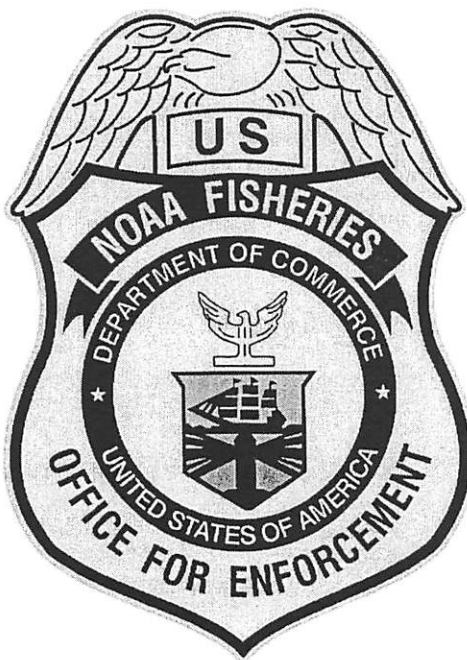


National Marine Fisheries Service  
Alaska Enforcement Division

**ENFORCEMENT REPORT**



January 01 – December 31, 2003

National Marine Fisheries Service  
Office for Law Enforcement  
P.O. Box 21767  
Juneau, AK 99802-1767

*This report can be viewed at:*

<http://www.nmfs.noaa.gov/ole/Alaska/>



**To report fisheries violations,  
call our National Hotline at**



**1-800-853-1964.**

## **INTRODUCTION:**

The Alaska Enforcement Division (AED) opened 1,102 cases last year. In 2003, AED had fifteen Special Agents and eight Enforcement Officers working cases. There were four Enforcement Officer and one Special Agent vacancies. This past month, I lost both Deputy Special Agents in Charge (DSAC); one to retirement and one resigned to follow her husband's job in Denver. I have already selected John Kingeter as one DSAC and hope to hire the second one shortly.

## **VESSEL MONITORING SYSTEMS (VMS)**

We have installed Thrane & Thrane 3026 VMS transceivers on four of our patrol vessels. The units were installed primarily for safety purposes but they are also used as a communications platform to send and receive email messages. Our plans are to have VMS on all seven our vessels by mid-summer. Guy Holt, our VMS and IT Team Leader, will give a more detailed report on VMS at this time.

## **HIGHLIGHTS OF PRIORITY ISSUES:**

An Alaska Region Enforcement Priorities Meeting was held on March 23, 2004. NOAA General Counsel led the meeting attended by Dr. Balsiger and some of his staff, as well as the Coast Guard and me. In 2003, we did not consider subsistence halibut regulations as a priority since they became effective last May. Enforcement was prepared to respond to complaints, however. As you will see further down in this report, complaints were numerous. As a result, subsistence halibut regulations were placed on the priority list.

### **1. OBSERVER-RELATED OFFENSES**

While there was a ninety percent increase in the total number of affidavits written by observers in 2003 (481) compared to 2002 (253), overall compliance has improved. This increase in numbers can be attributed to better reporting as a result of an enhanced awareness of what safety issues require an affidavit and additional training provided to observers and Observer Program Office (OPO) staff regarding the importance of reporting violations for single isolated incidents. This training was initiated in 2002 and continued through 2003. Observers wrote 228 more affidavits in 2003. Sixty-five percent were safety related while forty-five percent involved notification, miscellaneous, IR/IU, and prohibited species mishandling. There has been a noticeable decrease in the number of affidavits involving egregious violations and blatant disregard for the regulations.

Cases were opened for all affidavits that were not forwarded directly to the USCG from AED or the OPO. In situations where there were multiple affidavits against the same vessel and operator, a single case was opened and any additional affidavits received at a later date were merged into the existing case while it remained open. A total of 211 fishery related cases were generated by observers in 2003. This is an increase of 56 cases or thirty-eight percent compared to 2002.

The following table shows the number and total percent of affidavits received in 2003 and 2002 grouped by violation category. While the number of affidavits increased, the percentage of affidavits per violation category decreased in many areas.

Violation Category	2003	Percent	2002	Percent
Contractor problems	9	2.00	0	0.00
Failure to notify	45	9.00	25	10.00
Harassment (sexual)	1	0.60	3	1.00
Harassment (assault)	1	0.60	1	0.75
Harassment (intimidate/interfere)	3	0.50	8	3.00
Harassment (other)	20	4.00	17	7.00
Inadequate accommodations	12	2.00	13	5.00
IR/IU	30	6.00	10	4.00
Marine mammal (other)	1	0.60	2	1.00
Marine Mammal (feeding)	1	0.60	6	2.50
MARPOL / oil spill	40	8.00	24	9.00
Miscellaneous	38	8.00	17	7.00
MSCDQ	20	4.00	15	6.00
Prohibited species (mishandling)	45	9.00	31	12.00
Prohibited species (retaining)	5	1.00	6	2.50
Record keeping and reporting	9	2.00	10	4.00
Restricted access	2	0.50	5	2.00
Safety issues	112	23.00	15	6.00
Safety (NMFS)	3	0.50		
Safety (USCG – equipment)	4	1.00		
Safety (USCG - fail to conduct drills)	26	5.00		
Safety (USCG - marine casualty)	25	5.00	30	11.00
Sample Bias (other)	7		9	3.50
Sample Bias (physical)	13			
Sample Bias (groundfish)	3	5.00		
Sample Bias (seabirds)	1	0.60	4	1.50
Seabird (lack of avoidance)	1	0.60	1	0.75
Seabird (other)	3	0.50		
Seabird (harassment)	1	0.40	1	0.50
<b>TOTAL</b>	<b>481</b>	<b>100.00</b>	<b>253</b>	<b>100.00</b>

*Note - In September 2003 the Violation Category Titles were changed in the OPO's NORPAC database providing more precise violation category information to better reflect the nature of violations reported by observers. Some side-by-side comparisons were affected as a result of this change.*

## 2. COOK INLET BELUGAS

We continued our enforcement efforts to protect beluga whales in Cook Inlet last year. The following is a summary of those efforts:

• Vehicle Patrol Hours	30.0
• Aircraft Patrol Hours	93.0
• Vessel Patrol Hours	54.0
• Surveillance Hours	39.0
• COPPS Hours/Contacts	338/4,650
• Whale Strandings	76 (two mass strandings)
• Hotline Beluga Calls	0
• Arrests, Detentions or Citations Issued	0
• Complaint Action Requests	4
• EO's TDY for beluga enforcement	0

## 3. STELLER SEA LION PROTECTION MEASURES

Six incidents of stranded/dead sea lions were documented in various locations from Ketchikan to Sitka. Investigations on five of the incidents were dismissed for lack of evidence. A Special Agent conducting an investigation of the sixth incident, which occurred in Wrangell Narrows, near Petersburg, discovered numerous .30 caliber bullets lodged in the head and neck area of the sea lion. The bullets were removed and sent to the State of Alaska crime lab for analysis. Investigation is ongoing.

## 4. SEABIRD AVOIDANCE

Inspection of sea bird avoidance gear is now a standard part of every at-sea and dockside boarding.

One investigation was opened alleging non-compliance with sea bird avoidance regulations. The investigation was closed as unfounded.

## 5. RECORD KEEPING AND REPORTING

One IFQ Audit was conducted in Hoonah Cold Storage in Hoonah, Alaska in 2003. The processor was found to have failed to submit IFQ Sablefish shipment reports on several occasions. The processor paid a summary settlement of \$6,250.

*Note:  
however,  
catch was  
accounted for*

The fishing vessels WESTLING, KETA and ALPINE COVE were investigated for directed fishing for BSAI Pacific cod without possessing the required endorsement. The operator of the KETA was assessed a penalty of \$22,000 for the violation. The others are pending.

AED personnel continued a program of conducting offload audits in Dutch Harbor of the C/P fleet. The ALASKAN LEADER, REBECCA IRENE and DEEP PACIFIC were cited for underlogging violations.

Investigations continue concerning patterns of significant institutionalized observer data bias and interference within a fleet of catcher/processor vessels.

An investigation continues for significant "crab cap" violations against two corporations operating in the Bering Sea.

Investigations continue on two Yakutat shoreside processors for failing to comply with virtually all of the R&R requirements, i.e., fail to maintain DCPL's, fail to submit check-in/check-out reports, fail to submit WPR's.

## 6. SUBSISTENCE HALIBUT

Eight investigations were opened on individuals for violating the new subsistence halibut regulations. Violations included taking subsistence halibut on a charter vessel, submitting fraudulent information on a subsistence halibut permit application, taking subsistence halibut in a non-rural area, and taking subsistence halibut with unlawful gear (too many hooks, improper buoy markings).

There were four reports of individuals taking subsistence halibut for commercial purposes. One of these reports has led to an investigation of four individuals from one of the larger subsistence communities in SE Alaska. Information and evidence uncovered in this investigation led to the serving of a search warrant on a fish wholesaler in Seattle, WA. Preliminary evidence gathered during the course of that search indicates that the four individuals may have unlawfully sold up to 12,000 pounds of fish in interstate commerce. Investigation ongoing.

## 7. IFQ SPECIFIC

A Notice Of Violation and Assessment (NOVA) for \$10,000, and forfeiture of 6,000 pounds of 2C halibut IFQ's was issued to a Sitka resident for submitting false IFQ landing reports and for fraudulently applying for and receiving halibut IFQ's. The individual has requested an administrative hearing to reduce the penalty amount.

In a joint effort with the International Pacific Halibut Commission, AED officers conducted an enforcement effort targeting vessel operators who chronically failed to comply with Area 4 vessel clearance procedures. Fifteen vessel operators were investigated and/or cited for failure to conduct required area clearances.

The operator of the MAR DEL SUD was assessed a penalty of \$ 80,000 for fishing in Area 3B and landing the fish as harvested in 3A. Fraudulent logbooks were prepared in an attempt to conceal the violation.

## 8. MARITIME BOUNDARY FOREIGN FISHING VESSEL SEIZURES

There is nothing to report for MBL issues. However, on other international issues we have been working closely with the U.S. Customs, Coast Guard and enforcement representatives of Canada and Russia concerning illegal crab entering the United States. This is a result of the VLADA case where illegal crab was brought into Canada and then trucked into Washington State. There are plans to visit China in May to share with them how we train our enforcement personnel and how we prioritize our work. There is also a meeting of the NPAFC's Enforcement Committee in Japan the following week.

International cooperation with enforcement agencies in other countries is continuing to increase. We feel that meeting and sharing with other country's enforcement agencies provides us with important information about the international movement of fish that may be illegally competing with legal enterprises.

## 9. MARINE MAMMALS and ENDANGERED SPECIES

A report was received of a dead sperm whale washed ashore near Port Protection. USCG Air Station Sitka provided transportation for a NOAA Special Agent and a member of the SE Marine Mammal Stranding network to attempt to determine the cause of death. Due to high surf and unsafe landing conditions, the team was unable to reach the carcass. The cause of death has yet to be determined. In addition, NOAA Officers apprehended a USFWS employee with 12 teeth that he had unlawfully taken from this sperm whale carcass. The USFWS employee voluntarily abandoned the teeth to be used for educational purposes.

A report was received of a cruise ship striking a whale off the southern tip of Baranof Island. Special Agents interviewed the captain and crew of the cruise ship and employees of a shipyard in Vancouver, BC. The investigation was closed due to lack of evidence.

An investigation was forwarded to General Counsel that alleges that a tour boat approached a group of humpback whales closer than 100 yards near Pt. Adolphus. GC is considering the case.

## **COMMUNITY-ORIENTED POLICING AND PROBLEM SOLVING (COPPS)**

COPPS efforts continue with Protected Resources and the community of Yakutat to determine the cause of the decline of harbor seals in Disenchantment Bay. It is unknown what factor(s) may be causing the decline. Several possible explanations are vessel traffic disturbing the seals, hunting, environmental factors and cyclic population trends.

We continue to work with the Sitka Tribe of Alaska to accurately monitor, and reduce the instances of wasteful harbor seal harvests and to further the goals of the harbor seal co-management plan in the Sitka Sound area.

AED staffed a booth at Sitka WhaleFest. Approximately 520 people were contacted regarding IFQ fishing, subsistence halibut fishing and marine mammal issues.

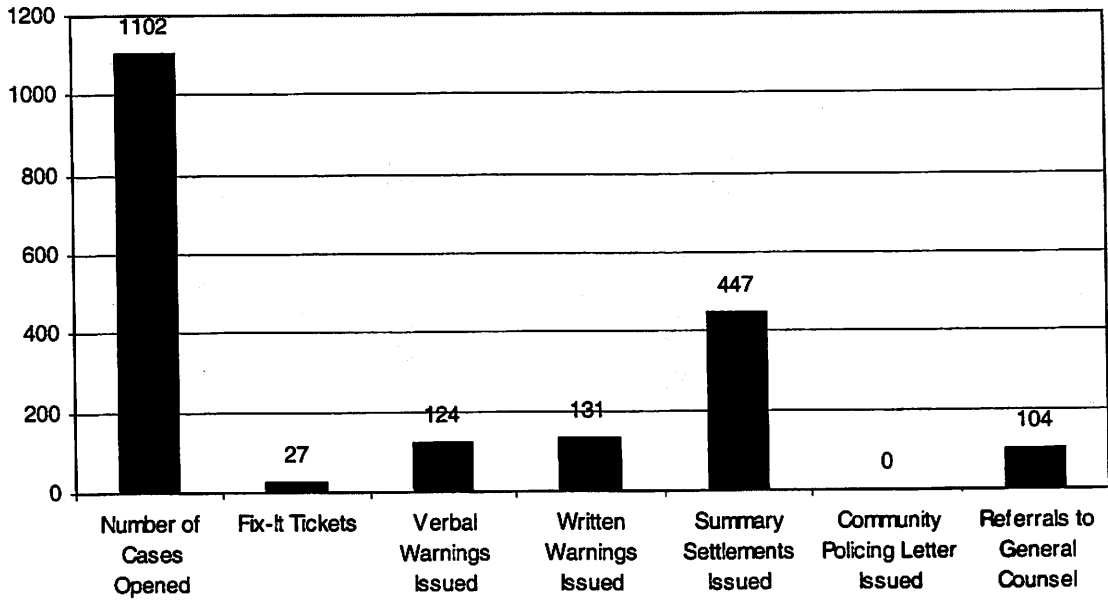
Special Agents in SE Alaska put on programs in schools to explain the importance of preserving living marine resources.

AED staff attended pre-CDQ season meetings with Norton Sound Economic Development Corporation and Bristol Bay Economic Development Corporation fishermen, buyers and managers to discuss requirements of the CDQ Halibut Program.

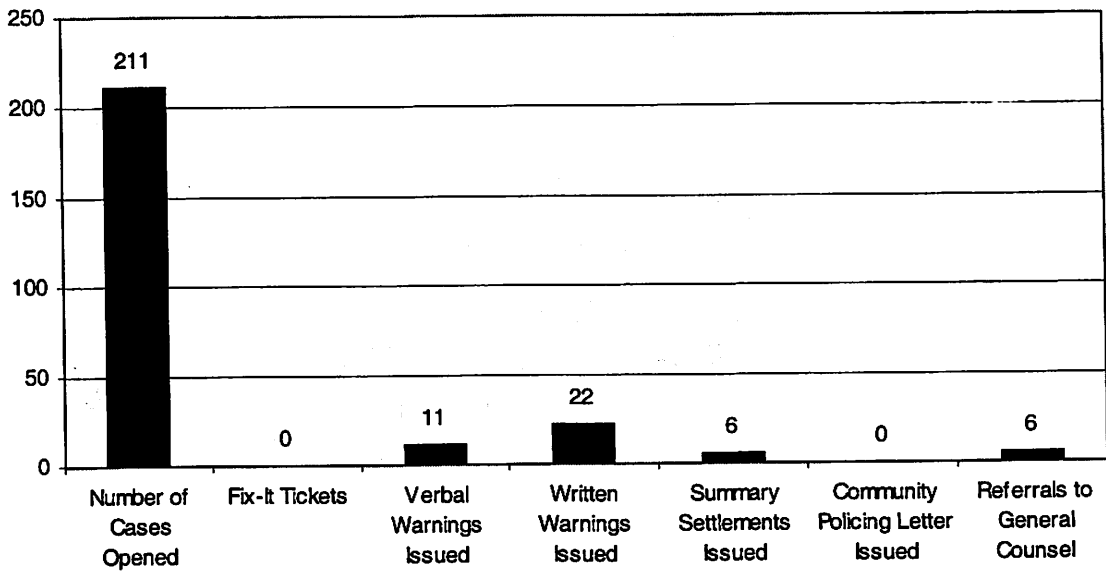
Last year, the Kodiak enforcement staff addressed the annual meeting of Alaska Dragger's Association, and addressed applicable fishing regulations and changes for 2004.



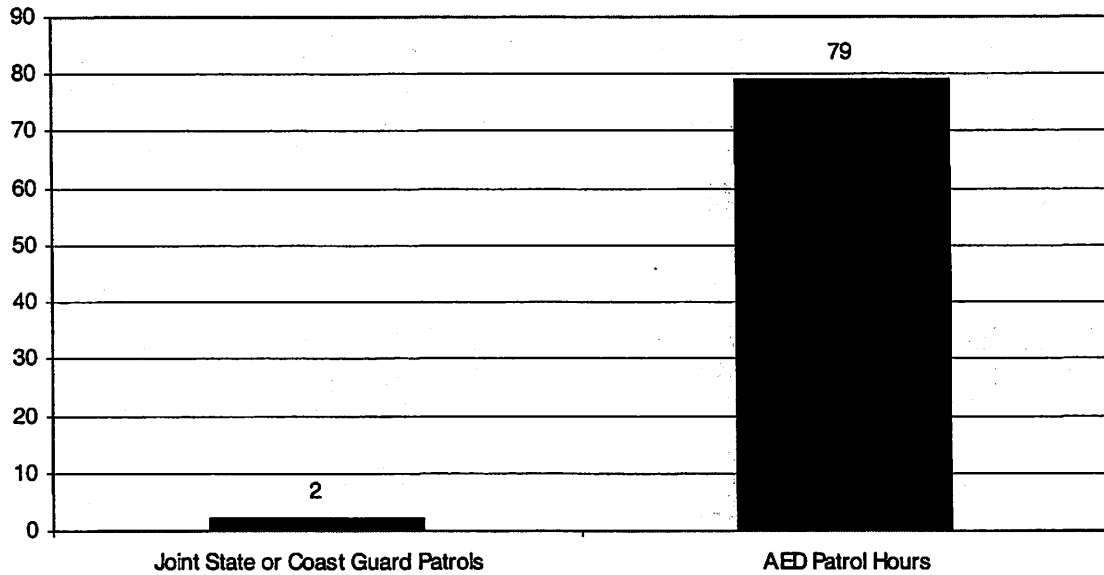
**Alaska Region Case Actions for All Cases  
January 01, 2003 - December 31, 2003**



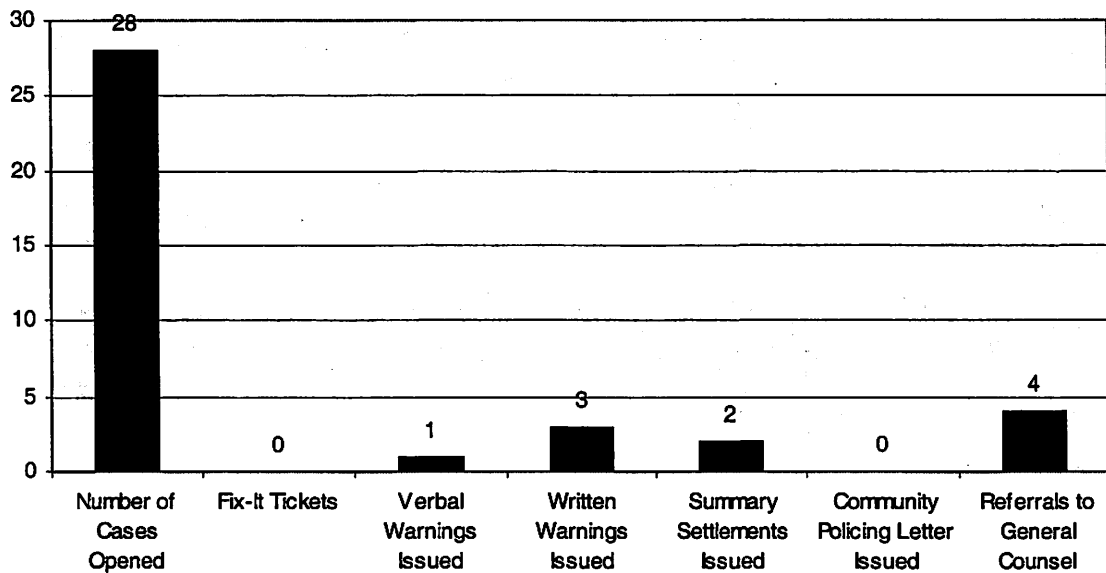
**Alaska Region Case Actions for Observer Cases  
January 01, 2003 - December 31, 2003**



**Enforcement Effort for Stellar Sea Lions  
January 01, 2003 - December 31, 2003**



**Alaska Region Case Actions for Stellar Sea Lion Cases  
January 01, 2003 - December 31, 2003**

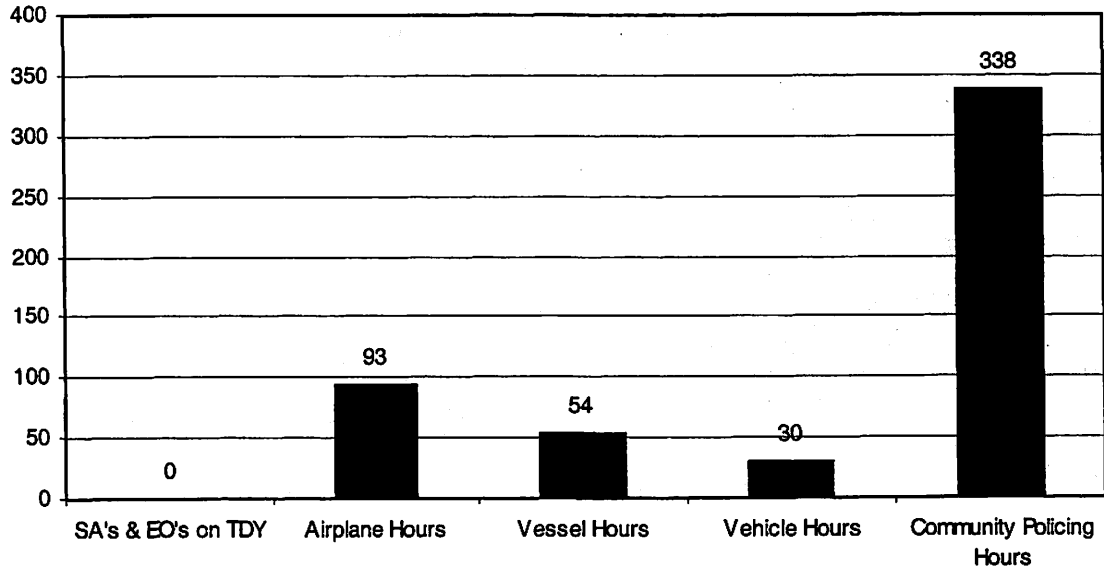


The above cases reflect the following violation descriptions:

- Unlawful take/harassment of Steller Sea Lion(s)
- Unlawful feeding of Steller Sea Lion(s)

- Incursion within 3 NM Steller Sea Lion Rookery

**Enforcement Effort for Beluga Patrols  
January 01, 2003 - December 31, 2003**



**Alaska Region Enforcement Patrol and Inspections**  
 January 01, 2003 - December 31, 2003

	Total	Cordova	Dutch Harbor	Homer	Hoonah	Kenai	Ketchikan	Kodiak	Nimilchick	Petersburg	Seldovia	Seward	Sitka	Whittier	Yakutat
<b>Boardings and Inspections</b>															
<b>No. of Vessel Boardings By Port</b>	412	8	35	93	1	1	14	98	4	26	1	82	38	11	0
<b>No. of Boardings with Violations</b>	110	1	9	26	0	0	7	12	1	4	0	39	7	4	0
<b>Compliance Rate (excluding state violations)</b>	79%	88%	74%	72%	100%	100%	50%	88%	75%	85%	100%	52%	82%	64%	0%
<b>No. of Plant Inspections By Port</b>															
<b>No. of Plant Inspections By Port</b>	58	9	1		1			43		1			1		2
<b>No. Inspections with Violations</b>	5	0	0		1			0		1			1		2
<b>Compliance Rate</b>	15%	100%		1%	0%			100%		0%			0%		0%

**Alaska Region Enforcement Effort with Patrol Vessels**  
 January 01, 2003 - December 31, 2003

<b>Vessel Patrols</b>	
<b>No. of Vessel Trips Taken</b>	51
<b>No. of Hours on the Water</b>	320
<b>No. of Boardings/Inspections</b>	73
<b>No. of Unmanned Port Visits</b>	
	7
<b>No. of Violations Detected on Patrol</b>	
	4
<b>Compliance Rate</b>	95%

**Public Testimony Sign-Up Sheet  
and  
Other Handouts Received**

**VESSEL MONITORING SYSTEMS (VMS) REPORT for 2003:**

Enforcement's use of VMS has increased steadily since its inception, providing over 13 million position fixes to date. Agents and Officers are becoming increasingly proficient in the use of the system to prevent and investigate potential violations.

The total number of activated units is now at approximately 560, the majority being Argos units, with 7 Thrane & Thrane units and 2 Orbcomm units. We are now allowing the Thrane & Thrane 3026M, 3036S, and 3022-D units, as well as the Orbcomm based Skymate & ESL Stellar 2500 units. The Federal Register notification for all of these units is at HQ and is expected to be published within a month.

*Jeff Rasser  
\* Ken Hanson  
Reported*

There have been many numbers reported regarding unit malfunctions. To quantify, there have been approximately 29 faulty Argos units since the beginning of the program in June 2002. That equates to an approximate 5% of failures. There was also a recall early in the program which affected approximately 40 units.

In 2003, a total of 124 VMS cases were initiated. Of these cases, 79 were VMS compliance cases in which the unit was not being operated, or was not installed. 43 cases were Steller Sea Lion no-transit incursions, and 2 cases were illegal Steller Sea Lion fishing cases, one pacific cod, one pollock. The no-transit zone incursions do seem to be dwindling in 2004, with only 7 cases opened to date.

Through the course of the VMS implementation, a number of issues stand out. One of the most noticeable from an operations standpoint was the last minute installations. While there is a 72 hour activation time required, many times this was not followed, though the VMS team was able to get almost all of the needed activations done in a shorter amount of time to allow the vessels to proceed to the fishing grounds. This also affected the vendor's ability to keep up with these short-period, high-volume needs. It has become apparent that while there were installation and troubleshooting issues with Argos units, we will encounter at least the same level of "problems" with any other units, mainly due to the two-way architecture, billing issues, etc.

Nationally, there have been two new major VMS implementations. The Northwest Division has implemented a VMS which will include approximately 400 vessels. There is an agreement in place that allows owners of Argos units purchased for Alaska fisheries to use the same unit in the Northwest fisheries requiring VMS. The Southeast Division has implemented a VMS which will include approximately 347 vessels. To date, Alaska still has the largest fisheries Vessel Monitoring System in the nation.

UNIT	Manufacturer	List Cost	Transmission Costs (1)	Accuracy	Email Capable (2)
ARGOS MAR-GE	North American CLS	\$2,000	\$5.00 / Day	100 Meters	No
T&T 3022-D	Thrane & Thrane	\$2,500	\$2.40 - \$3.36 / day (3)	15 Meters	Yes
T&T 3026-S	Thrane & Thrane	\$1,650	\$2.40 - \$3.36 / day (3)	15 Meters	Yes
T&T 3026-M	Thrane & Thrane	\$1,550	\$2.40 - \$3.36 / day (3)	15 Meters	Yes
Orbcomm ST-2500	ESL	\$1,185	\$50.00 / Month	15 Meters	Yes
Orbcomm ST-2500	Skymate	\$1,188	\$19.99 / Month	15 Meters	Yes

(1) Transmission costs assuming 1/2 hour reports

(2) Requires computer

(3) Depending on Service Provider

**Mar-GE Vendors:**

[www.nacis.com](http://www.nacis.com)

North American CLS

9200 Basil Court, Suite 306

Largo, Maryland 20774

(301)341-1814

**Thrane & Thrane Vendors:**

[www.landseasystems.com](http://www.landseasystems.com)

Thrane & Thrane Inc.

509 Viking Drive, Suites K, L & M

Virginia Beach, VA 23452

(757)463-9557

**ESL Vendors:**

[www.sat-ex.com](http://www.sat-ex.com)

Harris Electric, Inc.

4020 23rd Avenue West

Seattle, WA 98199

Naknek, Alaska

Dutch Harbor, Alaska

(206)282-8080

Kodiak Computers

11437 Womens Bay Dr.

Kodiak, AK 99615

(907)487-4996

**Skymate Vendors:**

[www.skymatewireless.com](http://www.skymatewireless.com)

South Central Radar & Communications

770 Fish Dock Road Suite 1

Homer, Alaska 99603

907-235-8008

3/19/2004

## DRAFT NPFMC ENFORCEMENT COMMITTEE REPORT

March 30, 2004

The Council's Enforcement Committee met March 30 with the following members in attendance: Roy Hyder (Chair), Sue Salvesson (NOAA Fisheries); Jeff Passer (NOAA Enforcement); Lauren Smoker (NOAA GC); Herman Savikko (ADFG); Rich Preston (USCG); Al Cain (Alaska Bureau of Wildlife Enforcement).

Other agency personnel in attendance: Chris Oliver, Cathy Coon, Jon McCracken, Mark Fina (NPFMC); Dennis Austin (Washington/NPFMC); Kenneth Hansen, Guy Holt (NOAA Enforcement); Susan Auer (NOAA GC); Al McCabe (USCG); Jay Ginter, Alan Kinsolving, Jon Kurland, Matt Eagleton (NOAA).

Others in attendance: John Gauvin, Dave Wood, Ed Lutrell.

The Committee discussed and provided the following comments on specific issue areas:

### Enforcement Precepts Paper

Jeff Passer provided an Enforcement 'Precepts', titled "Guidance for Effective Fisheries Enforcement" (attached). This paper is intended to provide regulators (NMFS and the Council) with general guidelines which enhance enforceability of fisheries regulations. The Committee concurs with these guidelines, and discussed a number of related issues which they recommend be included or expanded upon in the 'Precepts' paper, including:

- \*what is technically enforceable vs what is practically enforceable?
- \*closed areas are becoming increasingly used as regulatory mechanisms, and are therefore taking more of enforcements resources; related to this, VMS is becoming increasingly important as an enforcement tool.
- \*reliance on other agencies/organizations (outside NOAA and USCG) are becoming more of a factor in certain complex fisheries regulations, and need to be considered. Examples include Department of Justice in tracking of ownership structures of vessels/plants.
- \*effectiveness and enforceability of regulations is not a static question; i.e., regulations may need to be re-examined periodically for various reasons, and potentially brought to the Council for revision (the Committee recommends making this a standard agenda item for the Committee, in the event such revisions need to be considered for any particular regulation).
- \*stressing the importance of getting input on enforcement issues early in the process of developing regulatory programs.

The Committee intends to complete a revised/expanded 'Precepts' paper and report to the Council at their June meeting.

### Pre-sorting case

The Committee heard a report from Susan Auer regarding the pre-sorting case involving the FV/Rebecca Irene.

### VMS/VVS

The Committee reviewed the letter from APICDA and discussed several aspects related to VMS requirements and certification. Availability and cost issues were clarified, and it appears that some availability issues



raised in February were possibly overstated, due to miscommunication, and that availability may have been impacted at times by last minute installations by several vessels. Regarding the technical questions related to VVS/VMS, the Committee was informed by NOAA representatives that the VVS system, while very useful for certain purposes, was not a suitable replacement for VMS for the following reasons:

- VVS is not standardized relative to tamper-resistance and evidentiary aspects
- VVS lacks continuous, real-time positioning capability
- VVS is a data-logging system, rather than a vessel tracking system
- there is no type-approval process in place for VVS, as a substitute for VMS (there is for VMS and includes such things as tamper resistance, encryption standards, company/satellite ownership and linkages, etc.)

The Committee received these comments and does not support any changes to approve VVS as a VMS replacement at this time.

### HAPC

The Committee reviewed the preliminary, proposal-by-proposal evaluations prepared by NOAA Enforcement and USCG personnel, and believes them to be very useful as an initial evaluation tool. These evaluations do not identify any significant (show-stopper) enforcement concerns with any of the proposals, noting that some of the proposals did not define specific boundaries and will need to do so at some point in the process. The Committee recommends some general guidelines relative to enforceability, such as:

- boundaries need to be defined
- straight line boundaries (with specific lat/longs) are easier to enforce than circular closures
- proposals should be specific as to which gears are allowed or not allowed

Generally, the Committee believes that proposals can be evaluated relative to the basic 'Precepts' discussed earlier, as well as to general guidelines provided to the EFH Committee last year by the USCG. The attached matrix was developed by USCG and NOAA Enforcement in an attempt to help provide the Council a more specific assessment of the HAPC proposals relative to some of these general guidelines. The Committee intends to further review this matrix in June, as well as further analyses of enforcement issues by alternative, and provide additional comments at that time.

### June agenda items

Items to be reviewed by the Committee in June include:

- revisions to the enforcement 'precepts' paper
- HAPC alternatives
- role of observers in enforcement
- Am 80 (if new information available)
- AI pollock fishery (prior to Council final decision)
- crab rationalization (report from NMFS/ADFG on monitoring and enforcement discussions)

NOAA OFFICE FOR LAW ENFORCEMENT  
GUIDANCE FOR EFFECTIVE FISHERIES ENFORCEMENT

Regulations are constantly being created and most of those in place seem to be in a continual state of change. Staff from the North Pacific Fishery Management Council, and NMFS Sustainable Fisheries, Protected Resources, and Habitat are tasked with the creation and revision of the regulations. Although involving enforcement personnel in the process is essential, it is difficult to include enforcement on every conference call and at every meeting. With that in mind, the following is provided for consideration by those who are assigned a project which include elements of enforcement.

Before approval and implementation of a management plan, the following measures are enforcement's advice as it relates to the plan's efficacy. The basis for these principles is the historical experience of over twenty years of enforcing the many and varied regulations promulgated under the Magnuson, and later, the Magnuson-Stevens Act on a nationwide basis.

**REGULATIONS ARE MORE ENFORCEABLE IF THEY ARE:**

**Simple and easy to understand** - The more complicated the rule, the higher likelihood of creating loopholes and legal defenses. Straightforward requirements that are black and white without exceptions make it more difficult for intentional violators and conspirators to evade enforcement. For example, possession of an undersize halibut on a commercial vessel is clearly a simple prohibition. It is illegal regardless of where taken or how it was harvested or any other variable, condition or stipulation.

Simple regulations are easier for industry to comply with. Complex regulations result in errors, misunderstandings, and cause industry to simply ignore them.

To the extent possible, consideration should be given to consistently similar management measures among the FMP's and regulatory areas.

**Few as possible** - Adding too many control measures frustrate the industry as well as enforcement. Too many regulations allow for more possibilities for mistakes to be made and reports to be forgotten; and it gives more work for enforcement. Reports should be consolidated where possible, and instructions made simple. Regulations sometimes have to be very restrictive, but compliance should be easy for the industry.

**Closed areas which are clearly defined** - It helps if closed areas are clearly defined by using plain shapes and latitude and longitude coordinates which are easy to plot. The areas which are closed for reasonably long time spans, with minimal exemptions or transiting provisions are easier to comply with and to enforce. For example, the Gulf of Alaska management areas

following latitude lines out to the EEZ boundary is a good example because they are easy to plot and easy to comply with. An example of areas difficult to enforce are the ones that plot from a specific point on land, outward 3, 10, or 20 miles. Although simple to plot on a chart, there are many areas that are difficult for a vessel to identify to a certain accuracy by using radar. Getting an accurate radar return from a shoreline with a changing tide can be challenging.

**Assisted by VMS** - Vessel monitoring systems have proven to be very useful in many fisheries around the world. They run themselves on the vessel and allow fish managers and enforcement to monitor the vessels for harvest as well as compliance with restricted areas. They ease logistical burdens of extensive surveillance which are extremely manpower intensive operations. Some VMS systems allow for electronic catch reporting and communications.

**Fish is accountable and traceable throughout the wholesale process** - The intent of this requirement is for there to be traceability of product wherever found. This enables enforcement to intercept unlawful seafood at various funnel points such as airports and Customs borders. With required documentation and labeling, everything could be traced back to the responsible harvester.

**Supported by appropriate penalties up to and including permit revocation and criminal charges for the most egregious offenses** - The Penalty schedule of NOAA General Counsel is constantly evaluated to ensure it is sufficient to effectively penalize civil offenders commensurate with their violations. However, chronic repeat offenders who do not possess resources to pay their fines may need permit sanctions or revocations. Those who commit egregious crimes must be punished via criminal sanctions up to the felony level. In these cases, incarceration may be the appropriate avenue of attaining justice. (See PENALTY section below for more on this subject)

#### **WHAT IS GENERALLY NOT ENFORCEABLE:**

**Man power intensive regulations** - The halibut and sablefish IFQ regulations are manpower intensive. Enforcement will never have enough manpower to monitor more than a small fraction of the total offloads. This requires constant shifting effort from port to port, while not having adequate resources to properly be pro-active towards serious offenders. Use of technologies such as VMS and electronic log books can allow enforcement to monitor remotely, reducing manpower needs.

**Complex or convoluted regulations** - Regulations such as by-catch limits on catcher vessels are impossible to enforce at-sea. Enforcement of these regulations requires monitoring the entire catch during offload. At that time, it is too late for the vessel to do something about any overages it may have. The fisherman have to rely on their ability to estimate catch composition at sea to stay in compliance.

**Lack of accountability** - Fish can become "legal" merely by doctoring the records, without traceable accountability, or the ability to audit. Records which track fish from harvest, to the offload, and through the processing and shipping add to good accountability.

**Estimates** - Regulations which require a vessel captain to estimate catch, catch composition, and/or discards is not enforceable. Using estimates may work just fine for managing a fishery. However, enforcement can not prove the false reporting of an estimated weight of a discard, nor can we establish how close an estimate must be before we can cite someone.

Finally, any new plan or regulation must take into consideration the enforcement resources of the NMFS and the Coast Guard in terms of maximum capable enforcement contacts and investigative effort. Nationwide enforcement is spread thin, so adding more regulations to enforce, usually means decreasing, or in some cases ceasing, effort in other areas.

## **PENALTIES**

Once regulations are in place penalties are discussed. The goal of regulatory enforcement agencies is to ensure compliance, whereas prosecution agencies exist to assess responsibility and punish violations. The NOAA Fisheries Office for Law Enforcement (OLE) has both mandates. These two mandates often lead to conflict when we are criticized for not pursuing cases of wrongdoing more aggressively, and then criticized for being too heavy handed when pursuing major civil and criminal violations. OLE works with various NOAA and NMFS divisions, the Fishery Management Councils, NOAA General Counsel, and the U.S. Attorney's Office to determine the appropriate prosecution method for an offense. OLE has one of the most versatile selection of penalties of any agency in the United States. For civil violations, these include verbal warnings, fix-it notices, written warnings, summary settlement fines, monetary penalties from NOAA General Counsel, permit sanctions, permit suspensions, permit revocations and hearings with a Civil Administrative Law Judge or with a federal judge in federal civil court. Our goal is to seek the least penalty to gain compliance. If a penalty is too low, it may result in being the cost of doing business. If a penalty is too high, a person discovering they have committed a civil violation may decide to coverup the error instead of reporting it. Or they may feel the need to challenge the violation in court, not to claim innocence, but to petition for a lower penalty. For criminal violations, penalties include monetary penalties, home confinement, and/or imprisonment. Criminal investigations and prosecutions are saved for the intentional violators who commit the violation many times, conspire with others, or those who intentionally commit one serious offense where a civil penalty would not be appropriate or adequate.