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**Analysis of Disclosures, Agency Investigation and Reports,  
and Comments of the Special Counsel**

**Summary - OSC File Nos. DI-05-1907, DI-05-2163 and DI-05-2164**

The disclosures in this matter were made by three Senior Border Patrol Agents (SBPAs) stationed at the Port Angeles Border Patrol Station (Port Angeles), Blaine Sector, Washington. The whistleblowers, Johnathan M. Kohlman, Mark A. Aguirre, and Jonathan B. Russell, alleged that Border Patrol (BP) management officials adopted policies that left the border unprotected at critical times, impeded cooperation with other federal and local law enforcement agencies, and rendered the border at greater risk of terrorist infiltration, constituting a substantial and specific danger to public safety. They also alleged that the former Patrol Agent-in-Charge (PAIC), Michael Baker, violated the law, and engaged in gross mismanagement and a gross waste of funds, by taking actions to undermine the enforcement activities of the Port Angeles Station and misusing federal property and funds.

The Secretary of the Department of Homeland Security tasked the U.S. Immigration and Customs Enforcement (ICE), Office of Professional Responsibility (OPR), with investigating the allegations. The investigation was conducted by the OPR Special Investigations Unit (SIU). OSC received an initial report dated May 29, 2006, signed by DHS Deputy Secretary Michael Jackson. The agency produced a supplemental report dated November 6, 2006, also from Deputy Secretary Jackson.

As discussed more fully below, the agency investigation did not substantiate the allegations that agency officials adopted inappropriate new tactics and policies, exposed Border Patrol Agents (BPAs) to surveillance, impeded cooperation with other agencies, or engaged in a gross waste of agency funds. The investigation did substantiate two allegations against PAIC Baker: inattention to duty and a violation of a DHS Directive regarding facility security. The agency reports acknowledge that there are limitations on the ability of BP to exercise full operational control of many zones within the Blaine Sector, resulting from limited availability of personnel and technical resources. Nevertheless, the agency asserts that assets are used where the need is greatest, and that the enforcement zones in Port Angeles were created to use these assets in the most efficient manner. SBPAs Kohlman, Russell and Aguirre provided extensive comments on the report.

OSC finds that the agency's report contains all of the information required by statute and that the findings of the agency head appear reasonable. Notwithstanding my findings, I remain concerned about the adoption of national standards for BPAs in a border area geographically unique to the United States. My specific comments are set forth below.

## The Whistleblowers' Disclosures

### Allegations of Gross Mismanagement and Danger to Public Safety

The SBPAs alleged that, beginning in January 2005, Blaine Sector management officials implemented a series of tactical and policy decisions that devastated the ability of Port Angeles to respond to threats to border security unique to its Area of Responsibility (AOR). They contend that low-visibility enforcement tactics were necessary in Port Angeles, in part because it is geographically isolated from other stations in the Blaine Sector by the Puget Sound waterways. BPAs in Port Angeles are responsible for patrolling the 100-mile boundary between the United States and Canada formed by the Strait of Juan de Fuca, and the Port Angeles AOR comprises more than 7,000 square miles. According to SBPAs Kohlman, Russell, and Aguirre, this AOR is known for extensive smuggling activities. Moreover, management has acknowledged the continuing risk of terrorists using Port Angeles as a point of entry into the United States. Despite this, Port Angeles is staffed with one supervisor and only three BPAs.

Until January 2005, Port Angeles sought to remedy its lack of manpower and resources by using low-visibility tactics, flexibly scheduling its BPAs, and establishing close working relationships with other law enforcement agencies. According to SBPAs Kohlman, Russell, and Aguirre, Port Angeles historically concentrated its enforcement activities on low-visibility operations intended to interdict illegal cross-border traffic precisely because the station lacked the capacity to provide an effective high-visibility deterrent. Many of the station's operations were conducted through and with the assistance of interagency working groups such as the Integrated Border Enforcement Team (IBET) and the Olympic Peninsula Narcotics Enforcement Team (OPNET), which included representatives of the U.S. Coast Guard (USCG), ICE, the National Park Service, and local law enforcement agencies. In addition, the SBPAs at Port Angeles were assigned unmarked home-to-work vehicles that they used to respond to after-hours calls from USCG, ICE, and local law enforcement officials who had identified ongoing smuggling activity. Using these tactics, Port Angeles agents accounted for approximately 35 percent of all narcotics smuggling arrests in the Blaine Sector during 2004.

According to SBPAs Kohlman, Russell, and Aguirre, in January 2005, management ordered them to discontinue their successful low-visibility tactics and to adopt high-visibility tactics that stood no reasonable chance of deterring illegal cross-border traffic. PAIC Baker, with the consent of Blaine Sector management, implemented tactical and policy decisions which the whistleblowers asserted created a substantial and specific danger to public safety and amounted to gross mismanagement of Port Angeles, such as: 1) ordering BPAs to work the same eight-hour day shift as their supervisor; 2) requiring BPAs to dress in uniform, drive marked cars, and overtly patrol the border during their shifts; 3) depriving BPAs of home-to-work vehicles and prohibiting them from responding to after-hours calls identifying ongoing smuggling activities, and 4) prohibiting BPAs from providing support for operations involving other law enforcement agencies.

While management has defended the adoption of high-visibility tactics as part of an attempt to transform Port Angeles into a "standard border patrol station," SBPAs Kohlman, Russell, and Aguirre contend that Port Angeles has, in fact, been denied many of the resources

ordinarily available to such standard stations. The whistleblowers alleged that far from establishing Port Angeles as a “standard border patrol station,” management’s tactical and policy changes were intended to render it wholly ineffective and provide a pretext for its closure.

#### Allegations of Violation of Law and Gross Mismanagement by PAIC Baker

The whistleblowers also allege that PAIC Baker repeatedly took actions to undermine ongoing surveillance of suspected smuggling operations or otherwise weaken the enforcement activities of Port Angeles. For example, the whistleblowers maintain that on two separate occasions in April 2004, PAIC Baker abandoned surveillance posts that he had volunteered to staff, thereby allowing two suspected smugglers to avoid apprehension. Similarly, in October 2004, PAIC Baker undermined a week-long surveillance operation undertaken in cooperation with ICE and other OPNET member agencies when he arbitrarily refused to allow SBPA Russell to take up his surveillance post. As a result, a vessel under surveillance escaped without detection. Finally, from 2002, when he first assumed responsibility for the Border Patrol Criminal Alien Program (BORCAP) at the Kitsap County Jail, through January 2004, when he ordered an end to BORCAP activities, PAIC Baker intermittently neglected to identify and process numerous illegal aliens detained in that facility.

The whistleblowers further alleged that PAIC Baker wasted government funds and misused government property. PAIC Baker allegedly engaged in a gross waste of funds in September 2002, when he arranged for the purchase of approximately \$10,000 worth of marine equipment despite the fact that Blaine Sector management had no plans to outfit Port Angeles with a patrol boat. Most of this marine equipment remained in storage and was never used. In addition, Blaine Sector management improperly assigned PAIC Baker a home-to-work government vehicle; such use was improper because PAIC Baker lives more than fifty miles from Port Angeles headquarters and because he did not use his government-owned vehicle to respond to emergency or law-enforcement calls received when he was off duty. Similarly, the whistleblowers asserted that PAIC Baker used government-owned kayaks for personal off-duty recreation and transported these kayaks with his home-to-work vehicle in violation of federal regulations. Finally, the whistleblowers alleged that PAIC Baker violated DHS policy when he provided office keys to the cleaning contractor for use outside of normal duty hours.

#### **Report of the Department of Homeland Security**

The agency’s May 29, 2006, report reflects that Senior Special Agents (SSAs) assigned to ICE, OPR, SIU, conducted investigative interviews and obtained relevant evidence at Port Angeles and Blaine Sector. SBPAs Kohlman, Russell, and Aguirre were interviewed, along with other management officials at both locations and regionally. PAIC Baker had retired by the time the investigation was initiated, and declined to provide a written or oral statement to investigators. The agency report found that some of the allegations were substantiated, some were unsubstantiated, and some were unfounded.<sup>1</sup> The findings are summarized below according to disposition.

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<sup>1</sup> The agency report uses the terms “substantiated,” “unsubstantiated,” and “unfounded” to define the agency’s response to the various allegations. The agency subsequently explained that these terms originate from the OPR

### Unfounded Allegations

The agency reports as unfounded the allegations that management officials engaged in gross mismanagement when they: 1) adopted inappropriate new tactics and policies; 2) exposed BPAs to surveillance conducted by organized smugglers; 3) implemented policies that impeded cooperation with other federal and local law enforcement agencies; 4) assigned BPAs to work the same day-shift schedule as their supervisor, leaving the border unprotected at night; 5) required that BPAs wear the prescribed agency uniform when on duty, thus jeopardizing their operations, and; 6) prohibited BPAs from providing support to operations involving other law enforcement agencies. The investigation also concluded that the allegations that PAIC Baker used a Government-owned vehicle for home to work transportation while residing farther than permitted by agency directive and that he had engaged in a gross waste of funds, were unfounded. A brief discussion of the agency's findings follows.

#### 1. Management adopted inappropriate tactics and policies at Port Angeles.

Post September 11, 2001, CPB senior management determined that it should focus BP on its core mission of patrolling and securing the border. As a result, BPAs were redeployed to border areas and away from non-traditional duties such as conducting criminal investigations. In 2003, the high-profile deterrent strategy was accelerated with the integration of BP into CBP.

CBP and ICE operate under a Memorandum of Understanding (MOU) dated November 16, 2004, which outlines the functions and cooperation of the agencies, to ensure the collective contributions of each agency in support of the "defense-in-depth" strategy and to avoid conflict in investigative and interdiction activities. The MOU defined the primary goal of CBP and BP as "control of our nation's borders." It also identified ICE as the agency given primary responsibility by DHS for conducting interior immigration enforcement. BP has primary responsibility for all border-related interdiction activity and the Office of Investigations, ICE, has primary responsibility for all investigations. The BP also defines its mission in the National Border Patrol Strategy, published in 2004.

BP is a uniformed component of CBP, and BPAs are aware that most of their duty time is in uniform in marked BP vehicles. In limited instances, BPAs are permitted to wear civilian clothing or are issued unmarked vehicles, for instance, when assigned to a specialized task force or for tactical operations. The PAIC determines prescribed clothing based on guidance from management. Unless they are assigned to a specialized enforcement team or task force, or in other special circumstances, BPAs are assigned to marked BP vehicles and not granted home to work vehicle authorization. This is true in Port Angeles, as well as in Lynden, Bellingham, and Blaine. The report explains that the initial assignment of unmarked vehicles to BPAs assigned to

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Investigative Handbook. An allegation is substantiated when the evidence would cause a reasonable person to conclude that the subject employee committed one or more of the alleged acts of misconduct. An allegation is unsubstantiated when the evidence is not sufficient for a reasonable person to determine whether the subject employee committed the alleged misconduct. An allegation is unfounded when the evidence would cause a reasonable person to conclude that the subject employee did not commit the alleged misconduct, or that no misconduct in fact occurred.

Port Angeles was due to a lack of secured parking at Port Angeles. When secure parking was obtained between January and March 2005, BPAs were assigned marked patrol vehicles.

The report states that the tactics adopted by Blaine Sector management for use at Port Angeles are consistent with methods and procedures used successfully throughout the other 20 BP sectors and are consistent with the National Border Patrol Strategy, Border Patrol Manual and the CBP/ICE MOU. The report acknowledges that current staffing at Port Angeles does not permit 24/7 coverage by BPAs. The active participation by other DHS components including the Coast Guard, ICE, CBP, and state, county and city police officers creates an overall security posture that makes it extremely difficult for smugglers to gain undetected illegal entry into the U.S. As a result, the allegation that BP management adopted inappropriate tactics and policies at Port Angeles was unfounded.

2. Management exposed BPAs to surveillance conducted by organized smugglers due to the assignment of marked vehicles and uniforms.

The report stated that, as uniformed officers assigned to a uniformed agency, the BPAs assigned to Port Angeles are exposed to the same potential for surveillance by criminals as officers assigned to other uniformed agencies. The current requirement to wear the agency patrol uniform when working does not increase the likelihood of being watched by criminals beyond what one would normally expect. BPAs are taught how to react and successfully defend themselves if physically attacked. If they receive threats or believe they are being watched, BPAs are required to notify a supervisor. Research did not disclose any threat made against BPAs assigned to Port Angeles since they began wearing uniforms in early 2005, or prior to that time.

With regard to the use of agency vehicles, the report concludes that marked BP vehicles are parked in a secured parking area when not in use. Using personally owned vehicles to travel to and from home reduces the BPAs' risk of being followed by criminal elements BPAs may have encountered on duty.

3. Management impeded cooperation with other federal and local law enforcement agencies by prescribing that Port Angeles BPAs use high-visibility patrol tactics.

According to the report, before September 11, 2001, BPAs nationally performed duties that were not directly related to the core BP function of securing the border. Many assignments occurred away from the immediate border area and included participation with other agencies. These duties were usually investigative in nature and often not related to the core BP mission of securing the border. After September 11, 2001, senior management determined that BP should focus on a core mission of patrolling and securing the border in a highly visible and deterrent posture. The report concedes that the reduction in direct support given to other agencies "may be viewed as impeding cooperation." The report acknowledges that the BPAs' participation in joint operations with other agencies was successful from a law enforcement standpoint, but did not fit the core mission as re-defined post-September 11, 2001.

4. Blaine Sector and/or Port Angeles BP managers and/or supervisors inappropriately assigned BPAs to work the same duty schedule as the assigned supervisor thereby leaving the border unprotected for up to 16 hours a day.

The agency report acknowledges that “the current staffing level of the Port Angeles Station is insufficient to allow the BP to effectively provide an acceptable level of security without relying on other agencies.” It further states that the “current staffing level at the Port Angeles Station does not permit 24/7 coverage by the BPAs assigned to that station.” The agency report asserts that the active participation by other DHS components, together with state and local authorities, creates an overall security posture that makes undetected illegal entry into the United States extremely difficult.

5. Blaine Sector and/or Port Angeles BP managers and/or supervisors inappropriately required BPAs to wear the prescribed agency uniform when on duty.

The PAIC has discretion to assign daily tasks, including those requiring deviation from the post-September 11, 2001, national focus on the core BP mission of securing the border. It has been determined that the redeployment from investigative work to traditional duties necessitating the wearing of uniforms is consistent with this mission. Except in exigent circumstances, PAICs are expected to ensure that BPAs work in uniform.

6. Blaine Sector and/or Port Angeles BP managers and/or supervisors inappropriately prohibited BPAs from providing support to operations involving other law enforcement agencies.

The report explains that although Port Angeles BPAs have been successful in joint operations with other federal and state agencies in the area, their efforts did not directly support BP’s core mission of patrolling and securing the border. Blaine Sector management does not now discourage joint operations, but “it is their position that assistance cannot be done at the sacrifice of their primary mission of maintaining a high-profile deterrent enforcement presence on the border.”

#### Unfounded Allegations Against PAIC Baker

The investigation determined that the allegation that PAIC Baker used a home-to-work vehicle while residing more than 50 miles from Port Angeles was unfounded. According to agency records, PAIC Baker’s home address was within the required 50-mile radius. The agency used a “comparison of the latitudinal and longitudinal coordinates of Port Angeles and PAIC Baker’s home address,” to make this determination.

Finally, the investigation revealed that although PAIC Baker purchased a large quantity of marine equipment in September 2002, at a cost of approximately \$6,000, the purchase was not a gross waste of agency funds. Port Angeles was established in 1988 and was originally intended as a marine patrol station. Although no vessel was assigned to Port Angeles, BPAs stationed there have participated in joint marine patrols with other agencies. The approving official listed on the purchase request felt that the equipment and supplies were justified given the Port

Angeles BPAs' involvement in joint operations and the potential for a vessel to be assigned to Port Angeles.

### Unsubstantiated Allegations

The agency report stated that the allegation that PAIC Baker engaged in the inappropriate use of government-owned equipment by allowing family members to use government-owned kayaks was unsubstantiated. According to the report, because no one witnessed PAIC Baker or any member of his family using the kayaks, and because Baker denied the allegation to his supervisor, Deputy Chief Patrol Agent (DCPA) Joseph Giuliano, during a management inquiry, the agency could not substantiate this allegation.

For the same reasons as discussed above, the agency report concluded that the allegation that the tactics, policies and procedures implemented by Blaine Sector BP management left the border unprotected for 16 hours a day, creating a substantial and specific danger to the public, was unsubstantiated.

### Substantiated Allegations

Based on a "preponderance of the evidence" the agency report substantiated the allegation that PAIC Baker was inattentive to duty. In an incident on May 28, 2004, PAIC Baker volunteered to assist in conducting surveillance of a subject suspected of smuggling narcotics. He abandoned his post three hours early, and the allegation of inattention to duty was substantiated.

According to the agency report, the allegation that PAIC Baker did not secure Port Angeles was also substantiated. On more than one occasion, PAIC Baker gave office keys to building facilities personnel, allowing unauthorized access to several offices occupied by BP personnel and equipment. This violated a DHS Management Directive (MD Number 11030.1) regarding the physical protection of facilities and real property.

In January 2006, PAIC Baker retired from Government service and did not cooperate in the investigation. Because the allegations are administrative in nature, PAIC Baker is not subject to agency sanctions.

### **Supplemental Report of the Department of Homeland Security**

After receiving the initial report, OSC requested clarification of the agency's response and asked for supplemental information in key areas. While it was clear that the agency's initial report focused on the National Border Patrol Strategy and its implementation at Port Angeles, OSC sought further clarification on how the unique natural characteristics of Port Angeles might influence the implementation of the standard policies of the national strategy.

The agency's supplemental report reiterated that after September 11, 2001, national policy dictated a refocusing of the core mission to a high-profile forward deployed deterrence strategy,

which was accelerated in 2003 with the integration of BP into CBP. The agency re-interviewed DCPA Giuliano. He described the establishment of enforcement zones within the Port Angeles AOR, during which the rugged nature of the terrain making up the northern face of the Olympic Peninsula was considered, as well as the enforcement history at Port Angeles as compared to other Blaine Sector stations. Based on this assessment, CBP determined not to increase staffing at Port Angeles, and to focus the remaining assets where the need was greatest.

The report places blame for the failure of Port Angeles to adopt the national high-profile deterrent strategy until January 2005 on retired PAIC Baker. The report states that the directive to assume a highly visible posture was not enforced at Port Angeles "primarily because of misrepresentations made to Blaine Sector managers" by PAIC Baker. Although not addressed in the agency's initial report, this supplemental report finds that PAIC Baker was insubordinate because he did not ensure compliance with a high-visibility enforcement strategy as directed in 2001.

The agency supplemental report states that BP management believes border vulnerability is limited by the geography of the Port Angeles AOR and that attempted crossing there would be further exacerbated by the logistics of attempting an undetected crossing in light of the substantial USCG presence in the Strait of Juan de Fuca. BP management believes that Port Angeles staff "could achieve a satisfactory level of deterrence by using other DHS assets...." The report acknowledges, citing information contained in Port Angeles Annual Operations and Budget Plan, that Port Angeles does not have sufficient personnel or resources to fully monitor its maritime border, and that it relies on other agencies to enhance its capabilities. The agency plans to acquire additional technologies to enhance enforcement activities, in addition to its current night vision/infrared devices and other tools. According to the report, intrusion-sensing technology, although employed in the Blaine Sector, is not in use in Port Angeles. Port Angeles is considered a low-priority area for deployment of available sensing equipment.

With regard to the SBPAs' concerns that effective enforcement at Port Angeles demands low-visibility tactics, the report further addresses the inter-agency cooperation in place. Low-visibility tactics (investigations) are primarily the jurisdiction of ICE, Port Angeles. Allowing BP personnel to perform as ICE Special Agents would be contrary to the established MOU and inconsistent with BP management's determination that BP should focus on the core mission of patrolling and securing the border. While inter-agency investigative cooperation is encouraged, it is management's position that this should be accomplished within established parameters and not detract from BP's primary mission. The report reflects management's acknowledgement that this issue might be debatable.

The supplemental report also addresses the SBPAs' concern that narcotics seizures at Port Angeles have been reduced to zero in 2006, from a high in 2004, when 33-35 % of all seizures were for narcotics smuggling. The supplemental report posits that, the fact that there have been no narcotics seizures at Port Angeles in Fiscal Year 2006, must confirm that deterrence is 100% successful. However, the report acknowledges that it is not reasonable to assume that a high-profile uniform presence in Port Angeles is deterring 100% of those considering illegal entry into the United States. The supplemental report offers the alternate explanation that the prior apparent absence of any BP presence on the Olympic Peninsula (because BPAs there were

operating in a low-visibility posture) enticed narcotics smugglers who believed the area to be unprotected. Thus, seizure statistics were inflated during 2004. Seizure statistics provide only limited information from which the success of low-profile tactics can be assessed. The 2004 statistical increase could have been the result of the more obvious uniformed presence of BPAs in other Blaine Sector stations pushing smugglers to the Port Angeles AOR.

The supplemental report reiterates the agency's acknowledgement that BP does not have adequate resources to ensure full operational control of the Port Angeles AOR. The tactical decisions to mandate day shifts, uniforms, and marked vehicles, are an effort to use available resources to achieve maximum deterrence of smuggling activity. Because other areas in the Blaine Sector are more vulnerable to smuggling activity and to potential terrorist entry, the agency has elected to employ the high-visibility deterrent strategy in Port Angeles with the current staffing levels, and to divert resources to the areas of greater concern.

### **The Whistleblowers' Comments**

The whistleblowers provided extensive comments on both agency reports. They were grateful for the opportunity to respond, but disturbed that the agency has chosen to laboriously defend BP management actions that have jeopardized national security, rather than provide fundamental tools and support needed to protect the border. They are doubtful of the truth of many of the statements in the agency reports, and believe that the reports are intended to confuse rather than respond to the issues they raised.

Although the report states that the agency took swift action to investigate the disclosures, the whistleblowers point out that the agency ignored the numerous disclosures they sent to DHS internal affairs authorities over the ten months prior to their filing disclosures with OSC. They note that their allegations against PAIC Baker were substantiated, but are unable to be administratively addressed now, since PAIC Baker has retired.

Frustration with the decisions made by management over the last several years stems from the difficulties the SBPAs experienced with PAIC Baker. In January 2005, they notified the CBP/ICE Joint Intake Center (JIC) that PAIC Baker was committing serious misconduct, which included undermining the successful border interdiction operations they were conducting with other agencies. JIC forwarded the disclosures to Blaine Sector Chief Patrol Agent (CPA) Ron Henley, and DCPA Giuliano. It was immediately after these disclosures that CPA Henley, DCPA Giuliano and PAIC Baker implemented the revised high-visibility deterrent strategies. Rather than address the allegations of misconduct by PAIC Baker, management officials significantly changed the duties and responsibilities of the SBPAs.

Among other points, the whistleblowers argue that the high-visibility deterrent strategy adopted by the agency is inconsistent with the MOU and with published statements of BP strategy, including the National Border Patrol Strategy. They argue that BP standards do not require this high profile policy, but that the unique nature of Port Angeles should dictate the manner in which BP personnel and resources are used.

The Port Angeles Station is located on the Olympic Peninsula in Washington State. This station is unique to BP, because there is not a land border in their AOR, and there are only three BPAs assigned to the office. The international border is a coastal water border, 8-12 miles north of the Olympic Peninsula shoreline. BP does not own or operate coastal border marine vessels, nor does it have jurisdiction to conduct coastal border marine enforcement. The USCG and the CBP Office of Air and Marine share this responsibility. As such, the large contingent of USCG officers stationed in Port Angeles is the high-profile first line of border defense on the Peninsula. The USCG maintains a high-profile presence on the Strait of Juan de Fuca, and is responsible for turning back or arresting anyone attempting to enter illegally.

The Port Angeles operational AOR begins 8-12 miles south of the maritime border at the Peninsula shoreline, and extends south to the Oregon and California border. The Peninsula's northern shoreline is approximately 120 miles long, made up of rugged terrain and isolated beaches. Before January 2005, the SBPAs at Port Angeles were conducting a "defense-in-depth" enforcement by operating as a small contingent of highly mobile plainclothes BPAs to locate and arrest cross border violators who had successfully circumvented the USCG patrols and reached the shoreline. Those who have reached the shoreline have already entered the country illegally, as they are at that point 8-12 miles within the United States border.

The whistleblowers point out that it is not a credible argument that the three of them, conducting high visibility patrols on the expansive Olympic Peninsula, are deterring any illegal cross-border activity. This is especially true if the 250 USCG officers who are conducting high-visibility patrols on the Strait of Juan de Fuca are unable to do so. Since high-profile tactics were mandated at Port Angeles in January 2005, the SBPAs have not made any criminal arrests or contraband seizures.

With regard to the agency's contention that the 2004 seizure/apprehension statistics were an anomaly, the SBPAs state that a shift in the number of BPAs assigned to Blaine, Lynden, and Bellingham Stations, in 2003, pushed smugglers to operate in the Port Angeles AOR. As such, the 2004 narcotics statistics were not an anomaly, but rather the result of cooperative working relationships between the Port Angeles BPAs and other law enforcement agencies to locate and interdict smugglers who had circumvented the USCG and reached the Peninsula. Similarly, the whistleblowers attribute the fact that they have not made the same number of seizures since 2004, to their assignment to day-shift hours. The SBPAs conclude that the smuggling activity in their AOR has not diminished since 2004; they have simply been prevented from combating it. In sum, they believe that the three of them, conducting high-visibility patrols, have had zero effect on deterring criminal organizations.

Although the agency blamed retired PAIC Baker for insubordination because he did not adopt national standards in 2001, the SBPAs point out that Blaine Sector management was well aware of the tactics being used by Port Angeles BPAs all along. For example, the SBPAs note that it was DCPA Giuliano who had, up until the time the SBPAs filed disclosures, signed off on the BPAs' use of home-to-work vehicles.

The SBPAs do not believe that the agency's use of air nautical miles to justify PAIC Baker's home-to-work vehicle is consistent with the intent of the DHS policy on use of

government-owned vehicles. PAIC Baker lived more than 50 miles from Port Angeles, despite the latitudinal and longitudinal coordinates showing differently.

Finally, the SBPAs do not accept the agency's arguments that the purchase of \$6,000 worth of marine equipment was justified because Port Angeles was established in 1988 and intended to be a marine patrol station. The BPAs also deny that they ever participated in joint patrols with either USCG or Washington State Police. They went for a ride-along with the USCG on one occasion. The marine equipment has been in storage since it was purchased in 2002. Also, in January 2006, CBP announced that BP would not be conducting marine patrols in coastal and lake environments, as this duty was being assigned to the CBP Office of Air and Marine. Four months later, in May 2006, Blaine Sector management purchased more marine equipment for Port Angeles valued at approximately \$10,000.

### Conclusion

Based on my review of the original disclosures and the agency's report, I have determined that the agency's report contains all of the information required by statute. The statute also requires that I make a determination whether or not the findings of the agency head appear reasonable. In this case, I have concluded that the findings of the agency head are reasonable. Notwithstanding this conclusion, I have serious concerns about the agency's decision to adopt national standards for BPAs in an area geographically unique to the United States border.

The agency contends that the overriding deployment strategy at every station within the Blaine Sector has been to assume the maximum visibility possible. The whistleblowers make a compelling argument that the unique characteristics of Port Angeles demand low-visibility enforcement tactics, and that such tactics, in place from 1988 until early 2005, were successful. Further, the whistleblowers point out that although Blaine Sector management officials were aware of their tactics, it was not until after they made disclosures about PAIC Baker's wrongdoing that the agency abruptly changed course in Port Angeles.

It is understandable that the agency wishes to focus assets where the need is greatest, and to divert resources to areas where the threat, vulnerability and risk of exploitation are greater. It is questionable whether this justifies the implementation of a high-visibility strategy where enforcement efforts were previously successful using low-visibility tactics. Where resources are thin, the use of BPAs in more creative and effective ways would seem to be appropriate, and not inconsistent with a layered, defense-in-depth approach to border security.

The agency acknowledges that the management decision to adopt a high-visibility, uniformed force, regardless of geographic location or unique circumstances, is debatable. Because it is impossible for Port Angeles BPAs to cover the border 24/7, the agency argues, and because of the large contingent of BPAs and officers from other agencies in the area, the decision to mandate uniformed patrols working only a day shift makes sense from an economic and tactical standpoint. The whistleblowers point out that in other sectors, the agency has deviated from the national standard in order to better respond to emergent situations in the field and to assist state and local authorities. They have posited an alternative that has, in the past, proven successful, and arguably, represents a better use of agency resources at Port Angeles.

The SBPAs at Port Angeles are the front-line defenders against sophisticated smugglers who have already entered the United States. Their experience, knowledge of the area, and prior successes are diminished in the agency's broad brush attempt to implement a national strategy using a uniformed face at the border. Their argument that the geography of their station, together with their current complement of three BPAs, limited technological resources, and day shift scheduling, allows undetected entry in greater numbers than before January 2005, is credible. By supporting an inflexible, high-profile deterrent enforcement posture, simply because low-visibility tactics would be contrary to the established MOU and inconsistent with management's determination to focus on patrolling and securing the border, the agency may have missed a valuable opportunity to better secure the border in Port Angeles.

I urge agency officials to reevaluate the management decision to adopt solely a high-visibility, uniformed, daytime presence within the Port Angeles AOR, and beyond that, in the Blaine Sector as a whole. The agency reports in response to this whistleblower disclosure repeatedly cite the border patrol core mission of securing and patrolling the border, and assert that the means to accomplish this core mission is a uniformed, high-visibility force. The CBP Border Patrol Overview states that the primary mission of the Border Patrol is: "to detect and prevent the illegal entry of aliens into the United States."<sup>2</sup> Low-visibility tactics in an area so geographically distinct as Port Angeles given the primary mission of prevention of illegal entry, would appear to be the best line of defense in support of this mission.

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<sup>2</sup> CBP Border Patrol Overview, January 11, 2006, [http://www.cbp.gov/xp/cgov/border\\_security/border\\_patrol/overview.xml](http://www.cbp.gov/xp/cgov/border_security/border_patrol/overview.xml), (last accessed 2/20/06).