

National Marine Fisheries Service
Alaska Enforcement Division

ENFORCEMENT REPORT



January 01, 2004 – December 31, 2004

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/ak_enforce.html

**To report fisheries violations,
call our National Hotline at
1-800-853-1964.**



FOR THE PERIOD 01/01/2004 THROUGH 12/31/2004

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INTRODUCTION

The Alaska Enforcement Division (AED) opened 923 cases in 2004. The types of cases remained spread over all regulations, with recordkeeping and reporting violations being the most prominent. Special Agents (SA) and Enforcement Officers (EO) conducted joint patrols with the Alaska State Troopers following the October Bering Sea Red King crab fishery. The purpose of the patrols was to learn more about the crab fisheries in anticipation of the federal crab regulations.

PERSONNEL

In 2004, AED had 14 Special Agents and 8 Enforcement Officers working cases (see attached Organizational Chart). I was told recently that I would be given permission to hire 2 new Special Agents and 2 new Enforcement Officers for enforcing the crab regulations. I will begin recruiting these as soon as it is official. This will give me 17 Special Agents and 15 Enforcement Officers in Alaska.

BUDGET/PERFORMANCE MEASURES

For fiscal year 2005, the budget for the Office of Enforcement nationally is approximately \$43.5 million. This is a reduction of \$1.6 million over last year. This number also includes \$15 million for Joint Enforcement Agreements. There are no projected increases in money or positions (FTE's/Full Time Equivalents) for FY 2006 or 2007.

The FY'05 budget for the AED is about \$4.1 million. About \$2.5 million of that is for salaries and benefits.

The Office of Enforcement's Performance Measures are found under the NMFS Ecosystem's Goal (see attached table). The Alaska Enforcement Division is included in these national Measures. We are reviewing these goals and trying to determine better ways to establish goals and the best method for measuring enforcement outcomes.

VESSEL MONITORING SYSTEMS (VMS)

There were 30 VMS cases opened in 2004. Eighteen (18) of those were for No-Transit area incursions. Of these, 6 were closed for no violation, 9 were issued summary settlements, and 2 cases were referred to General Counsel. Seven (7) of the summary settlement offers were paid at \$2,500 each. The 2 cases referred to General Counsel resulted in the vessel owners being sent Notice of Violation and Assessments (NOVA) for \$2,500 each; one has been paid and payment is pending for the other. One (1) case remains under investigation.

Twelve (12) cases have been opened for failure to comply with VMS requirements. Three (3) were closed with written warnings, 2 were closed with verbal warnings, 1 was dismissed as unfounded, and 4 were settled by General Counsel for \$1,000 each. One (1) case is pending General Counsel review, and 1 is still under investigation.

We assisted fishermen when they had problems with their VMS units. Exemptions of up to two weeks were given to the vessel owners to allow for fishing while they waited for parts or for new VMS units. The vessel owners were required to provide a work order from a repair facility showing why there was a delay in repairing the unit.

JOINT ENFORCEMENT AGREEMENT – ALASKA STATE TROOPERS

The Alaska State Troopers continue to assist us by using their Troopers and Public Safety Technicians to conduct dockside boardings and inspections and at-sea patrols using their aircraft and patrol vessels. The State conducts these duties under our authority through a Cooperative Enforcement Agreement, and is funded through Joint Enforcement Agreements (JEA). Following is a summary of their efforts in 2004:

Vessels Boarded = 141
Federal Violations Detected = 55
State Violations Detected = 17
Fishermen Contacted = 483
Aircraft Patrol Hours = 141
Patrol Vessel Days = 39

HIGHLIGHTS OF PRIORITY ISSUES:

1. OBSERVER RELATED ISSUES

There was an increase in the total number of affidavits written in 2004 (576) compared to 2003 (481). This increase in numbers is believed to be caused by increased observer reporting of violations in response to emphasis placed on reporting during

observer training. The most noticeable increase in affidavit numbers is in the Failure to Notify Category, Recordkeeping and Reporting (R&R), and failing to deploy adequate seabird avoidance measures. The percentage of affidavits forwarded to the Coast Guard dropped while the total number increased slightly over the year.

The following table shows the number and total percent of affidavits received in 2004 and 2003 grouped by violation category. While the number of affidavits increased, the percentage of affidavits per violation category decreased in many areas. With a few exceptions involving repeat offender's overall compliance remains high as evidenced by the number of non-egregious reports received.

| Violation Category | 2004 | Percent | 2003 | Percent |
|--|------|---------|------|---------|
| Contractor problems | 10 | 1.7 | 9 | 1.8 |
| Failure to notify | 72 | 12.5 | 45 | 9.3 |
| Harassment (sexual) | 3 | .5 | 1 | .5 |
| Harassment (assault) | 2 | .34 | 1 | .5 |
| Harassment (intimidate/interfere) | 17 | 2.9 | 3 | .6 |
| Harassment (other) | 8 | 1.3 | 20 | 4 |
| Inadequate accommodations | 4 | .6 | 12 | 2 |
| IR/IU | 20 | 3.4 | 30 | 6 |
| Marine mammal (other) | 1 | <.25 | 1 | .5 |
| Marine Mammal (feeding) | 0 | | 1 | .5 |
| MARPOL / oil spill | 42 | 7 | 40 | 8 |
| Miscellaneous | 24 | 4 | 38 | 8 |
| MSCDQ | 15 | 2.5 | 20 | 4 |
| Prohibited species (mishandling) | 51 | 9 | 45 | 9 |
| Prohibited species (retaining) | 5 | .8 | 5 | 1 |
| Record keeping and reporting | 34 | 6 | 9 | 2 |
| Reasonable assistance | 7 | 1 | 2 | .5 |
| Restricted access | 1 | <.25 | 2 | .4 |
| Safety issues | | | 112 | 23 |
| Safety (NMFS) | 9 | 1.5 | 3 | .6 |
| Safety (USCG – equipment) | 18 | 3 | 4 | .8 |
| Safety (USCG - fail to conduct drills) | 54 | 9 | 26 | 5 |
| Safety (USCG - marine casualty) | 129 | 22 | 25 | 5 |
| Sample Bias (other) | 8 | 1.3 | 7 | 1.4 |
| Sample Bias (physical) | | | 13 | 2.7 |
| Sample Bias (groundfish) | 13 | 2.2 | 3 | .6 |
| Sample Bias (seabirds) | 1 | <.25 | 1 | <.5 |
| Seabird (lack of avoidance) | 22 | 4 | 1 | <.5 |
| Seabird (other) | 3 | .5 | 3 | .6 |

| Violation Category | 2004 | Percent | 2003 | Percent |
|----------------------|------------|---------------|------------|---------------|
| Seabird (harassment) | 3 | .5 | 1 | <.5 |
| TOTAL | 576 | 100.00 | 481 | 100.00 |

2. COOK INLET BELUGAS

Operations for the 2004 Cook Inlet Beluga Whale Enforcement Plan commenced on April 1, 2003 and continued through September 31, 2004. A total of seven Alaska Enforcement Division (AED) Enforcement Officers and Special Agents contributed nearly 900 hours of patrol, investigation, and Community Oriented Policing and Problem Solving (COPPS). Traditional law enforcement methods utilized investigations of stranded beluga whales along with air, land, and sea patrols to detect and to deter any illegal harassment or takes of beluga whales in and about Cook Inlet. COPPS law enforcement methods provided crime prevention outreach and education at events, shows, and activities for public involvement.

| AED Performance Goals for 2004 | | |
|--------------------------------|--------------------------|-----------------------|
| Activity | Projected Hours for 2004 | Actual Hours for 2004 |
| Patrol high threat areas | 200 | 403 |
| Conduct Surveillance | 100 | 87 |
| COPPS Outreach and Education | 125 | 382 |
| Total | 425 | 872 |

AED performance goals for 2004 were achieved and exceeded for patrolling high threat areas and COPPS outreach and education. Vehicle and vessel patrols were dramatically increased in comparison to 2003 due to the loss of available air support. Surveillance was limited because of the number of hours needed to increase patrols in order to compensate for the loss of air patrol reconnaissance and intelligence.

3. STELLER SEA LION PROTECTION MEASURES

Thirteen (13) cases were opened involving the illegal take or harassment of Steller sea lions.

Illegal Take/Harassment of SSL

| Number of Cases | Status |
|-----------------|---------------------------------|
| 2 | Summary settlement paid |
| 1 | Written warning issued |
| 2 | Dismissed - no violation |
| 1 | Closed - Intel only |
| 3 | Closed - lack of evidence |
| 2 | Closed - lack of F/EN resources |
| 1 | Verbal warning issued |
| 1 | NOVA issued |
| 13 | TOTAL |

SSL Rookery Incursions

| Number of Cases | Status |
|-----------------|-------------------------------------|
| 3 | Still under investigation |
| 2 | Summary settlement issued |
| 9 | Summary settlement paid |
| 2 | Written warning issued |
| 8 | Dismissed - no violation |
| 2 | Closed - Intel only |
| 1 | Closed - lack of evidence |
| 1 | Declined by F/EN |
| 1 | NOVA issued |
| 2 | Settlement agreement conditions met |
| 31 | TOTAL |

4. SEABIRD AVOIDANCE

There have been 76 cases opened involving seabird avoidance issues:

| Number of Cases | Status |
|-----------------|---|
| 7 | Still under investigation |
| 2 | Summary settlement paid |
| 14 | Written warning issued |
| 2 | Closed - Intel only |
| 3 | Declined by F/EN |
| 2 | Written warning (Fix-It) issued |
| 41 | Verbal warning issued |
| 2 | Sent to GC |
| 1 | Settlement agreement signed by GC |
| 2 | Transferred to another Region or agency |
| 76 | TOTAL |

5. RECORDKEEPING AND REPORTING VIOLATIONS

AED Enforcement Officers and Special Agents conducted 508 vessel boardings and 30 plant inspections in 22 ports in Alaska. Overall, vessels had a 73% compliance rate. This number includes minor violations resulting in Fix-it Notices and both verbal and written warnings. There was an overall 80% compliance rate for plant inspections.

Significant Cases

1. Icicle Seafoods, Inc., Adak Fisheries, and Adak Fisheries Development were assessed a \$3.44-million civil penalty for violating the American Fisheries Act for exceeding the company's crab-processing cap. The investigation showed that for over two years, from January 2002 until February 2004, Icicle Seafoods controlled Adak Fisheries Development, through the actions of Icicle's officers and through Icicle's subsidiary fish-processing operation. During the time period charged, Adak Fisheries purchased and marketed approximately 90 percent of all crab that Adak Fisheries Development processed. As a result of the control exercised by Icicle Seafoods, all crab processed by Adak Fisheries Development should have been allocated against Icicle Seafoods crab cap limit. When this is done, Adak Fisheries Development processed over 3.8 million pounds of brown king crab in excess of Icicle Seafoods' AFA crab cap for western Aleutian brown king crab during the same time period.

2. Commercial fishing company, Unimak Fisheries, LLC, owner of the F/V UNIMAK, pled guilty and was sentenced in U.S. District Court for intentionally under-reporting the amount of by-catch halibut brought aboard the UNIMAK during the 1999 and 2000 groundfish seasons in the Bering Sea and Gulf of Alaska. U.S. Magistrate Judge Harry Branson sentenced the company according to the terms of the plea agreement to a fine of \$300,000; restitution in the amount of \$200,000 payable to the International Pacific Halibut Commission; a 14-day suspension of fishing privileges during the January 2005

groundfish season; 18 months of probation; and a requirement that the company hire an expert to examine and correct policies which may have led to the criminal conduct.

3. Commercial fishing Captain Paul Ison and First Mate Daniel Skauge pled guilty and were sentenced in Anchorage Federal District Court for their roles in intentionally under-reporting the amount of by-catch halibut brought aboard the F/V UNIMAK during the 2000 groundfish season in the Bering Sea and Gulf of Alaska. District Court Judge Robert Beistline ordered Ison and Skauge each to spend four months in prison, pay fines of \$25,000 and restitution of \$25,000 to the International Pacific Halibut Commission; forego employment in the fishing industry for one year and write an article for publication in a fishing journal explaining their criminal behavior.

4. Global Seafoods in Kodiak, Alaska paid a \$71,000 NOVA for violations of the Magnuson-Stevens Fisheries Conservation and Management Act. On Oct. 25, 2004, Donna Jones, Oleg Nikitenko and Global Seafoods North America, LLC settled the NOVA for failing to have a required NOAA Fisheries-certified groundfish observer on site during a number of days during the first quarter of 2004, and for purchasing approximately 22,000 pounds of groundfish in violation of Gulf of Alaska Maximum Retainable Amounts (MRAs).

5. Joseph Hamm, operator of the FV Chellissa, was charged with violations of the Magnuson-Stevens Fisheries Conservation & Management Act after repeatedly delivering trawl catches containing very high numbers of Pacific halibut. Regulations require all incidentally caught halibut to be immediately sorted from the catch and returned to the sea with a minimum of injury, regardless of condition. Pacific halibut are prohibited from being retained at any time by trawl vessels. NOAA Office of General Counsel assessed a \$35,000 Notice of Violation and Assessment against Hamm for failing to sort his catch and return prohibited species immediately to the sea. The investigation was initiated when AED officers began documenting unusually high incidental amounts of halibut being sorted from delivered catches by Kodiak shoreside processors. Mr. Hamm was previously issued warnings in 2001 and 2003 for failure to sort prohibited species from his trawl catch.

6. SUBSISTENCE HALIBUT

We are continuing to investigate subsistence halibut entering commerce. There is one criminal case which began in 2003 and has been referred to the U.S. Attorney's Office. It is expected to be completed within the next couple months.

We worked closely with NMFS and Council staff last year to address regulatory concerns with the subsistence halibut regulations. Once the suggested changes are in place, I feel much of the confusion will go away and we will have a better set of regulations to enforce.

7. IFQ SPECIFIC VIOLATIONS

The operator of the F/V ARCTIC WAVE was cited for failure to have the IFQ permit holder on board and for fraudulent logbook entries. A civil penalty of \$20,847 was paid.

Philip Twohy, operator and owner of the F/V MAR DEL SUD, has agreed to pay a civil penalty of \$72,365 for fishing violations that occurred on May 22, 2004 in the Alaska halibut and sablefish fishery. Twohy received a Notice of Violation and Assessment (NOVA) for multiple violations of the Magnuson-Stevens Fisheries Conservation and Management Act, including fishing illegally in an area for which he had no halibut Individual Fishing Quotas and for home-packing unreported halibut fillets. Twohy reported that the halibut were caught in IPHC Area 3B even though the fish were caught in Area 3A, 85 miles away. The violation was found by a joint operation of the U.S. Coast Guard. After the landing, an additional 70 pounds of unreported halibut fillets were found on board the vessel. The fish apparently were intended for personal consumption, or homepacks. Keeping commercially harvested IFQ fish for personal use is permissible if the fish are reported and debited as required by IFQ regulations.

8. MARITIME BOUNDARY FOREIGN FISHING VESSEL SEIZURES

One foreign vessel, the JOCHOH, was seized in May 2004 for transshipping fish in an unauthorized area. The case was settled for \$150,000. The investigations on the U.S. fishing vessels which delivered to the JOCHOH have been completed and are being sent to General Counsel for prosecution.

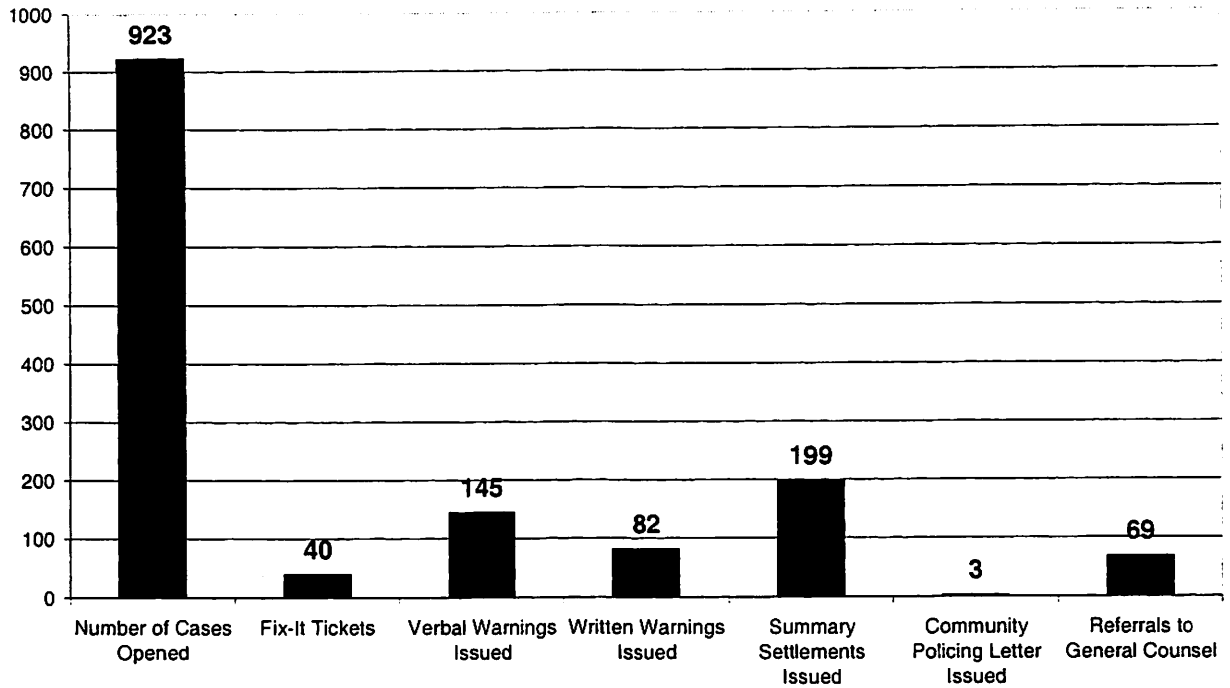
9. MARINE MAMMAL/ENDANGERED SPECIES

NOAA Office of General Counsel issued a \$2,000 NOVA to the operator of a sport fish charter vessel for harassment of Steller sea lions under the Marine Mammal Protection Act. The vessel operator, Jason W. Robinson, 27, working as a hired skipper aboard the charter vessel YODA II, owned by Timothy R. Berg, Alaska Fishing Adventures Incorporated, was charged with violations of 50 CFR 216.11(b) for feeding and harassing endangered Steller sea lions at a haul out near Seward, Alaska. On June 16, 2003, several witnesses including passengers and crew aboard another sight seeing vessel reported seeing some of the crew aboard the YODA II feeding sea lions within a few feet of what locals call "Seal Rock," an uncharted island located in Resurrection Bay, about 10 miles out of Seward. The incident was also documented by passengers using personal video cameras.

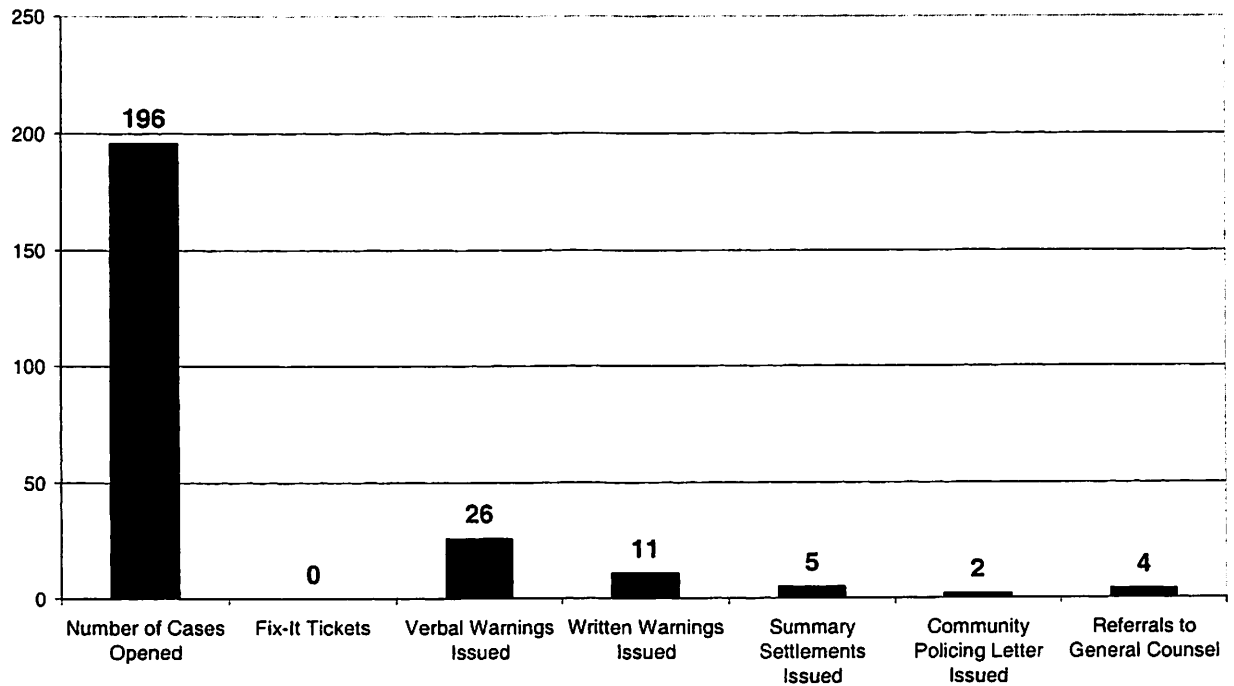
COMMUNITY-ORIENTED POLICING AND PROBLEM SOLVING (COPPS)

Special Agents and Enforcement Officers attended the Great Alaska Sportsman Show, Anchors Aweigh Boat Show, Valdez Marine Expo, Pacific Marine Expo, Sitka Whale Fest, Comfish, and the Anchorage Boat Show last year. Hundreds of people visited our booths and discussed regulations and wanted to learn more about our agency. We also continued our practice of visiting shoreside processors to educate them on regulations and to remind them of the requirements.

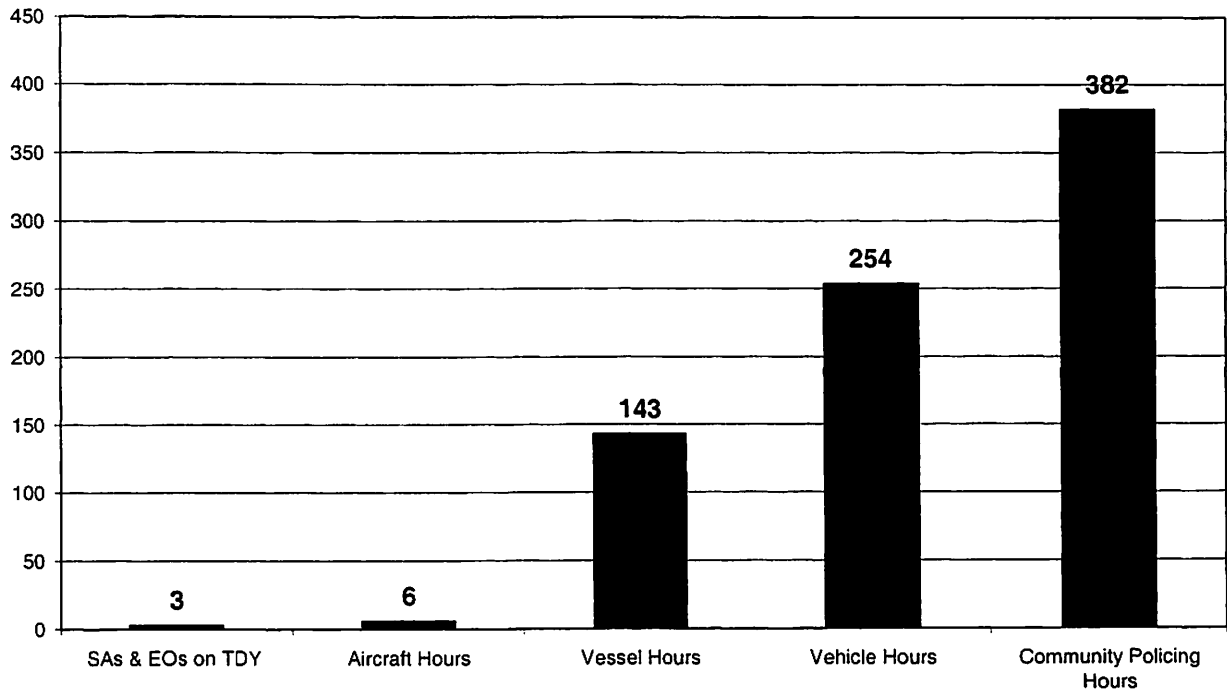
**Alaska Region Case Actions for All Cases
January 01, 2004 - December 31, 2004**



**Alaska Region Case Actions for Observer Cases
January 01, 2004 - December 31, 2004**



**Enforcement Effort for Beluga Patrols
January 01, 2004 - December 31, 2004**



Alaska Region Enforcement Patrol and Inspections

January 01, 2004 – December 31, 2004

| | Total | Alitak | Anchor Point | Anchorage | Chignik | Cordova | Craig | Dutch Harbor | Homer | Hoonah | Juneau | Kenai | Ketchikan | King Cove | Klawock | Kodiak | Nimilchik | Petersburg | Sand Point | Seldovia | Seward | Sitka | Valdez | Whittier | Yakutat |
|--|-------|--------|--------------|-----------|---------|---------|-------|--------------|-------|--------|--------|-------|-----------|-----------|---------|--------|-----------|------------|------------|----------|--------|-------|--------|--------------------|---------|
| Boardings and Inspections | | | | | | | | | | | | | | | | | | | | | | | | | |
| Number of Vessel Boardings By Port | 508 | 1 | 4 | 3 | 4 | 3 | 7 | 13 | 65 | 3 | 35 | 8 | 25 | | 2 | 60 | 1 | 55 | 5 | 1 | 148 | 38 | | 23 | 4 |
| Number of Boardings with Violations | 136 | 1 | 0 | 0 | 3 | 0 | 2 | 3 | 17 | 0 | 4 | 2 | 5 | | 1 | 8 | 0 | 20 | 4 | 0 | 52 | 11 | | 0 | 3 |
| Compliance Rate (excluding state violations) | 73% | 0% | 100% | 100% | 25% | 100% | 71% | 77% | 74% | 100% | 89% | 75% | 80% | | 50% | 87% | 100% | 64% | 20% | 100% | 65% | 76% | | 10% 25% | 100% |

| | | | | | | | | | | | | | | | | | | | | | | | | | |
|-------------------------------------|-----|------|--|--|------|------|----|------|--|--|-----|--|--|------|--|-----|--|------|------|--|--|--|------|------|-----|
| Number of Plant Inspections By Port | 30 | 1 | | | 1 | 3 | 1 | 1 | | | 2 | | | 1 | | 14 | | 1 | 1 | | | | 1 | 1 | 2 |
| Number Inspections with Violations | 6 | 0 | | | 0 | 0 | 1 | 0 | | | 1 | | | 0 | | 3 | | 0 | 0 | | | | 0 | 0 | 1 |
| Compliance Rate | 80% | 100% | | | 100% | 100% | 0% | 100% | | | 50% | | | 100% | | 79% | | 100% | 100% | | | | 100% | 100% | 50% |

correction noted by Jeff Passer

Alaska Region Enforcement Effort with Patrol Vessels

January 01, 2004 – December 31, 2004

| Vessel Patrols | |
|---|------|
| Number of Vessel Trips Taken | 22 |
| Number of Hours on the Water | 95.1 |
| Number of Boardings/Inspections | 44 |
| Number of Unmanned Port Visits | 4 |
| Number of Violations Detected on Patrol | 2 |
| Compliance Rate | 95% |

| Jet Boat Patrols | |
|---|------|
| Number of Vessel Trips Taken | 15 |
| Number of Hours on the Water | 66.7 |
| Number of Boardings/Inspections | 32 |
| Number of Unmanned Port Visits | 1 |
| Number of Violations Detected on Patrol | 1 |
| Compliance Rate | 97% |