



**ANNUAL REPORT
TO PARLIAMENT**

on the Administration
and Enforcement
of the Fish Habitat
Protection and
Pollution Prevention
Provisions of the
Fisheries Act.

April 1, 2008

to March 31, 2009



Published by:

Communications Branch
Fisheries and Oceans Canada
Ottawa, Ontario
K1A 0E6

DFO/2010-1656

© Her Majesty the Queen in Right of Canada 2010

This printed version: Cat. No. Fs1-57/2009

ISBN 978-1-100-51151-1

PDF version: Cat. No. Fs1-57/2009E-PDF

ISBN 978-1-100-14902-8

Correct citation for this publication:

Fisheries and Oceans Canada. 2010. Annual Report to Parliament on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. April 1, 2008 to March 31, 2009: iv + 35 p.

Internet site: < http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/measuring-mesures/reports-rapports/index_e.asp >



Printed on recycled paper

Minister of
Fisheries and Oceans



Ministre des
Pêches et des Océans

Ottawa, Canada K1A 0E6

Ms. Audrey O'Brien
Clerk of the House of Commons
Room 228-N, Centre Block
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Ms. O'Brien:

In accordance with the provisions of section 42.1 of the *Fisheries Act*, I have the honour to present, in both official languages, the Annual Report on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act* for the fiscal year 2008-2009.

In conformity with the requirements of the Act, these copies are for tabling in the House of Commons.

Sincerely,

Gail Shea, P.C., M.P.

Attachments

Minister of
Fisheries and Oceans



Ministre des
Pêches et des Océans

Ottawa, Canada K1A 0E6

Mr. Paul Bélisle
Clerk of the Senate & Clerk of the Parliaments
Room 183-S, Centre Block
The Senate
Ottawa, Ontario
K1A 0A4

Dear Mr. O'Brien:

In accordance with the provisions of section 42.1 of the *Fisheries Act*, I have the honour to present, in both official languages, the Annual Report on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act* for the fiscal year 2008-2009.

In conformity with the requirements of the Act, these copies are for tabling in the Senate.

Sincerely,

Gail Shea, P.C., M.P.

Attachments

Table of Contents

Abstract.....	iii
List of Acronyms	iv
1.0 Executive Summary	1
1.1 Administration and Enforcement of the Fish Habitat Protection Provisions of the <i>Fisheries Act</i>	1
1.1.1 <i>Review of Development Proposals (Referrals)</i>	1
1.1.2 <i>Compliance and Enforcement</i>	2
1.2 Administration and Enforcement of the Pollution Prevention Provisions of the <i>Fisheries Act</i>	2
2.0 The Policy and Legislative Setting	5
2.1 Purpose of Annual Report	5
2.2 Legislative Basis for the Conservation and Protection of Fish Habitat.....	5
2.3 Policy for the Management of Fish Habitat.....	8
2.4 National Habitat Management Program	9
3.0 Administration and Enforcement of the Fish Habitat Protection Provisions of the <i>Fisheries Act</i>	11
3.1 Benefit for Canadians: Healthy and Productive Aquatic Ecosystems.....	11
3.2 Administration of the Fish Habitat Protection Provisions of the <i>Fisheries Act</i>	12
3.2.1 <i>Overview</i>	12
3.2.2 <i>Categorizing Referrals</i>	13
3.2.3 <i>Review of Development Proposals (Referrals)</i>	15
3.2.4 <i>Advice Provided and Authorizations Issued</i>	18
3.2.5 <i>Notifications and Use of Regulatory Streamlining Tools</i>	20
3.3 Compliance and Enforcement of the Fish Habitat Protection Provisions of the <i>Fisheries Act</i>	20
3.4 Scientific Support	24
4.0 Administration and Enforcement of the Pollution Prevention Provisions of the <i>Fisheries Act</i>	25
4.1 Compliance Promotion for General Prohibition Against Release of Deleterious Substances to Waters Frequented by Fish	25
4.2 Regulations	26
4.2.1 <i>Pulp and Paper</i>	26
4.2.2 <i>Metal Mines</i>	27
4.2.3 <i>Wastewater</i>	28
4.3 Water Quality Monitoring – Canadian Shellfish Sanitation Program	28
4.4 Enforcement Activities and Measures	29
4.4.1 <i>Summary of Enforcement Activities</i>	29
4.4.2 <i>Enforcement Highlights</i>	32
4.5 Environmental Emergencies Program	33

4.6 Agreements34

List of Tables

Table 1: Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*7
Table 2: Work Categories14
Table 3: Summary of Habitat Referrals by Work Category16
Table 4: Advice Provided and Authorizations Issued.....18
Table 5: Notifications of use of Class Authorizations and Operational Statements20
Table 6: Summary of DFO Habitat Enforcement Activities.....21
Table 7: Convictions Reported under the Habitat Protection Provisions of the
Fisheries Act22
Table 8: Summary of Convictions and Alternative Measures to Prosecution23
Table 9: EC Enforcement Activities and Measures Carried Out under the *Fisheries Act*..30
Table 10: Investigation Breakdown31

List of Figures

Figure 1: Referrals Received by Region, 2004-2005 to 2008-2009.....17
Figure 2: Percent of Referrals by Region, 2008-2009.....17
Figure 3: Advice Provided by Region, 2004-2005 to 2008-200918
Figure 4: Authorizations Issued by Region, 2004-2005 to 2008-200919

Abstract

Fisheries and Oceans Canada. 2010. Annual Report to Parliament on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. April 1, 2008 to March 31, 2009: iv + 35 p.

This is a report on the administration of Fisheries and Oceans Canada's National Habitat Management Program and Environment Canada's Pollution Prevention Program during the 2008-2009 fiscal year. It highlights the two departments' activities.

Résumé

Pêches et Océans Canada. 2010. Rapport annuel au Parlement sur l'administration et l'application de dispositions de la *Loi sur les pêches* relatives à la protection de l'habitat du poisson et à la prévention de la pollution du 1^{er} avril 2008 au 31 mars 2009 : iv + 35 p.

Ce rapport porte sur l'administration du Programme national de gestion de l'habitat de Pêches et Océans Canada et du Programme de prévention de la pollution d'Environnement Canada au cours de l'exercice financier 2008-2009. Il présente les activités entreprises par les deux ministères.

List of Acronyms

C&P	Conservation & Protection Program
CEAA	<i>Canadian Environmental Assessment Act</i>
DFO	Fisheries and Oceans Canada
EA	Environmental Assessment
EC	Environment Canada
EDF	Environmental Damages Fund
EEM	Environmental effects monitoring
EPAM	Environmental Protection Alternative Measures
EPMP	Environmental Process Modernization Plan
FCSAP	Federal Contaminated Sites Action Plan
HADD	Harmful alteration, disruption or destruction
HaPAE	Healthy and Productive Aquatic Ecosystems
HMP	Habitat Management Program
MMER	<i>Metal Mining Effluent Regulations</i>
NPA	National Programme of Action for the Protection of the Marine Environment from Land-based Activities
OGLA	Ontario-Great Lakes Area
PATH	Program Activity Tracking system for Habitat Management
PPER	<i>Pulp and Paper Effluent Regulations</i>
RISS	Regulatory Information Submission System
RMF	Risk Management Framework
SARA	<i>Species at Risk Act</i>

1.0 Executive Summary

This Annual Report to Parliament summarizes the administration and enforcement of the fish habitat protection and pollution prevention provisions of the *Fisheries Act*¹, from April 1, 2008 to March 31, 2009. The annual report highlights the activities of Fisheries and Oceans Canada's (DFO) National Habitat Management Program (HMP), as well as Environment Canada's (EC) Environmental Enforcement Program, Environmental Emergencies Program and Compliance Promotion and Analysis Program.

Canada's freshwater and marine fish species and fish habitat play a critical role in Canada's economic prosperity and biological diversity. The *Fisheries Act* contains two key provisions that are applied for the conservation and protection of fish habitat that is essential to sustaining freshwater and marine fish species:

- DFO administers section 35, the key habitat protection provision, prohibiting any work or undertaking that would cause the harmful alteration, disruption or destruction (HADD) of fish habitat, unless authorized by the Minister of Fisheries and Oceans or through regulations under the *Fisheries Act*; and
- EC administers section 36, the key pollution prevention provision, prohibiting the deposit of deleterious substances into waters frequented by fish, unless authorized by regulations under the *Fisheries Act* or other federal legislation.

1.1 Administration and Enforcement of the Fish Habitat Protection Provisions of the *Fisheries Act*

1.1.1 Review of Development Proposals (Referrals)

By ensuring that *healthy and productive fish habitat is available to sustain the production of fish species and populations that Canadians value*, DFO's HMP contributes to the department's strategic outcome of healthy and productive aquatic ecosystems. As well, DFO's Environmental Science, and Conservation and Protection (C&P) programs are key partners in realizing this strategic outcome.

The referral process enables HMP staff to review proposals to assess if harmful alteration, disruption or destruction (HADD) of fish habitat is likely to result from the proposed works or undertakings. HMP staff sends advice to the proponent on how to proceed with their works or undertakings in a manner that will comply with the *Fisheries Act*, mainly with respect to avoiding the HADD of fish habitat (section 35). These requirements are commonly

¹ The full text of the *Fisheries Act* can be found at: < <http://laws.justice.gc.ca/en/F-14/text.html> >

in the form of a “Letter of Advice”, an “Operational Statement”² for low risk activities, or an “Authorization” pursuant to subsection 35(2) of the Act.

During fiscal year 2008-2009 the HMP:

- reviewed 7,453 development proposals (referrals) to ensure compliance with the *Fisheries Act*, mainly with respect to avoiding the HADD of fish habitat;
- provided 4,436 written advice to proponents or others; and
- issued 287 authorizations.

1.1.2 Compliance and Enforcement

DFO’s C&P Program is responsible for monitoring compliance with legislation and regulations regarding the conservation of fisheries resources and fish habitat. The Minister of Fisheries and Oceans appoints Fishery Officers to enforce fisheries regulations and management plans as well as the habitat provisions of the *Fisheries Act*.

DFO’s measures to promote compliance include communication and public education; consultation with parties affected by the habitat protection provisions of the *Fisheries Act*; and technical assistance as required.

Enforcement of habitat protection provisions are carried out through inspections to monitor or verify compliance; investigations of alleged violations; the issuance of warnings, Inspector's Directions, Ministerial Orders; and court actions such as injunctions, prosecutions, court orders upon conviction and suits for recovery of costs.

In 2008-2009, DFO:

- issued 61 warnings under the habitat protection provisions of the *Fisheries Act*;
- laid 37 charges under the habitat protection provisions of the *Fisheries Act*; and
- concluded 2 successful prosecutions.

1.2 Administration and Enforcement of the Pollution Prevention Provisions of the *Fisheries Act*

EC has responsibility for various components of the administration and enforcement of the pollution prevention provisions of the *Fisheries Act*, involving the Environmental Enforcement Program; the Compliance Promotion and Analysis Program; and the Environmental Emergencies Program.

² A list of DFO operational statements can be found at : < http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/modernizing-moderniser/epmp-pmpe/index_e.asp >

EC develops sector-based strategies and undertakes activities to promote and secure compliance with the pollution prevention provisions of the *Fisheries Act*. It works to:

- advance pollution prevention technologies;
- promote the development of preventative solutions; and
- work with the provinces, territories, industry, other government departments and the public on issues relating to the pollution provisions of the *Fisheries Act*.

In 2008-09, EC carried out enforcement activities and measures under the *Fisheries Act*, including:

- 3,280 compliance verification inspections;
- 47 investigations, involving gathering and analyzing evidence and information relevant to suspected violations; and
- 24 charges, 5 convictions and 275 written warnings.

2.0 The Policy and Legislative Setting

2.1 Purpose of Annual Report

Section 42.1 of the *Fisheries Act* requires the Minister of Fisheries and Oceans to table an annual report to Parliament on the administration and enforcement of the fish habitat protection and pollution prevention provisions. This Report satisfies that requirement for fiscal year 2008-2009.

The Annual Report is organized under the following four parts:

- Part 1.0 presents the executive summary.
- Part 2.0 provides the legislative and policy context for the conservation and protection of fish habitat, as well as an overview of DFO's HMP.
- Part 3.0 reports on the results achieved by DFO in 2007-2008 through the administration and enforcement of the fish habitat protection provisions of the *Fisheries Act*. This part covers both the review of development proposals (referrals) by HMP, and the support provided by DFO's Environmental Science, and C&P programs.
- Part 4.0 reports on the work of EC in developing regulations, policies and guidelines related to the pollution prevention provisions of the *Fisheries Act*.

2.2 Legislative Basis for the Conservation and Protection of Fish Habitat

The Government of Canada fulfills its constitutional responsibilities for sea coast and inland fisheries through the administration and enforcement of the *Fisheries Act*. This Act provides DFO with powers and authorities to conserve and protect fish habitat³, which is essential to sustaining freshwater and marine fish species and populations that Canadians value.

The *Fisheries Act* contains two types of provisions that are applied for the conservation and protection of fish habitat.

Section 35 is the key habitat protection provision of the *Fisheries Act*. This section prohibits any work or undertaking that would cause the harmful alteration, disruption or destruction (HADD) of fish habitat, unless authorized by the Minister of Fisheries and Oceans or through regulations under the *Fisheries Act*.

³ Fish habitat is defined under subsection 34(1) of the *Fisheries Act* as “spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes”.

DFO administers and enforces section 35 and other related habitat protection provisions of the *Fisheries Act*, including sections 20, 21, 22, 26, 28, 30, and 32 (see Table 1 below).

Section 36 is the key pollution prevention provision. It prohibits the deposit of deleterious substances into waters frequented by fish, unless authorized by regulation under the *Fisheries Act* or other federal legislation. Regulations to authorize deposits of certain deleterious substances have been established for key industry sectors pursuant to section 36 (e.g., pulp and paper, and metal mining). As noted above, EC is responsible for the administration and enforcement of the pollution prevention provisions of the *Fisheries Act*.

The *Fisheries Act* also contains provisions that support the administration and enforcement of the habitat protection and pollution prevention provisions. These include:

- powers for the Minister to request plans and specification for works and undertakings that might affect fish or fish habitat (section 37);
- authority for the Minister to appoint inspectors and analysts (subsection 38(1));
- a description of inspectors' powers (including entry, search, and direction of preventive, corrective or cleanup measures) (subsection 38(3));
- a description of offences and punishment (section 40); and
- a determination of liability when a deleterious substance has been deposited (section 42).

Table 1: Habitat Protection and Pollution Prevention Provisions of the <i>Fisheries Act</i>	
Section	Intent
20	The Minister may require fish-ways to be constructed.
21	The Minister may authorize payment, order construction or removal or require fish stops or diverters for fish-ways.
22	The Minister may require sufficient flow of water for the safety of fish and flooding of spawning grounds as well as free passage of fish during construction.
26	Prohibits obstruction of fish passage through channels, rivers and streams. In addition, the Minister may authorize devices to prevent the escape of fish.
27	Prohibits the damage or obstruction of fish-ways, the impediment of fish to fish-ways and nearby fishing.
28	Prohibits the use of explosives to hunt or kill fish.
30	The Minister may require fish guards or screens to prevent the entrainment of fish at any water diversion or intake.
32	Prohibits the destruction of fish by any means other than fishing.
34	Definitions used throughout sections 35 to 42.
35	Prohibits works or undertakings that may result in harmful alteration, disruption or destruction of fish habitat, unless authorized by the Minister or under regulations.
36	Prohibits the deposit of deleterious substances into waters frequented by fish, unless authorized under regulations.
37	The Minister may request plans and specifications for works or undertakings that might affect fish or fish habitat. The Minister may, by regulations or with Governor-in-Council approval, make orders to restrict or close works or undertakings that may harmfully alter fish habitat or lead to the deposit of deleterious substances.
38	Gives the Minister the authority to appoint inspectors and analysts and describes inspectors' powers, including entry, search and the power to direct preventive, corrective or cleanup measures. Provides for regulations that require reporting of abnormal deposits of a deleterious substance or substances that occur in contravention of the general prohibition, regulations or site-specific authorizations.
40	Sets out penalties in case of a contravention of: sections 35 or 36; failing to provide information or to undertake a project in compliance with section 37; or failing to make a report or to otherwise comply with section 38.
42	Those causing the deposit of deleterious substances in waters frequented by fish are liable for costs incurred by Her Majesty. Also, the Minister shall prepare an annual report on administration and enforcement of the fish habitat protection and pollution prevention provisions of the <i>Fisheries Act</i> as well as a statistical summary of convictions under section 42.1.
43	The Governor in Council may make regulations for carrying out the purposes and provisions of the <i>Fisheries Act</i> , including habitat protection and pollution prevention.

2.3 Policy for the Management of Fish Habitat

The *Policy for the Management of Fish Habitat*⁴ (the Policy), which was tabled in Parliament in 1986, and its supporting operational policies provide a comprehensive framework for the administration and enforcement of the habitat protection and pollution prevention provisions of the *Fisheries Act* consistent with the goal of sustainable development.

The Policy has an overall objective to “increase the natural productive capacity of habitat for the nation’s fisheries resources”. This is to be achieved through the Policy’s three goals of conservation, restoration, and development of fish habitat.

The Policy recognizes that habitat objectives must be linked and integrated with fish production objectives and with other sectors of the economy that make legitimate demands on water resources. As a result, the Policy identifies the need for integrated planning for habitat management as an approach to ensuring the conservation and protection of fish habitat that sustain fish production while providing for other uses.

The objective and goals of the Policy are to be achieved through eight implementation strategies: Protection and Compliance; Integrated Resource Planning; Scientific Research; Public Consultation; Public Information and Education; Cooperative Action; and Habitat Improvement and Habitat Monitoring.

A key element of the Policy is the guiding principle of “no net loss of the productive capacity of fish habitat”. This principle, which supports the conservation goal, is applied when proposed works and undertakings may result in a HADD of fish habitat. Prior to issuing an authorization under subsection 35(2) of the *Fisheries Act*, DFO applies the “no net loss” guiding principle, so that unavoidable habitat losses as a result of development projects are balanced by newly created and/or restored fish habitat.

If unacceptable losses of fish habitat cannot be prevented, the Policy calls for an authorization not to be issued. Furthermore, where deleterious substances result in harm to fish or damage to fish habitat, compensation⁵ is not an option.

⁴ The full text of the *Policy for the Management of Fish Habitat* can be found at:

< http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/policies-politique/management-gestion_e.asp >.

⁵ See Glossary in the *Policy for the Management of Fish Habitat* for the definition of compensation at:

< http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/policies-politique/operating-operation/fhm-policy/index_e.asp >.

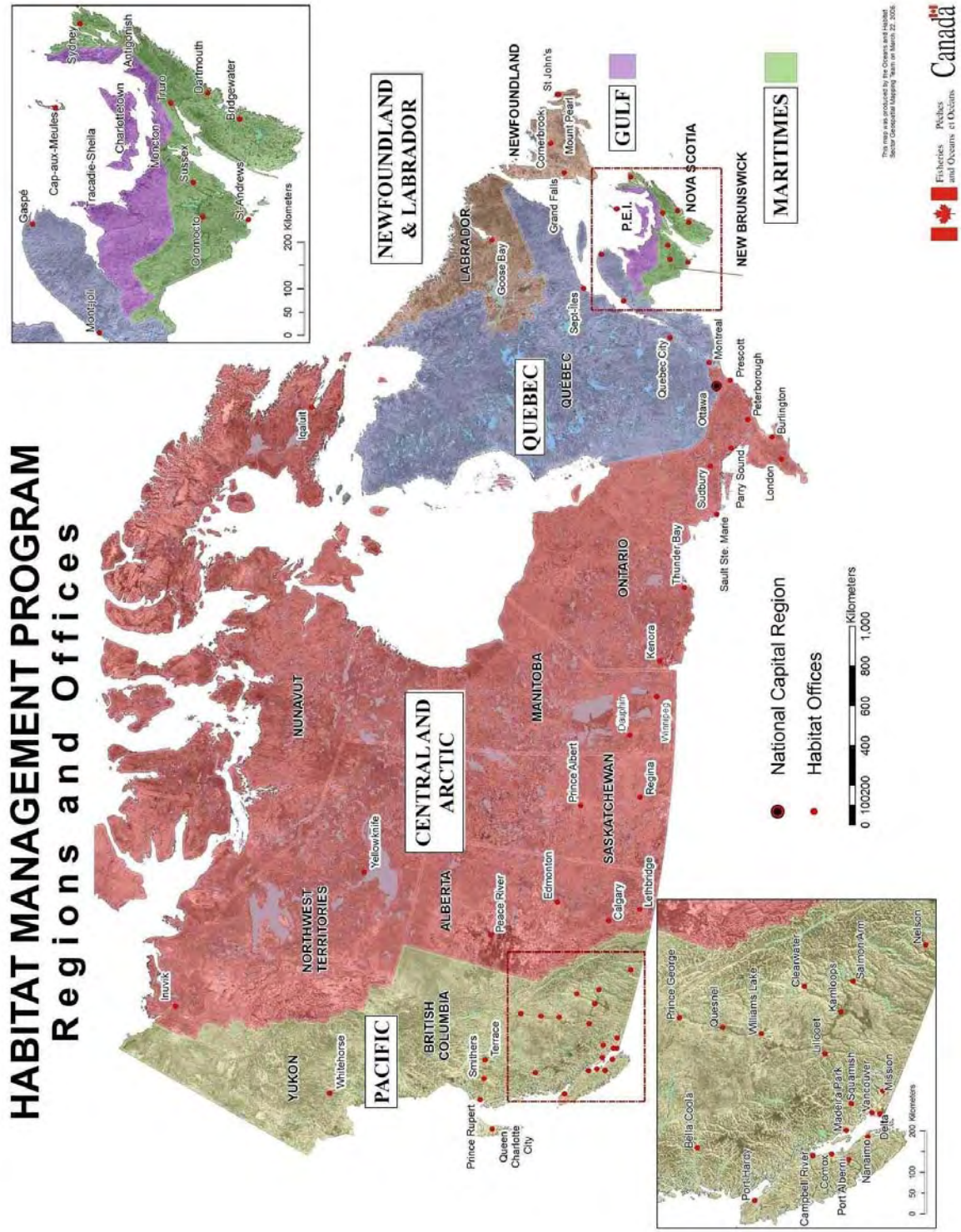
2.4 National Habitat Management Program

DFO's HMP is a key federal regulatory program with a mandate to conserve and protect fish habitat, pursuant to the *Fisheries Act*, the *Canadian Environmental Assessment Act* (CEAA) and the *Species at Risk Act* (SARA). HMP regulatory activities can have significant implications on a wide range of industries, businesses, communities and individual Canadians proposing or carrying out development projects in or around fish bearing waters. The growth of economic development activities across Canada, particularly in the natural resource based sectors, has resulted in a greater complexity and number of development proposals requiring DFO regulatory reviews.

Staff at the HMP's National Headquarters are responsible for the overall coordination of the delivery of the HMP, providing national policy direction, strategic advice and liaison with other Departmental sectors, federal departments and national industry and non-governmental organizations). Day-to-day delivery of the program is carried out by habitat staff located in over 65 DFO offices across the country (see map on following page):

The HMP is supported by DFO's C&P Program, and Environmental Science Program.

Map: Habitat Management Program Regions and Office Locations



3.0 Administration and Enforcement of the Fish Habitat Protection Provisions of the *Fisheries Act*

3.1 Benefit for Canadians: Healthy and Productive Aquatic Ecosystems

DFO aims to achieve the sustainable development and integrated management of resources in or around Canada's aquatic environment. This DFO strategic outcome, identified as *healthy and productive aquatic ecosystems* (HaPAE), is expected to take many years to come to fruition, and is beyond the control of any individual government department.

Canada's fisheries resources and fish habitat play a critical role in the economic prosperity and the biological diversity of Canada. In the context of sustainable development, provinces and territories, industry, Aboriginal peoples and others play important roles in delivering HaPAE.

The HMP contributes to the strategic outcome HaPAE through its activities for ensuring that healthy and productive fish habitat is available to sustain the production of fish species and populations that Canadians value.

Science support activities included assessing the impacts of development on aquatic ecosystems, and the provision of scientific advice and information related to the impacts of industrial activities on the aquatic environment. The department's scientists also provided case-specific advice to HMP on several large-scale projects such as the Mackenzie Valley Pipeline, and diamond mines in the north. In addition, scientific advice was provided to specify mitigation measures for managing the impact of water withdrawals from the Athabasca River associated with oil sands projects.

DFO's C&P program provided enforcement and compliance monitoring activities in support of the HaPAE strategic outcome. These activities are linked to enhanced compliance with legislation, regulations and management measures (e.g., conditions of authorizations and orders). Information on C&P activities and related program outputs is provided below in Part 3.3.

Further information in terms of results achieved in 2008-2009 related to DFO's strategic outcomes is available in the 2008-2009 Departmental Performance Report.⁶

⁶ The report is available at: < <http://www.dfo-mpo.gc.ca/reports-rapports-eng.htm> >

3.2 Administration of the Fish Habitat Protection Provisions of the *Fisheries Act*

3.2.1 Overview

The administration of the Fish Habitat Protection Provisions of the *Fisheries Act* is the responsibility of DFO's HMP. The program accomplishes this in part by reviewing development proposals (known as "referrals"). The referral process enables HMP staff to review submitted proposals to assess if a HADD of fish habitat is likely to result from the proposed works or undertakings. As part of its practice, the HMP applies a Risk Management Framework (RMF) consisting of three components: Aquatic Effects Assessment; Risk Assessment, and; Risk Management.⁷

As part of the referral process, HMP staff sends advice to the proponent indicating the requirements for the conservation and protection of fish habitat. This advice informs proponents on how to proceed with their works or undertaking in a manner that will comply with the *Fisheries Act*, mainly with respect to avoiding the HADD of fish habitat (section 35). These requirements are commonly in the form of a "Letter of Advice", an "Operational Statement" for low risk activities, or an "Authorization" pursuant to subsection 35(2) of the Act.

It is important to note that proponents voluntarily submit information about their proposed works or undertakings to determine if they comply with the habitat protection provisions of the *Fisheries Act*. In fact, the habitat protection provisions, including section 35 of the *Fisheries Act*, do not create a mandatory obligation for proponents of development proposals to seek a Letter of Advice, an Operational Statement, or an Authorization from DFO. However, failure to do so may expose a proponent to being charged and prosecuted under the *Fisheries Act*.

Prior to issuing certain Authorizations pursuant to the *Fisheries Act*, HMP staff must verify whether the project under review has potential to adversely affect wildlife species listed under SARA, or their critical habitat, and ensure that an environmental assessment (EA) under CEAA (or other EA regimes) is completed. In the context of development proposals, when DFO may exercise decision-making authority that triggers the CEAA (specifically, when DFO is the proponent; provides financial assistance; sells, leases, or otherwise transfers control or administration of federal land; or, makes certain regulatory decisions to enable a project to be carried out), DFO becomes a responsible authority under the CEAA and must ensure that an EA is prepared prior to making a decision. In such cases, HMP staff must ensure that the EA considers broad environmental issues linked to the project, as well as including those directly associated with fish and fish habitat. The *Fisheries Act* regulatory decisions requiring environmental assessments (*Law List Regulations* under CEAA) involve:

⁷ Information on DFO's application of the RMF is available at:
< http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/modernizing-moderniser/risk-risques_e.asp >

subsection 35(2) authorizing a HADD, flow needs for fish downstream of an obstruction; authorizing the destruction of fish by means other than fishing, and; orders to restrict or close works or undertaking that may cause a HADD or pollution of waters frequented by fish. For more specific information regarding EAs pursuant to the CEAA, please see the Canadian Environmental Assessment Registry.⁸

3.2.2 Categorizing Referrals

Habitat assessors and field staff have categorized referrals according to various work categories (see Table 2). The selected work category references a specific undertaking or work that has the potential to impact on fish and fish habitat.

⁸ Canadian Environmental Assessment Agency < http://www.ceaa-acee.gc.ca/050/index_e.cfm >

**Table 2:
Work Categories**

Work Category	Description
Aquaculture	Includes all forms of aquaculture in marine, estuarine and fresh water, including: shellfish culture, marine plant culture, polyculture, finfish cage culture, freshwater ponds and hatcheries.
Contaminated Site Remediation	The cleanup of contaminated sites, including: excavation and removal of contaminated sediments and soils; treatment of contaminated groundwater, etc.
Control of Nuisance Species	Works to capture, control and poison nuisance species.
Dredging	Dredging, including: clamshell, backhoe, suction, cutter suction, suction hopper, and any other type of dredging in freshwater, estuarine and marine conditions. Does not include dredging for the purposes of ocean mining of minerals or aggregate.
Fish Offal Disposal	Includes sites for disposal into the aquatic environment of fish offal from vessels, barges, etc. Does not include disposal of fish waste from a fish plant through an effluent pipe.
Habitat Improvement	Modifications to or structures placed into any aquatic habitat to improve the capacity of the habitat to produce fish.
Instream Works	Work and activities in a stream, brook, river, lake, estuary or any marine area, including: excavation, pool excavation, beaver dam removal, ditch cleaning, and aquatic vegetation removal.
Log Handling	Establishment and operation of aquatic and terrestrial areas used for storing and sorting logs. Includes log sorts at pulp mills and sawmills. Includes underwater log salvage.
Mineral, Aggregate and Oil & Gas Exploration, Extraction, Production	Includes all forms of mining and mineral exploration, including offshore and onshore oil and gas exploration and production, as well as ocean mining. This category also includes the use of explosives or other methods to explore sub-surface geological structures underwater or on land.
Shoreline Works (Foreshore and Streambank Work)	Includes physical works along a shoreline, both in the riparian zone and in the zone between Low-Low Water (LLW) (Low Water) and High-High Water (HHW) (High water) in a stream, brook, river, lake, estuary or any marine area.
Structures in Water	Includes structures built in all habitat types (riverine, lacustrine, palustrine (wetlands), estuarine, marine) including: docks and boathouses for personal or commercial purposes, wharves, breakwaters, commercial marine terminals, personal and commercial moorings, boat launches, water intake physical structures including screens, effluent outfall pipes and outfalls, fishing weirs, artificial reefs, and gear placed in water.
Water Management	Includes physical structures and activities involved in water management, such as: dams, dykes, diversions, reservoirs and reservoir operations, irrigation canals, stormwater management plans, water withdrawal from natural waterbodies and reservoirs, irrigation canals, hydroelectricity generation, etc.
Watercourse Crossings	Crossings of all kinds that traverse wetlands, streams, brooks, rivers, ponds, lakes, estuaries and any area in the marine environment. Includes small undertakings up to large pipeline and cable crossings across oceans.
Other	To be used for those proposed projects that do not fit any of the above Main Categories.

3.2.3 Review of Development Proposals (Referrals)

Data recorded in the Program Activity Tracking System for Habitat (PATH) on review of referrals are presented in this section.

Table 3 presents summary data on the number of habitat referrals in 2007-2008 by work category for each DFO region.

Figure 1 illustrates the pattern in total habitat referrals, by region, from fiscal years 2004-2005 to 2008-2009.

Figure 2 illustrates the regional distribution of total habitat referrals for 2008-2009.

Table 3: Summary of Habitat Referrals by Work Category Fiscal Year 2008-2009⁹															
DFO Region	Work Categories														
	Aqua.	Cont. Site Rem.	Cont. Nuis. Spec.	Dredg.	Fish Off. Disp.	Hab. Imp.	Instr. Works	Log Hand.	Min. Agg. & O&G Extract.	Shor. Works	Struct. in Water	Water Mgmt	Water-course Xing	Other ¹⁰	Total
Newfoundland and Labrador	21	10	0	21	0	1	30	1	113	72	113	29	244	127	782
Maritimes	7	4	0	16	2	13	15	0	5	131	117	62	334	26	732
Gulf	26	1	0	40	0	23	24	0	5	35	60	31	160	25	430
Quebec	0	5	2	31	1	14	46	0	9	44	40	11	74	0	277
Central and Arctic	1	18	4	168	0	31	208	1	150	607	448	277	999	233	3145
Pacific	26	11	2	46	0	50	250	60	114	475	278	258	295	222	2087
Total	81	49	8	322	3	132	573	62	396	1364	1056	668	2106	633	7453

⁹ Note: For reporting purposes, the receipt of a referral by DFO is accounted for in the statistics of the same year that event actually occurred; while any DFO decisions linked to the referral could occur in a subsequent year and be accounted for separately in the statistics for that year.

¹⁰ “Other” includes referrals identified with the Work categories of “to be determined,” “Undetermined” and “Other”.

Figure 1: Referrals Received by Region, 2004-2005 to 2008-2009

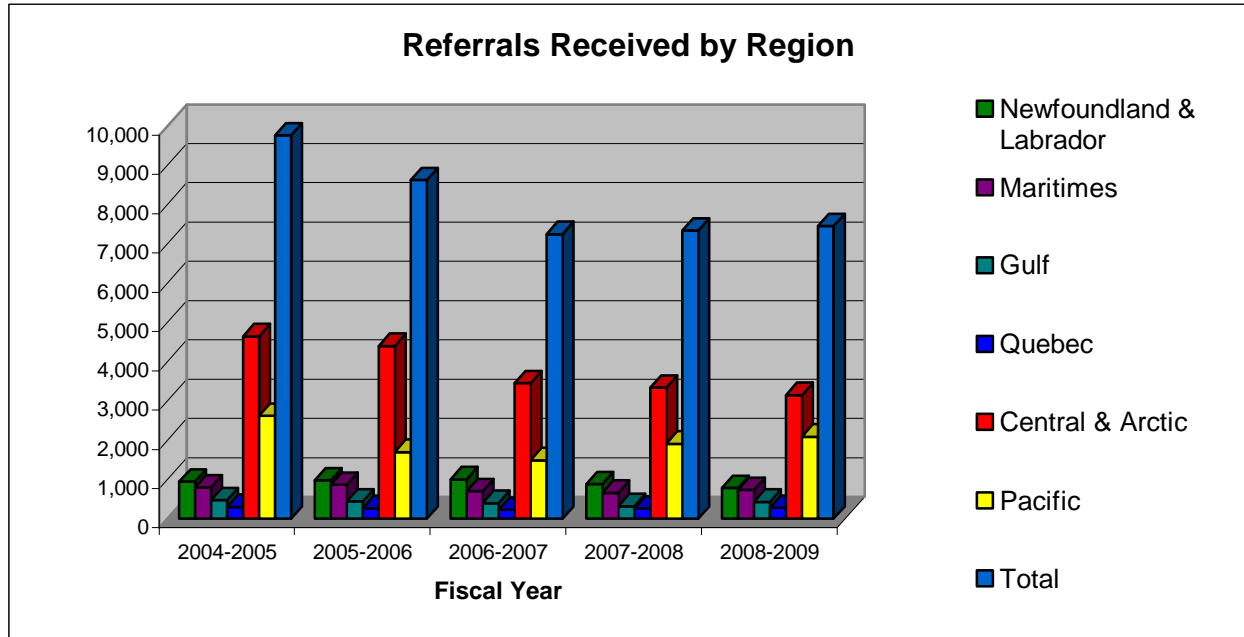
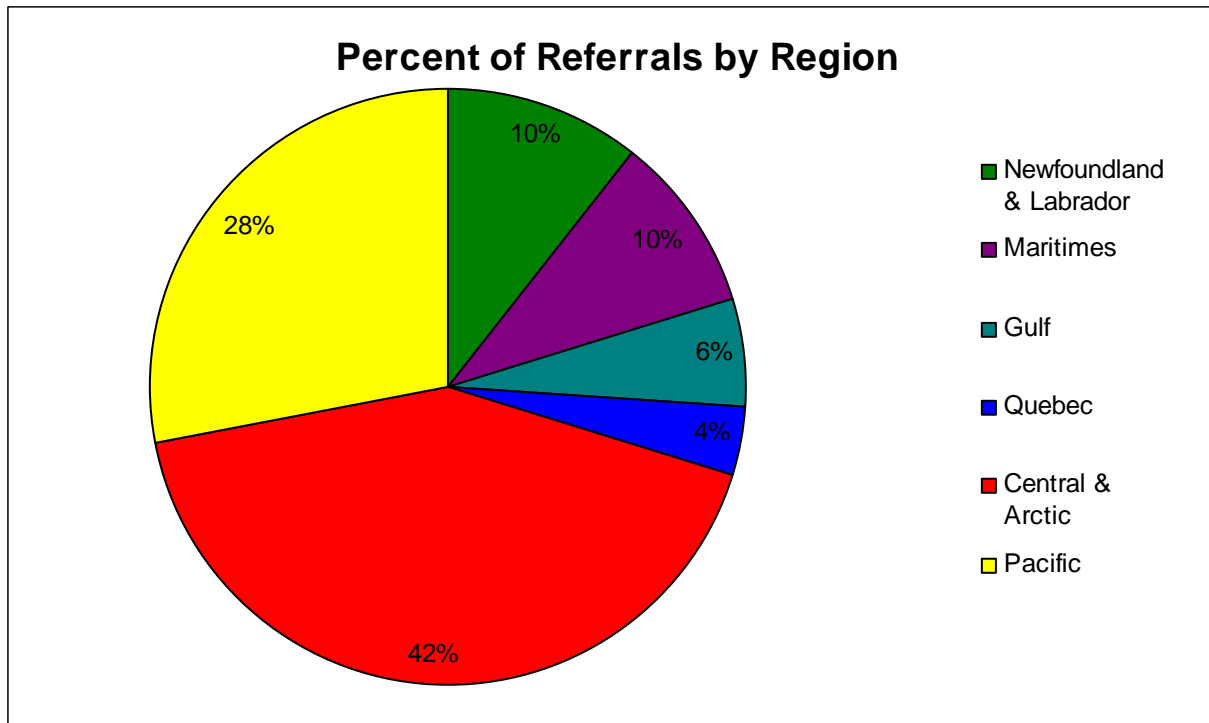


Figure 2: Percent of Referrals by Region, 2008-2009



3.2.4 Advice Provided and Authorizations Issued

Data recorded in PATH on advice provided by DFO and authorizations issued are presented in this section.

Table 4 lists for each region in 2008-2009:

- the letters of advice provided to proponents or others;
- the operational statements provided as advice; and
- the Authorizations issued.

Figure 3 and Figure 4 illustrate the regional distribution of advice and authorizations, respectively in 2008-2009.

Table 4: Advice Provided and Authorizations Issued Fiscal Year 2008-2009				
REGION	Advice Provided to Proponent or Others¹¹	Operational Statements Provided as Advice	Authorizations Issued	TOTAL
Newfoundland and Labrador	648	18	2	668
Maritimes	370	0	55	425
Gulf¹²	287	0	5	292
Quebec	219	10	40	269
Central and Arctic	2241	144	129	2514
Pacific	477	22	56	555
TOTAL	4242	194	287	4723

Figure 3: Advice Provided by Region, 2004-2005 to 2008-2009

¹¹ Advice provided to others includes: written advice to federal agencies, provincial/territorial/other agencies, letters of advice to proponents, letters of approval to proponents, mitigation measures provided to permitting agencies.

¹² In the Gulf Region, as a result of an agreement with the Province of New Brunswick, DFO does not need to provide Operational Statements for streamlining certain activities.

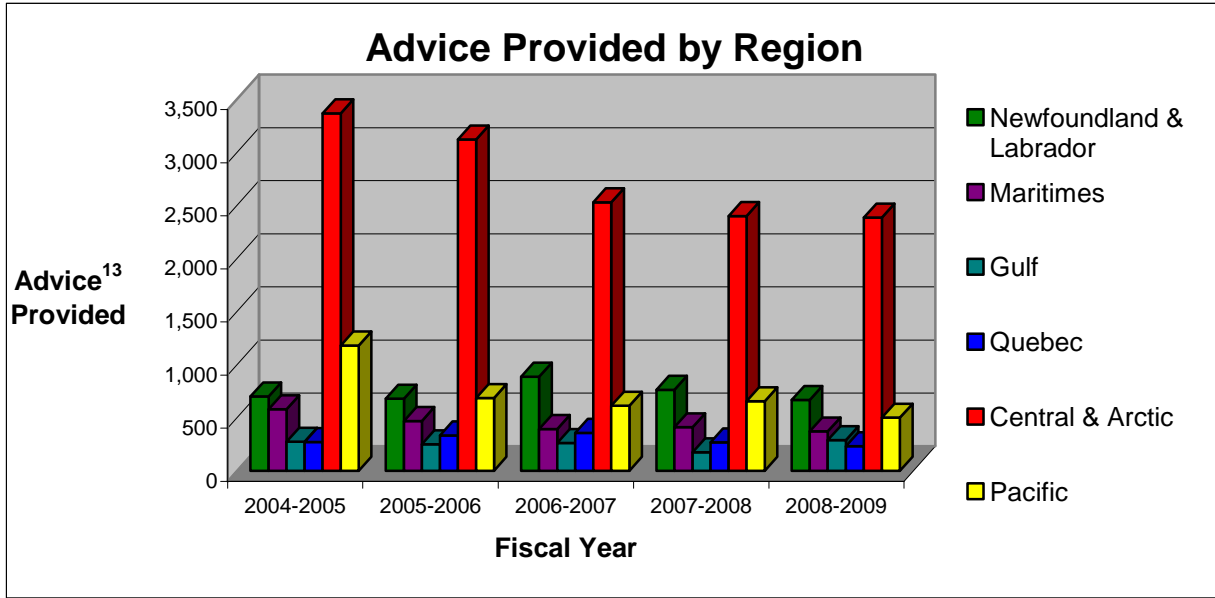
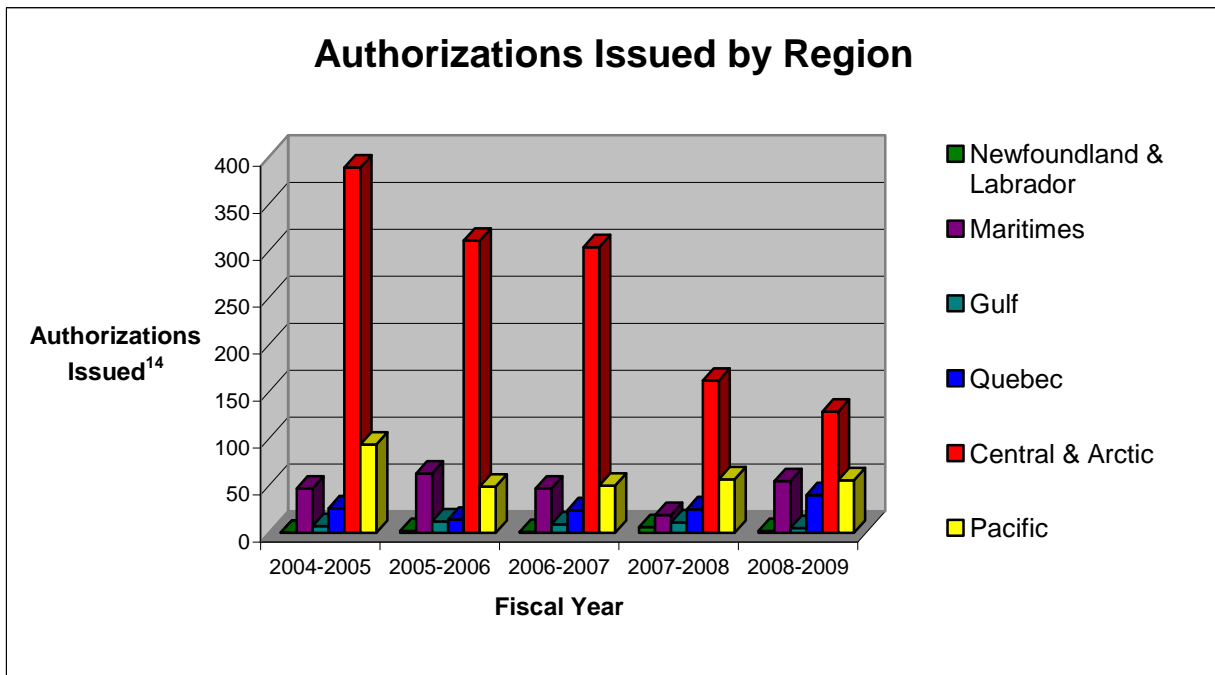


Figure 4: Authorizations Issued by Region, 2004-2005 to 2008-2009



¹³ As of 2005-2006, the advice provided includes Operational Statements provided as Advice (following receipt of referral).

¹⁴ Notifications of use of Class Authorizations are not included in this chart.

3.2.5 Notifications and Use of Regulatory Streamlining Tools

DFO develops and implements operational statements as a management tool to improve efficiency and effectiveness of its regulatory reviews for low-risk activities. The operational statements specify mitigation measures needed to avoid harm to fish habitat, providing proponents with greater certainty on what they must do to comply with the habitat protection provisions of the *Fisheries Act*. It is voluntary for proponents to submit notification forms to DFO when any operational statement is used.

To streamline the regulatory process for specific activities, DFO has established “class” authorizations for agricultural municipal drains in Southern Ontario (Ontario-Great Lakes Area), and for placer mining in the Yukon Territory. The process in Ontario was initiated in 1999-2000. It provides a mechanism for proponents to use class authorizations for pre-defined drain maintenance activities thereby eliminating the requirement for a proponent to undergo a site-specific review process. Similarly, the Yukon Territory, DFO, the Government of Yukon, and the Council of Yukon First Nations implemented a new integrated regulatory regime for placer mining. This regime includes a streamlined process for environmental review of placer mining proposals pursuant to the *Yukon Environmental and Socio-economic Assessment Act*.¹⁵

REGION	Class Authorizations Notifications	Operational Statements Notifications	TOTAL
Newfoundland and Labrador	0	26	26
Maritimes	0	0	0
Gulf	0	0	0
Quebec	0	13	13
Central and Arctic	166	3792	3958
Pacific	0	204	204
TOTAL	166	4035	4201

3.3 Compliance and Enforcement of the Fish Habitat Protection Provisions of the *Fisheries Act*

DFO’s C&P Program is responsible for monitoring compliance with legislation and regulations regarding the conservation of fisheries resources and fish habitat. The Minister of Fisheries and

¹⁵ For more information on placer authorizations refer to:
< <http://www.yukonplacersecretariat.ca/infocentre.html> >.

Oceans appoints Fishery Officers to enforce fisheries regulations and management plans as well as the habitat provisions of the *Fisheries Act*.

In addition to protecting fish habitat, Fishery Officers conduct at-sea patrols in coastal and inshore areas, monitor catches, conduct forensic investigations and audits, conduct inland patrols and provide information to fishers regarding government policies and regulations regarding fisheries. The enforcement and compliance monitoring activities of Fishery Officers are key to protecting Canada's fish and fish habitat.

For more information, see the *Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act*¹⁶.

Table 6, Table 7 and Table 8 summarize C&P's compliance and enforcement activities by region in 2008-2009.

Table 6: Summary of DFO Habitat Enforcement Activities Fiscal Year 2008-2009			
REGION	Warnings Issued	Charges Laid	Alternatives to Prosecution
Newfoundland and Labrador	3	0	0
Maritimes	8	0	0
Gulf	11	2	0
Quebec	1	19	0
Central and Arctic	3	11	0
Pacific	35	5	0
TOTAL	61	37	0

¹⁶ The full text of the Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act may be found at:

< <http://www.ec.gc.ca/ele-ale/default.asp?lang=En&xml=D6765D33-DB9B-4FA9-9E92-815A013842F4> >

Table 7: Convictions Reported under the Habitat Protection Provisions of the <i>Fisheries Act</i> Fiscal Year 2008-2009				
REGION	Section 35(1)	Section 36(3)	Section 40(3)	TOTAL
Newfoundland and Labrador	0	0	0	0
Maritimes	1	0	0	1
Gulf	0	0	0	0
Quebec	0	0	0	0
Central and Arctic	0	0	0	0
Pacific	1	0	0	1
TOTAL	2	0	0	2

**Table 8:
Summary of Convictions and Alternative Measures to Prosecution
Fiscal Year 2008-2009**

REGION	PROVINCE	AREA	WATERBODY	<i>FISHERIES ACT SECTION</i>	PROJECT DESCRIPTION	CONVICTION / RESOLUTION DATE	FINE	SENTENCE DETAILS
Maritimes	Nova Scotia	Eskasoni, Cape Breton	Bras d'Or Lake	35(1)	Silt deposit and infilling as a result of a subdivision development	October 6, 2008	\$30,000	\$5,000 fine to the Court and \$25,000 for restoration and enhancement of the Bras d'Or Lake.
Pacific	British Columbia	Smithers	Robin Creek	35(1)	Agriculture, cattle in stream	June 13, 2008	\$1,000	The court ordered the defendant to pay a penalty of \$17,000 to the Environmental Damages Fund for works in the area of the Bulkley River watershed.

3.4 Oceans and Scientific Support

DFO's Science Sector conducts research and provides advice to assist habitat management practitioners. In collaboration with managers in the Habitat Management Directorate, environmental scientists identify knowledge gaps related to habitat conservation, restoration and improvement, and devise research projects to address those gaps. Research pursued in 2007-2008 included:

- developing empirical models for evaluating the productive capacity of fish habitat, linking fish biomass at specific habitats to total population production;
- assessing the impacts of hydroelectric dam operations (ramping rate) on downstream aquatic ecosystems;
- refining methodologies for the remediation of oil-contaminated sites;
- assessing the impacts of fishing gear on fish habitat;
- developing techniques to assess productive capacity and the value of specific habitats to fish, and to delineate 'critical habitat';
- assessing the effects of aquaculture on the environment;
- conducting joint research, with Habitat Management staff, into the efficacy of habitat compensation projects in meeting compensation objectives in a 'habitat productive capacity' framework; and
- developing the knowledge necessary to make decisions regarding stream flows and water allocations in order to ensure that water levels are sufficient for fish.

Research results are transferred to HMP staff in the form of peer-reviewed advice, workshops, published reports, fact sheets, briefings, and personal consultations. Information provided can range from informal, one-on-one discussions, to regional advice sessions and large-scale National Advisory Process workshops that follow a formal process to produce peer-reviewed, published advisory documents. The Canadian Science Advisory Secretariat within the Oceans and Science Sectors oversee the production of science advice, and maintains a website where reports are made available¹⁷.

¹⁷ < http://www.dfo-mpo.gc.ca/csas/Csas/Home-Accueil_e.htm >

4.0 Administration and Enforcement of the Pollution Prevention Provisions of the *Fisheries Act*

Since 1978, EC has been responsible for the enforcement of the pollution prevention provisions of the *Fisheries Act* - namely section 34 and sections 36 to 42. These sections of the Act deal with the deposit of deleterious substances into waters frequented by fish.

EC administers the pollution prevention provisions through a suite of activities including compliance promotion, regulations, water quality monitoring, enforcement, emergencies management and administrative agreements. The department's 2008-09 activities may be summarized as follows:

- compliance promotion activities to support subsection 36(3) which prohibits the deposit of deleterious substances to waters frequented by fish unless authorized by regulation;
- development, administration and compliance promotion of regulations under Section 36(4) for sectors where risks are best managed by authorization and control of the deposit of deleterious substances;
- water quality monitoring under the Canadian Shellfish Sanitation Program;
- enforcement of all regulations and the general prohibition under subsection 36(3);
- response to and notification when emergencies occur as per Section 38(5) regarding the deposit of deleterious substances out of the normal course of events;
- agreements with provinces for the cooperative administration of *Fisheries Act* activities related to Section 36.

4.1 Compliance Promotion for General Prohibition Against Release of Deleterious Substances to Waters Frequented by Fish

Compliance promotion relates to the planned activities that are undertaken to increase the awareness and the understanding of the law and related risk management instruments. Through these activities, information is provided on what is required to comply, the benefits of complying with the law as well as the consequences of non-compliance.

The approach to compliance promotion is collaborative and coordinated across the department's programs and regions and with Enforcement. It is achieved using various tools and approaches such as website postings, letters and emails, brochures, site visits, responses to inquiries and information sessions.

In 2008-09, EC undertook compliance promotion activities relating to the general prohibition provisions across the country for a number of sectors and sources. Activities included:

- provision of scientific and technical advice related to contaminated sites (federal and non-federal sites) and potential *Fisheries Act* implications for more than 119 sites through

various avenues, including the Federal Contaminated Sites Action Plan (FCSAP), compliance promotion activities, and environmental assessments.

- completion of a multi-year project to improve spill reporting and spill response at First Nations communities in Ontario.
- guidance through the environmental assessment process and through direct interaction with other government departments, industry and the general public for a broad range of sectors and sources including: aquaculture, non-metal mineral developments, acid mine drainage from former underground coal mining areas, contaminated effluents at closed/abandoned industrial sites in the forestry and mineral resource sectors, dredging of port facilities, underwater pipeline installation, marsh restoration and protection and discharges from facilities owned by all levels of government and small-to medium-sized enterprises.

4.2 Regulations

4.2.1 Pulp and Paper

Regulations Amending the Pulp and Paper Effluent Regulations (PPER) were published in Part II of the *Canada Gazette* on August 6, 2008. These amendments modify Environmental Effects Monitoring (EEM) requirements under the PPER in several key areas such as the suspension of EEM at mills that have ceased production for at least eight consecutive months, streamlining of sublethal toxicity testing requirements, new exemptions for benthic monitoring, and a new requirement for Investigation of Solutions (IOS) where important effects have been confirmed. These amendments are targeted at improving the PPER by making pulp and paper EEM requirements more effective and efficient.

EC continued to provide compliance promotion advice to the pulp and paper sector on the requirements of the PPER especially at sites with temporary or proposed closures. EC highlighted requirements for continued compliance with the PPER, and with the general provisions of subsection 36(3) of the *Fisheries Act* when the facility ceases to be a mill, but may continue to have an effluent discharge to waters frequented by fish. Additional guidance to pulp mills was provided via e-mails, phone calls, and mail out of compliance promotion materials.

Compliance promotion activities also included support for electronic reporting of data by regulated facilities. The Regulatory Information Submission System (RISS) for pulp and paper mills was deployed in April 2009 for Manitoba. RISS is in place in Ontario, Atlantic and Pacific regions. The information system is a web-based reporting tool used by industry to report mandatory data as required under PPER. The government of Quebec is launching a new computerized environmental data tracking system (SENV) in fall 2009 to replace the current system (INDMON-MEF) for pulp and paper mills in Quebec. This system will collect mandatory data as required under the PPER and provincial environmental legislation.

4.2.2 Metal Mines

EC's analysis of the effluent data generated during 2007 by Canadian metal mines concluded that these companies continued to have high rates of compliance with the effluent quality limits prescribed in the Metal Mining Effluent Regulations (MMER). It was determined that the Regulations applied to 93 mining facilities across the country in 2007, and that the compliance rate with limits for cyanide, lead and radium 226 was 100%, over 99% for arsenic, copper, zinc and pH, and 94% for total suspended solids. The Regulations also require that effluent be non-acutely lethal to rainbow trout, and in 2007 the compliance rate for this requirement was 97%.

The MMER were amended on two occasions during the year to add natural, fish-bearing water bodies to Schedule 2 of the Regulations, which means that they are designated as tailings impoundment areas. These water bodies are associated with two new gold mines being constructed in Nunavut, and two existing iron ore mines in Newfoundland and Labrador that have been in operation since the 1960s.

Compliance promotion activities included the provision of information to the regulated community and in response to the Environmental Assessment (EA) project review process. Several compliance promotion site visits were made to mines and prospective mines, as well as to several operating facilities subject to the MMER and facilities undergoing environmental assessments.

4.2.3 Wastewater

During 2008-2009, EC provided compliance advice, related to the *Fisheries Act*, on more than 32 wastewater treatment projects reviewed under the CEAA , under the *Canadian Environmental Protection Act* (Pollution Prevention planning for inorganic chloramines and chlorinated effluents) and under the National Framework for the Review Process of Water and Wastewater Systems in First Nations Communities.

EC recognizes the key role played by provinces and territories in the management of the wastewater and is working with these jurisdictions and other stakeholders through the Canadian Council of Ministers of the Environment. On February 17, 2009, the Council endorsed the Canada-wide Strategy for the Management of Municipal Wastewater Effluent. The Strategy includes national performance standards applicable to the effluents of all wastewater systems in the country and risk-based implementation timelines.

EC intends to develop wastewater effluent regulations under the *Fisheries Act* as its principal instrument to contribute to the implementation of the Canada-wide Strategy. The regulations, which will include national standards, will be applied in a harmonized regulatory framework with the provinces and territories. The desired outcome is to ensure that the release of wastewater effluent does not pose unacceptable risks to human and ecosystem health or fisheries resources through the application of one set of standards in a fair, consistent, and predictable manner.

4.3 Water Quality Monitoring – Canadian Shellfish Sanitation Program

Under the Canadian Shellfish Sanitation Program (CSSP), EC surveys bivalve molluscan shellfish growing areas for the purposes of harvesting area classification. EC makes classification recommendations to Fisheries and Oceans Canada (DFO) under the Management of Contaminated Fisheries Regulations. In 2008-09, over 23,800 marine water quality samples were collected to support the classification of approximately 23,250 km coastline in the Atlantic, St. Lawrence and Pacific regions of Canada.

In 2008, there were 638 recorded spills to shellfish areas from wastewater treatment plants (WWTPs), subject to reporting under s.38(4). EC assessed the adverse effects of such spills on harvest areas and made appropriate closure recommendations to DFO. The CSSP is in the process of redefining the classification of harvest areas near WWTPs, including EC's assessment of over 300 WWTPs that could potentially impact these areas. EC is also working with CSSP partners (Canadian Food Inspection Agency and DFO) and with colleagues within EC to strengthen failure reporting from WWTPs.

4.4 Enforcement Activities and Measures

4.4.1 Summary of Enforcement Activities

Table 9 summarizes the number of occurrences, inspections and investigations carried out under the *Fisheries Act* by EC in 2008-2009.* The following explanations should be noted with respect to the table:

- An **occurrence** is any event where there is a possible violation of the environmental and wildlife legislation administered, in whole or in part, by EC. An occurrence can generate an inspection or an investigation. Occurrences are tabulated based on Reported Date, for all categories except Spill/Release. An occurrence file may include one or more regulations, therefore is it possible that the data at the regulation level, may not add to the total at the legislation level.
- An **inspection** is an activity that involves verification of compliance with the environmental or wildlife legislation administered, in whole or in part, by EC. Only closed files using the end date are tabulated. The number of inspections relates to the number of regulatees inspected for compliance under each of the applicable regulations.
- An **investigation** is the gathering and analyzing, from a variety of sources, of evidence and information relevant to a suspected violation where there are reasonable grounds to believe that an offence has been, is being or is about to be committed with regards to the environmental or wildlife legislation administered, in whole or in part, by EC. Investigations are tabulated by number of investigations files, based on Start Date of the investigation. An investigation file may include activities relating also to another piece of legislation and may include one or more regulations. Therefore, the total number of investigations shown by regulation may not add to the total at the legislation level.

**Table 9:
EC Enforcement Activities and Measures Carried Out under the *Fisheries Act*
Fiscal Year 2008-2009**

NATIONAL	Inspections ¹⁸			Investigations ¹⁹	Enforcement Measures				
	Off-site	On-site	Total		Prosecutions	Charges	Convictions	Written Directives	Written Warnings
General Prohibition	457	625	1,082	41	16	24	5	31	117
Chlor-Alkali Mercury Liquid Effluent Regulations and Guidelines	4	-	4	0	0	0	0	0	0
Meat and Poultry Products Plant Liquid Effluent Regulations and Guidelines	3	2	5	0	0	0	0	0	0
Petroleum Refinery Liquid Effluent Regulations and Guidelines	141	3	144	0	0	0	0	0	0
Potato Processing Plant Liquid Effluent Regulations and Guidelines	32	2	34	0	0	0	0	0	0
Pulp and Paper Effluent Regulations	1,366	67	1,433	8	0	0	0	0	64
Guidelines for Effluent Quality and Wastewater Treatment at Federal Establishments	0	1	1	0	0	0	0	0	0
Metal Mining Effluent Regulations	504	73	577	6	0	0	0	0	94
TOTAL	2,507	773	3,280	55	16	24	5	31	275

¹⁸ **Number of Inspections - new way of counting:** Only closed files using the end date are tabulated. The number of inspections relates to the number of regulatees inspected for compliance under each of the applicable regulations.

¹⁹ **Number of Investigations:** Investigations are tabulated by number of investigations files, based on the Start Date of the investigation. An investigation file may include activities relating to other legislation and may concern one or more regulations. Therefore, the total number of investigations shown by regulation may not add to the total at the legislation level.

ADDITIONAL STATISTICS

There were 128 referrals to other federal or provincial government departments or municipal bodies.

Table 10: Investigation Breakdown Fiscal Year 2008-2009	
INVESTIGATION BREAKDOWN	# of Investigations
Investigations started and ended in fiscal year 2008-2009	10
Investigations started in fiscal year 2008-2009 and still ongoing at end of fiscal year 2008-2009	37
Investigations started before 2008-2009 and ended in fiscal year 2008-2009	24
Investigations started before fiscal year 2008-2009 and still ongoing at the end of fiscal year 2008-2009	45

EXPLANATORY NOTES: THE STATISTICS ARE TABULATED AS FOLLOWS

The number of enforcement measures such as Tickets, Written Warnings, Written Directions, Injunctions, Ministerial Orders and Environmental Protection Compliance Orders (EPCOs) does not reflect the number of physical documents, such as tickets or warning letters issued. Instead, it reflects the number of sections of a regulation with which the regulatee is not compliant.

For example, if a regulatee is violating sections 36(1) and 36(3) of the *Fisheries Act*, the regulatee may be issued one physical ticket for violations of both sections. However, in the statistics above, this is counted as two tickets, one for each section.

Prosecutions: The number of prosecutions reflects the number of regulatees prosecuted this year. Prosecutions include tickets. Prosecutions are counted in relation to the date a charge was laid, not the date when the case began or ended.

Environmental Protection Alternative Measures (EPAMs): The number of EPAMs indicates the number of regulatees who signed EPAMs this year. EPAMs are counted in relation to when a charge was laid, not the date when the case began or ended.

Charges: The number of charges reflects the number of violated sections of a regulation where a charge was laid. For example, a regulatee violating sections 36(1) and 36(3) of the *Fisheries Act* may be charged with one count under section 36(1) and two counts under section 36(3).

This is considered as two charges – one for each section. Charges are counted in relation to the date the charge was laid, not the date when the case began or ended. The number of charges excludes tickets.

Convictions: The number of convictions (excluding tickets) indicates the number of counts where the regulatee was found guilty or pleaded guilty. For example, in a case where a regulatee

is found guilty of one count under section 36(1) and two counts under section 36(3), this is considered three convictions.

4.4.2 Enforcement Highlights

Beaverlodge, Alberta

In 2008-2009, Environment Canada enforcement actions resulted in the successful prosecution of the Town of Beaverlodge, Alberta, for violations under section 36(3) the *Fisheries Act*. In May 2006, Environment Canada investigated a fish kill that occurred in Beaverlodge. The municipality's wastewater had a green color and officers observed numerous dead fish in the Beaverlodge River.

Representatives of the Town of Beaverlodge appeared in Provincial Court in Grande Prairie for sentencing in August, 2008. The Town was ordered to: pay a penalty of \$20,000 (including \$18,000 to the Environmental Damages Fund); install and operate an aeration system no later than April 30, 2009; undertake a verification study for one year following the installation of the aeration system; and develop a written procedure that requires wastewater to be tested prior to each discharge into the Beaverlodge River to ensure that it would not be deleterious to fish in contradiction of section 36(3) of the *Fisheries Act*.

Additionally, in an innovative form of sentencing, the Town of Beaverlodge, was ordered by the court to make a presentation at the Alberta Water and Wastewater Operator's Association (AWWOA) annual seminar in Banff on March 11, 2009 to inform and educate other municipalities about this case. Municipal administrators from Beaverlodge highlighted the steps that they took as a result of the conviction; specifically outlining the measures used to correct common wastewater problems. Over 300 people attended including elected officials and wastewater administrators from municipalities across Alberta, and the presentation was effective in providing general deterrence and in promoting compliance with the *Fisheries Act*.

Irving Pulp & Paper Ltd.

In 2008-2009, an Environment Canada investigation into a suspected discharge into the St. John River in St. John, New Brunswick, resulted in the successful prosecution of Irving Pulp & Paper Ltd under Section 36(3) of the *Fisheries Act*.

Enforcement officers observed an overflow of black liquor into the effluent stream that discharges into the river and the subsequent investigation resulted in charges against Irving Pulp & Paper. In February 2009, Irving was convicted and assessed a \$37,000 penalty; \$7,000 of the penalty is to be paid to the courts, with the remaining \$30,000 to be paid to the St. John Atlantic Coastal Action Program (ACAP) for the restoration of a local water resource.

Casey Concrete Limited

Casey Concrete Limited was ordered to pay \$25,000 in Nova Scotia Provincial Court in Truro on February 18, 2009 for two separate incidents involving the release of a substance deleterious to fish into fish bearing waters. The company pleaded guilty in the Provincial Court in Truro on

January 12, 2009 to releasing concrete wash water into McClure's Brook in Truro in violation of subsection 36(3) of the *Fisheries Act*.

Charges were laid against Casey Concrete Limited after an investigation by Environment Canada. The penalty includes a court ordered payment of \$15,000 to the Environmental Damages Fund.

Cangra Natural Stones Inc.

Cangra Natural Stones Inc. of Black Point, Nova Scotia, was sentenced to a penalty of \$9,000 in the Provincial Court in Halifax for violating subsection 36(3) of the *Fisheries Act*. The penalty consists of a fine of \$2,000 and a court ordered payment of \$7,000 to the Environmental Damages Fund.

On July 21, 2008, the company pleaded guilty to one charge of depositing a deleterious substance into waters frequented by fish. The charge resulted from a July 2007 release of processing wastewater into St. Margaret's Bay, Nova Scotia.

This conviction was based on information obtained by Environment Canada's Environmental Enforcement Division in the Atlantic Region during an investigation that was initiated as a result of a complaint it received. The illegal discharge was confirmed during an inspection by enforcement officers who observed wastewater, a bi-product of stone cutting, being deliberately diverted from the company's holding tank into St. Margaret's Bay. An analysis of the wastewater samples found it to be high in concentrations of metals that are harmful to fish.

4.5 Environmental Emergencies Program

EC's Environmental Emergencies Program plays an important role concerning the response to the deposit of deleterious substances in water frequented by fish. Subsection 38(5) of the *Fisheries Act* states that persons who own or are responsible for a deleterious substance, or persons who cause or contribute to a deposit of the deleterious substance in water frequented by fish, must "take all reasonable measures consistent with safety and with the conservation of fish and fish habitat" to prevent the deposit or, where that deposit actually does occur, "to counteract, mitigate or remedy any adverse effects that result".

If a spill or other deposit out of the normal course of events occurs, Environmental Emergencies Program personnel provide environmental and technical advice to the responsible parties, environmental response organizations and to other levels of government. In addition, Environmental Emergencies personnel:

- receive notifications and reports of spills, leaks and deposits of deleterious substances;
- access the site of the deposits in order to observe or to carry out spill response activities;
- collect and analyze relevant information;

- issue inspector's directions requiring the responsible parties to take remedial or preventive measures; and
- support enforcement actions.

In 2008-2009, EC recorded a total of 1481 spill occurrences under the *Fisheries Act* (1424 under the General Prohibition, 22 for MMER and 57 for PPER). There were a total of 435 non-spill occurrences (347 under the General Prohibition, 27 for MMER and 65 for PPER). EC's Environmental Emergency Officers, who are designated as inspectors under the *Fisheries Act*, conducted 88 on site inspections to verify that the responsible parties complied with subsection 38(5) of the *Fisheries Act*.

The scope and nature of on-site inspections conducted by Environmental Emergency Officers varies across EC's five regions depending on the location of the incident, the responsible parties and arrangements that exist with other jurisdictions. Efforts are made to ensure that the environment is protected against deposits of deleterious substances in water frequented by fish while minimizing duplication of administrative effort between the federal, provincial and territorial governments.

The Environmental Emergencies Program also coordinates the activities of the Regional Environmental Emergencies Teams in EC's five administrative regions. These interdisciplinary, interdepartmental, multi-stakeholder teams provide agencies involved in an environmental emergency response with consolidated advice and scientific information on environmental protection, environmental damage assessment, clean-up measures and the disposal of waste resulting from cleanup activities.

4.6 Agreements

The *Canada-Alberta Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act* entered into force on September 1, 1994. The agreement, establishes the terms and conditions for the cooperative administration of subsection 36(3) and the related provisions of the *Fisheries Act*, as well as regulations under the *Fisheries Act* and the *Alberta Environmental Protection and Enhancement Act*. The Agreement streamlines and coordinates the regulatory activities of EC and Alberta Environment in relation to the protection of fisheries, and reduces duplication of regulatory requirements for regulatees. During 2008-2009, Alberta Environment reported 1,881 incidents to EC, of which 233 were related to the *Fisheries Act*. This collaboration led to 150 (on-site and off-site) inspections and five investigations. EC conducted an additional 162 off-site inspections under the *Pulp and Paper Effluent Regulations* and the *Petroleum Refinery Liquid Effluent Regulations* for monthly and annual reports forwarded from AENV in accordance with the Agreement.

To facilitate the cooperative administration of subsection 36(3) of the *Fisheries Act* and its accompanying regulations, EC maintains bilateral agreements with Saskatchewan. The *Canada-Saskatchewan Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act* sets out the principles for cooperation and identifies a preliminary list of

activities where detailed collaborative arrangements could be developed. Existing collaborative arrangements are described in the five annexes to the agreement. In 2008-2009, the Saskatchewan Ministry of Environment reported 100 spills to the EC's Enforcement Branch, of which 40 were related to the *Fisheries Act*, and 13 were referred to inspection.

The governments of Canada and Quebec agreed to a five-year *Administrative Agreement Regarding the Implementation in Quebec of Federal Regulations Pertaining to the Pulp and Paper and Metal Mining Sectors*, in force as of April 1, 2007, and which will expire on March 31, 2012. The agreement enables the Environment Ministry of Quebec to act as a “single window” with the pulp and paper industry for the gathering of information required pursuant to the PPER, the *Fisheries Act*, and two other regulations under the *Canadian Environmental Protection Act, 1999*.