



Whistleblowers are Crucial to Combating Ocean Pollution

An analysis of the Act to Prevent Pollution from Ships (APPS), which implements the MARPOL Protocol in U.S. law, conducted by the National Whistleblower Center (NWC) and Kohn, Kohn & Colapinto (KKC).

National Whistleblower Center

3238 P St. NW
Washington, DC 20007

T: (202) 342-1903

E: contact@whistleblowers.org



@StopFraud



@NationalWhistleblowerCenter

Website: whistleblowers.org | Blog: whistleblowersblog.org

JULY 2018

National Whistleblower Center

PART I

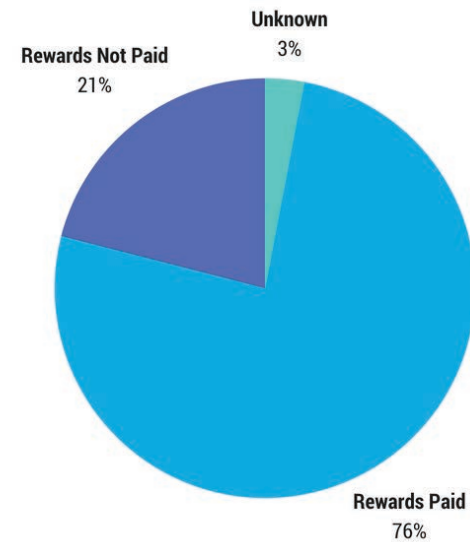
The whistleblower reward provision in APPS brings clear dividends for law enforcement effectiveness.

In an analysis of 100 recent Act to Prevent Pollution from Ships (APPS) prosecutions available on Public Access to Court Electronic Records (PACER), court records reveal that whistleblowers were responsible for 76% of all successful cases in the years ranging from 1993 - 2017. This review provides a snapshot of how the whistleblower reward provision has been implemented in APPS cases.

According to this analysis the United States obtained over \$270 million in sanctions from 100 polluters and paid 206 whistleblowers a total of more than \$33 million in rewards under APPS. Additionally, over \$63 million was ordered by courts to be used for beneficial purposes in fighting ocean pollution. Organizations that received restitutions include the National Fish and Wildlife Foundation, National Marine Sanctuary Foundation, and Smithsonian Environmental Research Center.

**Whistleblower
detection
credited in 76%
of the last 100
APPS cases.**

fig 1 | Payment of Whistleblower Rewards in Last 100 APPS Cases



The ocean pollution cases prove that whistleblowing can work on an international stage. Our review of the 100 cases reveals that 70% of those cases came from international, non-U.S. whistleblowers from country such as the Philippines, Greece, and Venezuela. According to court documents, only 3% were from the U.S. The countries of origin of the remaining whistleblowers were not reviewed in the court records.

— Stephen M. Kohn, partner at Kohn, Kohn & Colapinto, an expert in whistleblower law

Source: [Public Access to Court Electronic Records \(PACER\)](#), [Public Files on APPS Cases](#)

Since its implementation, APPS has been an effective mechanism for prosecuting ocean pollution cases. The law applies to all U.S.-flagged and foreign-flagged vessels, whether they are at ports under U.S. jurisdiction or ever have operated in navigable waters of the U.S. APPS is especially powerful because of its whistleblower provision (See 33 U.S.C. § 1908).

Whistleblowers are essential to 1) alerting authorities of APPS violations and 2) successful prosecutions of APPS violations. The possibility of collecting up to half the fine is a strong incentive for whistleblowers to come forward with information, and has proved a boon in keeping U.S. waters free of oil and other pollution. Activities like illegal discharge of oil and falsification of record-keeping usually take place within a close-knit community in the open ocean, making it hard for the Coast Guard to detect crime. The persons best positioned to uncover violations are crew members. Testimony, videotapes, and other evidence provided to law enforcement by whistleblowers is essential to the detection and prosecution of ocean pollution crime.



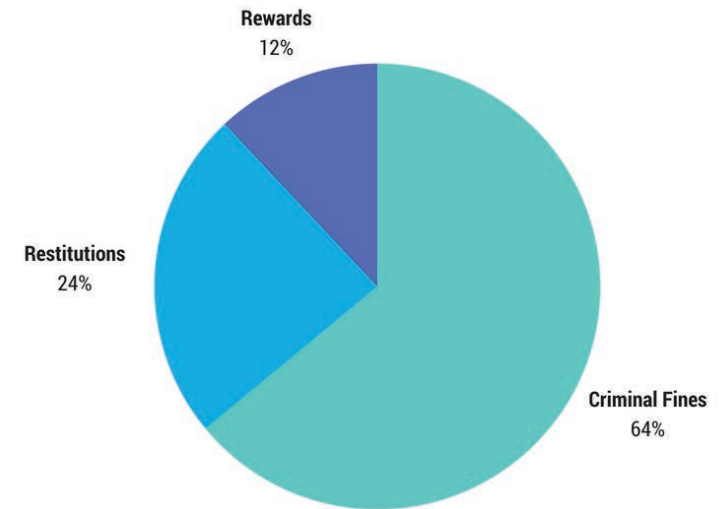
A person who knowingly violates the MARPOL Protocol, Annex IV to the Antarctic Protocol, this chapter, or the regulations issued thereunder commits a class D felony. In the discretion of the Court, an amount equal to not more than 1/2 of such fine may be paid to the person giving information leading to conviction.

— 33 U.S.C. § 1908

Nationality of Whistleblowers in the last 100 APPS cases

	Australia		Philippines
	Greece		Venezuela
	Honduras		United States
	India		

fig 2 | Breakdown of Sanctions Recovered in Last 100 APPS Cases



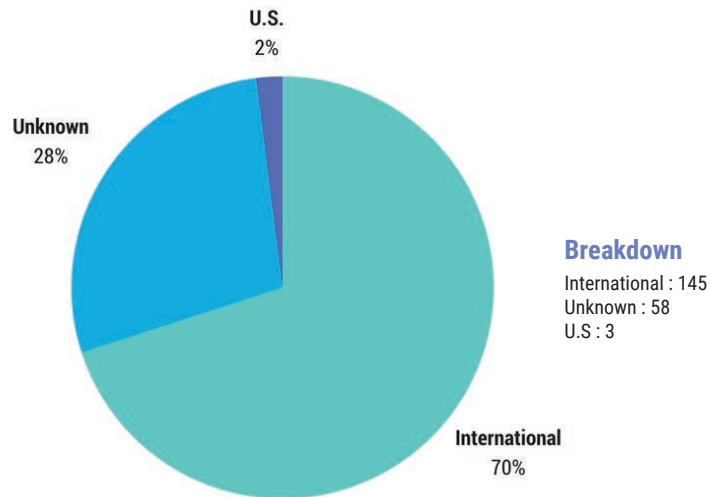
Here's proof that the math works when it comes to whistleblower rewards. Criminal fines of \$175,617,054 plus restitution of \$63,925,000 plus whistleblower rewards of \$33,755,666 equal over \$270 million dollars of illicit funds taken away from criminals.



There is not one reported case in which a whistleblower was punished for giving inaccurate information or that the reward provision of APPS hindered the enforcement of the law. In fact, the opposite is true. The U.S. Department of Justice has recognized that the reward provision is key to prosecution.

— Stephen M. Kohn

fig 3 | Origin of Whistleblower Tips in Last 100 APPS Cases



In many of the court filings, the U.S. Department of Justice (DOJ) praises the usefulness of whistleblowers.

For instance, in *U.S. v. Aksay Denizcilik Ve Ticaret A.S.* (8:10-CR-00116), the DOJ informed the court: "Without the information provided by [the whistleblowers], this activity likely would not have been discovered."

Likewise, in *U.S. v. Efploia Shipping Co., S.A.* (1:11-CR-00652), the DOJ stated "it is beyond dispute," that the whistleblower "provided substantial information that led to the investigation and conviction of all defendants in this matter." Quite simply, "the government was otherwise unaware of this crime and unlikely to learn about it...These photographs and documents were essential tools in the interviews of other witnesses and in securing guilty pleas from the defendants."

Two ongoing cases include *U.S. v. Jinhyun Youn* (7:19-CR-00119) and *U.S. v. Sea World Management & Trading, Inc.* (2:18-CR-00099). In *U.S. v. Jinhyun Youn*, a crew member provided information to the inspectors about the illegal discharge of oil waste, leading to the conviction of a chief engineer. In May 2018, it was announced that Nitta Kisen Kaisha Ltd. was ordered to pay a fine of \$1M, placed on a three-year probation, and ordered to implement a comprehensive Environmental Compliance Plan with an audit component.

In *U.S. v. Sea World Management & Trading, Inc.*, two vessel operators were convicted for violating APPS. This could not have occurred without the assistance of six whistleblowers in the case, as confirmed in the DOJ's motion for whistleblower rewards: "The information and testimony they provided as well as their continued availability here in the United States as witnesses helped to secure the guilty plea of the Defendant corporation, as well as one individual defendant...they provided the impetus for the criminal investigation, helped the Government to secure relevant evidence, and encouraged other witnesses to cooperate."

The law has a demonstrated effectiveness over this 24-year span.



Registration of Ships Sanctioned Under APPS

Antigua and Barbuda	Malta
Bahamas	Marshall Islands
Bermuda	New Zealand
Cayman Islands	Norway
China	Panama
Cook Islands	St. Kitts and Nevis
Cyprus	St. Vincent and the Grenadines
Egypt	Singapore
Gibraltar	South Korea
Greece	United States
Italy	Vanuatu
Liberia	



Origin of Companies Sanctioned Under APPS

Bahamas	Liberia
Bermuda	Malta
British Virgin Islands	Marshall Islands
China	New Zealand
Cyprus	Norway
Denmark	Panama
Egypt	Portugal
Germany	Singapore
Greece	South Korea
India	Sweden
Israel	Turkey
Italy	United Kingdom
Japan	United States
Jordan	Vanuatu



Recipients of Restitutions Payments Under APPS

One of the most important features of the APPS program is the use of APPS fines for beneficial purposes, including to marine conservation organizations. **Here is a full list of organizations that obtained restitution payments under APPS in the 100 cases analyzed for this report:**

Alaskan Arctic Fund
Arctic Research Consortium of the U.S.
Channel Islands National Park
Channel Islands Natural Resources Protection Fund
Columbia River Estuarine Coastal Fund
Dauphin Island Sea Lab Foundation
Florida Environmental Task Force Trust Fund
Florida Keys National Marine Sanctuary
Flower Garden and Stetson Banks National Marine Sanctuary
Gray's Reef National Marine Sanctuary Foundation
International Arctic Research Center
Minnesota Environmental Fund
National Fish and Wildlife Foundation
National Fish and Wildlife Fund
National Marine Fisheries Service
National Marine Sanctuary Foundation
National Marine Sanctuary of American Samoa
National Park Foundation
North American Wetlands Conservation Act Fund
Northern Coastal California Restoration Fund
Oregon Governor's Fund for the Environment
Puget Sound Marine Conservation Fund
Smithsonian Environmental Research Center
South Florida National Parks Trust
Tijuana River National Estuarine Research Reserve
Vessel Source Pollution Prevention and Compliance Fund

PART II

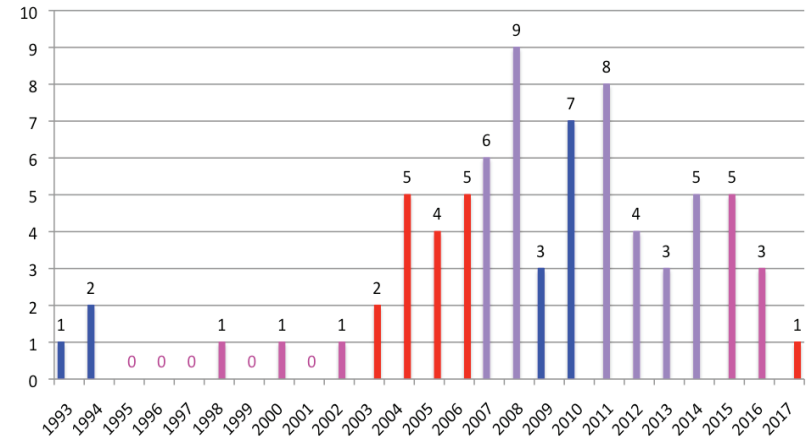
Bipartisan support exists for the continued use of whistleblowing provisions in APPS.

The review of 100 recent Act to Prevent Pollution from Ships (APPS) prosecutions available on Public Access to Court Electronic Records (PACER) also sheds light on the bipartisan nature of the support for whistleblower provisions in APPS.

From President Clinton, to Bush, to Obama, and now to Trump, law enforcement has continued to utilize whistleblowers as a crucial component of enforcing APPS. The data showed that rewards were given to whistleblowers during both Republican and Democratic administrations.

From Presidents Clinton to Trump, whistleblowing continues to work.

fig 4 | APPS Rewards by Government Partisanship (1993-2017)



The National Whistleblower Center compiled data on the 100 most recent APPS cases, of which 76 were credited to whistleblowers, and assessed the date that the whistleblower reward was granted to determine partisanship. The data shows that 48 awards, or 63.16%, were granted under Democratic-leaning or strongly-Democratic administrations, and 28 awards, or 36.84%, were granted in Republican-leaning or strongly-Republican administrations.

- Strongly Democratic
- Leaning Democratic
- Leaning Republican
- Strongly Republican

Strong is defined as both the President and both chambers Congress were of the same party, while leaning is defined as a split between the chambers of Congress or between the Congress and the President, by political party.

fig 5 | APPS Rewards by Presidential Partisanship (1993-2017)

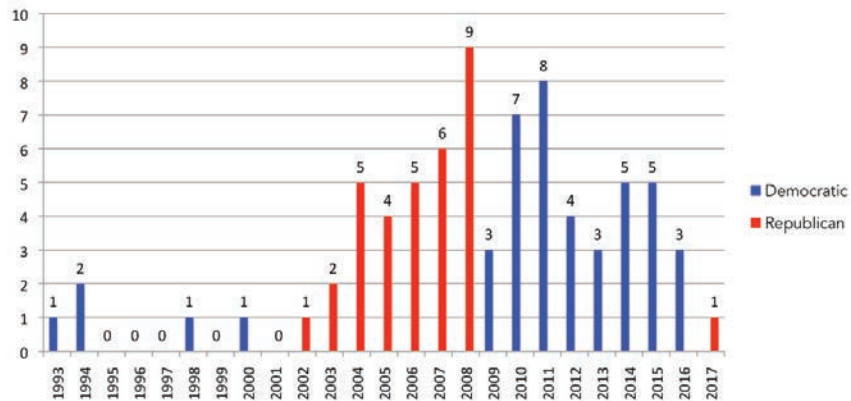


fig 6 | APPS Rewards by President (1993-2017)

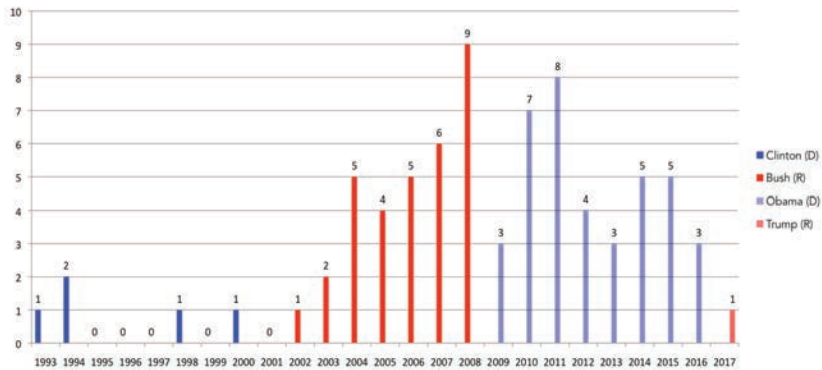
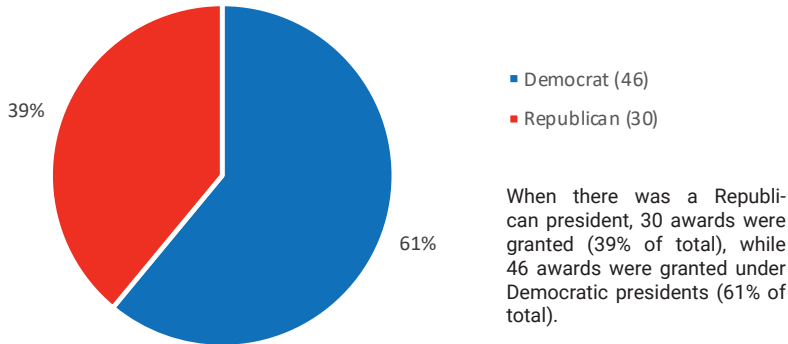


fig 7 | Number of Rewards by Presidential Partisanship (1993-2017)



President	Average Number of Awards per Year	Total Number of Awards
Clinton	0.625	5
Bush	4	32
Obama	4.75	38
Trump	1 (so far)	1

fig 8 | Total Number of Rewards by Presidential Partisanship (1993-2017)

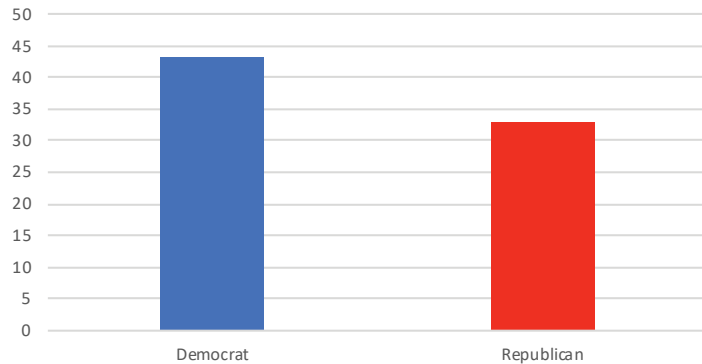


fig 9 | Total Number of Rewards by Government Partisanship (1993-2017)

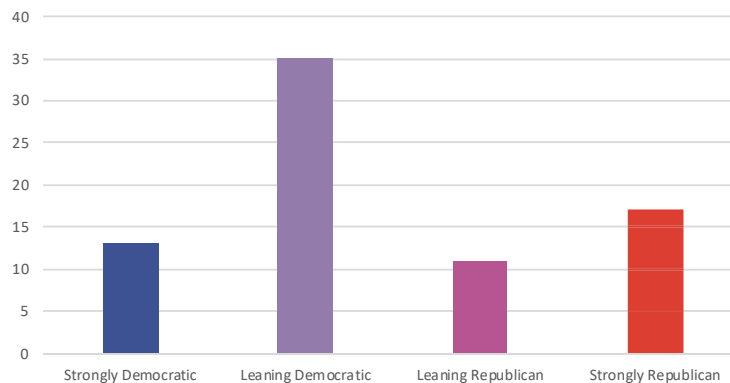
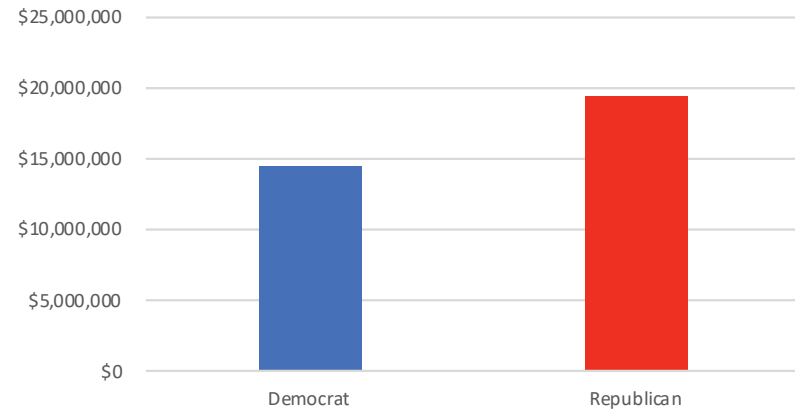


fig 10 | Total Value of Rewards by Presidential Partisanship (1993-2017)



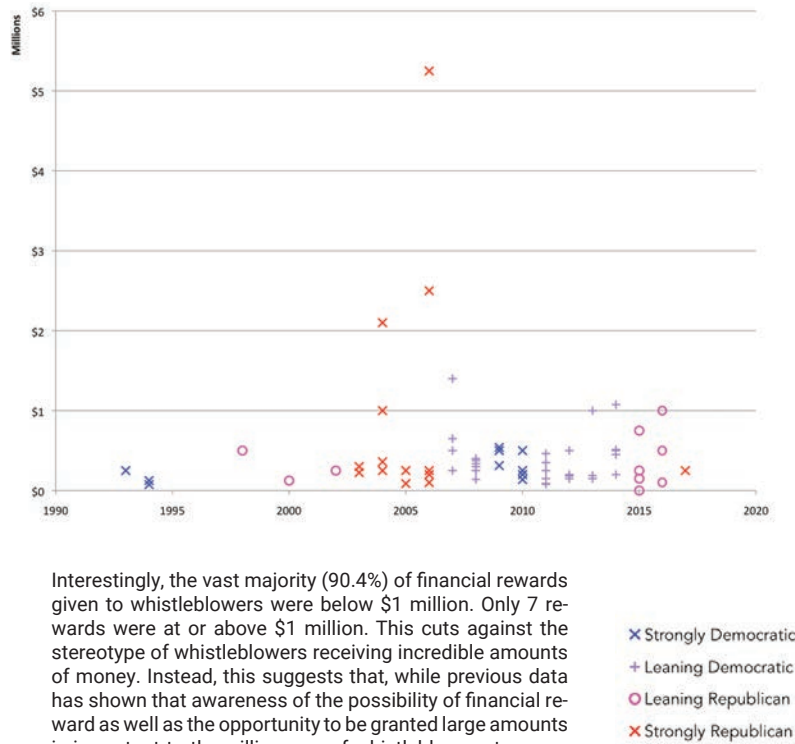
Rewards for whistleblowers occurred under both Republican and Democratic presidents. From President Clinton, to Bush, to Obama, to the current Trump administration, each presidents' executive branch has granted rewards for whistleblowers who assisted law enforcement in detecting and catching ocean polluters.

Crucially, the data includes 16 years of Democratic presidents, while only 9 years of Republican presidents. While this factor is somewhat mitigated by ongoing increase in APPS prosecutions and rewards - with a Democratic president during the earliest years of minimal activity - this remains a consideration when assessing the partisanship of whistleblower rewards under APPS. More information can be found on pg. 20 of this report.

Note that three (3) cases were exempted from charts on the total value (amount) of rewards. These cases were known to have included rewards for whistleblowers, but documentation as to the amount was unavailable on PACER. Two of the cases occurred in 2011 under Democratic presidential leadership and split Congressional partisanship. The third case occurred in 2015 under a Democratic presidency and a Republican Congress.

In terms of total reward values, years with Democratic presidents resulted in \$14,404,166 given to whistleblowers, while \$19,351,500 were granted to whistleblowers under Republican presidents. As a result, whistleblowers were rewarded over \$33 million (in fact, exactly \$33,755,666) through successful APPS prosecutions (1993-2017).

fig 11 | Reward Values by Year and Partisanship



Interestingly, the vast majority (90.4%) of financial rewards given to whistleblowers were below \$1 million. Only 7 rewards were at or above \$1 million. This cuts against the stereotype of whistleblowers receiving incredible amounts of money. Instead, this suggests that, while previous data has shown that awareness of the possibility of financial reward as well as the opportunity to be granted large amounts is important to the willingness of whistleblowers to come forward with crucial information, top dollar isn't everything. That is, whistleblowers will come forward if they are adequately compensated for their tip – even if that tip is not over \$1 million.

fig 12 | Average Whistleblower Reward Percentage (1993-2017)



**Over \$33 million
has been
awarded to
whistleblowers
under APPS**

The average reward granted to whistleblowers as a result of successful APPS prosecutions was 28.8% of the total amount of funds collected by the government. This amount was consistent between cases which occurred under Democratic and Republican presidents: under Democratic presidents, whistleblowers were granted rewards which averaged 29.3% of the total funds, while under Republican presidents whistleblowers were granted rewards which averaged 28.1% of the total funds collected by the government.

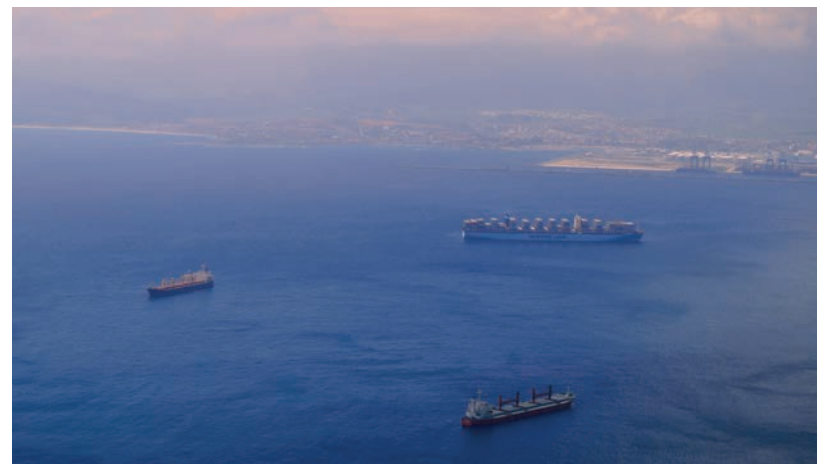
The effects of policies, especially those which require awareness among different stakeholders (in this case, both whistleblowers and law enforcement officers), as well as backwards-looking and time-intensive (in this case, the actual reward for the whistleblower at the conclusion of a legal case, which can often take several years), can take quite some time to be reflected in data. APPS went into effect in 1980. It is reasonable to assume that quite some time – a minimum of a decade, or longer – is required for the effects of law to be seen in data on whistleblower rewards. As such, a review of the 100 most recent APPS cases, especially as it extends to not much more than a decade after the enactment of the law, offers an accurate picture of the use of this whistleblower reward provision.

Moreover, it is difficult to ascertain whether the appropriate agency (including both law enforcement and prosecutorial capabilities) aggressively utilized whistleblower tips and so provided whistleblower rewards for successful cases. While public records may indicate the timeline for a reward being granted or a case being concluded, absent from the public records is the date when the whistleblower transmitted the tip to the agency, and, importantly, the date when the internal decision to investigate (and subsequent internal decisions to continue investigation, prosecute, etc.) were made.

“

“The availability of the award aptly reflects the realities of life at sea... A monetary award both rewards the crew member for taking that risk and may provide an incentive for other crew members on other vessels to alert inspectors and investigators regarding similar crimes.”

– U.S. Department of Justice, Natural Resources Division Brief in *U.S. v. Odfjell*



While it is difficult to obtain a statistical significant conclusion from this review of the cases, it is clear that whistleblowers are a crucial component for the enforcement of APPS. The continued upward trend of APPS cases prosecuted and so whistleblower receiving rewards suggests that in the years to come, the data will continue to demonstrate the importance of whistleblower tips in stopping ocean pollution.

NWC believes that the use of whistleblower rewards as a bipartisan law enforcement and community engagement tool will become more apparent over time, as awareness grows and the amount of data available grows larger.

If whistleblower rewards are unaffected by partisanship, we would expect that the number of rewards would continue to rise a consistent upward trajectory, as demonstrated from the previous quarter century (and the 100 cases assessed in this report).

Partisanship does not appear to halt the use of whistleblower rewards in the enforcement of APPS.

It's not surprising that the data shows that whistleblowers are the vast majority of the source of detection for ocean pollution crime; data shows that this is the case for other laws as well. Figure 13 represents the outsized effect of whistleblower tips as a detection method of corruption for law enforcement around the world, as compared to other enforcement tools.



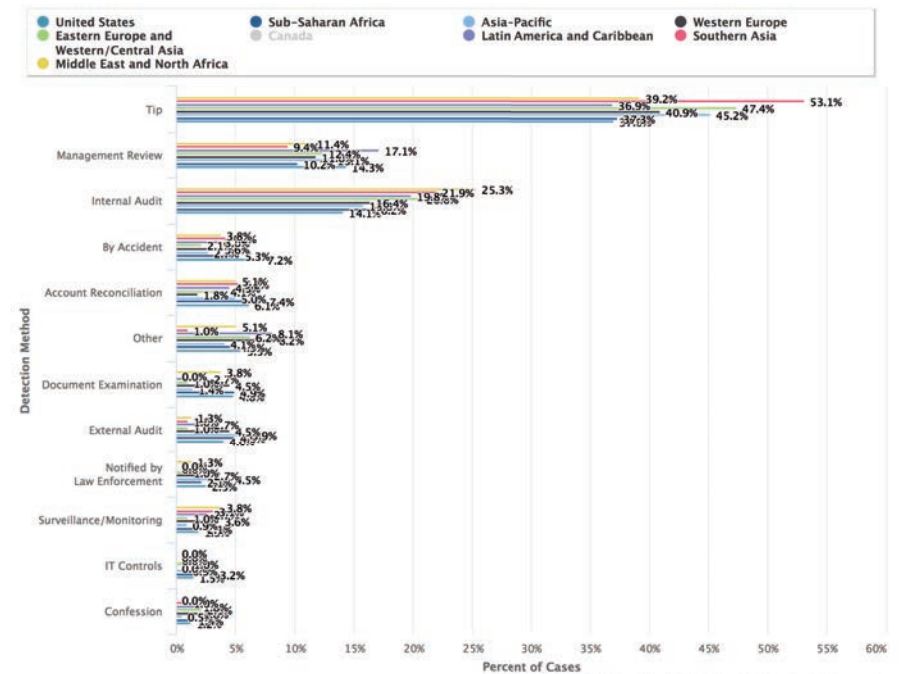
"Absent crew members with firsthand knowledge of the illegal conduct coming forward, APPS violations are extremely difficult to uncover."

- U.S. v. Noble Drilling

"Information of this nature is otherwise difficult, if not virtually impossible to obtain [without help from the whistleblower]."

- U.S. v. Consultores De Navegacion S.A.

fig 13 | Method of Fraud Detection by Region



Source: [Association of Certified Fraud Examiners](#)

CONCLUSION

Looking forward, the whistleblower provisions of APPS will continue to be a crucial component of the fight to stop ocean pollution worldwide.

Whistleblower reward provisions in the APPS law serves citizens worldwide by functioning as an effective crime detection tool. Whistleblower reward programs incentivize informants to come forward to stop criminals. It is no surprise that this snapshot of 100 recent cases tells a success story for whistleblowers.

The APPS whistleblower provision allows for international application - foreign whistleblowers and international companies can be under US jurisdiction. These rewards, at no cost to taxpayers, incentivize whistleblowers to report criminal activity, which aids the US government in the detection and prosecution of crimes related to wildlife and environmental laws and regulations. The whistleblower program is effective in addressing issues of corruption at-home and abroad.

While the timespan of the data is limited, it is clear that whistleblower awards under APPS are on the rise. Moreover, partisanship does not appear to halt the use of such programs. Over time, this trend suggests that we can expect to see the numbers continue to rise regardless of election cycles. From 1993 to 2017, APPS enabled over \$33 million in rewards to be given to whistleblowers for speaking out against pollution and corruption on the high seas. Imagine how effective APPS will be as awareness continues to grow during its third decade and into its fourth. APPS serves as proof of reward programs' effectiveness and as a model for other programs moving forward.

Acknowledgements

*Part I by Yelena Wang and Aaron Jordan
Part II by Maya Efrati and Jacob Gardner
Designed by Julia Malleck*

