



NOAA FISHERIES



Office of Law Enforcement
Alaska Enforcement Division
June Report To
North Pacific Fisheries Management Council



October 2020 through March 2021
Report fisheries or marine mammal violations,
call our National Hotline at 1-800-853-1964

<https://www.fisheries.noaa.gov/topic/enforcement>

NOAA Fisheries, Office of Law Enforcement, Alaska Division

Report to the North Pacific Fishery Management Council

June 2021

TABLE OF CONTENTS

1. Enforcement Operational Highlights	2
2. Outreach and Education	3
3. Case Updates	4
4. Incident and Summary Settlement Information	6
5. Fixed-Gear Electronic Monitoring Program	8
6. OLE Response to Council on D4: IFQ Committee Report	9
7. Observer Program	9

Alaska Enforcement Division

1. Enforcement Operational Highlights

From October 1, 2020 to March 31, 2021, the Office of Law Enforcement (OLE), Alaska Division (AKD) conducted extensive patrols for the purposes of enforcement and education. In addition to daily dockside and vessel patrols, AKD conducted several multi-day patrols. Patrols were often coordinated with partners including U.S. Customs and Border Protection (CBP), U.S. Fish and Wildlife Service (USFWS), U.S. Coast Guard (USCG), Alaska Wildlife Troopers (AWT) and National Park Service (NPS). Partnering with multiple agencies provides the benefits of diverse enforcement opportunities and outreach.

In October, an Enforcement Officer conducted a remote joint patrol of the Chefonak and Bethel area with AWT. The focus of this patrol was to detect and deter Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) violations.

In November, an Enforcement Officer conducted a patrol with the U.S. Coast Guard for seven days on the USGBC BAILEY BARCO. 13 vessels were boarded with two federal violations found and four State of Alaska violations found.

An Enforcement Officer participated in a 22 day Bering Sea IFQ Opilio crab and Operation Groundfish patrol on the P/V STIMSON in January. Gear from 19 fishing vessels was inspected at sea; four violations were detected. 22 boardings were conducted with two violations found. Due to Covid-19 restrictions only four remote ports were visited.

The Annual BSAI A season Observer Operation in February started with a total of 59 incidents containing 219 individual statements detailing potential violations; a total of 50 vessels or shoreside processing facilities were identified. Over the course of four weeks, 37 statements were resolved with compliance assistance, 10 summary settlements were issued, and 29 Written Warnings were issued. 25 statements were closed due to a lack of evidence or were unfounded. 91 of the 219 statements remain open and ongoing. One case, consisting of two statements, was forwarded to General Counsel for prosecution. Three additional cases involving the safety of observers were initiated.



In conjunction with the annual Observer Operation, OLE and AWT conducted 20 patrol days on the P/V Stimson focused on observer work environments, observer coverage, reasonable assistance, interference, electronic monitoring, catch accounting, flow scale requirements and

remote port patrols. In addition to the observer-related violations, logbook, permit, license, gear, and record keeping and reporting violations were investigated during the patrol. The team conducted enforcement activities in four of the 10 Central and Aleutian Island Alaska communities' unmanned ports. The team traveled 1,612 nautical miles aboard the PV Stimson. 131 vessels were observed at sea, 23 vessels were boarded (at sea and dockside) with 49 commercial fish contacts made and 14 vessels' pot gear pulled/inspected at sea. Of these contacts, some produced evidence and information that will inform future investigations. Outreach and education were also conducted by the team members in the four ports visited.

2. Outreach and Education

The NOAA OLE outreach and education efforts facilitate responsible and sustainable use of marine resources. NOAA agents and officers visit communities throughout Alaska, utilizing multiple venues to deliver a strong message of resource protection. Due to COVID-19, many of the large community events where AKD has maintained an annual presence were canceled. AKD provided resources and outreach through virtual venues. The table below provides an account of AKD's formal virtual outreach efforts from October 1, 2020 to March 31, 2021.

Date	Description
10/13/2020	A Special Agent participated in a teleconference with Bering Sea crab fishermen to discuss issues for the Bristol Bay red king crab season starting on October 15.
10/26-28/2020	A Special Agent and Compliance Analyst participated in the third Tri-Annual meeting of the Alaska Eskimo Whaling Commission (AEWC). There was a brief discussion concerning the take of injured whales, to include calves, without it affecting the AEWC quota. The AEWC attorney will be seeking to include OLE in future discussions concerning approval for these types of takes.
11/12/2020	A Special Agent provided a presentation to the Alaska Longline Fishermen's Association in Sitka to discuss the current IFQ sablefish pot fishery regulations. They provided information for those considering a switch from hook and line gear to pot gear, and the difference between the regulatory schemes for the two gear types. 29 of their members attended online.
12/16/2020	A Special Agent participated in the annual Aleutians East Borough Fisherman's Winter Meeting. Attendees were encouraged to make sure to renew their federal fisheries permit and check their VMS is working. 46 people attended the meeting and there were at least 15 agencies represented.

01/06/2021	A Special Agent presented during the Amendment 80 annual co-op meeting. She provided a comparative analysis of select suspected violations reported in the CP sectors and discussed specific areas for improvement.
1/15/2021	A Compliance Analyst and a Special Agent attended the biannual Kodiak Trawl Fleet meeting hosted by Alaska Groundfish Data Bank, and provided reminders to the trawl fleet and processors in the Gulf of Alaska for 2021.
1/28-2/4/2021	A Compliance Analyst, Observer Program Liaison, and SA conducted multiple outreach meetings with different industry groups representing AFA CP Trawlers, CP P.cod and sablefish longliners, and A80 CP Trawlers. The meetings addressed potential violation summaries from the latter half of 2020.

3. Case Updates

Notices of Violation and Assessment

The NOAA Office of General Counsel, Enforcement Section (GCES) issued Notices of Violation and Assessment (NOVA) in the following civil administrative cases. A NOVA is not evidence of liability; it is only an allegation. A respondent is entitled to a fair hearing before an administrative law judge at which the government must prove liability by a preponderance of the evidence.

AK1804012; C/P Seafisher – Crewman Ioane Ioane was charged under the Magnuson-Stevens Act with harassing a fisheries observer by conduct that had sexual connotations, the purpose or effect of interfering with the observer’s work performance, or otherwise created an intimidating, hostile, or offensive environment. A \$24,000 NOVA was issued.

AK2002477; F/V Maverick – Owner F/V Maverick, LLC and Operator Scott Edward Giles were charged jointly and severally under the Northern Pacific Halibut Act with failing to record information in the vessel’s Daily Fishing Logbook within the applicable time limits as required. A \$2,200 NOVA was issued.

AK1905767 and AK1905392; F/V Anita – Owner F/V Anita LLC and Operator Jay Gillman were charged jointly and severally under the Magnuson-Stevens Act and the Northern Pacific Halibut Act with unlawfully discarding IFQ sablefish and IFQ halibut, failing to report discards, failing to retrieve gear in a timely manner, and failing to register an IFQ fishing trip in the Observer Declare and Deploy System (ODDS). A \$78,250 NOVA was issued.

AK1905306; F/V Pacific Sojourn – Owner Sojourn Fisheries, LLC and Operator Roy Wilson were charged jointly and severally under the Magnuson-Stevens Act with unlawfully discarding IFQ sablefish and failing to log the discards. A \$21,500 NOVA was issued.

AK1906825; F/V Cameron – Owner Overa Fisheries, LLC and Operator Roger Overa were charged jointly and severally under the Magnuson-Stevens Act with operating a vessel in the Gulf of Alaska Pacific cod fishery without carrying an operable NMFS-approved Vessel Monitoring System (VMS) and without complying with VMS requirements. A \$15,000 NOVA was issued.

Cases Settled

NOAA GCES entered into settlement agreements in the following civil administrative cases:

AK1905035; Recreational Vessel AK7338AL – Owner/Operator Patrick H. Harmon was charged under the Marine Mammal Protection Act with the unlawful taking of a humpback whale by striking a humpback whale with his vessel at a high rate of speed and leaving a gash in front of the whale’s dorsal fin. A \$7,500 NOVA was issued and the case settled for \$4,000.

AK1805481; F/V Jean C – Owner Moderation Enterprises, Inc., Operator and IFQ Permit Holder Harley Ethelbah, and IFQ Permit Holder Aaron Phillips were charged jointly and severally under the Northern Pacific Halibut Act with retaining 52.75% more IFQ halibut while fishing in regulatory area 2C than the total amount of unharvested area 2C IFQ halibut aboard. A \$44,494.10 NOVA was issued and the case settled for \$22,000, with time payments over 24 months.

AK2002477; F/V Maverick – Owner F/V Maverick LLC and Operator Scott Edward Giles were charged jointly and severally under the Northern Pacific Halibut Act with failing to record information in the vessel’s Daily Fishing Logbook within the applicable time limits as required. A \$2,200 NOVA was issued and the case settled for \$1,980.

AK1803714; F/V Foreigner – Operator Vonifonti Basargin and Permit Holder Nazary Basargin were charged jointly and severally under the Northern Pacific Halibut Act for landing an undersized halibut. Respondents failed to respond to Summary Settlement offers. A \$500 NOVA was issued and the case settled for \$450.

AK1708987; F/V Sovereign Grace – Owner/Operator/IFQ Permit Holder Bradley Stewart Haynes and IFQ Permit Holder Gregory Beam were charged jointly and severally under the Northern Pacific Halibut Act and the Magnuson-Stevens Act with IFQ two-area violations and for making false statements. A \$195,555.34 NOVA was issued, and the case settled with Respondent Haynes, who demonstrated an inability to pay, for \$25,000, time payments over 24 months, and an agreement that he abide by VMS and regulatory area conditions for three years. The case remains pending as to Respondent Beam.

Other Actions and Dispositions

AK1804012; C/P Seafisher – Crewman Ioane Ioane was charged under the Magnuson-Stevens Act with harassing a fisheries observer by conduct that had sexual connotations, the purpose or effect of interfering with the observer’s work performance, or otherwise created an intimidating, hostile, or offensive environment. A \$24,000 NOVA was issued. The NOVA became a final Administrative decision due to default.

4. Incident and Summary Settlement Information

From October 1, 2020 to March, 31, 2021, NOAA OLE officers and agents opened 667 incidents including 468 Magnuson Stevens Act (MSA), 107 Northern Pacific Halibut Act (NPHA), 37 Marine Mammal Protection Act (MMPA), 27 Endangered Species Act (ESA), and 28 regarding other acts/regulations (Lacey Act, North Pacific Fisheries Act, AK State Law/Regulations and Other Federal Law/Regulations). (Figure 4.1)

101 incidents remained under investigation. The majority of incidents were closed or completed: of 516 closed incidents, 173 required no enforcement action due to no recorded violation or minor/mitigated violation(s). (Figures 4.2 and 4.3)

Figure 4.1 – Incidents by percent **October 1, 2020 to March 31, 2021** categorized by primary law, program, or regulation type.

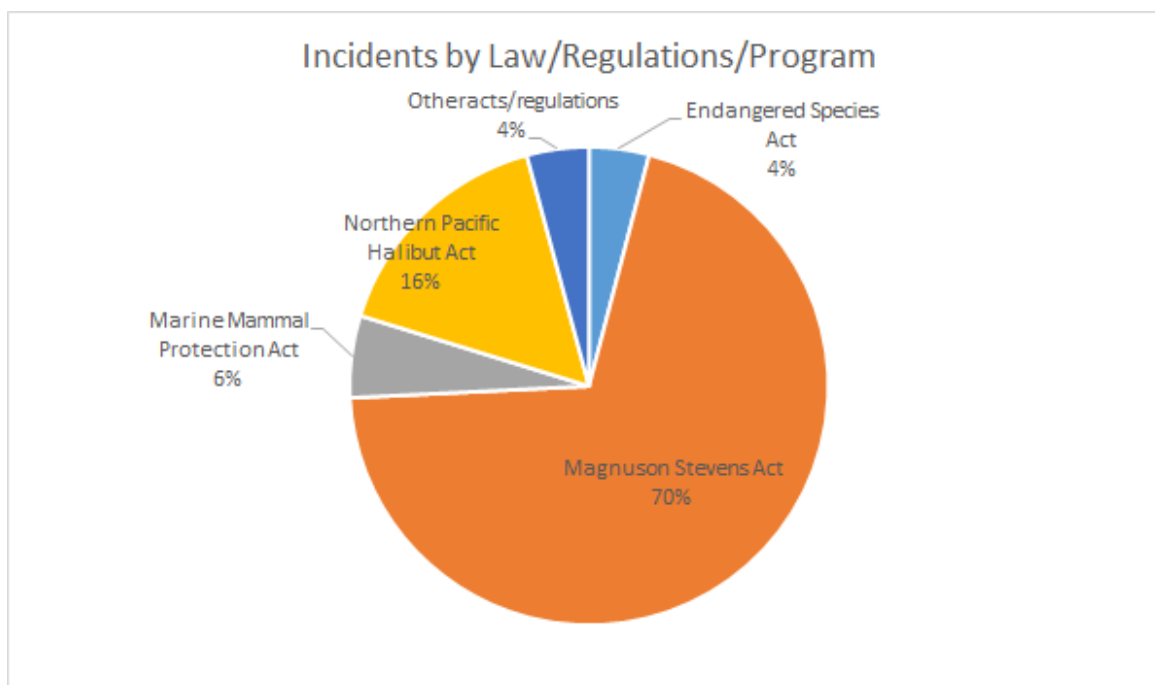


Figure 4.2 – Incident dispositions for incidents created October 1, 2020 to March 31, 2021

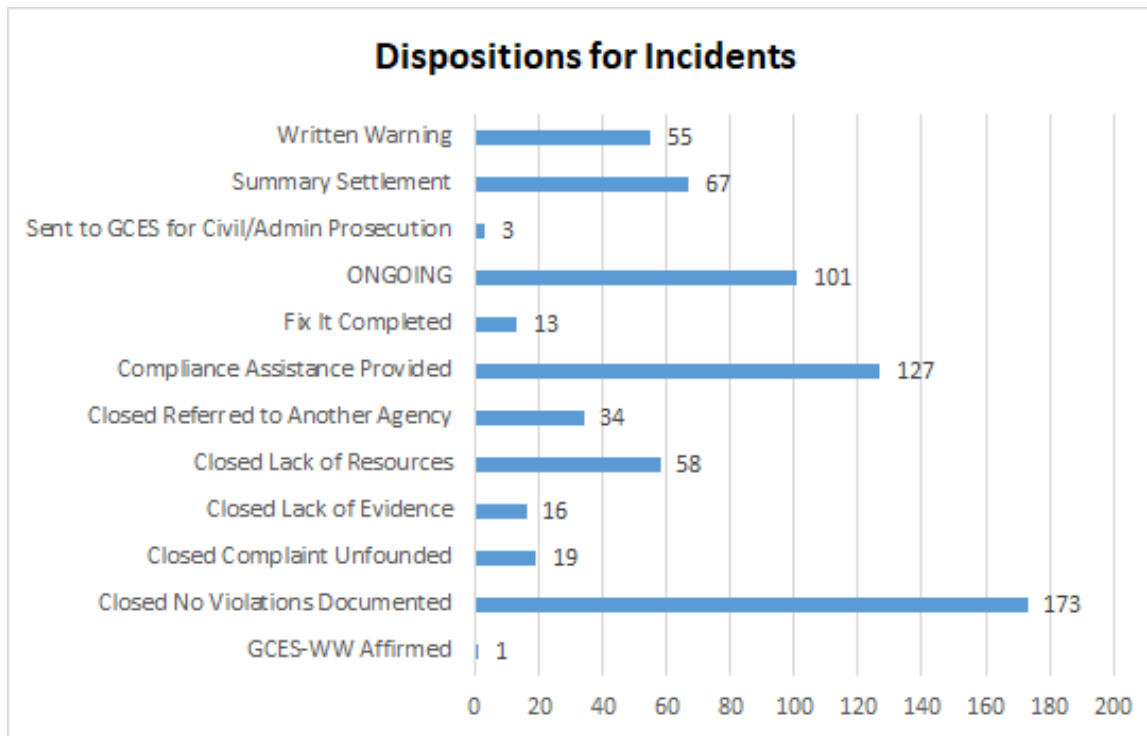
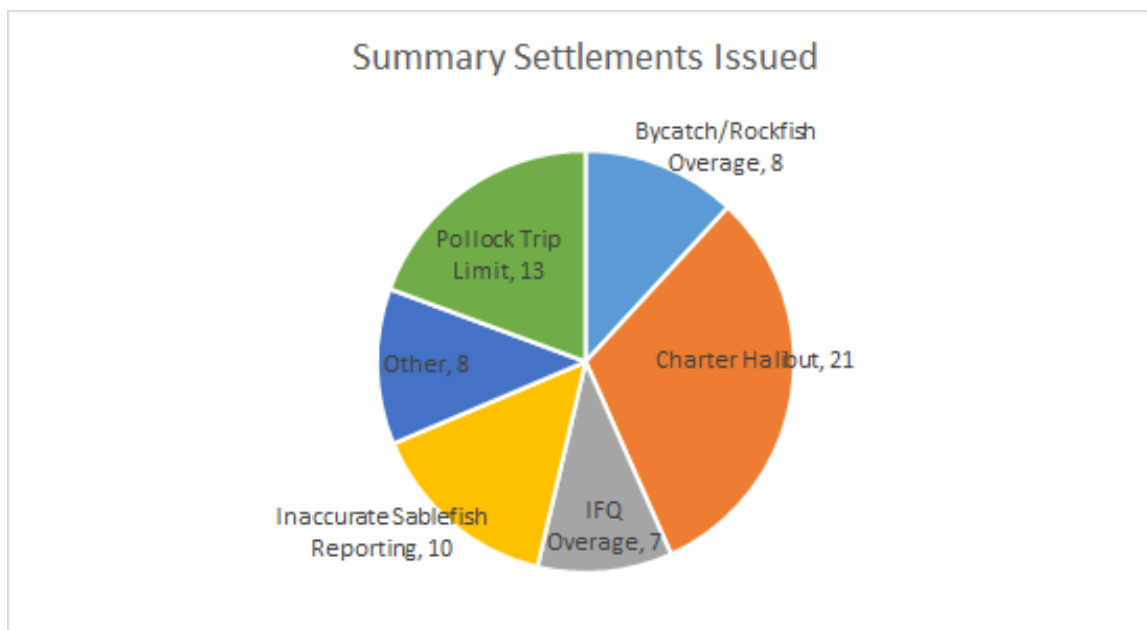


Figure 4.3 Summary Settlements Issued October 1, 2020 to March 31, 2021



* Others include no FFP, feeding harbor seal from charter vessel, failure to register trips in ODDS, and failure to transmit VMS.

5. Fixed-Gear Electronic Monitoring Program

In 2021, NOAA Fisheries initiated several efforts to mitigate noncompliance issues arising in the Fixed-Gear EM Program fleet. A select group of individual vessels with particularly high rates of noncompliance were identified; they were issued notice letters and communications that highlighted the issues on their vessels in 2019 and 2020. Communications between these vessels and NOAA Fisheries—subsequent to this outreach—have been very positive, as vessels work to mitigate issues and comply with program requirements.

In examining issues, some fleet-wide noncompliance trends were detected. Under program regulations, vessels are required to check system functionality prior to each trip, and prior to retrieving each set. Efforts to correct all issues affecting system function must be performed immediately (repair instructions are detailed in Vessel Monitoring Plans). If issues are detected that cannot be resolved at sea, the vessels must notify their EM service provider at the end of the fishing trip. Instances of vessels notifying their providers (i.e. self-reporting) have been quite low, and declined since the program became regulated in 2018. This indicates that some vessels may not be actively checking system functionality and performing repair attempts at sea, per requirements.

We categorized issues reported in the Observer Declare and Deploy System (ODDS) as either “within the vessel’s control” or hardware and software malfunctions. This too revealed a concerning trend. The number of reported issues occurring during selected trips “within the vessel’s control” increased year over year. OLE reinforces that all issues, both those “within vessel control” and hardware- and software-related issues should be actively monitored, repair attempts made when detected, and issues self-reported when repair attempts fail.

Table 5.1

Issues within vessel control	2018	2019	2020
Catch handling inconsistent with VMP (LL/Pot)	19	54	65
Camera lens dirty/obstructed (combined)	18	28	33
Complete logbook not submitted	22	26	18
Continuous Power (interrupted by vessel action)	2	4	12
Prohib mishandling/Careful release issues	7	6	4
Streamer lines not used (non-weather-driven)	3	1	3
Catch handled out of camera view	2	3	0
Insufficient lighting	0	4	0
Seabirds not presented to camera	3	0	1
Sum	76	126	136

Table 5.1 indicates that the primary issues are: Catch handling inconsistent with the VMP (for both longline and pot vessels); Camera lens dirty or obstructed; and Complete logbook not submitted. OLE maintains that stakeholder engagement is crucial to ensure successful data collection and program success.

OLE collaborated with the Council's Partial Coverage Fishery Monitoring Advisory Committee to determine the most effective means to garner that stakeholder engagement, and subsequently distributed an outreach letter to fleet participants. The letter informed participants of the issues and reminded them of the appropriate regulations and program requirements.

6. OLE Response to Council Motion on D4: IFQ Committee Report

The Council April 2021 D4 Motion included: “[T]he Council requests NMFS OLE clarify that they have the discretion to waive gear tending requirements (i.e., documented mechanical breakdown or a severe weather event). The Council requests that NMFS update the Council on these issues under the NMFS management report at a future meeting.”

OLE Response: OLE does not have legal authority to grant waivers to the applicability of Federal law or regulations. At the same time, when investigating a violation, OLE reviews mitigating and/or aggravating circumstances as factors for considering law enforcement action. OLE views documented and bonafide mechanical breakdowns and severe weather as potential mitigating factors for IFQ gear tending violations. However, simply claiming a mechanical or weather concern does not nullify or mitigate a violation, especially where evidence contradicts the claim. Examples of evidence that may be provided by the operator or may come from vessel boardings in the area include vessel records, NOAA weather forecasts, reports from other mariners, witness accounts, NOAA weather station data, and or tidal predictions, etc.

7. Observer Program

OLE collaborated with other Agency Divisions in production of the 2020 Observer Program Annual Report, which will be presented at the June 2021 Council meeting. Chapter 5 of the report, Compliance and Enforcement, presents an expansive rate-based analysis of statements provided to OLE by the North Pacific Observer Program (NPOP). Please reference the Observer Program Annual Report for extensive details regarding OLE's efforts in calendar year 2020.

This report will therefore furnish a brief synopsis of statements (Tables 7.1 and 7.2) provided to OLE by the NPOP since our December 2020 Report to Council, from October 1, 2020 through March 31, 2021. During the first half of Fiscal year 2021, OLE was provided 320 observer statements detailing 1440 occurrences of potential violations. Of these, 130 incidents were initiated. To date, three incidents resulted in issuance of written warnings: one for a processor

regarding failure to notify, inadequate accommodations, interference/sample biasing, intimidation, coercion, hostile work environment, reasonable assistance, record keeping and reporting, and safety-NMFS; one for a vessel concerning Amendment 91 salmon, disruptive/bothersome behavior-conflict resolved, and recordkeeping and reporting; and one for a processor concerning Amendment 91 salmon. Two resulted in summary settlements: one for retaining a species in prohibited status; and one for intimidation, coercion, hostile work environment. 46 incidents are under investigation (ongoing); this often indicates more complex cases.

Table 7.1. Statements, Incidents, and Investigation Status. ‘No OLE Action’ includes incidents determined not to be a violation after an investigation, incidents lacking adequate evidence, and incidents that were closed due to a lack of personnel to conduct an investigation.

Statements	Incidents	Investigation Statuses
320 statements received and reviewed in the first half of FY21; 15 did not document an actual violation (no incident created)	305 statements forwarded to agents and officers; 130 unique incidents	46 Ongoing (116 statements)
		1 Forwarded for prosecution (2 statements)
		3 Written Warnings issued (20 statements)
		2 Summary Settlements paid (3 statements)
		21 Compliance Assistance Provided (51 statements)
		57 Closed - No OLE Action (113 statements)

Table 7.2. Statement types, numbers, and occurrences. For more detailed information regarding 2020 rates by sea days, incidents per deployment, and fishery-specific incidents, please refer to the 2020 Observer Program Annual Report.

Statement Type	Statements	Occurrences
OLE Priority		
Harassment-Assault	1	1
Harassment - Sexual	7	16
Interference/Sample Biasing	18	67
Intimidation; coercion; hostile work environment	25	109
Reasonable Assistance	15	66
Safety-NMFS	24	79
	90	338
Limited Access Programs		
AFA	5	10
A80	21	46
CP LL	5	12
IFQ Retention	5	15
	36	83
Protected Species		
Gulf of Alaska Salmon	9	29
A91	27	77
Halibut Deck Sorting	7	15
Prohibited Species - Mishandling	18	85
Prohibited Species - Retaining	4	62
Marine Mammal-Feeding	7	46
Marine Mammal-Harassment	1	1
Seabird-Avoidance Measures	1	15
Seabird-Harassment	1	2
	75	332
Other		
Disruptive/Bothersome Behavior - Conflict Resolved	20	53
Record Keeping and Reporting	46	368
Restricted Access	7	43
Failure to notify	20	164
Inadequate Accommodations	9	32
Contractor problems	11	21
Miscellaneous Violations	6	6
	119	687