



# NEZ PERCE TRIBE

## Department of Fisheries Resources Management

Administration • Enforcement • Harvest • Production • Research • Resident Fish • Watershed



### CONSERVATION ENFORCEMENT DIVISION

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Judi Danielson, Chair  
Northwest Power Planning Council  
450 West State  
P.O. Box 83720  
Boise ID 83720-0062

May 29, 2003

Dear Judi Danielson:

Representatives of the Nez Perce Tribe and Columbia River Inter Tribal Fish Commission met last week (May 21<sup>st</sup>) with senior staff of NOAA Fisheries – Brian Brown, Larry Rutter, Gary Sims and John Palensky – concerning FY2004 funding for Conservation Enforcement (CE) projects. NOAA Fisheries representatives clearly stated that their agency supports continuation of the Conservation Enforcement Program. Furthermore, they stated that any survival benefits from fishery and habitat law enforcement actions that affect the "Base period" will be considered as part of any FCRPS Biological Opinion (BiOp).

As you know, Judge Redden recently ruled that NOAA's 2000 FCRPS Biological Opinion violates the Endangered Species Act, and the parties are currently briefing the issue of the appropriate remedy in this case. Consequently, we discussed the feasibility of formulating a specific RPA pertaining to enhanced fisheries and habitat law enforcement measures during NOAA's re-evaluation of the FCRPS Biological Opinion called for by Judge Redden. NOAA Fisheries staff indicated that if/when the FCRPS BiOp RPAs are revised, that the inclusion of a Conservation Enforcement RPA may be possible. However, it is apparent that the timing of NOAA's BiOp revision and subsequent endorsement by the Federal Judge would occur after the Council makes its decision on FY2004 funding for the mainstem/system-wide Province. Therefore, it is critical that the Council continue its support for this very important Conservation Enforcement program that helps provide the accountability that the salmon demand.

The Conservation Enforcement Program proposals for FY2003-2006 consist of four CE projects – rated "urgent" by CBFWA and "fundable" by the Council's ISRP:

- CRITFE Project #200005600 (ongoing; 3 officer FTE)
- Nez Perce Tribe's Project #200005500 (ongoing; 7.75 officer FTE)
- Umatilla Tribe's Project #195505500: (new, 2 officer FTE)
- Colville Tribes' Project #35052 (new, 2 officer FTE)

The risk of not funding these projects will be the loss of ESA-focused resource protection provided by 14.75 conservation officers throughout the Columbia Basin, including 10.75 officer FTE that are included in base condition assumptions of the 2000 FCRPS BiOp.

The elimination of the system-wide Law Enforcement program in 1998 provided an Adaptive Management experiment that demonstrated the immediate impact that the loss of conservation officers has on resource protection in the mainstem (refer to Attachment 1 for a detailed data analysis). After the mainstem CRITFE enforcement budget was cut, the primary output measures – patrol effort, contacts, and arrests – showed declines of 39.6, 40.2, and 27.0 percent, respectively in 1998. Conversely, renewed BPA funding during the second half of CY2000 resulted in reversal of the downward trends and 5-10 percent increases in these same output statistics during the first year of the new Conservation Enforcement projects. Nearly all the lost ground in enforcement outputs due to budget cuts in 1998-99 was recovered during the second year of Conservation CE implementation. Patrol effort increased 32.8 percent, resource contacts increased 106.9 percent, and arrests increased 47.9 percent – from CY1999 to CY2001. Trends in enforcement effectiveness in the tributary areas showed similar patterns of severe reductions in enforcement of fish & wildlife regulations after the budget cut and resumption of resource protection after the new NPT project was implemented in year 2000.

Recently, Council Staff made the remarkable recommendation not to include the four CE Projects in the “preferred projects” list – this omission threatens to result in de-funding of these projects in FY2004. Instead, Council Staff elevated three projects to the “preferred” funding level – totaling about \$850,000 – that CBFWA identified as the responsibility of the Council to fund or recommended not to fund. In addition, Council staff recommended \$1.8 million in placeholder funds for unspecified RFP's for future projects – to address BiOp gaps. We think it is untenable that the ongoing CE projects, with a proven record of providing focused *on-the-water* actions to reduce illegal take of ESA-listed salmon and steelhead, are in danger of de-funding; while placeholders for requests for proposals (un-developed and un-reviewed) and projects that lack regional consensus are recommended for funding.

In summary, Conservation Enforcement projects are critical to the Columbia Basin's Tribes for managing treaty and trust fisheries, the integrity of the Columbia Basin Fish & Wildlife Program, and for the continued protection of ESA-listed salmonids in the mainstem and tributaries. Furthermore, the salmon survival benefits derived from these CE projects are assumed to be ongoing in any NOAA Fisheries Biological Opinion on the FCRPS operations. We believe that elimination of the ongoing CE projects for FY2004 funding would severely reduce the protection of ESA-listed salmon stocks from illegal take, and increase the gap in salmon survival that is assumed as base conditions in any FCRPS Biological Opinion.

We thank you in advance for the consideration of our comments. We strongly recommend that the Conservation Enforcement Projects are funded in FY2004.

Sincerely,



David B. Johnson,  
Fisheries Program Manager  
Nez Perce Tribe



Chief John B. Johnson,  
Enforcement Manager  
Columbia River Inter Tribal Fish  
Commission

cc: Brian Brown, NOAA Fisheries  
Doug Marker, NPPC Fish & Wildlife Director  
Patty O'Toole, NPPC  
*Rod Sando - CBFWA*

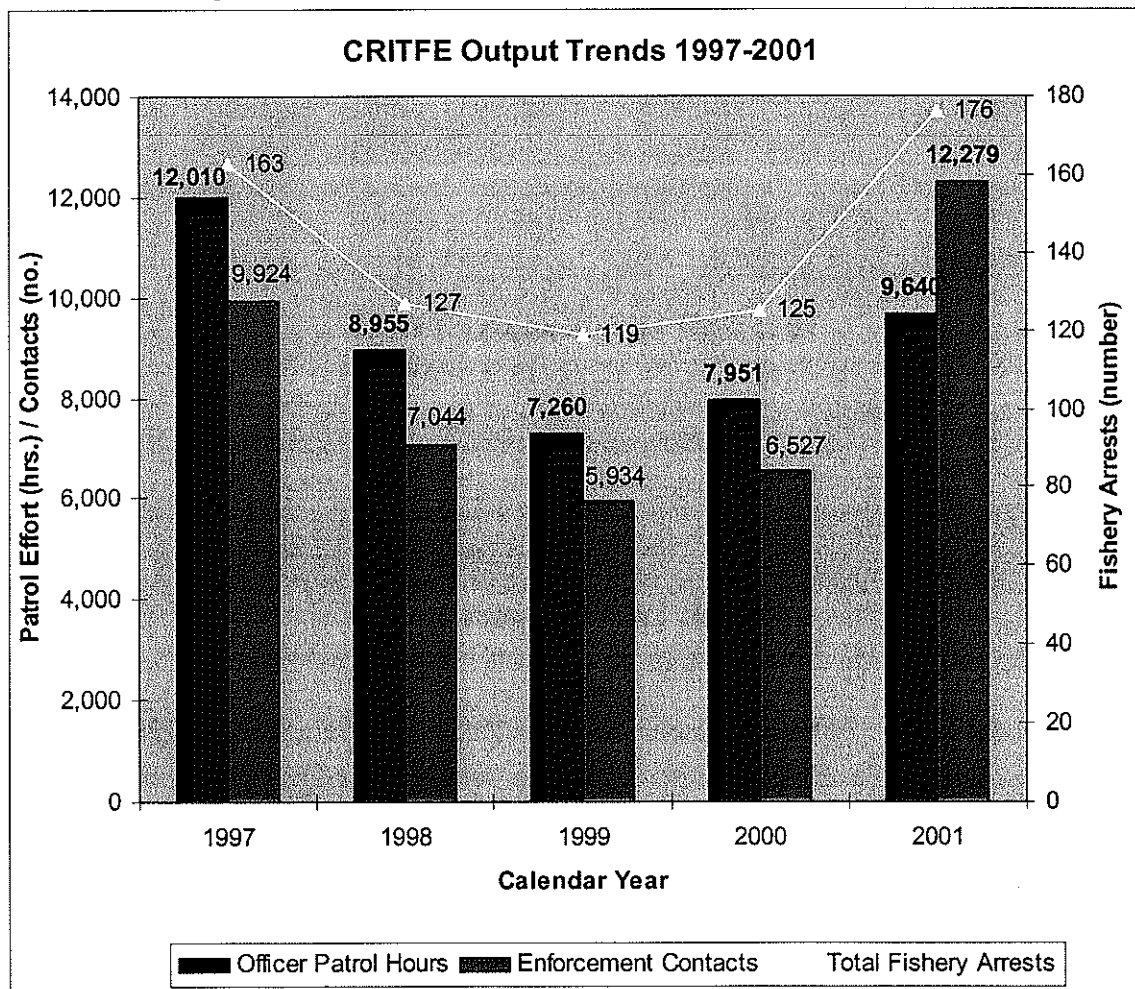
**Attachment 1. Effects of law enforcement project budget cuts during 1998-2000 on the effectiveness of resource protection in the mainstem Columbia River (Zone 6) under the jurisdiction of CRITFE and tributary areas under the jurisdiction of the Nez Perce Tribe.**

I. Columbia River Inter-Tribal Fish Commission's mainstem CE Project

It was clearly apparent that when the Columbia River Inter-Tribal Fisheries Enforcement's (CRITFE's) BPA funding was terminated in FY1998 and it was forced to eliminate several experienced officers from their force -- that CRITFE's level of effort and effectiveness was greatly diminished.

Reductions in all CRITFE output statistics occurred during calendar years 1998-2000 relative to the enhanced 1992-1997 period. Temporal trends in three of the primary enforcement outputs -- officer patrol effort, contacts with resource users, and total arrests for fishery violations -- show decreases in CRITFE performance during 1998-2000 compared to 1997 (Figure 1).

Subsequently, after funding was restored in May 2000 and new officers were trained and certified -- the measures of performance rebounded during CY 2001.



**Figure 1. Trends in enforcement output statistics (patrol effort, contacts and arrests) by CRITFE Conservation Officers in Zone 6, CY 1997 to 2001.**

CRITFE patrol effort declined from a high of 12,010 officer hours in 1997 to a low of 7,260 in 1999 and returned 9,640 hours of effort during 2001. Likewise, enforcement contacts decreased from 9,924 in 1997 to 5,934 in 1999 and returned to a new high of 12,229 contacts with resource users during 2001. CRITFE officers arrested 163 violators in 1997, but only 119 in 1999. Total arrests were up to a new high of 176 in 2001.

Thus, the primary output measures – patrol effort, contacts, and arrests – showed declines of 39.6, 40.2, and 27.0 percent, respectively -- from 1997 to 1999 (Table 1). Conversely, renewed BPA funding during the second half of CY2000 has resulted in reversal of the downward trends and 5-10 percent increases in these same output statistics during the first year of the new enforcement project. Furthermore, nearly all the lost ground in enforcement outputs due to budget cuts in 1998-99 has been recovered by year 2001. The primary output measures – patrol effort, contacts, and arrests – showed increases of 32.8, 106.9, and 47.9 percent, respectively -- from CY1999 to CY2001. Both total enforcement contacts and total fishery arrests were higher in year 2001 than 1997.

**Table 1. Changes in three primary enforcement output statistics during calendar years (CY) 1997 to 2001.**

Enforcement Statistic	Percent Decrease From CY 1997 to 1999	Percent Increase From CY 1999 to 2000	Percent Increase From CY 1999 to 2001
Officer Patrol Hours	39.6%	9.5%	32.8%
Enforcement Contacts	40.2%	10.0%	106.9%
Total Fishery Arrests	27.0%	5.0%	47.9%

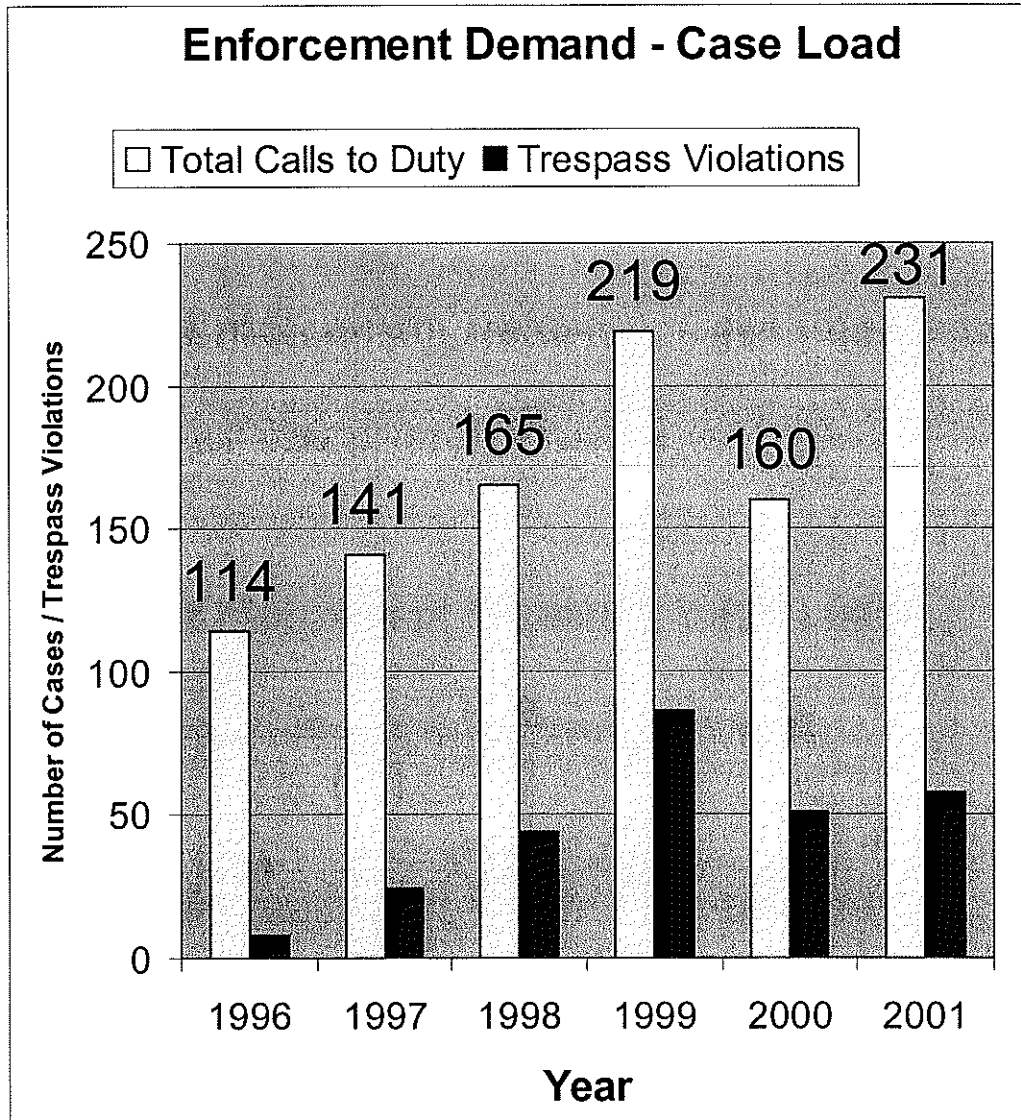
Since resumption of BPA funding to the new Conservation Enforcement Project 2000-056-00 in May 2000, CRITFE resource enforcement effort has been significantly enhanced. Three additional enforcement positions were hired in August and received academy and field training during the remainder of CY 2000. In addition an experienced officer was promoted to supervise BPA-funded field activities. Thus, although BPA funding in May 2000 immediately provided focus on Conservation Enforcement objectives and invigoration of the command structure, the achievement of additional fully functional and commissioned officers in the field was not fully realized until January 2001. Thus, much of the enhancement in CRITFE field effort from FY2001 funding occurred during the latter segment of the FY2000 performance period – specifically, January–May 2001. During FY2001, however, the Conservation Enforcement project has reached full effectiveness, as will be demonstrated in the following section that presents results of quantitative data analyses.

The trends in the CRITFE enforcement output and outcome statistics (presented at the July 18 ISRP review) clearly show project effectiveness is increasing with respect to performance of various statistics during 2000-2002 compared to the pre-project baseline. These results demonstrate that the amount of effort added by the BPA project has resulted in large increases in protection of anadromous salmonids in the mainstem.

## II. Nez Perce Tribe's CE Project

Since 1996 an increased demand for NPT conservation enforcement has occurred; calls to duty (case load) steadily increased – with a peak in 1999 at 219 calls to duty (Figure 2). During that same time, the ability of NPT enforcement to respond to fish, wildlife and habitat violations was

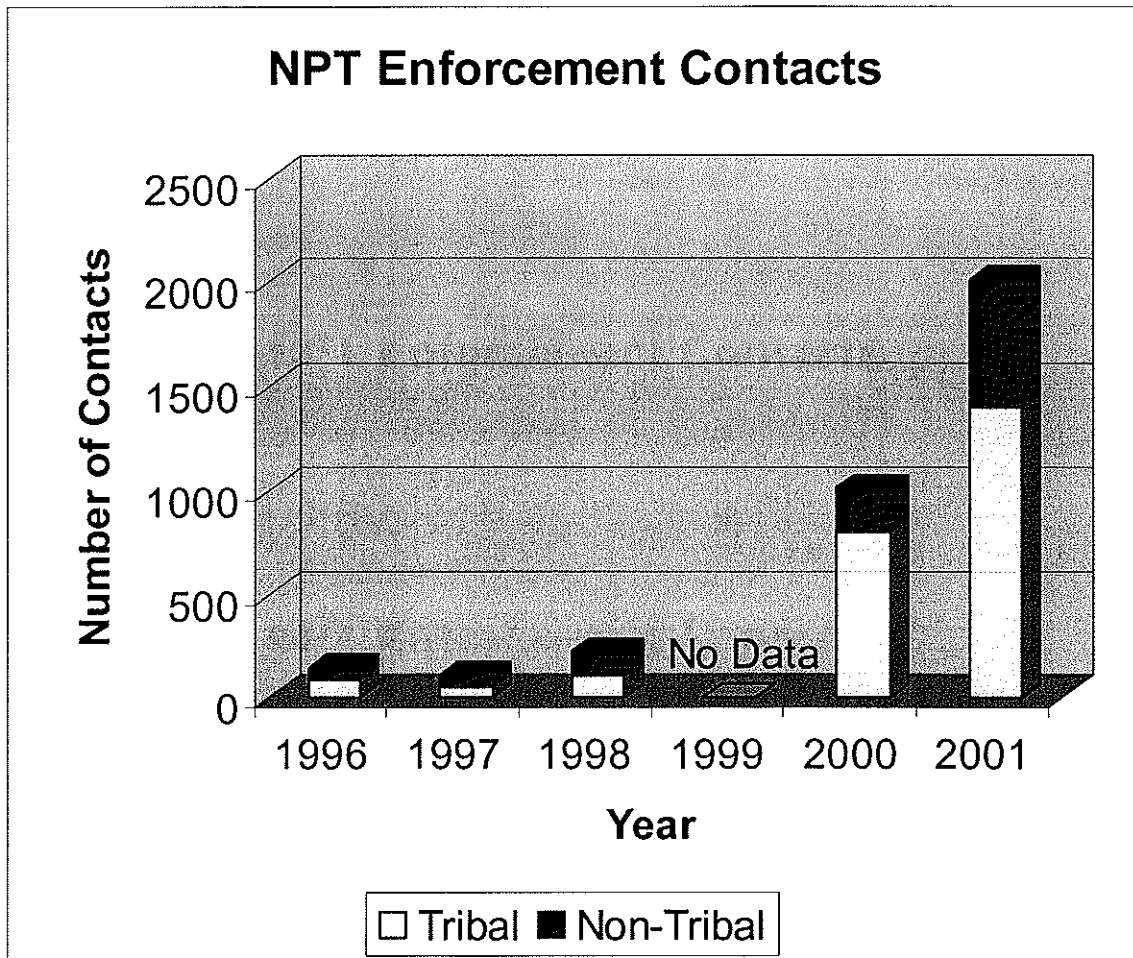
diminished by BPA funding cuts during 1998-99. The case load decreased to 160 calls to duty in CY2000, after two years of diminished enforcement effort due to funding cuts. Funding was resumed in March 2000 and NPT conservation enforcement was back to full effectiveness by January 2001. The enforcement demand in CY2001 was at an all time high of 231 cases. Reported trespasses also peaked in 1999 at 86 cases, then decreased and leveled off during 2000-2001 at about 55 cases per year. This trend indicates deterrence may be in effect for trespassing.



**Figure 2. Increasing demand for NPT Conservation Enforcement, 1996-2001.**

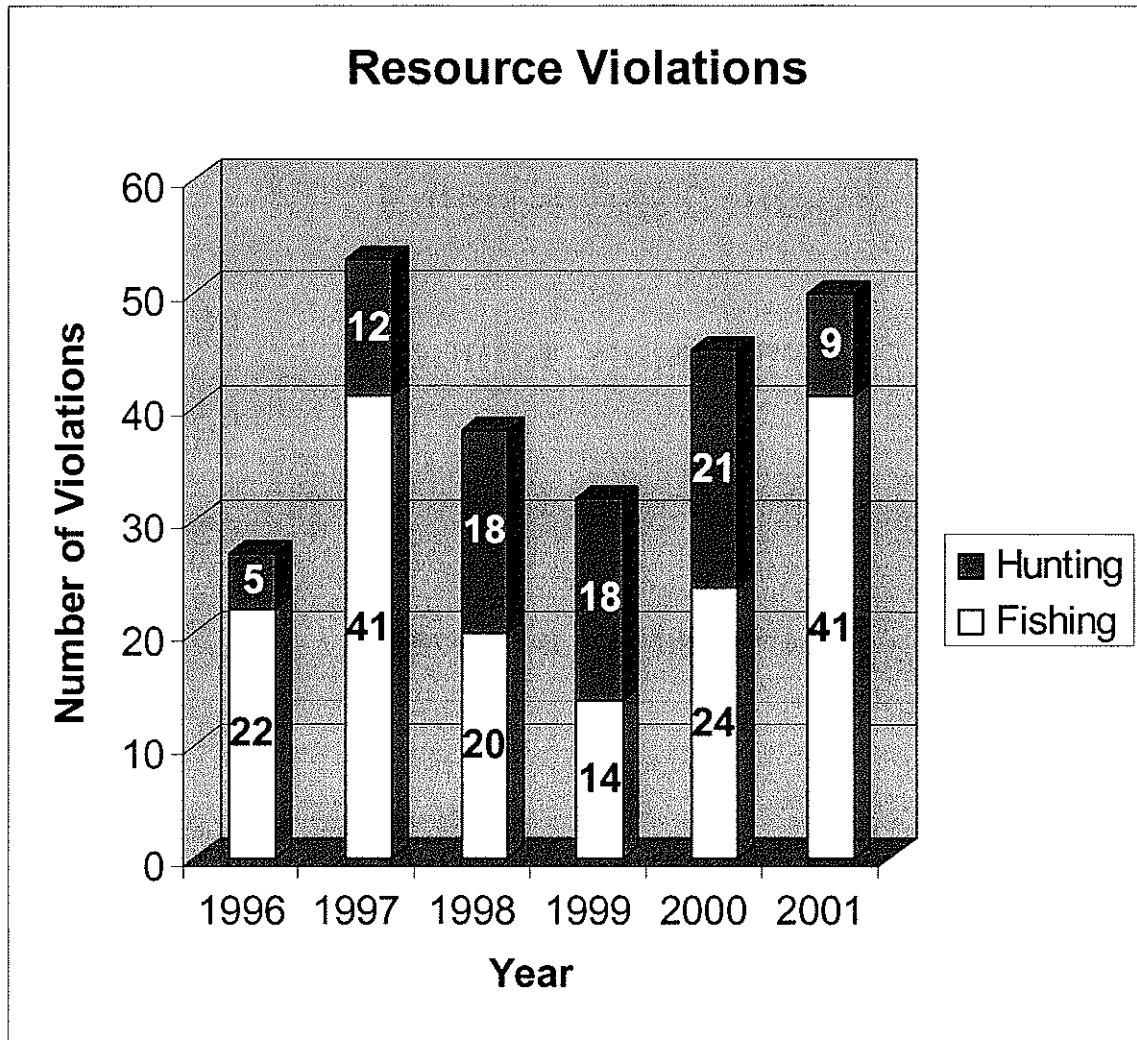
Since resumption of BPA funding in March 2000, NPT resource enforcement effort has been greatly enhanced. Conservation law enforcement contacts ranged from 111 to 246 per year during 1996-98, and increased dramatically to over one thousand during year 2000 and over two thousand during year 2001 (Figure 3). Although baseline levels of enforcement continued during 1999 when BPA funds were cut, data collection was incomplete due to limited human resources. During times of restricted budgets, enforcement generally takes on a reactive mode – responding

only to urgent cases – and record keeping (needed for M&E) is given lower priority. Tribal contacts (Figure 3) and detection of fishery related violations (Figure 4) both increased during calendar year 2001.



**Figure 3. Conservation law enforcement contacts with Tribal and non-tribal resource users, CY 1996 to 2001.**

Enforcement of fish & wildlife violations peaked in 1997 when enhanced BPA funding first took effect. However, during 1998-99 the number of resource violations handled by NPT enforcement officers declined – especially for fishery violations. This was probably due to less effort in the field from 1998 to the first quarter of year 2001 – corresponding to cuts in BPA funding. However, starting in March of 2001 BPA funding of NPT conservation enforcement was resumed, along with an enhanced focus on sensitive fish stocks. Apparently as a result of increased effort, the number of resource violations detected substantially rebounded during calendar years 2000 and 2001 (Figure 4). Additional years of monitoring & evaluation will be needed to clarify the probable cause-effect relationships underlying these trends.



**Figure 4. Hunting and fishing violations handled by NPT Conservation Officers, CY 1996 to 2001.**

The trends in the NPT enforcement output and outcome statistics (presented at the July 18 ISRP review) clearly show project effectiveness is increasing in terms of patrol effort and enforcement actions (refer to the FY2001 annual report).