Fisheries and Oceans Canada | Pêches et Océans Canada

ANNUAL REPORT

April 1, 2004 to March 31, 2005

ANNUAL REPORT TO PARLIAMENT on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*

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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
KlA OA6

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 2004-2005.

In conformity with the requirements of the Act, these copies are for tabling in the House of Commons and for referral to the Standing Committee on Fisheries and Oceans.

Sincerely,

Loyola Hearn, P.C., M.P.

Attachments

Minister of
Fisheries and Oceans

Ministre des
Pêches et des Océans

Ottawa, Canada K1A 0E6

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

Dear Mr. Bélisle:

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 2004-2005.

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

Sincerely,

Loyola Hearn, P.C., M.P.

Attachments

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Abstract

Fisheries and Oceans Canada. 2005. Annual Report to Parliament on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. April 1, 2004 to March 31, 2005: iii + 50 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 2004-2005 fiscal year. It highlights the two departments' national and regional activities.

Résumé

Pêches et Océans Canada. 2005. 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 1er avril 2004 au 31 mars 2005 : iii + 54 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 2004-2005. Il présente les activités entreprises par les deux ministères à l'échelle national et régionale.

1.0 Introduction

The federal government fulfils its constitutional responsibilities for coastline and inland fisheries through the administration and enforcement of the *Fisheries Act,* that provide Fisheries and Oceans Canada (DFO) with powers and authorities to conserve and protect fish habitat, which is essential to sustaining freshwater and marine fish species and populations that Canadians value.

The *Fisheries Act* contains provisions that prohibit harmful changes to fish habitat (habitat protection provisions) as well as discharges of deleterious substances into fisheries water (pollution prevention provisions). DFO is responsible for the administration and enforcement of the habitat protection provisions of the *Fisheries Act*, while responsibility for the administration and enforcement of the pollution prevention provisions has been assigned to Environment Canada (EC).

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.

"42.1 (1) the Minister shall, as soon as possible after the end of the fiscal year, prepare and cause to be laid before Parliament a report on the administration and enforcement of the provisions of this Act relating to fish and fish habitat protection and pollution prevention for that year."

"42.1 (2) the annual report shall include a statistical summary of convictions under section 40 for that year."

The *Annual Report to Parliament* (Annual Report) is only one of several reporting mechanisms used to assess and report on the contributions and successes of DFO's and EC's Programs in conserving and protecting fish habitat that sustain fish species and populations that Canadians value. Other reporting mechanisms such as the annual *Departmental Performance Report* and the *Report on Plans and Priorities*, which are also produced by the Department, provide information about the performance of these programs to Parliamentarians and Canadians. In order to streamline departmental reporting while maintaining its legislated responsibilities under section 42.1, this report will focus on its responsibilities under the *Fisheries Act*. DFO's responsibilities pursuant to the *Canadian Environmental Assessment Act* (*CEAA*) can be found in the Canadian Environmental Assessment Agency's 2004-2005 Annual Report.

This report provides a summary of key activities undertaken by DFO and EC in conserving and protecting fish habitat during this fiscal year.

Section 2.0 of the report presents:

- background on the legislation and policy for the conservation and protection of fish habitat;
- an overview of the *Policy for the Management of Fish Habitat*;
- an overview of the Habitat Management Program (HMP), and those sectors who support it; and
- a summary of the Environmental Process Modernization Plan (EPMP), designed to make the HMP more efficient in the delivery of its services, and effective in the conservation and protection of fish and fish habitat.

Section 3.0, 4.0 and 5.0 highlight the regulatory activities of DFO and EC Programs for this fiscal year, at National Headquarters and in the regions. These activities include:

- the review of development proposals (referrals) that may affect fish habitat;
- the monitoring of compliance with the habitat protection and pollution prevention provisions of the *Fisheries Act* and enforcement actions as a result of violations; and
- developing regulations, policies and guidelines related to the habitat protection and pollution prevention provisions of the *Fisheries Act*.

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

2.1 Legislative Basis for the Conservation and Protection of Fish Habitat

The *Fisheries Act* contains two types of provisions that can be applied for the conservation and protection of fish habitat[1] essential to sustaining freshwater and marine fisheries resources that Canadians value because of the significant economic, social, cultural, and environmental benefits they provide.

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 DFO or through regulations under the *Fisheries Act*.

> (1) "No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat."
> (2) "No person contravenes subsection (1) by causing the alteration, disruption or destruction of fish habitat by any means or under any conditions authorized by the Minister or under regulations made by the Governor in Council under this Act."
>
> - Section 35, *Fisheries Act*.

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 Annex).

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). The responsibility for the administration and enforcement of the pollution prevention provisions of the *Fisheries Act* is assigned to EC.

[1] 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".

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 37(3));
- a description of offences and punishment (section 40); and
- a determination of liability when a deleterious substance has been deposited (section 42).

2.2 Policy for the Management of Fish Habitat

The *Policy for the Management of Fish Habitat*[2] (the Habitat 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 Habitat Policy has an overall objective to "increase the natural productive capacity of habitat for the nation's fisheries resources" – that is, to achieve a "net gain" in fish habitat. This is to be achieved through the Habitat Policy's three goals of conservation, restoration, and development of fish habitat.

The Habitat 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 Habitat 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 Habitat Policy are to be achieved, through eight implementation strategies. These include 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 Habitat 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

[2] The full text of the *Policy for the Managment of Fish Habitat* can be found at :
< http://www.dfo-mpo.gc.ca/canwaters-eauxcan/infocentre/legislation-lois/policies/fhm-policy/index_e.asp >.

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 by these measures, the Habitat Policy calls for an authorization not to be issued. Furthermore, where deleterious substances result in harm to fish or damage to fish habitat, compensation[3] is not an option.

2.3 National Habitat Management Program

DFO's Habitat Management Program (HMP) is a key federal regulatory program with a mandate to conserve and protect fish habitat. Delivery of its responsibilities under the *Fisheries Act*, the *CEAA* and now the *Species at Risk Act* (*SARA*) impacts on a wide range of individuals, businesses and communities all across Canada. The HMP is supported from Science Sector's Environmental Science Program and compliance and enforcement activities through Fisheries and Aquaculture Management Sector's C&P Program.

National Headquarters' staff is 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 industries and non-governmental organizations (NGOs). Day-to-day delivery of the program is carried out by staff located in 67 HMP offices located in six regions (see Map). These regions are:

- Newfoundland and Labrador;
- Maritimes (parts of New Brunswick and Nova Scotia);
- Gulf (parts of New Brunswick and Nova Scotia, as well as all of Prince Edward Island);
- Quebec;
- Central and Arctic (Alberta, Saskatchewan, Manitoba, Ontario, the Northwest Territories and Nunavut); and
- Pacific (British Columbia, and the Yukon Territory).

[3] See Glossary in the *Policy for the Management of Fish Habitat* for the definition of compensation < http://www.dfo-mpo.gc.ca/canwaters-eauxcan/infocentre/legislation-lois/policies/fhm-policy/gloss_e.asp >.

2.3.1 Scientific Support

Timely, relevant science is a fundamental requirement for strengthening the foundation and credibility of the program in support of the objectives of DFO's *Policy for the Management of Fish Habitat*. Science Sector's, Science Program conducts research to address knowledge gaps related to habitat conservation, restoration and improvement. Research projects are conducted by Environmental Science staff in all Regions, addressing questions of importance to Habitat Managers. Among the areas of research pursued in this fiscal year are:

- 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;
- assessing techniques 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 a habitat compensation project at the Rose Blanche Hydroelectric Development in meeting compensation objectives in a 'habitat productive capacity' framework;
- developing the knowledge necessary to make decisions regarding stream flows and water allocations, with regard to maintaining sufficient water for fish; and
- assessing the impacts of land use practices on aquatic habitat, with an aim to reducing the impacts of industries such as forestry, farming, and mining.

The results of these research projects are transferred to HMP staff in the form of peer reviewed advice, workshops, published reports, fact sheets, briefings, and personal consultations. Science provides advice to Habitat Managers at levels ranging 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. This fiscal year, advice was provided to Habitat Management in many areas, including:

- the habitat effects of fin-fish aquaculture on the marine environment;
- the scientific validity of a proposed assessment methodology to examine the impacts of large-scale hydroelectric development;
- the use of valued components in the environmental impact statement of the Mackenzie Gas Pipeline;
- the publication of the proceedings of the joint Science and Habitat Management Technology Transfer workshop (Randall et al. 2004) highlighting contributions towards improving Fish Habitat Management;

- the provision of scientific advice on a referral by referral basis in relation to determination of HADDs of habitat, monitoring and compensation requirements, etc.;
- review of the Environmental Impact Statements, effects monitoring programs, compensation effectiveness, and supporting documents in relation to oil and gas developments, mining, hydroelectric developments, and other major industrial sectors; and
- preparation of 'state of knowledge' papers on effects of sedimentation, habitat structure and cover, and changes in dissolved oxygen and temperature to support Habitat Management's Risk Management Framework and the Pathway of Effects concepts.

2.3.2 Compliance and Enforcement Support

The fish habitat protection and pollution prevention provisions of the *Fisheries Act* provide the legislative basis for protecting fish and fish habitat: however, they must be administered and enforced in a fair, predictable and coherent manner. The compliance monitoring and enforcement support for the habitat protection provisions of the *Fisheries Act* are provided by Fisheries and Aquaculture Management Sector's C&P Program. Compliance and enforcement support for the pollution prevention provisions of the *Fisheries Act* are provided by EC's Environmental Emergencies Program and Enforcement Program.

2.4 Environmental Process Modernization Plan

This fiscal year, the Department continued to reform its HMP with the implementation of its Environmental Process Modernization Plan (EPMP). The EPMP is aimed at providing more efficient and effective delivery of its habitat responsibilities, improved predictability and timeliness in decision making, improved harmonization of processes with others, particularly in the area of federal-provincial environmental assessments (EA)s for major projects, and strengthening partnerships with others – be it other levels of government, the industry sector, NGOs and Aboriginals – to maximize opportunities to conserve and protect fish habitat in ways that respect the interests of others.

The EPMP supports the Government of Canada's "Smart Regulation" initiative by creating a more modern regulatory system that provides decisions in a more timely, efficient and effective manner that is "enabling" of sustainable development. The EPMP has received positive reviews by many stakeholders during this fiscal year and was cited as a concrete and significant example of "smart regulation" in practice by an independent non-government body this past year.

The EPMP focussed on five key elements in modernizing its HMP:

The first is the development and implementation of a science-based Risk Management Framework, so that Program resources and efforts can be re-allocated from the review of routine, low risk activities, to the review of projects with the greatest degree of risk to fish

habitat of importance to Canadians. A Risk Management Framework was developed and successfully piloted in a number of cases, including the Yukon Placer mining industry, which formed the foundation of a new integrated regulatory regime for this industry. For 2005-2006, DFO will continue to implement the Risk Management Framework through its integration into the HMPs decision-making process.

Second, regulatory streamlining practices for low risk activities, which eliminate the need for repetitive and time-consuming reviews by DFO, are being developed and implemented. Management tools, such as "Operational Statements" (OPS)s and guidelines, are being created to identify up-front the mitigation measures needed to avoid harm to fish habitat for routine low risk activities in or near water. These tools provide proponents with the certainty they need to be in compliance with the *Fisheries Act* and the measures Canadians need to follow in order to protect our fish habitat. These initiatives will allow for the reallocation of effort and resources to review higher risk activities and other activities like monitoring and watershed planning. DFO developed 13 *Fisheries Act* OPSs – representing a majority of low risk activities reviewed by DFO annually - and steps were taken to support a "one-window" Provincial/Territorial delivery system for OPS where possible. In addition, a review of industry best management practices was undertaken in co-operation with industry partners to ensure that the appropriate habitat protection measures were included. For 2005-2006, DFO will implement the OPS, and further develop additional OPS for low risk activities.

The third component of the EPMP involves internal improvements to program coherence and predictability. This includes the development of policy manuals for practitioners in the field, a mandatory training program for DFO's Habitat Management staff, improved internal governance and communications tools, and improved performance measures, evaluation and reporting to Canadians. Progress was made in all of these areas. These internal initiatives are improving predictability in decision-making as well as program fairness and credibility, by ensuring that the basis upon which program decisions are made are known to all. The development of a habitat monitoring and performance measurement framework, scheduled to be implemented in 2005-2006, will encourage continuous learning and improvement and provide clear and transparent information to Canadians about HMP's results and how they will be measured.

The fourth EPMP component is a renewed emphasis on partnering with provinces, industry, Aboriginal groups, NGOs, and municipalities to identify and collaborate on common issues and priorities. This component recognizes that the regulatory system is part of a complex global system, which requires meaningful partnering arrangements that reflect shared stewardship of this valuable resource. For example, DFO completed a formal cooperative Memorandum of Understanding with Nova Scotia building on the recently signed Memorandum of Understanding with British Columbia, Prince Edward Island, and Manitoba. Negotiations on Memoranda of Understanding are underway with Newfoundland and Labrador, New Brunswick, Ontario and Saskatchewan and Yukon. In addition, DFO signed an agreement with seven major national resource industry associations (known as the National Resource Industry Associations) to complement an existing agreement with the Canadian Electrical Association. During the past year, work continued with other partners such as the Federation of Canadian Municipalities, Aboriginal groups and conservation

groups, and for 2005-2006, DFO will work to develop formal arrangements with these groups. These partnerships and consultations are achieving the common objective of more effective and efficient protection of fish habitat and a better understanding by DFO of the interests and priorities of others.

As the fifth component of the EPMP, DFO developed and implemented a new management model for the EA of "major projects" – projects that are complex, multi-jurisdictional and have nationally significant socio-economic implications. This new approach is aimed at strengthening accountabilities at senior levels within the Department, improving interdepartmental co-ordination and communication, improving opportunities to harmonize federal and provincial reviews and facilitating more timely and more effective application of the EA process. DFO established a new organizational model for the management of EAs of major projects in National Headquarters and in the Regions, which included the development of new policies and protocols that further support the EPMP principles. For example, the Policy on early triggering of *CEAA* was developed and implemented in order to improve timeliness of EAs and the likelihood of harmonization with other jurisdictions and/or levels of government. For 2005-2006, work will continue on policy development and implementation.

Near the end of this fiscal year, a sixth component, "habitat compliance modernization" was added to the EPMP implementation process. In 2005-2006, work will begin in this area that reflects the Program's increased emphasis on monitoring and auditing of its regulatory decisions and resourcing the full continuum of compliance activities - from compliance promotion, to enhanced compliance monitoring/auditing, to enforcement where necessary. As with the other elements of the EPMP, this new direction will, over time, provide for increased effectiveness in protecting fish habitat of value to Canadians.

3.0 Review of Development Proposals (Referrals) under the Fish Habitat Protection Provisions of the *Fisheries Act*

The administration of the Fish Habitat Protection Provisions of the *Fisheries Act* is the responsibility of DFO's HMP. The HMP accomplishes this in part by reviewing development proposals (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. Following the review, 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 to 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 (to be implemented in 2005-2006), or an "Authorization" pursuant to subsection 35(2) of the Act.

It is important to note that 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, as there is no such authority in the section. However, to ensure that they are not in violation of the *Fisheries Act*, proponents voluntarily submit information about their proposed works or undertakings to determine if they comply with the habitat protection provisions of the *Fisheries Act*.

Prior to issuing an Authorization, HMP staff must also verify whether the proponent's project under review adversely affects wildlife species listed under *SARA*, or their critical habitat, and ensure that an EA under *CEAA* is completed. For development projects requiring such decisions, DFO becomes a responsible authority under the *CEAA* and HMP staff must conduct EAs that consider broader environmental issues than those directly associated with fish habitat. For additional information regarding EAs conducted by HMP staff please see the Canadian Environmental Assessment Registry (CEAR) at the following address: http://www.ceaa-acee.gc.ca/050/index_e.cfm.

3.1 Summary of Habitat Referrals by Work Category

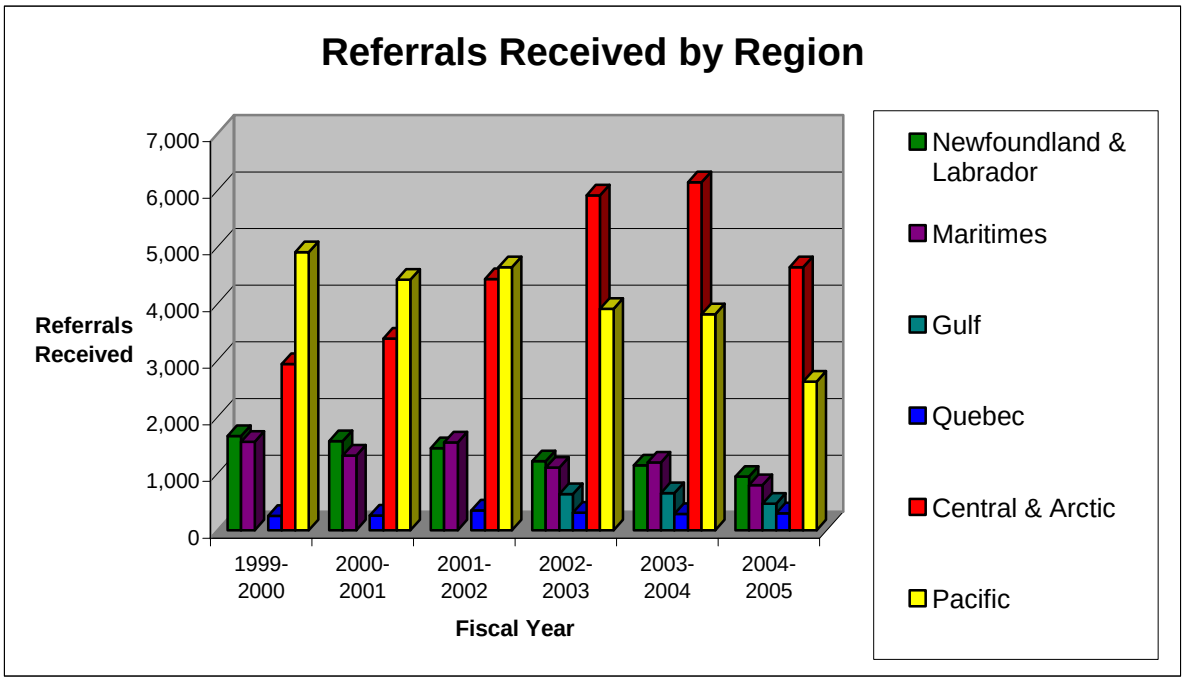
In 2004, work categories were modified in order to improve the consistency in the categorization of referrals. In order to accomplish this, a working group consisting of DFO field staff from each Region worked on the development of a new work category list. Field staff then updated the referrals for this fiscal year with the new work categories. Assessors are now required to categorize their referrals by the activity that may affect fish or fish habitat, instead of by the type of development proposal.

Table 1: Work Categories Fiscal Year 2004-2005	
Aquaculture	Includes all forms of aquaculture in marine, estuarine and freshwater, 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 pulpmills and sawmills. Includes underwater log salvage.
Mineral, Aggregate and Oil & Gas Extraction	Includes all forms of mining and mineral exploration, including offshore and onshore oil and gas exploration and production, as well as ocean mining.
Seismic Exploration	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.

Table 2:
Summary of Habitat Referrals by Work Category
Fiscal Year 2004-2005

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.	Seis. Expl.	Shor. Works	Struct. in Water	Water Mgmt	Water-course Xing	Other*	**Total**
Newfoundland and Labrador	28	1	2	36	32	4	25	2	43	15	206	163	31	292	64	**944**
Maritimes	21	3	0	29	1	26	55	0	5	6	117	141	40	306	43	**793**
Gulf	38	2	1	69	0	23	33	0	0	1	53	55	36	138	17	**466**
Quebec	4	1	1	35	1	13	19	0	0	2	53	66	17	79	6	**297**
Central and Arctic	1	25	2	170	0	23	497	10	174	28	682	818	318	1,644	251	**4,643**
Pacific	43	19	5	42	0	69	245	112	295	1	377	227	252	396	537	**2,620**
Total	**135**	**51**	**11**	**381**	**34**	**158**	**874**	**124**	**517**	**53**	**1,488**	**1,470**	**694**	**2,854**	**919**	**9,763**

* "Other" includes referrals identified with the Work Categories of "To be Determined", "Undetermined" and "Other".



3.1.1 Newfoundland and Labrador Region

This fiscal year, the Newfoundland and Labrador Region received approximately 944 referrals describing a variety of proposed works or undertakings that could potentially affect fish or fish habitat. This represents a 17.4% decrease in referrals since last fiscal year, when 1,143 referrals were reviewed.

This decrease can be attributed to the number of labour disputes involving mining companies, loggers and silviculture workers, a telecommunications company, and the Provincial public service. These disputes resulted in delays in calling tenders, and work not being started in 2004-2005.

3.1.2 Maritimes Region

This fiscal year, the Maritimes Region received approximately 793 referrals describing a variety of proposed works or undertakings that could potentially affect fish or fish habitat. This represents a 33.8% decrease in referrals since last fiscal year.

The decrease in referrals is due to the successful implementation of a Habitat risk management model. Maritimes Region worked with the New Brunswick Department of Environment and Local Government concerning the use of the provisional watercourse alteration guidelines – effectively removing these low risk referrals from the DFO referral process. In 2004-2005, staff worked to implement this process with Nova Scotia Department of Environment and Labour for referrals to streamline the process in Nova Scotia. The

process forms the basis for the regional implementation of the National OPSs in Maritimes Region, pursuant to the EPMP.

3.1.3 Gulf Region

This fiscal year, the Gulf Region received approximately 466 referrals describing a variety of proposed works or undertakings that could potentially affect fish habitat. This represents a 28.9% decrease in referrals since last fiscal year.

The reduction in referrals was likely due to the following:

- Effects of a severe storm in 2003-2004 caused significant damage to structures resulting in immediate repairs and rebuilds; therefore, fewer structures needed repair this fiscal year.
- Guidelines for several categories of work, namely marine coastal erosion protection and freshwater erosion protection were incorporated within the Province of Nova Scotia provincial permitting processes, resulting in these projects no longer being submitted for review.
- A decision process established with the province of Prince Edward Island, pursuant to the 2002 Memorandum of Understanding, to address low-risk activities, resulting in these activities no longer being submitted for review.
- The incorporation of the national operating statements into provincial guidelines for low-risk activities as defined by the Risk Management Framework.

3.1.4 Quebec Region

This fiscal year, the Quebec Region received approximately 297 referrals describing a variety of proposed works or undertakings that could potentially affect fish habitat. This represents a 3.5% increase in referrals since last fiscal year.

3.1.5 Central and Arctic Region

This fiscal year, the Central and Arctic Region received approximately 4,643 referrals describing a variety of proposed works or undertakings that could potentially affect fish habitat. This represents a 24.4% decrease in referrals since last fiscal year.

Due to the large number of referrals received by this region, below is a further breakdown by regional area:

3.1.5.1 Ontario-Great Lakes Area

The Ontario-Great Lakes Area (OGLA) and partners received approximately 4,049 habitat referrals describing a variety of proposed works or undertakings that could potentially affect fish habitat. The OGLA reviewed 2,040 representing an 18.8% decrease of referrals since

last fiscal year while the Conservation Authorities reviewed 1,508 and Parks Canada Agency reviewed 503 representing an increase of 33%.

3.1.5.2 Western Arctic Area

The Western Arctic Area received approximately 102 referrals describing a variety of proposed works or undertakings that could potentially affect fish habitat. This represents a 24.4% decrease of referrals since last fiscal year.

The decrease in referrals received was predominantly due to the economic environment and some oil and gas activities being put on hold pending a decision regarding the Mackenzie Pipeline project.

3.1.5.3 Eastern Arctic Area

The Eastern Arctic Area received approximately 159 referrals describing a variety of proposed works or undertakings that could potentially affect fish habitat. This represents a 24.2% increase of referrals since last fiscal year.

The majority of referrals focused on scientific research, exploration activities, rural development, transportation infrastructure, municipal infrastructure and marine infrastructure. The increase can be primarily attributed to an increase in scientific research, as well as an increase in marine infrastructure, rural development, municipal infrastructure, and transportation infrastructure, which is reflective of the developing nature of the territory.

3.1.5.4 Prairies Area

The Prairies Area received approximately 2,342 referrals describing a variety of proposed works or undertakings that could potentially affect fish habitat. This represents a 30.3% decrease of referrals since last fiscal year.

Key indicators for the reduction include: increased education, stewardship and partnering opportunities have increased public knowledge. This has translated into fewer referrals, as the public and industry are more aware of what they must send to DFO for review versus what they do not need to send to DFO for review; and, the use of OPSs (Interim OPSs included) has contributed to a reduction in referrals.

3.1.6 Pacific Region

This fiscal year, the Pacific Region received approximately 2,620 referrals describing a variety of proposed works or undertakings that could affect fish habitat. This represents a 31.3% decrease in referrals since last fiscal year.

This decrease can be attributed in part to:

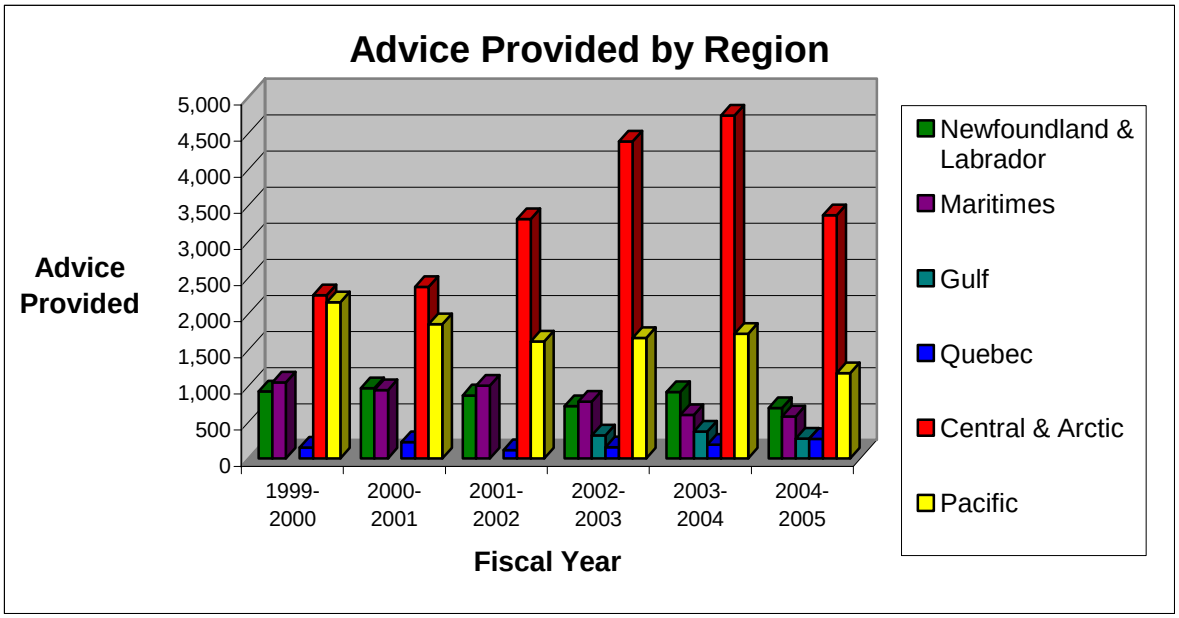
- streamlining initiatives have been underway within Area offices for numerous years that have risk managed various referral sectors via protocols or partnerships that filter referrals to best management practices, guidelines and/or other agencies rather than DFO. Examples of streamlining referral activities include federal/provincial referral committees, foreshore mapping atlases, water allocation mapping tools, and operational protocols with industry sectors; and
- changes in the provincial government's service delivery model and the introduction of performance based legislation have meant a reduction or cessation of referrals in some sectors.

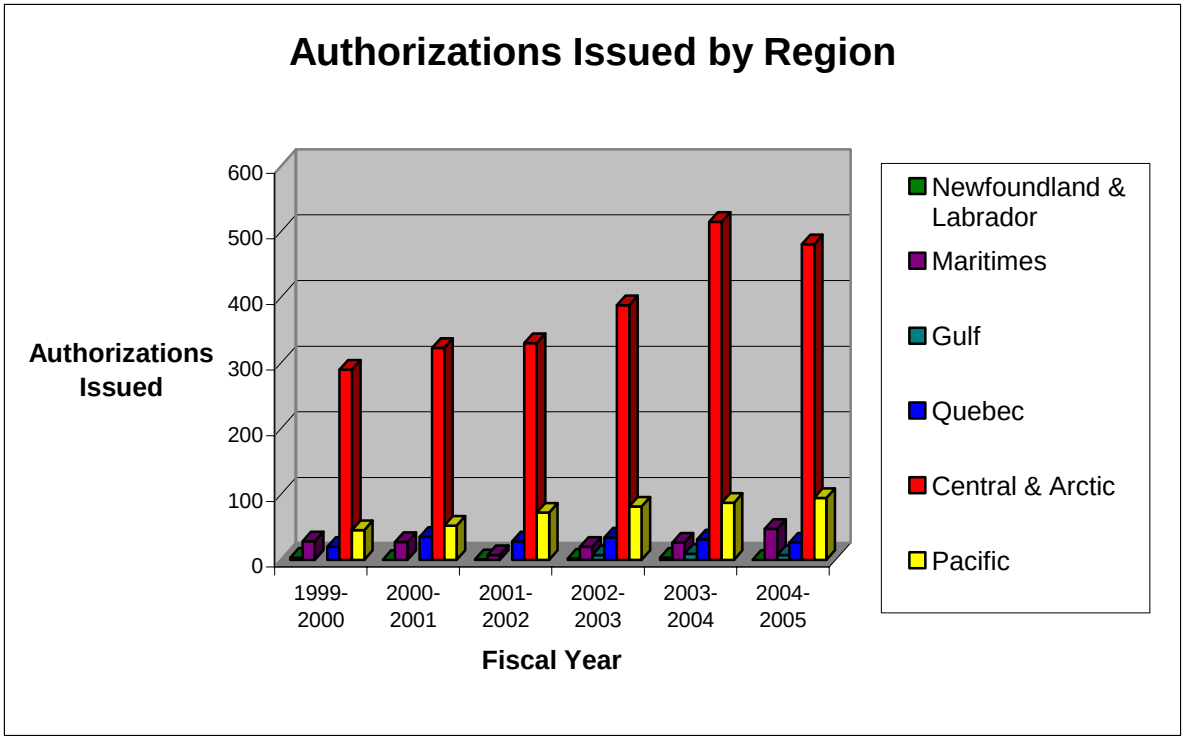
3.2 Advice Provided and Authorizations Issued

Table 3:
Advice Provided and Authorizations Issued
Fiscal Year 2004-2005

REGION	Advice Provided to Proponent or Others**	Authorizations Issued	TOTAL
Newfoundland and Labrador	699	0	**699**
Maritimes	580	47	**627**
Gulf	272	7	**279**
Quebec	268	26	**294**
Central and Arctic	3,366	481	**3,847**
Pacific	1,178	94	**1,272**
TOTAL	**6,363**	**655**	**7,018**

** 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.





3.2.1 Newfoundland and Labrador Region

This fiscal year, the Newfoundland and Labrador Region provided formal advice to proponents, provincial, and federal agencies on 699 occasions regarding a variety of proposed works or undertakings that could affect fish habitat.

The Region did not issue any Authorizations for the HADD of fish habitat during this fiscal year. The reduction in the number of Authorizations is attributable to the time and effort spent working with proponents to relocate and/or redesign projects to minimize or avoid adverse effects on fish and fish habitat, such that Authorizations are not required.

3.2.2 Maritimes Region

This fiscal year, the Maritimes Region provided advice on 580 occasions regarding a variety of proposed works or undertakings that could affect fish habitat.

The Region issued 47 Authorizations for the HADD of fish habitat during this fiscal year.

3.2.3 Gulf Region

This fiscal year, the Gulf Region provided advice on 272 occasions regarding a variety of proposed works or undertakings that could affect fish habitat.

The Region issued seven (7) Authorizations for the HADD of fish habitat during this fiscal year.

3.2.4 Quebec Region

This fiscal year, the Quebec Region provided advice on 268 occasions regarding a variety of proposed works or undertakings that could affect fish habitat.

The Region issued 26 Authorizations for the HADD of fish habitat during this fiscal year.

3.2.5 Central and Arctic Region

This fiscal year, the Central and Arctic Region provided advice on 3,366 occasions regarding a variety of proposed works or undertakings that could affect fish habitat.

The Region issued 481 Authorizations for the HADD of fish habitat during this fiscal year.

Due to the large number of instances where this region provided advice, below is a further breakdown by regional area:

3.2.5.1 Ontario–Great Lakes Area

This fiscal year, the Ontario-Great Lakes Area (OGLA) provided advice on 1,459 occasions regarding a variety of proposed works or undertakings that could affect fish habitat.

OGLA issued 290 Authorizations for the HADD of fish habitat during this fiscal year. Of the 290 authorizations, 92 of those were issued under the Class Authorization Process for agricultural municipal drain maintenance works.

3.2.5.2 Western Arctic Area

This fiscal year, the Western Arctic Area provided advice on 89 occasions regarding a variety of proposed works or undertakings that could affect fish habitat.

The Area issued three (3) Authorizations for the HADD of fish habitat during this fiscal year related to contaminated site remediation.

3.2.5.3 Eastern Arctic Area

This fiscal year, the Eastern Arctic Area provided advice on 91 occasions regarding a variety of proposed works or undertakings that could affect fish habitat.

The Area issued one (1) Authorization for the HADD of fish habitat during this fiscal year.

3.2.5.4 Prairies Area

This fiscal year, the Prairies Area provided advice on 1,727 occasions regarding a variety of proposed works or undertakings that could affect fish habitat.

The Area issued 187 Authorizations for the HADD of fish habitat during this fiscal year.

3.2.6 Pacific Region

This fiscal year, the Pacific Region provided advice on 1,178 occasions regarding a variety of proposed works or undertakings that could affect fish habitat.

The Region issued 94 Authorizations for the HADD of fish habitat during this fiscal year.

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

The DFO, Conservation and Protection Program (C&P) 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*.

4.1 Legislative Basis and Application of the Compliance and Enforcement

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. The enforcement and compliance monitoring activities of Fishery Officers are key to protecting Canada's fish and fish habitat.

Measures to *promote compliance* include the following: communication of information; public education; consultation with parties affected by the habitat protection provisions of the *Fisheries Act*; and technical assistance as required.

Enforcement is achieved through the exercise or application of powers granted under legislation. Enforcement of habitat protection provisions is carried out through: inspections to monitor or verify compliance; investigations of alleged violations; the issuance of warnings, Inspector's Directions, Ministerial Orders, etc. without resorting to court action; and court actions such as injunctions, prosecution, court orders upon conviction and suits for recovery of costs.

The six Guiding Principles that govern the application of the *Fisheries Act* are identified in the *Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act*[4]. The Policy, which was published in November 2001, was co-developed by DFO and EC.

The Guiding Principles are as follows:

- compliance with the habitat protection and pollution prevention provisions and their accompanying regulations is mandatory.

[4] The full text of the *Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act* can be found at : < http://www.ec.gc.ca/ele-ale/default.asp?lang=en&n=D6765D33 >.

- compliance will be encouraged through communication with parties affected by the habitat protection and pollution prevention provisions.
- enforcement personnel will administer the provisions and regulations in a manner that is fair, predictable, and consistent. Rules, sanctions and processes securely founded in law will be used.
- enforcement personnel will administer the provisions and accompanying regulations with an emphasis on preventing harm to fish, fish habitat or human use of fish caused by physical alteration of fish habitat or pollution of waters frequented by fish. Priority for action to deal with suspected violations will be guided by:
  - the degree of harm to fish, fish habitat or human use of fish caused by physical alteration of fish habitat or pollution of waters frequented by fish, or the risk of that harm; and/or
  - whether or not the alleged offence is a repeat occurrence.
- enforcement personnel will take action consistent with this *Compliance and Enforcement Policy*.
- The public will be encouraged to report suspected violations of the habitat protection and pollution prevention provisions of the *Fisheries Act*.

4.2 Summary of DFO Habitat Enforcement Activities

Table 4:
Summary of DFO Habitat Enforcement Activities
Fiscal Year 2004-2005

REGION	Warnings Issued	Charges Laid
Newfoundland and Labrador	1	0
Maritimes	1	6
Gulf	0	2
Quebec	0	0
Central and Arctic	41	23
Pacific	30	15
TOTAL	73	46

4.3 Convictions Reported Under the Habitat Protection Provisions of the *Fisheries Act*

Table 5:
Convictions Reported under the Habitat Protection Provisions of the *Fisheries Act*
Fiscal Year 2004-2005

REGIONS	35(1)	36(3)	38(6)	TOTAL
Newfoundland and Labrador	2	0	0	2
Maritimes	0	0	0	0
Gulf	3	0	0	3
Quebec	0	0	0	0
Central and Arctic	10	2	1	13
Pacific	2	4	0	6
TOTAL	17	6	1	24

4.4 Summary of Convictions

Table 6:
Summary of Convictions
Fiscal Year 2004-2005

Region	Province	Area	Waterbody	Section	Project Description	Conviction Date	Fine	Sentence details
Newfoundland & Labrador	Newfoundland & Labrador	ENL	Brigus River	35(1)	Excavation in river / siltation	15-Feb-05	$5,000	$2,000 for general deterrent, $3,000 court order for conservation & protection of fish habitat.
Newfoundland & Labrador	Newfoundland & Labrador	ENL	Brigus River	35(1)	Excavation in river / siltation	05-Oct-04	$1,000	
Gulf	Nova Scotia	GNS	Mattatall Lake	35(1)	Sea rock blasting and removal	19-May-04	$1,000	In addition to fine, $130,000 for assessment, restoration and enhancement of lobster habitat in the area. $15,000 for conduct of educational seminars.
Gulf	Nova Scotia	GNS	Northumberland Strait	35(1)		21-Jun-04	$35,000	
Gulf	New Brunswick	ENB	Nicholas River	35(1)	Siltation into river from mill	25-Oct-04	$1,000	
Central & Arctic	Ontario	OGLA	Hogg's Bay (Midland)	38(6)	Shoreline work / cement	14-Oct-04	$1,000	The fine will was directed towards the Severn Sound Environmental Association. Restoration activities before the guilty plea were undertaken at a cost of about $50,000.
Central & Arctic	Ontario	OGLA	Little Lake Joseph	35(1)	Shoreline work / cement	24-Jul-04	$1,500	Site was also restored and concrete removed.
Central & Arctic	Ontario	OGLA	Muskoka River (Bracebridge)	36(3)	Road/Bridge construction	01-Oct-04	$25,000	The fine was directed a study of the Muskoka watershed.
Central & Arctic	Ontario	OGLA	Wabigoon Lake	35(1)	Shoreline stabilization	02-Dec-04	$12,500	Accused was ordered to restore the shoreline and habitat

Table 6:
Summary of Convictions
Fiscal Year 2004-2005

Region	Province	Area	Waterbody	Section	Project Description	Conviction Date	Fine	Sentence details
Central & Arctic	Ontario	OGLA	Soper Creek (Whitby)	35(1)	Creek destroyed by removal of trees	16-Dec-04	$6,000	$4,000 of the fine went towards restoration of fish habitat in the Soper Creek watershed. The site of the offence was rehabilitated by the company at a cost of $50,000.
Central & Arctic	Manitoba	Prairies	Assiniboine River	35(1)	Agricultural	12-Jan-05	$7,500	
Central & Arctic	Ontario	OGLA	Little Lake (Blind River)	35(1)	Culvert installation	21-Jan-05	$3,000	
Central & Arctic	Ontario	OGLA	Georgian Bay (Midland)	35(1)	Removal of rocks	16-Dec-04	$1,000	Proceeds of fine will go to restoration of Severn Sound fish habitat. Accused spent $45,000 restoring the site.
Central & Arctic	Ontario	OGLA	Lake Consecon (Picton)	35(1)	Construction of cement wall	14-Jul-04	$0	Accused paid for the removal of the cement wall and other repair of fish habitat.
Central & Arctic	Ontario	OGLA	St. Lawrence River (Kingston)	35(1)	Built dock which exceeded limits set by the authorization	26-Nov-04	$5,000	The site was restored by the accused at an estimated cost of $12,000
Central & Arctic	Ontario	OGLA	Lake Huron (Gore Bay, Ont)	36(3)		14-Oct-04	$10,000	5 accused fined $2,000 each. Prior to the conviction, the accused had spent more than $100,000 to stabilize the site.
Central & Arctic	Ontario	OGLA	Big Otter Creek (Woodstock)	35(1)	Dam/culvert construction	18-Feb-05	$20,000	$16,000 of the fine was directed to Long Point Region Conservation Authority. Restoration work cost the accused $60,000.
Central & Arctic	Ontario	OGLA	Six Mile Lake (Bracebridge)	35(1)		10-Feb-05	$5,000	Voluntary restoration cost the accused $4,000.
Pacific	British Columbia	South Coast	Gibsons Harbour	36(3)	Fuel spill / dump	20-Sep-04	$500	$2,500 for Habitat enforcement

Table 6:
Summary of Convictions
Fiscal Year 2004-2005

Region	Province	Area	Waterbody	Section	Project Description	Conviction Date	Fine	Sentence details
Pacific	British Columbia	North Coast	Sumgas Creek	35(1)	Excavation and dredging in river / siltation	27-Sep-04	$1,000	$60,000 order, $10,000 mitigation works on Sumgas Creek, $5,000 order of assessment.
Pacific	British Columbia	Central Coast	Cordero Channel	36(3)	Diesel oil spill	24-Nov-04	$500	$500 to Receiver General and $12,000 to Gillard Pass Fisheries Association for fish enhancement in the Stuart Island area.
Pacific	British Columbia	Central Coast	Cordero Channel	36(3)	Diesel oil spill	24-Nov-04	$500	$500 to Receiver General and $10,000 to Gillard Pass Fisheries Association for fish enhancement in the Stuart Island area.
Pacific	British Columbia	British Colum-bia Interior	Quesnel River	36(3)	Sewer line leak into river.	01-Dec-04	$1,000	$1,000 fine and $19,000 to be split equally between EC and DFO for conservation and protection of fish habitat on Quesnel River.

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

In 1978, the Prime Minister confirmed the assignment, to the Minister of the Environment, of the responsibility for the enforcement of the pollution prevention provisions of the *Fisheries Act* – namely section 34 and sections 36 to 42 of the *Fisheries Act*. These sections of the Act deal with the deposit of deleterious substances to waters frequented by fish. In addition, a 1985 Memorandum of Understanding between DFO and EC outlines the responsibilities of DFO and EC with respect to the administration and enforcement of the pollution prevention provisions of the *Fisheries Act*, and creates several mechanisms to facilitate information sharing and cooperation.

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

This section of the annual report provides an overview of two main programs that EC uses to fulfill its enforcement mandate. It also includes an update on the status of three bilateral agreements that involve the administration and enforcement of the pollution prevention provisions of the *Fisheries Act*, and a brief review of some of the major issues, developments, and activities for this fiscal year.

5.1 Environment Canada Programs

In order to fulfill its obligations with respect to the pollution prevention provisions of the *Fisheries Act*, EC has implemented two major national programs: the Environmental Protection Enforcement Program, and the Environmental Emergencies Program. Both programs operate within EC's five administrative regions (Atlantic, Quebec, Ontario, Prairie and Northern, and Pacific and Yukon).

During this fiscal year, the Environmental Protection and Wildlife Protection components of the enforcement program began a restructuring process, which will result in a newly-formed Compliance and Enforcement Office, to be led by a Chief Enforcement Officer. The Chief Enforcement Officer will have direct authority over enforcement operations in EC's five regions through the headquarters National Directors of Environmental and Wildlife Enforcement and the Regional Directors of enforcement for both those subject areas. The new streamlined organization will co-ordinate all of EC's enforcement activities and ensure national consistency.

5.1.1 The Environmental Emergencies Program

EC's Environmental Emergencies Program plays a fundamental role with regard to the deposit of deleterious substances into water frequented by fish. Subsection 38(5) of the *Fisheries Act* states that persons who own or are responsible for a deleterious substance, or person who cause or contribute to an abnormal deposit of the deleterious substance into 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 abnormal deposit does occur, environmental emergencies personnel provide environmental and technical advice to polluters, response organizations and other levels of government. In addition, environmental emergencies personnel:

- receive notifications and reports of spills, leaks and other abnormal deposits of harmful substances into waters frequented by fish;
- visit the site of abnormal deposits of deleterious substances into waters frequented by fish, in order to observe or to carry out spill response activities;
- collect and analyze relevant information at the site of the deposit; and
- issue inspector's directions requiring polluters to take remedial or preventive measures, should they fail to take all reasonable measures to prevent the harmful deposit as required under subsection 38(5) of the *Fisheries Act*, or to counteract, mitigate, or remedy any adverse effects that result from the deposit.

Once the environmental emergencies officers have carried out their primary emergency responsibilities, they will also collect/preserve evidence to ensure that EC fishery officers and fishery inspectors can take the appropriate actions with regards to the pollution incident.

During this fiscal year, the Environmental Emergencies Program received 5,379 reports of abnormal deposits of a deleterious substance into water frequented by fish, and environmental emergency officers who are fishery inspectors conducted 143 on-scene inspections to verify that the polluter was in compliance with subsection 38(5) of the Act.

The scope of on-scene inspections conducted by environmental emergency officers who are also fishery inspectors for the purposes of subsection 38(5) of the Act varies across regions, depending on administrative agreements and working arrangements that exist with provincial and territorial governments. Effort is taken to minimize duplication of effort while also ensuring that the environment is adequately protected against abnormal deposits of deleterious substances into water frequented by fish.

In addition, environmental emergency officers partner with other government and private agencies to gather and analyze information, and develop a coordinated incident response to ensure appropriate remedial measures are taken.

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

5.1.2 The Environmental Enforcement Program

The restructuring process that will consolidate the Environmental and Wildlife components of the Enforcement branch will have no impact on the mandate of the Program to enforce the law secure compliance with the *Fisheries Act*, the *Canadian Environmental Protection Act*, 1999 (*CEPA 1999*), and with any regulations made under those Acts. EC fishery inspectors and fishery officers in the Department's five administrative regions conduct inspections and investigations, and, in the event of alleged violations, apply a number of enforcement tools including, issuing written warnings or directions and laying charges in order to secure compliance with subsection 36(3) of the *Fisheries Act* and with any regulations made under subsection 36(5) of that Act.

EC fishery inspectors and fishery officers record, track, and analyze enforcement activities and data using an electronic database called the National Emergencies and Enforcement Management Information System and Intelligence System. The tables below summarize some key enforcement data for this fiscal year.

Table 7:
Summary of Enforcement Activities
Fiscal Year 2004-2005

	Written Warnings	Charges Laid
Environment Canada	190	21

Explanatory notes:
The activities listed above written warnings and charges laid are tabulated at the section level of a regulation. Example, if the outcome of an inspection is the issuance of a written warning, which relates to three sections of a given regulation the number of written warnings is three.

Table 8:
Convictions Reported under the Pollution Prevention Provisions of the *Fisheries Act*
Fiscal Year 2004-2005

	36(1)	36(3)	37(1)	37(2)	37(3)	38(4)	38(6)	TOTAL
Environment Canada	-	3	-	-	-	-	-	3

Table 9:
National Enforcement Activities Carried Out under the *Fisheries Act*
Fiscal Year 2004-2005

	Total Inspections	On-site Inspections	Off-Site Inspections	Investigations *	Prosecutions**	Charges	Convictions	Directions	Written Warnings
Subsection 36(3)	1,754	719	1,035	46	13	15	3	22	72
Chlor-Alkali Mercury Liquid Effluent and Guidelines	12	2	10	0	0	0	0	0	0
Meat and Poultry Products Plant Liquid Effluent and Guidelines	90	1	89	0	0	0	0	0	0
Petroleum Refinery Liquid Effluent and Guidelines	181	10	171	1	0	0	0	0	2
Port Alberni Pulp and Paper Effluent	1	0	1	0	0	0	0	0	0
Potato Processing Plant Liquid Effluent and Guidelines	59	5	54	0	0	0	0	0	0
Pulp and Paper Effluent	1,628	74	1,554	4	0	0	0	5	47
Guidelines for Effluent Quality and Wastewater Treatment at Federal Establishments	2	1	1	0	0	0	0	0	0
Metal Mining Effluent	599	69	530	6	2	6	0	4	69
Total	**4,326**	**881**	**3,445**	**43**	**13**	**21**	**3**	**31**	**190**

Additional statistics:
There were 34 referrals to other federal government departments, provincial government departments, municipal governments, for and/or to another agency.

Out of 43 investigations* started in this fiscal year, six ended and 37 are still on-going. In addition, there were 117 investigations, which started before this fiscal year: 54 were completed and 63 are still on-going.

Explanatory notes:
The statistics are tabulated as follows:

The number of inspections relates to the number of regulatees inspected for compliance under each of the applicable regulations.

* Investigations are tabulated by number of investigation files. An investigation file may include activities relating to another federal Act and may include one or more regulations. Therefore, the total number of investigations shown by regulation does not add up to the total shown at the legislation level.

All measures (except for prosecutions) are tabulated at the section level of a regulation. For example, if the outcome of an inspection is the issuance of a written warning, which relates to three sections of a given regulation, the number of written warnings is three.

**The number of prosecutions is represented by the number of regulatees that were prosecuted by charged date, regardless of the number of regulations involved.

5.2 *Fisheries Act* Enforcement Activities by Region

5.2.1 Atlantic Region

5.2.1.1 Aquaculture

In June 2004, the EC Enforcement Division in Atlantic Region conducted a field operation that focused on the overall environmental management and regulatory requirements in the salmon aquaculture industry in southwest New Brunswick. 'Operation Aquafin' included 42 participants from five different provincial and federal agencies, including EC, DFO, the Canadian Food Inspection Agency and the New Brunswick Department of Agriculture, Fisheries and Aquaculture.

During the four-day exercise, EC fishery inspectors/fishery officers and their regulatory partners inspected 47 salmon farms in southwest New Brunswick. At seven salmon farms, a remotely-operated underwater vehicle equipped with a video camera was deployed to record the condition of the seafloor and sediments under and adjacent to the site. Inspection results were compiled and shared with all participating departments. A number of regulatory and scientific follow-up activities, including post operation debriefings with our partners and the development of a final report shared with the industry association were carried out. An inspector's direction was also issued as a result of these follow-up activities. Closer cooperation between partners in future aquaculture inspections is planned.

5.2.1.2 Municipal Wastewater

Ongoing Actions

In May 2003, an EC fishery inspector issued an inspector's direction to a municipality in Nova Scotia in response to complaints to the province of Nova Scotia regarding the discharge of the municipal effluent to water frequented by fish. The provincial Department of Environment referred the matter to EC for follow up. The direction ordered the municipality to take all reasonable measures to comply with the pollution provisions of the *Fisheries Act*. The investigation into the release is ongoing.

5.2.1.3 Pulp and Paper

Concluded Actions

An EC investigation into a spill of paper mill effluent into Little River in Saint John, New Brunswick resulted in charges under subsection 36(3) of the *Fisheries Act* being laid on May 28, 2004 against Irving Paper Limited. On December 12, 2004, the company entered a plea of guilty to the offence. A total penalty of $30,000 was imposed: a fine of $2,500; the sum of $22,500 to the University of New Brunswick at Saint John for the study of the

impacts of effluent from paper mills on receiving waters; and $5000 to the Environmental Damages Fund.

5.2.1.4 Deleterious Substances

Initiated Actions

In October 2004, a complaint was responded to by EC fishery inspectors/fishery officers regarding a deposit of pig manure in Sleepy Hollow Brook in Canning, Nova Scotia. An agricultural operation over sprayed during application of pig manure to their fields resulting in the release of the manure to the water course. EC is investigating the incident for potential violations of the *Fisheries Act*.

An investigation by EC fishery inspectors/fishery officers into a spill of bilge water contaminated by fuel into Halifax Harbour from a ship in dry dock, was initiated December 10, 2004 under subsection 36(3) of the *Fisheries Act*. The investigation is ongoing.

In August 2004, a drilling ship off the coast of Nova Scotia reported to regulatory authorities the release of approximately 400 m^3 of synthetic drilling mud, a deleterious substance, after a joint at a well-head failed. The Canadian Nova Scotia Offshore Petroleum Board is the frontline regulator of the offshore oil and gas industry in Nova Scotia. However, EC fishery inspectors/fishery officers and the Canadian Nova Scotia Offshore Petroleum Board are jointly investigating the release for potential violations of subsection 36(3) of the *Fisheries Act*.

An offshore drilling company is currently under investigation for alleged violations of subsection 36(3) of the *Fisheries Act* relating to a 4,000-litre diesel spill off the coast of Sable Island. This is another joint investigation with the Canadian Nova Scotia Offshore Petroleum Board.

An investigation is ongoing into a Nova Scotia maintenance company for allegedly stripping an airplane of paint and allowing the toxic paint stripping waste to enter a storm sewer system, contrary to subsection 36(3) of the *Fisheries Act*.

Ongoing Actions

A complaint was received in December 2002 regarding a spill of dark blue dye into Humphreys Brook, Moncton, New Brunswick, believed to be coming from a local mill. Legal samples taken from the mill found the effluent was toxic to fish, and in alleged violation of the *Fisheries Act*. In September 2003, charges were laid under subsection 36(3) of the *Fisheries Act* against Newco Construction Ltd, a contractor to the mill. The company is scheduled to go to trial in November 2005.

The City of Moncton and Gemtec Ltd., an engineering consulting firm which advised the City on the landfill closure, were charged under subsection 36(3) of the *Fisheries Act* relating to deleterious leachate allegedly being discharged from a decommissioned landfill owned by

the municipality. On December 12, 2003, following the submission of written arguments, the *Fisheries Act* charges against Gemtec Ltd. were dismissed by the New Brunswick Provincial Court. On December 23, 2003, the Federal Prosecution Service in the Atlantic Region appealed the court decision of December 12, 2003. The appeal is ongoing.

Charges were laid against a recycling company by EC fishery inspectors/fishery officers in January 2001 after an investigation into a release of approximately 800 litres of oil from a sinking ship. In 1999, a ship docked at Long Harbour, Newfoundland sank allegedly as a result of poor maintenance. EC fishery inspectors/fishery officers investigated the release of oil as an alleged violation of subsection 36(3) of the *Fisheries Act*.

Concluded Actions

In July 2003, hundreds of litres of diesel fuel were pumped into the bilge of a fishing vessel in error, and the bilge pump discharged the fuel into L'Archeveque Harbour, Nova Scotia. This is an alleged deposit of a deleterious substance in contravention of subsection 36(3) of the *Fisheries Act*. An investigation was conducted, charges laid and on May 5, 2004 Emera Fuels Inc. pleaded guilty in the Provincial Court of Nova Scotia. Emera Fuels Inc. was ordered to pay a fine of $5,000 and a payment of $15,000 to the federal Environmental Damages Fund.

On November 17, 2002, the MV Forrest Glen sank while tied up to the Digby wharf in Digby, Nova Scotia. The vessel contained 6,819 litres of diesel fuel at the time of the sinking and an undetermined amount of diesel fuel entered the harbour, in alleged contravention of subsection 36(3) of the *Fisheries Act*. An investigation was conducted and revealed that the vessel was improperly maintained and sunk during a storm. The Department of Justice determined that it was not in the public's interest to proceed with charges in the matter. The file was subsequently closed.

A joint investigation involving the Nova Scotia Department of Environment and Labour and EC was initiated to investigate a reported fish kill in the Little Sackville River, Lower Sackville N.S. that occurred on July 12, 2002. After a review of the evidence, it was determined that charges under provincial regulations were more appropriate than under the *Fisheries Act*. Charges were laid October 28, 2002 against a demolition company, Marinus Verhagen Enterprises, for moving acid-bearing slate without an authorization. On August 23, 2004, a plea bargain was reached whereby the Crown stayed the proceedings and a $15,000-donation was made to the federal Environmental Damages Fund by the accused.

An investigation was initiated in August 2002 after dead fish were found in the Wilmot River in Norboro, Prince Edward Island. Sample results showed the presence of the insecticide azinphos methyl and charges were laid against George M. Caseley and Sons Inc. under subsection 36(3) of the *Fisheries Act*. Charges were laid October 20, 2003, and initially the company pleaded not guilty. On September 13, 2004, the plea was changed to guilty. Sentencing took place on September 21, 2004 with the accused ordered to pay $16,300, comprising a fine of $3,500 and an additional $12,800 to the Environmental Damages Fund. This was the first time in Canadian law that a farmer had been successfully prosecuted for the runoff of pesticides and thus provides a precedent for future cases.

On May 17, 2004, subsequent to an EC investigation, Irving Pulp and Paper, Limited pleaded guilty to depositing potato leachate into an unnamed brook. The company was fined $30,000 of which $20,000 was directed to the federal Environmental Damages Fund.

5.2.2 Quebec Region

5.2.2.1 Pulp and Paper

Initiated Actions

An investigation was initiated in 2004 in order to gather proof concerning a series of deleterious discharges resulting from the deposits of pulp and paper mill effluent into the Chaudière River, which constituted alleged violations of subsection 36(3) of the *Fisheries Act* and its *Pulp and Paper Effluent Regulations*.

Ongoing Actions

Tembec Inc. is currently the subject of an EC investigation for alleged violations (in 2002 and 2004) of the *Fisheries Act* and its *Pulp and Paper Effluent Regulations*. An investigation was initiated in May 2003 concerning the company's mill effluents deposited in the Ottawa River, as well as the company's failure to conform to an Environmental Emergencies order issued by the EC inspector in 2003. A search warrant was executed at the Tembec offices in November 2004.

Concluded Actions

An investigation was initiated in January 2004, in order to gather into ongoing deposits of a pulp and paper mill effluent into the Portneuf River, which constituted an alleged violation of subsection 36(3) of the *Fisheries Act*. At that time, this pulp and paper mill was the responsibility of Raymond Chabot Inc., trustee in bankruptcy. The company's environment officer, as well as representatives for the Ministère de l'Environnement du Québec, confirmed that the company had deployed efforts to avoid, and ultimately prevent, such deposits in the river. Furthermore, such companies are protected from prosecution, under the law, if such environmental incidents are not deliberate. As proof of undue diligence concerning the alleged violations could not be established, this file was closed without any further action taken.

5.2.2.2 Deleterious Substances

Ongoing Actions

In September 2003, Trichloroethylene a solvent considered to be "probably carcinogenic to humans" was detected in a stream entering the Jacques Cartier River. In December 2003, EC issued two advisories concerning illegal Trichloroethylene deposits that contravened subsection 36(3) of the *Fisheries Act* in the Jacques Cartier River: one at Department of National Defence and one at SNC Technologies Inc. There is an ongoing investigation concerning these alleged violations.

Concluded Actions
On November 19, 2004, Valleytank Inc. and its director general, Mr. Michael S. Anwar, pleaded guilty to charges under subsection 36(3) of the *Fisheries Act* for illegally depositing, on February 20, 2002, a substance containing ethylene glycol in the Canal de Beauharnois (St. Lawrence River). The court ordered the company and its director general to pay the sum of $450,000.00. The penalty included a fine of $150,000 and a payment to the Environmental Damages Fund of $300,000.

5.2.3 Ontario Region

5.2.3.1 Metal Mines Effluent

Ongoing Actions
EC fishery inspectors/fishery officers are currently involved in three investigations under the *Metal Mines Effluent Regulations* in Northern Ontario. Investigations are underway, with no charges laid as of yet.

5.2.3.2 Deleterious Substances

Initiated Actions
As a result of a private prosecution under subsection 36(3) of the *Fisheries Act* in the Oak Ridges Moraine area of Ontario, EC fishery inspectors/fishery officers responded to a request for input from the Department of Justice on whether or not to intervene. The investigation is ongoing and no decision has been reached.

Ongoing Actions
There is an ongoing prosecution in the Mississauga, Ontario area as a result of a spill of machine oil into a catch basin leading to Etobicoke Creek. Prosecution is underway, with no resolution at this time.

Concluded Actions
On June 16, 2004, a Schneider's poultry processing plant in Ayr, Ontario was convicted of an offence under subsection 36(3) of the *Fisheries Act*. The company was fined a total of $30,000, with $20,000 of that going to enhancement activities at the Grand River Conservation Authority, Cambridge, Ontario.

5.2.3.3 Contaminated Sites

Initiated Actions
An investigation was initiated into ongoing fuel oil discharge into a local creek on First Nation land, allegedly from a fuel handling facility. The investigation is ongoing.

Concluded Actions
In January 2005, International Graphite, a mining development company, was convicted of failing to comply with a Direction of an inspector. The company was fined $1,000 and

ordered to pay $7,500 to a local watershed foundation in the Kearney, Ontario area, along with other conditions to improve compliance at the site.

5.2.3.4 Pollution Prevention Activities

Ongoing Actions
EC fishery inspectors/fishery officers are conducting two investigations into vessel pollution incidents in the Great Lakes. No charges have been laid during 2004-2005.

5.2.4 Prairie and Northern Region

5.2.4.1 Municipal Wastewater

Concluded Actions
The City of North Battleford was charged with four counts under subsection 36(3) of the *Fisheries Act* for the release of sewage on April 28, 2004. On November 2, 2004, the City of North Battleford was sentenced to a penalty of $80,000 after pleading guilty. This included a payment of $50,000 to the Environmental Damages Fund, $20,000 to cover expert witness costs and a fine of $10,000. In addition, the City was ordered to have their new wastewater treatment plant functional and in operation by November 30, 2005, or pay a $25,000 fine for every month that the plant is late.

5.2.4.2 Deleterious Substances

Initiated Actions
Agriculture-related (i.e. cattle in streams, manure) complaints continued to be a problem in this fiscal year. The Saskatchewan Division of EC worked jointly with Saskatchewan Environment, DFO, the Saskatchewan Watershed Authority and Saskatchewan Agriculture & Food to try and resolve the problems. With the continual increase in agriculture-related complaints, EC, in conjunction with the DFO, is developing a Guidance Document with respect to the application of subsection 36(3) of the *Fisheries Act* in the case of Deposits of Livestock Waste to Waterways.

Concluded Actions
On August 6, 2004, Akzo Nobel Chemicals Ltd. and Grant Flory were charged with one count under subsection 36(3) of the *Fisheries Act* for the release of an industrial chemical.

On March 23, 2005, Akzo Nobel Chemicals Ltd. was sentenced to an $80,000-penalty after pleading guilty. The penalty included a fine of $10,000 and a payment to the Environmental Damages Fund of $70,000. The court order also included requirements to improve the Material Safety Data sheet for the chemical and to provide employee training. In addition, it is anticipated that Akzo will spend approximately 1.4 million dollars on its effluent system in order to bring it into compliance with an inspector's direction issued to Akzo Nobel Chemicals by EC fishery inspectors/fishery officers under subsection 36(3) of the *Fisheries Act*.

5.2.5 Pacific and Yukon Region

5.2.5.1 Municipal Wastewater

Ongoing Actions

An EC investigation resulted in charges being laid against Quesnel City in northern British Columbia in relation to a sewage spill into the Quesnel River on February 27, 2003. Charges were laid under subsection 36(3) of the *Fisheries Act*. The trial is scheduled to take place in May 2005.

The Municipality of Dawson City was convicted under subsection 36(3) of the *Fisheries Act* for depositing effluent directly into the Yukon River. The court ordered the construction of sewage treatment facilities sufficient to comply with the *Fisheries Act*. The order has not been complied with and EC is monitoring the situation and preparing further action with the Department of Justice.

Concluded Actions

Charges were laid pursuant to subsection 36(3) of the *Fisheries Act* against the District of Kitimat in relation to a sewage spill into the Kitimat River and Sumgas Creek on February 16, 2001. A court date was set for September 2004. The charges pursuant to subsection 36(3) were stayed in favour of charges pursuant to subsection 35(1) of the *Fisheries Act* (harmful alteration, disruption or destruction of fish habitat). A conviction on these charges was secured and resulted in a fine of $1,000.00 and court orders totalling $75,000.00 to be directed to various environmental projects in the area.

5.2.5.2 Pulp and Paper

Charges were laid in December 2004 against a pulp and paper mill in British Columbia as a result of a deleterious discharge into fish-bearing waters. The matter is scheduled to go to trial in January/February 2006.

5.2.5.3 Deleterious Substances

Initiated Actions

An investigation in the Yukon Territory with respect to the unsafe storage of fuel adjacent to fish-bearing waters was initiated in July 2004. Charges were laid as a result of the accused's failure to comply with an inspector's direction to prevent the discharge of fuel into the nearby river. The matter is scheduled to go to trial in July 2005.

Ongoing Actions

In February 2003, in Port Moody British Columbia a train derailed causing two rail cars to rupture and spill several thousand litres of ethylene glycol into Burrard Inlet. Charges were laid pursuant to subsection 36(3) of the *Fisheries Act* as a result of an investigation by EC

fishery inspectors/fishery officers. The first court appearance was held on June 10, 2004. The matter is now scheduled to go to trial in January 2006.

As a result of information received in January 2003, EC fishery inspectors/fishery officers initiated an investigation into an allegation that acid rock drainage, originating from a highway construction project, was entering water frequented by fish. As a result of this investigation, charges were laid on May 27, 2004 under subsection 36(3) of the *Fisheries Act* and the first court appearance is scheduled for July 5, 2004. The matter has been held over for trial, which is scheduled for September/October 2005.

An investigation into a forest products company on the Sunshine coast of British Columbia resulted in charges being laid under subsection 36(3) of the *Fisheries Act*. These charges are in relation to a deleterious substance (wood waste leachate) entering water frequented by fish. The trial commenced in January 2004 and has been held over until October 2005.

As a result of manure runoff from cattle operations into water frequented by fish (Robin Creek in northern British Columbia) on March 3, 2004, EC fishery inspectors/fishery officers initiated an investigation. Charges pursuant to subsection 36(3) of the *Fisheries Act* have been approved by the Department of Justice, as well as charges pursuant to subsection 35(1) in relation to destruction of habitat. The rancher responsible had previously been given warnings and an inspector's direction but failed to comply. The matter is scheduled to go to court in February/March 2006.

Concluded Actions

A major pipeline rupture in northern British Columbia resulted in approximately one million litres of crude oil spilling into the Pine River. As a result of an EC investigation, the pipeline company, Pembina Pipeline Co., was charged pursuant to subsection 36(3) of the *Fisheries Act*. The company pled guilty on May 15, 2004, received a $5,000 fine, and was ordered to pay $195,000 into the Environmental Damages Fund for use in northern British Columbia

5.3 Other *Fisheries Act* Issues

5.3.1 Bilateral Agreements

In order to facilitate the cooperative administration of subsection 36(3) of the *Fisheries Act* and its accompanying regulations, EC maintains bilateral agreements with Alberta, Saskatchewan, and Quebec.

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 Canada and Alberta in relation to the protection of fisheries, and reduces duplication of regulatory requirements for regulatees. During this fiscal year, Alberta Environment reported 994 incidents to EC, of which 347 were related to the *Fisheries Act*. This collaboration led to 100 off-site inspections, 11 on-site inspections and seven (7) investigations.

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 this fiscal year, Saskatchewan Environment conducted 10 inspections under the *Pulp and Paper Effluent Regulations* on behalf of EC. In addition, Saskatchewan Environment and EC worked cooperatively on two joint investigations. In both cases, a written warning letter was issued and the investigation was closed.

The Saskatchewan Division of EC is in the process of renegotiating the Canada-Saskatchewan Administrative Agreement for the Control of Deposits of Deleterious Substances under the *Fisheries Act* with Saskatchewan Environment and anticipates its completion during Fiscal Year 2005-2006.

The third Canada-Quebec Pulp and Paper Administrative Agreement came into effect on September 16, 2003. The agreement is retroactive to April 1, 2000, and will terminate on March 31, 2005. The agreement identifies Quebec as the principal contact for receiving data from the pulp and paper sector and information required pursuant to the *Pulp and Paper Mill Effluent Chlorinated Dioxins and Furans Regulations*, the *Pulp and Paper Mill Defoamer and Wood Chip Regulations*, and the *Pulp and Paper Effluent Regulations* made under the *Fisheries Act*. The agreement describes the procedures for co-operation between Quebec and Canada regarding the implementation in Quebec of the federal regulations identified in the agreement. The agreement is managed by a joint committee, which is made up of three representatives appointed by the provincial government and three by the federal government. The Quebec government has undertaken to fulfill the committee secretariat's responsibilities.

The committee met five times in this fiscal year. Discussions focused on the compliance record of each mill in Quebec. The information exchange mechanism was reviewed and improvements were made. The committee recommended continued co-operation in the spirit of the agreement after its expiry on March 31, 2005 for a period of up to two years. The two-year period should allow the necessary discussions to develop the next agreement.

5.3.2 Pulp and Paper

On May 19, 2004, the Minister of Fisheries and Oceans published amendments to the *Pulp and Paper Effluent Regulations* in Part II of the *Canada Gazette*, following preparation of the required amendments by EC. The amendments are designed to streamline and clarify the *Pulp and Paper Effluent Regulations*, and will maintain the stringency of the requirements for quality of the effluent discharged by pulp and paper mills. They also repeal the *Port Alberni Pulp and Paper Effluent Regulations*, and incorporate the stricter allowable

discharges from and specific requirements for the *Port Alberni Pulp and Paper Effluent Regulations* into the amended *Pulp and Paper Effluent Regulations*. Under both the former and amended the *Pulp and Paper Effluent Regulations*, pulp and paper mills continue to be required to implement an Environmental Effects Monitoring (EEM) program. The program requires pulp and paper mills to conduct site-specific monitoring of the receiving environment, as well as scientific evaluations of the effects of mill effluent on fish, fish habitat, and the use of fishery resources. The EEM program is structured in three or four-year sequences of monitoring and interpretation phases known as "Cycles". Cycle 3 reports were submitted to EC on April 1, 2004. The Department has completed and published a National Assessment of the Cycle 2 and Cycle 3 data available online at http://www.nwri.ca/c3/intro-e.html.

EC's regional staff provides technical guidance to mills to help with EEM studies. EEM studies are directed by local monitoring committees for each mill or group of mills (if the mill is of a combined design). Each local monitoring committee includes representatives of EC, Ministry of the Environment, the mill and other interested parties (e.g. NGO's, Aboriginal groups) as well as consultants, and local monitoring committee members provide advice at all stages of the EEM process. EC's regional officers collaborate with their provincial and industry counterparts to ensure sustainable development and to promote prevention of pollution from mills.

A number of compliance promotion sessions were held across the country to inform mills and other stakeholders of the key features and new requirements of the amended *Pulp and Paper Effluent Regulations*. Specific information sessions regarding the EEM program were also held in a number of cities across Canada. These sessions described how the EEM program has evolved over the past few years and presented the results of the national assessment of Cycle 2 and Cycle 3 EEM studies.

5.3.3 Metal Mines

The 2003 Annual Report on Mine Effluent will be published soon. A multi-stakeholder "Workshop on Possible Amendments to the *Metal Mining Effluent Regulations*" was held in November 2004. Under the EEM program, an Invertebrate Reference Condition Approach Biomonitoring Network for six Northern Ontario mines was developed to meet regulated EEM requirements. Phase 1 is almost complete and Phase 2 and 3 are ongoing. In Atlantic region, with the help of our regional staff, a company is exploring options to improve tailings management. In all regions, compliance promotion, education and awareness of *Metal Mining Effluent Regulations* requirements are provided to new mines or mining projects during the EA process or provincial permitting process when required. There are numerous new mines working their way through EA applications now.

5.3.4 Municipal Wastewater Effluent

Recent legislative actions have been taken to address pollutants in wastewater such as ammonia dissolved in water, inorganic chloramines and chlorinated wastewater effluents.

On December 4, 2004, EC published the *CEPA 1999* Guideline for the Release of Ammonia Dissolved in Water Found in Wastewater Effluents. The guideline is aimed at owners of wastewater systems discharging 5000 m^3 or more of effluent per day to surface water. The guideline includes standards for both acute and chronic toxicity caused by ammonia. Compliance promotion activities for these instruments include both *CEPA 1999* and *Fisheries Act* aspects. Workshops, meetings and information sessions were held across Canada after publication of the instruments and information packages were sent out to 1200 stakeholders.

EC's strategy for municipal wastewater effluents includes working with other jurisdictions and stakeholders under the aegis of the Canadian Council of Ministers of the Environment (CCME) to develop a Canada-wide strategy for the management of municipal wastewater effluents. EC's intention is to develop specific objectives for deleterious and toxic substances released through wastewater systems and to refer to these objectives in a regulation under the *Fisheries Act* and other *CEPA 1999* instruments.

EC staff has been meeting with provincial and municipal representatives, holding workshops and making presentations to ensure a comprehensive understanding of the requirements of the pollution prevention Notice for chlorine and the Ammonia Guideline.

5.3.5 Shellfish Water Quality Protection

Assessment of shoreline pollution sources and evaluation of water quality were conducted in the Atlantic Provinces during this fiscal year. Also, sanitary surveys conducted in British Columbia waters enabled classification of shellfish areas for safe harvesting for human consumption and identification of pollution sources, which can be targeted for remediation. As of April 2005, over 16,000 km^2 of British Columbia waters remain approved for direct shellfish harvesting and approximately 1,100 km^2 are classified as closed.

EC, DFO and the Canadian Food Inspection Agency are responsible for the Canadian Shellfish Sanitation Program. EC assesses the water quality of shellfish harvesting areas. DFO classifies areas as approved, conditionally approved, or closed on the basis of EC's evaluation. The Canadian Food Inspection Agency carries out biotoxin monitoring at the shellfish harvesting areas, to ensure that dangerous toxins are not present in the shellfish above specified threshold levels. This fiscal year, the total area assessed in Canada increased from 21,013 km^2 to 33,865 km^2, the total area approved for harvest increased from 15,375 km^2 to 26,993 km^2 (this includes both 11,919 km^2 intertidal and 15,074 km^2 sub-tidal areas) the total area conditionally approved decreased from545 km^2 to 450 km^2, and the total area closed for harvest increased from 5,093 km^2 to 5,183 km^2. It is important to note that the increase in the total area assessed may be more artificial than real, due to the inclusion of more sub-tidal areas on the west coast in the calculations. In addition to its area classification activities, EC meets its responsibility to promote pollution prevention, remediation and restoration of shellfish growing areas through co-operative arrangements and other initiatives.

EC continues its active participation as a member of the provincial shellfish committees. These multi-stakeholder committees that include the federal government, provincial governments, industry, shellfish harvesters, and community based groups, engage in the understanding and resolution of issues pertaining to shellfish (area classification, access to shellfish, redress of pollution issues, etc.). A water quality survey of recreational and aquaculture sites in eastern Newfoundland was carried out in order to ensure marine waters meet acceptable standards for safe harvest of shellfish.

In British Columbia, EC's compliance promotion activities, in collaboration with Provincial Environmental Health Officers and the Enforcement and Emergencies Division of EC's Pacific and Yukon Region, resulted in the removal of unapproved sewage discharges. Support funding from the Georgia Basin Action Plan facilitated partnership projects designed to remediate pollution sources in areas closed to direct shellfish harvesting.

5.3.6 Deleterious Substances

On December 4, 2004, EC published the final notice which targets persons involved in textile wet processing activities that discharge their effluents to municipal wastewater treatment systems. The notice targets approximately 150 textile mills. The risk management objective is to reduce the use of nonylphenol and its ethoxylates by 97% and to reduce the toxicity of textile mill effluents.

Additionally, the final notice outlines the requirements for manufacturers and importers of soap and cleaning products, processing aids used in textile wet processing, and pulp and paper processing aids that contain nonylphenol and its ethoxylates to prepare and implement pollution prevention plans. The risk management objective is to reduce the total use these substances in products manufactured in or imported into Canada by 50% from 1998 levels by 2007, and by 95% from 1998 levels by 2010. The notice targets approximately 200 manufacturers and importers. The primary pathway to the environment for nonylphenol and its ethoxylates is through effluents released from municipal wastewater systems.

Atlantic Region spent considerable time and efforts on the delivery of Operation Clean Feather Program in Newfoundland. The program delivers information to the shipping industry on the negative effects of waste oil releases in marine waters and the negative effect on the environment, particularly marine seabirds.

This fiscal year, the Environmental Emergencies program in Atlantic Region led in the development of the 117-page guide "*Response Procedures for Natural and Pollution-Related Fish Kill Incidents in the Atlantic Region*". The procedures in this guide have been prepared to promote interagency coordination and communication and to encourage timely and appropriate response to the natural and pollution related fish kills in the Atlantic Region.

The Atlantic Team of the National Programme of Action for the Protection of the marine Environment from Land-based Activities continues through its activities and those of the working groups to work towards intergovernmental, industry and community based projects to help reduce pollution from land-based activities.

5.3.7 Contaminated Sites

Contaminated Site programs work to mitigate, reduce, and/or eliminate negative impacts from contaminated sites on the environment and on human health. Throughout this fiscal year, EC provided ongoing scientific and technical advice related to contaminated sites and potential *Fisheries Act* implications. There were two meetings of the Regional Interdepartmental Federal Contaminated Sites Action Plan working group. The working group has representation from 12 federal departments. Issues related to *Fisheries Act* and contaminated sites were discussed at the meetings.

5.3.8 Pollution Prevention

The pollution prevention initiative focuses on avoiding the creation of pollutants, rather than trying to manage them after they have been created. This fiscal year, the Ontario Region worked with EC Enforcement in order to address livestock access to water.

The Ontario Region program staff continued to promote better management of animal wastes to farm organizations and agencies, and responded to several complaints regarding intensive livestock operations and cattle access to watercourses. The regional staff also conducted a watershed survey of manure handling practices on the southeast Lake Huron shoreline in 2004.

The Ontario Sustainability Aquaculture Working Group has initiated a project to look at rainbow trout feed as a potential source of contaminants. In the Atlantic Region program staff worked with regional Metal Finishers to minimize releases of contaminants, reduce energy use and increase profitability. The Region also partnered with several other federal and provincial agencies to conduct pollution prevention evaluations of Nova Scotia Small and Medium size Enterprises and to encourage changes to minimize contaminant releases, and on other opportunities identified.

EC Atlantic Region worked with the Tourism Industry Association of Nova Scotia and tourism associations of other provinces to promote "Green Boating" by encouraging boaters to use on-site holding tanks for sewage, and marinas to develop and operate dumping stations. A web site with map was developed - http://www.atlanticgreenboating.com/.

On the Pacific coast, the Pacific and Yukon Region conducted compliance promotion activities to the boat and ship repair and maintenance sector as part of its three-year compliance and enforcement project to address pollution problems. The initiative is intended to encourage adoption of Best Management Practices to reduce pollution from hull maintenance activities. Information booths were set up at various events including the Vancouver and Victoria Boat Shows.

5.3.9 Environmental Assessment

Ontario Region has provided general advice on approximately 150 projects under either the federal EA process pursuant to *CEAA*, or provincial EA in which the department chose to participate. Ontario Region focused its efforts on sewage treatment (e.g. Courtice), mining (e.g. Victor Diamond, Pamour Gold), and facilities on Aboriginal lands (e.g. water treatment, waste management).

The Atlantic Region contributed expertise related to prediction, mitigation and verification of impacts on aquatic environments in the course of participating in the EA of over 500 projects throughout Atlantic Canada.

Federal EAs of projects were required by many federal agencies, such as DFO, Transport Canada, and Atlantic Canada Opportunities Agency, based on their involvement in any given project as a proponent, regulator, founder, or land administrator. Many of the projects subject to EA were related to wastewater and waste management, highway infrastructure, aquaculture, contaminated site remediation, coastal developments, oil and gas, power generation, mineral and resource extraction, and marine terminals and shipping operations. EC advocated adoption of best management practices, including attention to pollution prevention opportunities, that would allow significant adverse effects to be avoided and compliance with subsection 36(3) of the *Fisheries Act* or regulated limits, as applicable. EC staff participated in various sector-specific committees (e.g. aquaculture) responsible for investigating aquatic environmental effects and management options.

EC's Newfoundland office reviewed 207 referrals related to federal and provincial Environmental Assessment Acts and provided advice to the responsible agencies and project proponents regarding compliance with the *Fisheries Act* where appropriate.

5.3.10 Meat and Poultry Products Plant Liquid Effluent

The Atlantic Region is in discussions with operations in the province of Newfoundland to improve effluent treatment capability.

5.3.11 Unregulated Food Sector Issues (i.e. Fish processing, vegetable processing, beverage production, etc.)

An EC working group was established to develop a national strategy and approach for the fish-processing sector. Atlantic Region has supported a number of initiatives aimed at improving the management of effluents from seafood processing facilities. Under the Atlantic Team National Programme of Action for the Protection of the Marine Environment from Land-Based Activities, a working group is coordinating information gathering between federal departments/agencies involved (DFO, EC, Canadian Food Inspection Agency) and provincial jurisdictions. The Canada Water Research chair at Dalhousie University receives $50,000 per year from EC, to promote research in technology advancements relating to seafood processing effluents and other wastewater. The Atlantic Environmental Sciences

Network is promoting research relating to the seafood processing sector, including process intensification, pollution prevention, and characterization.

In New Brunswick, EC participated in a multi-jurisdictional working group including government, industry, academics, and environmental NGO's. A $750,000 project is underway at six seafood-processing plants to pilot the implementation of best management practices as a means of improving product utilization and effluent quality. To better understand the potential impacts of effluents from the unregulated food sector, the region has initiated a project to characterize the effluents of a variety of seafood processing plants, including general chemistry, as well as a suite of toxicity tests.

5.3.12 Petroleum Refinery Liquid Effluent

EC staff engaged in ongoing compliance promotion to the Come By Chance oil refinery to explain the benefits of conducting voluntary EEM to obtain data on potential effects of their effluent discharge.

5.3.13 Other Oil and Gas Issues

The Terra Nova oil field in the Newfoundland Offshore Area, under the management of Petro Canada, experienced a loss of approximately 160,000 litres of crude oil in November. While the government response lead was with the Canada Newfoundland and Labrador Offshore Petroleum Board (CNLOPB), EC played an important support role for CNLOPB through the use of Regional Environmental Emergencies Teams and assistance in aspects of the investigation and monitoring of the oil slick and affected sea birds. While the spill was likely a violation of the *Fisheries Act*, EC has been standing down to the CNLOPB as it is taking legal action under the Atlantic Accords legislation.

In collaboration with DFO and the CNLOPB, an EEM Coordination Framework has been developed to strengthen cooperation and coordination between regulators and industry when designing, implementing and reviewing EEM programs with respect to oil and gas in the Nova Scotia offshore. In addition, during 2004, DFO and EC provided advice to the CNLOPB on the proposed EEM program for tier 2 of the Sable Offshore Energy Project.

Compliance Monitoring reports as per the *Offshore Wastewater Treatment Guidelines* were reviewed. The information and related attachments is strictly confidential and has been provided in accordance with the terms and conditions outlined in a letter from EC's Manager, Environmental Protection Branch Newfoundland dated August 27, 2002.

5.3.14 Environmental Impacts of Former Gold Mining Operations

In 2004, EC was approached by Natural Resources Canada and the Nova Scotia Department of Natural Resources to participate in a study to assess the biological impacts of gold mine tailings in the area of Seal Harbour, Nova Scotia. Results of that study indicated elevated arsenic and mercury contamination in sediments and high arsenic tissue uptake in marine soft

shell clams. As a result, EC committed to further assess the estuarine ecological impact at the Seal Harbour site and other former gold mining sites in Nova Scotia in 2005.

5.3.15 Pesticides

EC updated guidelines/standard conditions relating to "Pesticide Free and Buffer Zones" for ongoing comment to the British Columbia Ministry of Environment Pesticide Use Permits and Pest Management Plans. Pacific and Yukon Region participated in the consultation of British Columbia's new pesticide management legislation, the British Columbia *Pest Management Act* and *Regulations* in the context of EC's mandate relating to the *Fisheries Act*, *Migratory Birds Convention Act Regulations* and *SARA*.

EC also coordinated the Wireworm Task Force, a stakeholder group whose aim is to develop and implement non-chemical means of controlling the wireworm pest in British Columbia Assessments of various pesticides used in the British Columbia were conducted in order to provide information to the Pest Management Regulatory Agency for pesticide re-evaluation purposes.

Finally, EC sponsored Integrated Pest Management training courses for horticultural growers in the lower British Columbia mainland.

5.3.16 Aquaculture Chemicals

EC conducted a literature review of emamectin benzoate used in British Columbia and elsewhere to determine current understanding and gaps. EC also undertook a toxicity study of emamectin benzoate and its metabolite using a resident west coast sediment amphipod species.

5.3.17 Inorganic Chloramines

Pacific and Yukon Region staff provided advice to the Capital Regional District of Victoria on their Chloramines Risk Assessment Study. The assessment determined that aquatic life in the Capital Regional District of Victoria could be at risk from environmental releases of inorganic chloramines used to treat drinking water. *Fisheries Act* requirements in relation to their use of inorganic chloramines to treat drinking water were communicated in writing to Capital Regional District of Victoria.

5.4 Looking Ahead - EC's Goals for Fiscal Year 2005-2006

In Fiscal Year 2005-2006, EC will pursue its enforcement activities with respect to the pollution prevention provisions of the *Fisheries Act* and will maintain its working relationship with other federal, provincial and territorial bodies to fulfill its obligations. The Department will also continue to seek cooperation from provincial and territorial counterparts, in order to ensure fair and consistent enforcement, reliable and efficient

reporting of spills and other uncontrolled releases into water frequented by fish, training and exchange of information.

Some of the more significant projects identified for Fiscal Year 2005-2006include:

1. **Pulp and Paper:** In an effort to continually improve the EEM program, EC launched the Smart Regulation Project on Improving the Effectiveness and Efficiency of Pulp and Paper EEM. The smart regulation project brought together a group of policy experts from the federal government (EC, DFO, and Privy Council Office), industry, and the Aboriginal and environmental communities. The group has been tasked with identifying opportunities to achieve benefits through more efficient, targeted monitoring and actions to improve environmental performance where environmental effects have been identified. The group's report will be submitted to EC for consideration in the fall of 2005.
2. **Municipal Wastewater:** Since November 2003, EC and the CCME have strived to develop a Canada-wide strategy for the management of municipal wastewater effluents. A draft Canada-wide strategy is on-track for submission to the CCME Ministers in November 2006. EC staff will continue to answer questions and provide information when required. Currently, draft regulations are under development.
3. **Shellfish Water Quality Protection:** EC will continue to work with its Canadian Shellfish Sanitation Program partners to find ways to strengthen the program. On the west coast, we expect that sanitary surveys will be conducted throughout British Columbia's coast including inside southern waters, the west coast of Vancouver Island and the Queen Charlotte Islands. Partnership projects will continue within the Georgia Basin, with funding support provided through Georgia Basin Action Plan.
4. **Contaminated sites:** The Atlantic Region expects that up to 20 new federal contaminated sites are anticipated to be submitted for funding under the Federal Contaminated Sites Action Plan.
5. **Pollution Prevention:** Ontario spills data over the last 10 years indicates that over 60% of manure entered water bodies via field tiles. As such, regional staff will focus on the identification and marking of tile drain outlets and in educating farmers on liquid manure application tips to prevent manure from entering water bodies.

   EC Ontario Region is in the process of coordinating a "one-voice, one-visit" concept for the agricultural sector in order to avoid duplication and to combine resources for common goals. EC's Ontario Region will combine all our issues (water, air and soil) for the agricultural sector so that all EC issues (potential problems/violations that EC sees for the agricultural sector) can be dealt through the one-voice, one-visit concept. Throughout Fiscal Year 2005-2006, EC Ontario Region will work with Agriculture and Agri-Food Canada, DFO, the Ontario Soil and Crop Improvement Association, conservation authorities and the agricultural industry to share information, provide technical assistance, and promote compliance with the *Fisheries Act*.

   In the Pacific Yukon Region, compliance promotion activities will continue in Fiscal Year 2005-2006 and will see EC informing stakeholders and distributing brochures to all hull maintenance facilities in British Columbia. This will be followed up in Fiscal Year

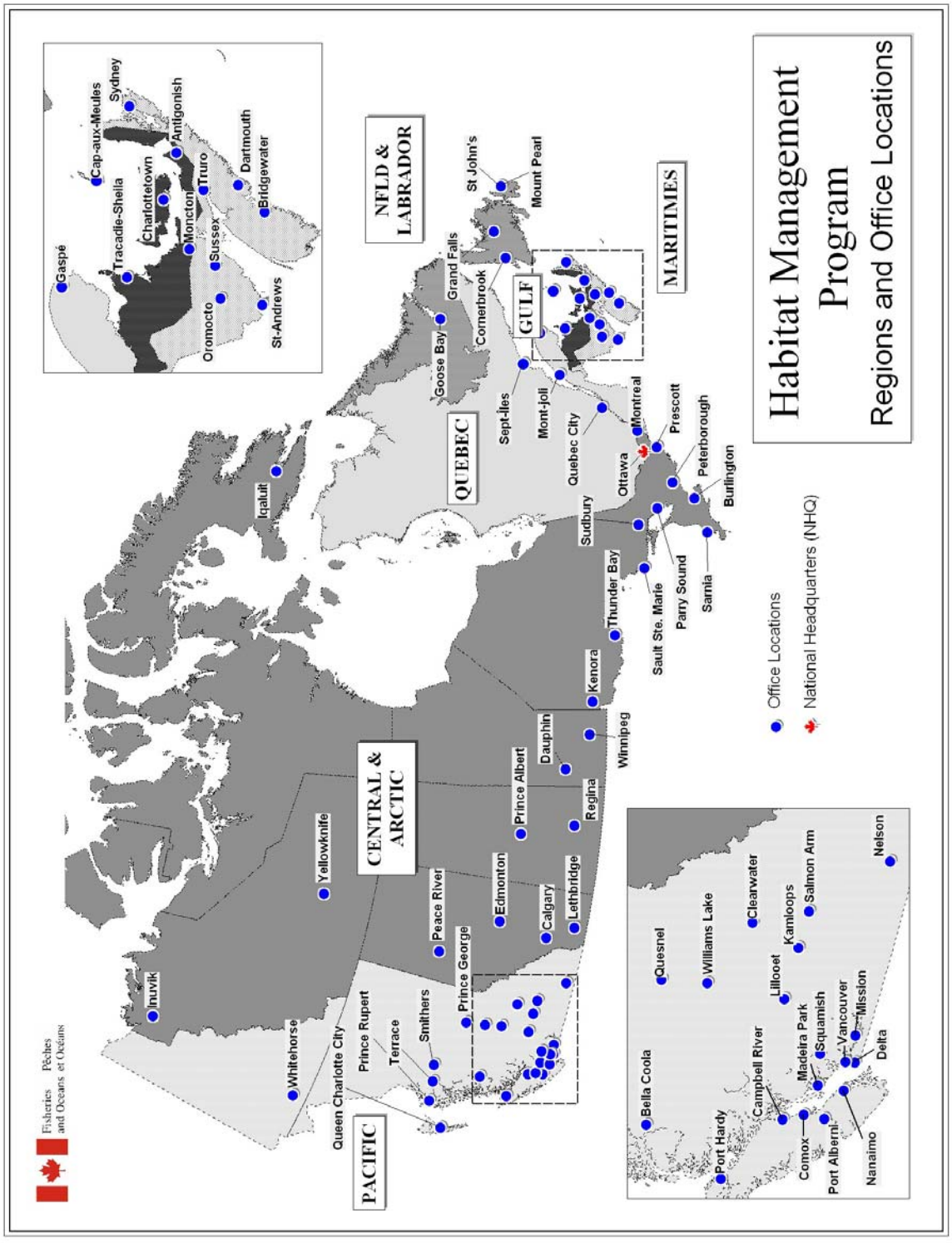
2006-2007 by compliance verification audits to determine conformance with the BMP and compliance with the *Fisheries Act*.

6. **Other Oil and Gas Issues:** EC and DFO will review the EEM program for tier 2 of the Sable Offshore Energy Project and provide advice to the CNLOPB and ExxonMobil.
7. **Environmental Impacts of Former Gold Mining Operations:** EC is conducting estuarine studies in co-operation with a larger multi-stakeholders working group led by Nova Scotia department of Environment. The results of estuarine studies will be shared with Canadian Food Inspection Agency, DFO and other members of the working group to assess other risks associated with these sites (i.e. human health, freshwater ecosystems).
8. **Agriculture - Pesticides:** EC wishes to develop a brochure for agricultural pesticide users (e.g. farmers), describing their responsibilities in relation to the *Fisheries Act*.

6.0 List of Abbreviations

C&P	Conservation and Protection
CCME	Canadian Council of Ministers of the Environment
CEAA	*Canadian Environmental Assessment Act*
CEAR	Canadian Environmental Assessment Registry
CEPA 1999	*Canadian Environmental Protection Act, 1999*
CNLOPB	Canada Newfoundland and Labrador Offshore Petroleum Board
DFO	Fisheries and Oceans Canada
EA	Environmental Assessment
EC	Environment Canada
EEM	Environmental Effects Monitoring
ENB	Eastern New-Brunswick
ENL	Eastern Newfoundland and Labrador
EPMP	Environmental Process Modernization Plan
GNS	Gulf - Nova-Scotia
HADD	harmful alteration, disruption or destruction
HMP	Habitat Management Program
NGO	Non-governmental organization
OGLA	Ontario-Great Lakes Area
OPS	Operational Statement
SARA	*Species at Risk Act*

Map: Habitat Management Program Regions and Office Locations



Annex:
Habitat Protection and Pollution Prevention Provisions, *Fisheries Act*

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. Also, 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 *Fisheries Act* 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 *Fisheries Act*, including habitat protection and pollution prevention.