

I wish you the best in this stressful time and hope to be able to provide you assistance when you need it. I don't want you to think you must keep observers that are no longer needed to support your program. I also want to make sure I understand what power the observers have been given in making a determination to go out on a boat or not. Please let me know if I can help in any way.

Gayla

 Pelagic Observer Program safety policies 2010.doc

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James Nance <James.M.Nance@noaa.gov>

Mon, May 24, 2010 at 4:31 PM

To: Lawrence R Beerkircher <Lawrence.R.Beerkircher@noaa.gov>

Larry: Thanks for letting me know about this issue.

<https://mail.google.com/mail/?ui=2&ik=86f531c189&view=pt&q=from%3Afornea&qs=tru...> 1/3/2012

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Gayla D. Fornea <Gayla.D.Fornea@noaa.gov>

Mon, May 24, 2010 at 6:47 PM

To: Lawrence R Beerkircher <Lawrence.R.Beerkircher@noaa.gov>

Cc: Chad Lefferson <Chad.Lefferson@noaa.gov>, Charles Bergmann <charles.bergmann@noaa.gov>, James M Nance <James.M.Nance@noaa.gov>

Larry,

Thank you for sending the safety policy. It is very helpful in that it shows you give the observers complete discretion in determining if they will deploy or not due to safety issues. This is informative to me as I had always understood the observer only had the option to refuse deployment for safety reasons based on the conditions of the boat.

I did not understand that Chad was questioning if there were any contractual issues concerning his arranging hazardous training for his employees. We did discuss briefly who was responsible for paying if there was a charge and, based on contract language, it is ambiguous since this is not the type of training we have ever had to consider. Thankfully, Chad was able to find training provided by BP and cost is not an issue.

You are right that, if not careful, some of our actions may create contractual obligations and I appreciate you taking the time to try to consider those. That was my main concern and reason for sending the email to you.

I wanted to reassure you that you do not have to retain the observers if your mission has changed or ends abruptly. Additionally, if it benefits the program, you can send the observers home to remain on stand by and fly them back if things clear up. In other words, we will work to support whatever need you have.

Additionally, I was a little upset that it seemed, from the conversations I had, that the observers were dictating what they would and would not do which is unacceptable. But, your safety policy clears that concern up.

Again, let me say I am here to help you in any way possible.

Gayla

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