

May 30, 2013

Ms. Kathryn Sullivan
Acting Undersecretary and Administrator
for Oceans and Atmosphere
U.S. Department of Commerce
Herbert Clark Hoover Building
14th Street & Constitution Avenue, NW
Washington, DC 20230

Dear Ms. Sullivan:

On behalf of the Association for Professional Observers (APO) and Public Employees for Environmental Responsibility (PEER), we are writing to alert you to impending statutory requirements that will affect the management of Fisheries Observer programs maintained by the National Oceanic & Atmospheric Administration (NOAA).

As you may know, the National Defense Authorization Act for Fiscal Year 2013 created new whistleblower protections for federal contract employees, such as Fisheries Observers. These new protections entail new duties for the contracting agencies, such as NOAA, which require your prompt attention as these new provisions go into effect on July 1, 2013.

Specifically, Section 4712 was added to title 41 of the United States Code to provide that:

“An employee of a contractor, subcontractor, or grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing ... information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract...or grant.”

This new statute further requires that:

“The head of each executive agency shall ensure that contractors, subcontractors, and grantees of the agency inform their employees in writing of the rights and

remedies provided under this section, in the predominant native language of the workforce.” [Emphasis added]

In addition, the master contracts for observers and other contracted work must be amended to reflect these new rights. The statute specifies that all contracts, grants or task orders entered or renewed after July 1 must include provisions reflecting these whistleblower protections. Further, with regard to existing contracts, it stipulates:

“At the time of any major modification to a contract that was awarded before the date that is 180 days after the date of the enactment of this Act, the head of the contracting agency shall make best efforts to include in the contract a contract clause providing for the applicability of the amendments made by this section to the contract.”

Agency heads should also be aware that they may very soon start receiving reports of investigation of reprisal complaints from the Office of Inspector General. The agency head must reviewed and make a final decision “Not later than 30 days after receiving an Inspector General report,” according to the statute. Within that short timeframe, the agency head will have to determine and order the appropriate form of relief.

Given the imminent nature of these new legal responsibilities and the number of observer and other contracts that are entering a renewal or re-bidding phase, we thought that it was important that you ensure your contracting staff members are aware of these provisions and are taking steps now to implement their specifications.

We would also respectfully request that you publicly post the actions your agency will take to implement the provisions of 41 U.S.C. §471 2 or otherwise inform us of those actions.

Thank you for your attention to this matter.

Sincerely,

Jeff Ruch
PEER Executive Director

Elizabeth Mitchell
President of the APO

Cc. Bruce Andrews, Chief of Staff, Secretary of Commerce
Matthew McGuire, Director, Commerce Office of Business Liaison