

**Department of Fisheries and Oceans Policies and Programs  
for Fisheries Enforcement  
April 19, 2011**

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## Introduction

- 1 This policy and practice report provides an overview of the Department of Fisheries and Oceans' ("DFO" or "the Department") policies and programs for enforcement of laws related to Fraser River sockeye salmon fisheries, as carried out by Conservation and Protection ("C&P"). The information contained in this report is derived from documents disclosed to the commission or otherwise obtained through the commission's investigations. The accuracy of this report is subject to the accuracy of the documents provided or obtained. Descriptions of policy and program objectives, purposes, intentions, outcomes, reviews or any other qualitative assessments contained in this report are as provided in the documents cited and are not necessarily the views of the commission.
  
- 2 This report is not comprehensive of all DFO policies or programs related to fisheries enforcement. It is intended to provide a contextual background for the fisheries enforcement portion of the commission's hearings, scheduled for May 2011. Certain topics not covered in this report, but relevant to fisheries enforcement or C&P, such as fishery monitoring and catch reporting or enforcement of habitat protection measures, are covered by other sections of the commission's hearings. For fishery monitoring and catch reporting information, see the commission's policy and practice report entitled "Department of Fisheries and Oceans Policies and Programs for Fishery Monitoring and Catch Reporting." For an overview of DFO policies and practices with respect to enforcement of sections 35 and 36 of the *Fisheries Act* and the Department of Environment's responsibilities with respect to section 36, see the commission's policy and practice report entitled "Enforcement of the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*."
  
- 3 The commission's Terms of Reference direct the Commissioner to use the documents management program specified by the Attorney General of Canada, Ringtail Legal. Source references in this report refer to the unique document identifier attached to a given document by Ringtail Legal (such as CAN000059).

To identify a document that has been referred to by its Ringtail identifier, see Appendix 2. Documents that have been disclosed to the commission but that have not yet been entered into the Ringtail database are identified as “Non-Ringtail documents” and will be provided to participants to the inquiry directly.

## **Conservation and Protection**

- 4 C&P has a long history of service to Canada, having monitored the fisheries “since Confederation.”<sup>1</sup> Today, C&P’s role is to promote and maintain “compliance with legislation, regulations and management measures implemented to achieve the conservation and sustainable use of Canada’s aquatic resources, and the protection of species at risk, fish habitat and oceans.”<sup>2</sup>
  
- 5 Changes to fishing practices, fisheries management and fish abundance create emerging areas of monitoring and enforcement responsibilities for C&P.<sup>3</sup> However, core areas of enforcement responsibility include: commercial fisheries, recreational fisheries, Aboriginal fisheries, aquaculture, the Canadian Shellfish Sanitation Program, species at risk, pre-season licence condition reviews, post-season reviews of management plans and enforcement measures, market access certification, traceability initiatives, foreign fishing, aquatic invasive species, habitat and marine protected areas.<sup>4</sup> In the Pacific Region, one of the highest priority areas of responsibility for C&P is fisheries enforcement related to Fraser River sockeye salmon.<sup>5</sup>

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<sup>1</sup> CAN256204 at p. 1 and 7

<sup>2</sup> CAN185940 at p. 7. For a similar mandate description, see CAN02036 at p. 4 and CAN004037 at p. 32.

<sup>3</sup> CAN256204 at p. 7

<sup>4</sup> *Ibid.*

<sup>5</sup> CAN057525 at p. 3

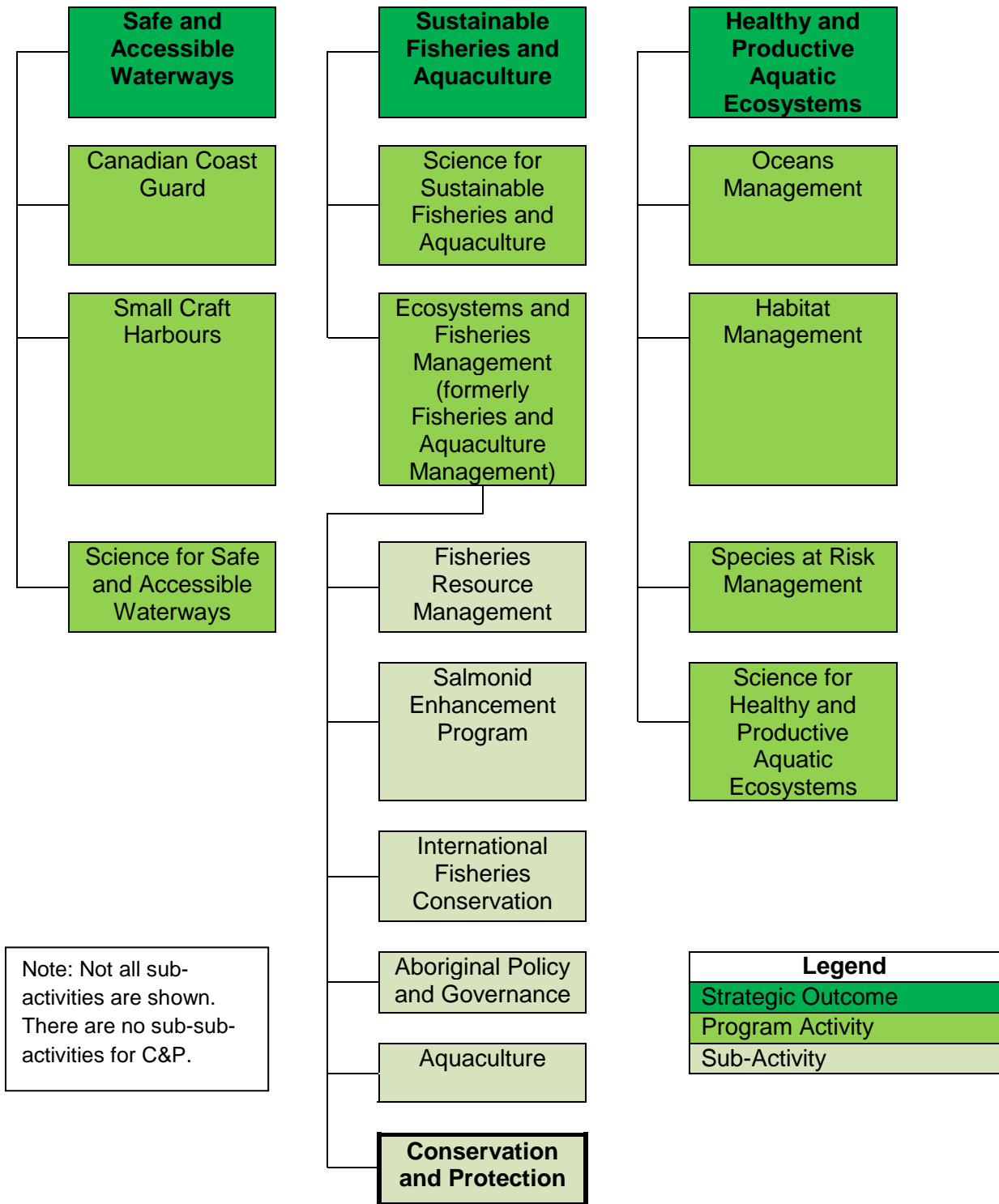
- 6 C&P intends to further the Government of Canada strategic outcomes of “strong economic growth” and “a clean and healthy environment.”<sup>6</sup> Within the DFO program activity architecture, C&P is aligned with the strategic outcome “sustainable fisheries and aquaculture.”<sup>7</sup>

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<sup>6</sup> CAN010869 at p. 5

<sup>7</sup> *Ibid.* at p. 4-5

**Figure 1: DFO Program Activity Architecture highlighting Conservation and Protection<sup>8</sup>**



<sup>8</sup> Fisheries and Oceans Canada Organizational Structure, presentation to Cohen Commission, August 11, 2010, Non-Ringtail document at p. 5.

7 C&P has also developed a “logic model” to describe its ultimate outcomes, intermediate outcomes, immediate outcomes and activities.<sup>9</sup>

**Table 1: Conservation and Protection Logic Model<sup>10</sup>**

DFO Strategic Outcome: Sustainable Fisheries and Aquaculture	
C&P Ultimate Outcomes	<ul style="list-style-type: none"> <li>• Canadians are protected from marine security threats</li> <li>• Peaceful and orderly fisheries</li> <li>• Conserved and protected aquatic resources</li> <li>• Public is protected from consumption of contaminated fisheries products</li> </ul>
C&P Intermediate Outcome	<ul style="list-style-type: none"> <li>• Compliance with legislation and regulations and management measures</li> </ul>
C&P Immediate Outcomes	<ul style="list-style-type: none"> <li>• An informed public and resource users</li> <li>• Effective management measures build on common goals</li> <li>• Effective compliance and deterrents</li> <li>• Skilled, equipped, and well-informed workforce</li> </ul>
C&P Activities	<p>Education and Shared Stewardship</p> <ul style="list-style-type: none"> <li>• Information products</li> <li>• Presentations</li> <li>• Agreements</li> <li>• Partnerships</li> </ul> <p>Monitoring, Control and Surveillance</p> <ul style="list-style-type: none"> <li>• Patrols</li> <li>• Inspections</li> <li>• Third party audits</li> <li>• Investigations</li> <li>• Prosecutions</li> </ul> <p>Major Case / Special Investigations</p> <ul style="list-style-type: none"> <li>• Major cases</li> <li>• Complex investigations</li> <li>• Covert operations</li> <li>• Intelligence-led policing</li> <li>• Special warrants</li> </ul> <p>Program Capacity</p> <ul style="list-style-type: none"> <li>• Human resources strategy and plans</li> <li>• Specialized training</li> <li>• Competency profiling</li> <li>• Financial stability</li> <li>• Material and asset acquisition plans</li> </ul>

<sup>9</sup> CAN034467

<sup>10</sup> *Ibid.*

8 To achieve its intended outcomes, C&P collaborates with several other government organizations, both federal and provincial. For example, agreements or memoranda of understanding have been formed between C&P and the BC Ministry of Agriculture,<sup>11</sup> the BC Ministry of Health,<sup>12</sup> the BC Ministry of Environment<sup>13</sup> and the RCMP.<sup>14</sup>

## Legal Framework

9 C&P promotes and maintains compliance with legislation and regulations. This section of the policy and practice report provides a brief summary of the acts and regulations enforced by fishery officers in relation to fisheries enforcement.<sup>15</sup>

### Fisheries Act<sup>16</sup>

10 The *Fisheries Act* generally applies to all fishing in Canadian fisheries waters, meaning all waters in the fishing zones of Canada, the territorial sea of Canada and all internal waters of Canada.<sup>17</sup> The Minister of Fisheries and Oceans (the “Minister”) has absolute discretion to issue or authorize leases or licences for fisheries or fishing.<sup>18</sup> In regards to fisheries enforcement, the *Fisheries Act* creates general prohibitions, including, *inter alia*:

- Fishing in limits leased to another is prohibited (s.23)
- Fishing apparatus not to obstruct navigation (s.24(1))
- No fishing during closed fishing times (s.25(1))
- No unattended fishing gear (s.25(2))
- No fishing with explosives, generally (s.28)
- No unlawful sale or possession of fish (s.33)
- No contravention of a fishing plan (s.33.1(2))
- No obstruction of a fishery officer, guardian or inspector (s.62)

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<sup>11</sup> CAN054136

<sup>12</sup> *Ibid.*

<sup>13</sup> CAN005732

<sup>14</sup> CAN216711 at p. 1

<sup>15</sup> This policy and practice report does not include regulations related to aquaculture, which is covered in another section of the commission’s hearings.

<sup>16</sup> R.S.C., 1985, c. F-14

<sup>17</sup> “Canadian fisheries waters” as defined in s. 2 of the *Fisheries Act*

<sup>18</sup> *Fisheries Act*, s. 7(1)



11 The *Fisheries Act* also sets out the general powers of fishery officers and fishery guardians<sup>19</sup> (which will vary and may be limited by the Minister), rules on information returns (reporting), disposition of seized goods,<sup>20</sup> ticketable offences,<sup>21</sup> punishment,<sup>22</sup> and the power to make regulations.<sup>23</sup> Fishery officers and fishery guardians may have powers of inspection,<sup>24</sup> search<sup>25</sup> and seizure,<sup>26</sup> and in some cases, the power to arrest without warrant.<sup>27</sup> The power to inspect is discussed further in the section of this policy and practice report on “Fishery Officers.”

### *Fishery (General) Regulations*<sup>28</sup>

12 The *Fishery (General) Regulations* apply to fishing and related activities in Canadian fisheries waters off the Atlantic, Pacific and Arctic Coasts, in the coastal provinces and fishing in waters other than Canadian fisheries waters where carried out by vessels subject to the jurisdiction of Canada.<sup>29</sup> Parts of the regulations, including those dealing with the transfer of ownership, loss of vessel and the identification of fishing vessels and fishing gear do not apply in respect of fishing and related activities carried out under an Aboriginal communal fishing licence.<sup>30</sup> Where there is an inconsistency between the *Fishery (General) Regulations* and a regulation specifically enumerated in s. 3(4), such as the *Pacific Fishery Regulations, 1993*, the enumerated regulation will prevail.<sup>31</sup>

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<sup>19</sup> *Ibid.*, s. 49 ff

<sup>20</sup> *Ibid.*, s. 70 ff

<sup>21</sup> *Ibid.*, s. 79.7

<sup>22</sup> *Ibid.*, s. 78

<sup>23</sup> *Ibid.*, s. 43

<sup>24</sup> *Ibid.*, s. 49

<sup>25</sup> *Ibid.*, s. 49.1. Note that the power to search under s. 49.1 is available to fishery officers but not to fishery guardians.

<sup>26</sup> *Ibid.*, s. 51

<sup>27</sup> *Ibid.*, s. 50

<sup>28</sup> SOR/93-53

<sup>29</sup> *Fishery (General) Regulations*, s. 3(1)

<sup>30</sup> *Ibid.*, s. 3(5)

<sup>31</sup> *Ibid.*, s. 3(4)

13 The *Fishery (General) Regulations* cover a wide array of topics, including, *inter alia*:

- Requirements to carry and produce a fishing licence and registration (ss.11-12)
- Non-transferability of documents (s.16(1))
- Conditions that may be attached to a licence (s.22)
- Suspension or cancellation of licences (s.24)
- Identification of fishing vessels and gear (ss.26-29)
- Release of incidental catch (s.33)
- No dumping and wasting of fish (s.34)
- Restrictions on the sale of fish (s.35)
- Requirement to identify, count, weigh and measure fish (s.36)
- Variation of close times, fishing quotas and size and weight limits of fish (Part I)
- Designation and duties of observers (Part V)
- Requirements to assist persons engaged in enforcement or administration of the *Fisheries Act* (Part VI)
- Ticketable offences (Part XII)
- Canadian jurisdiction vessels fishing in waters other than Canadian fisheries waters (Part XIII)

*Pacific Fishery Regulations, 1993*<sup>32</sup>

14 The *Pacific Fishery Regulations, 1993* generally apply to the commercial fishery. Specifically, they apply to fisheries in Canadian fisheries waters in the Pacific Ocean and British Columbia, fishing for tuna by Canadian fishing vessels in the Pacific Ocean (including high seas) and the harvesting of marine plants from Canadian fisheries waters.<sup>33</sup> These regulations do not apply in respect of sport fishing, fishing from foreign fishing vessels, taking fish from aquaculture operations or harvesting marine mammals.<sup>34</sup> In addition, the majority of the regulations, including Part VI regarding salmon, do not apply to fishing and related activities carried out under an Aboriginal communal fishing licence.<sup>35</sup>

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<sup>32</sup> SOR/93-54

<sup>33</sup> *Pacific Fishery Regulations, 1993*, s. 3(1)

<sup>34</sup> *Ibid.*, s. 3(2)

<sup>35</sup> *Ibid.*, s. 3(3)

- 15 The regulations set out the requirement for registration of commercial fishing vessels and licensing of fishers.<sup>36</sup> In Part I, the regulations outline general prohibitions, including, *inter alia*:
- No fishing by snagging or with snares (s.6)
  - No molesting or injuring fish, subject to the regulations (s.7)
  - No fishing with torches or artificial lights (s.8)
  - No fishing with more than one gill net at a time in tidal waters (s.9)
  - No fishing with a dip net beyond a certain size (s.10)
  - No fishing with unmarked or improperly marked gear (s.13)
- 16 Part VI of the regulations is specific to salmon fishing. This Part outlines salmon-specific prohibitions, including, *inter alia*:
- No driving salmon from one area to another (s.51)
  - No fishing for salmon in certain closed areas (s.52(1))
  - No fishing for salmon during closed times (s.53(1))
  - Restrictions as to gear type and size (ss.54, 57, 60)
  - No retention of salmon below a minimum size (s.55)
  - No unattended or anchored gill nets (s.57)

*British Columbia Sport Fishing Regulations, 1996*<sup>37</sup>

- 17 The *British Columbia Sport Fishing Regulations, 1996* apply in respect of sport fishing in Canadian fisheries waters of the Pacific Ocean and British Columbia. However, these regulations do not apply in respect of fishing in certain national parks or sites, or to fishing and related activities carried out under an Aboriginal communal fishing licence.<sup>38</sup>
- 18 The regulations set out close times, fishing quotas, size limits and other restrictions for all sport fisheries in British Columbia. For a fuller description of the legislation related to recreational fisheries, see the commission's policy and practice report entitled, "Recreational Salmon Fishing: Licensing, Management and Related Issues."

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<sup>36</sup> *Ibid.*, s. 22 ff

<sup>37</sup> SOR/96-137

<sup>38</sup> *British Columbia Sport Fishing Regulations, 1996*, s. 3

### *Aboriginal Communal Fishing Licences Regulations*<sup>39</sup>

- 19 The *Aboriginal Communal Fishing Licences Regulations* (“ACFLR”) provide a licensing mechanism for Aboriginal fisheries, whether to access fish for food, social or ceremonial purposes, or for economic purposes under the pilot sales or economic opportunity fisheries as part of the Aboriginal Fisheries Strategy.<sup>40</sup> The ACLFR apply to several fisheries throughout Canada, including fisheries in water areas enumerated in Schedule II to the *Pacific Fishery Management Area Regulations*<sup>41</sup> and salmon fisheries in British Columbia.<sup>42</sup> However, the ACFLR do not apply in respect of fishing in national parks.<sup>43</sup>
- 20 For a fuller discussion of the ACLFR, see the commission’s policy and practice report entitled “Department of Fisheries and Oceans Policies and Programs for Aboriginal Fishing.”

### *Foreign Vessel Fishing Regulations*<sup>44</sup>

- 21 Part II of the *Foreign Vessel Fishing Regulations* applies to foreign fishing vessels and to any person on board a foreign fishing vessel (including crew or employees) in the Canadian fisheries waters adjacent to the Pacific Coast.<sup>45</sup>
- 22 Part II sets out close times for fishing certain species and areas, incidental catch limits, gear restrictions and requirements for seals and certificates on gear.<sup>46</sup> Although the regulations specifically identify several species, such as pollock, rockfish, cod, sablefish, hake, squid, and dogfish, the regulations make no mention of incidental catch limits, gear restrictions or close times in respect of salmon.

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<sup>39</sup> SOR/93-332

<sup>40</sup> CAN000059 at p. 2

<sup>41</sup> SOR/2007-77

<sup>42</sup> ACFLR, s. 3(1)(d)

<sup>43</sup> *Ibid.*, s. 3(2).

<sup>44</sup> C.R.C., c. 815

<sup>45</sup> *Foreign Vessel Fishing Regulations*, s. 22

<sup>46</sup> *Ibid.*, s. 23-30

## Coastal Fisheries Protection Act<sup>47</sup>

23 The *Coastal Fisheries Protection Act* regulates the activities of foreign fishing vessels in Canadian fisheries waters and in the regulatory area of the North Atlantic Fisheries Organization. For example, it restricts the entry of foreign fishing vessels into Canadian waters,<sup>48</sup> foreign vessel fishing in Canadian waters,<sup>49</sup> and the transport of fish into Canadian waters.<sup>50</sup>

## **Organization**

### *National Organization*

24 The Director General C&P (presently Trevor Swerdfager)<sup>51</sup> is DFO's head enforcement officer. He is responsible for promulgating policies and procedures to facilitate the national delivery of the C&P program,<sup>52</sup> and holds ultimate responsibility for the activities of over 600 fishery officers stationed in 136 offices across Canada.<sup>53</sup> The Director General C&P reports to the Assistant Deputy Minister, Ecosystems and Fisheries Management, and is assisted by a Director of Enforcement and a Director of Program Support and Development.<sup>54</sup> Compared to other programs within DFO, C&P is relatively decentralized, with limited staff operating out of DFO national headquarters.

25 The Director of Enforcement (presently Randy Jenkins) is responsible for planning and monitoring the implementation of national compliance strategies and initiatives in support of departmental fisheries and habitat management programs; for the design, development and delivery of career development programs and related activities for fishery officers; and for development and

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<sup>47</sup> R.S.C. 1985, c. C-33

<sup>48</sup> *Coastal Fisheries Protection Act*, s. 3

<sup>49</sup> *Ibid.*, s. 4

<sup>50</sup> *Ibid.*, s. 5

<sup>51</sup> Trevor Swerdfager took over as Director General C&P from Paul Steele on March 21, 2011.

<sup>52</sup> CAN024036 at p. 2

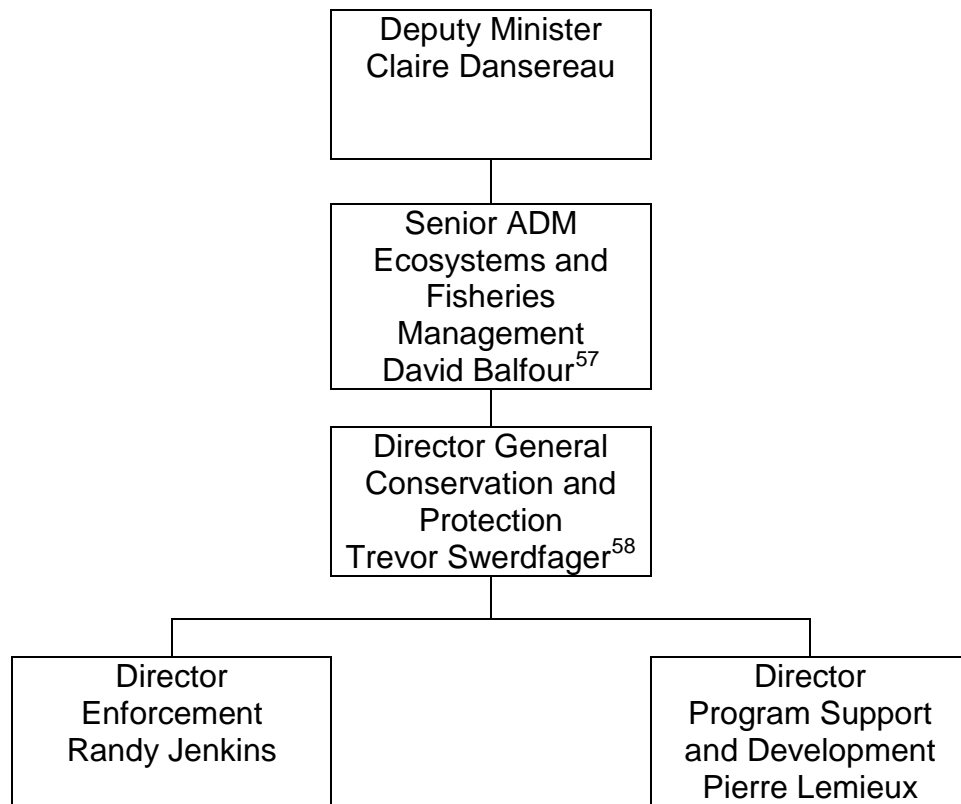
<sup>53</sup> CAN185940 at p. 12

<sup>54</sup> CAN203247

monitoring of monitoring of the Department's Emergency Preparedness Program.<sup>55</sup>

- 26 The Director of Program Support and Development (presently Pierre Lemieux) is responsible for developing a review and risk assessment of C&P activities and services, leading the National Compliance Strategy, and managing research, consultations and development of enhanced operations, recruitment, training, staff programs, policies, procedures, national standards and equipment for enforcement personnel.<sup>56</sup>

**Figure 2: National Headquarters Conservation and Protection Organizational Structure (Executive Level Positions Only)**



<sup>55</sup> *Ibid.* at p. 1

<sup>56</sup> *Ibid.* at p. 2

<sup>57</sup> Previously, David Bevan

<sup>58</sup> Previously, Paul Steele

## *Pacific Region Organization*

- 27 The Regional Director C&P (presently Randy Nelson) has line authority<sup>59</sup> over all Pacific Region C&P resources.<sup>60</sup> Regional Directors are responsible for the regional delivery of the C&P program,<sup>61</sup> including development and application of regional C&P policies and guidelines, regional C&P planning and priority setting, collaborating with partner agencies (such as the RCMP) and meeting the requirements of international enforcement agreements.<sup>62</sup> The Regional Director C&P reports directly to the Regional Director General and sits on the Regional Management Committee.<sup>63</sup> As of 2009, there were 161 fishery officers stationed in 34 offices in the Pacific Region,<sup>64</sup> more fishery officers than in any other region of DFO.<sup>65</sup>
- 28 The Pacific Region consists of several management areas. Each area is led by a C&P Area Chief, reporting to the Regional Director C&P. Area Chiefs oversee detachment supervisors, who in turn oversee field supervisors, who in turn oversee general duty fishery officers. Figure 3 illustrates the number of Area Chiefs in the Pacific Region, including the number of detachments and fishery officers that they oversee.

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<sup>59</sup> The Pacific Region C&P Program has been operating under a line-reporting model since a June 20, 2005 pilot project: CAN018647 at p. 1. For reviews of the Pacific Region line reporting pilot project, see CAN024022, CAN191413, CAN143420 and CAN103732.

<sup>60</sup> CAN024036 at p. 4

<sup>61</sup> Note that C&P program delivery is largely decentralized and under the control of the regions: CAN024036 at p. 4.

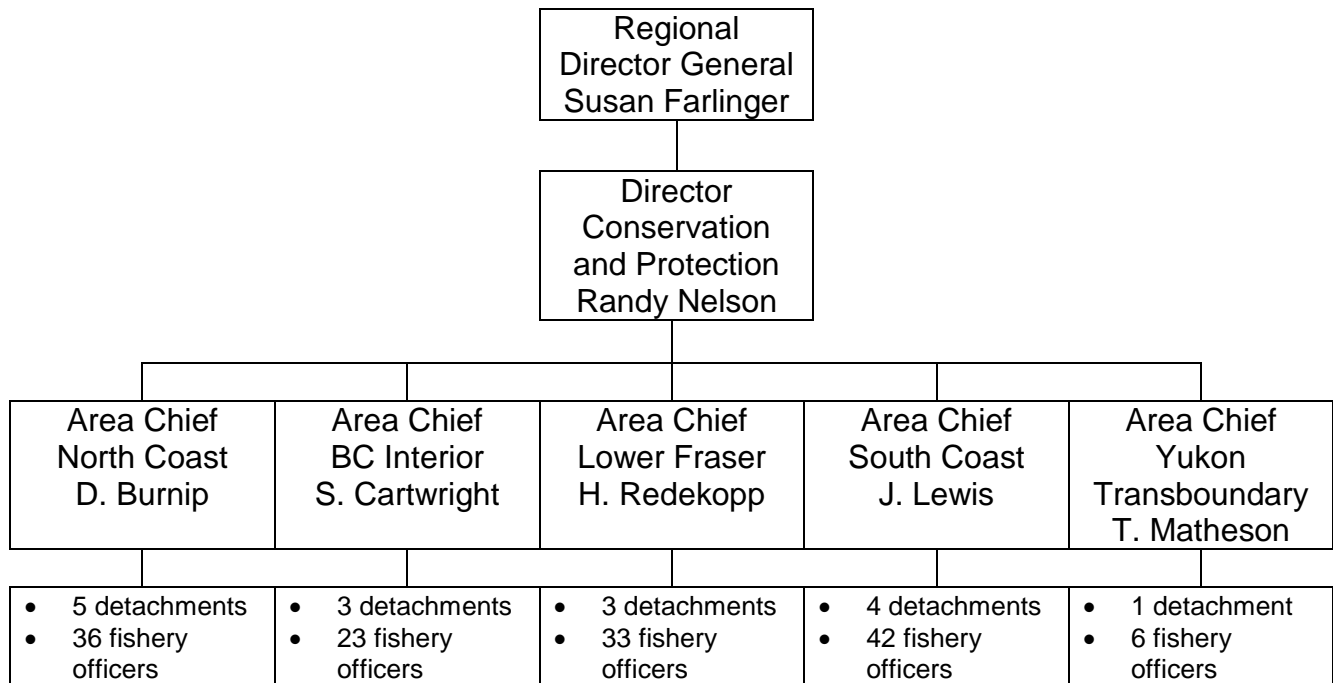
<sup>62</sup> CAN285310

<sup>63</sup> CAN018647 at p. 1

<sup>64</sup> CAN185940 at p. 12

<sup>65</sup> CAN024036 at p. 2

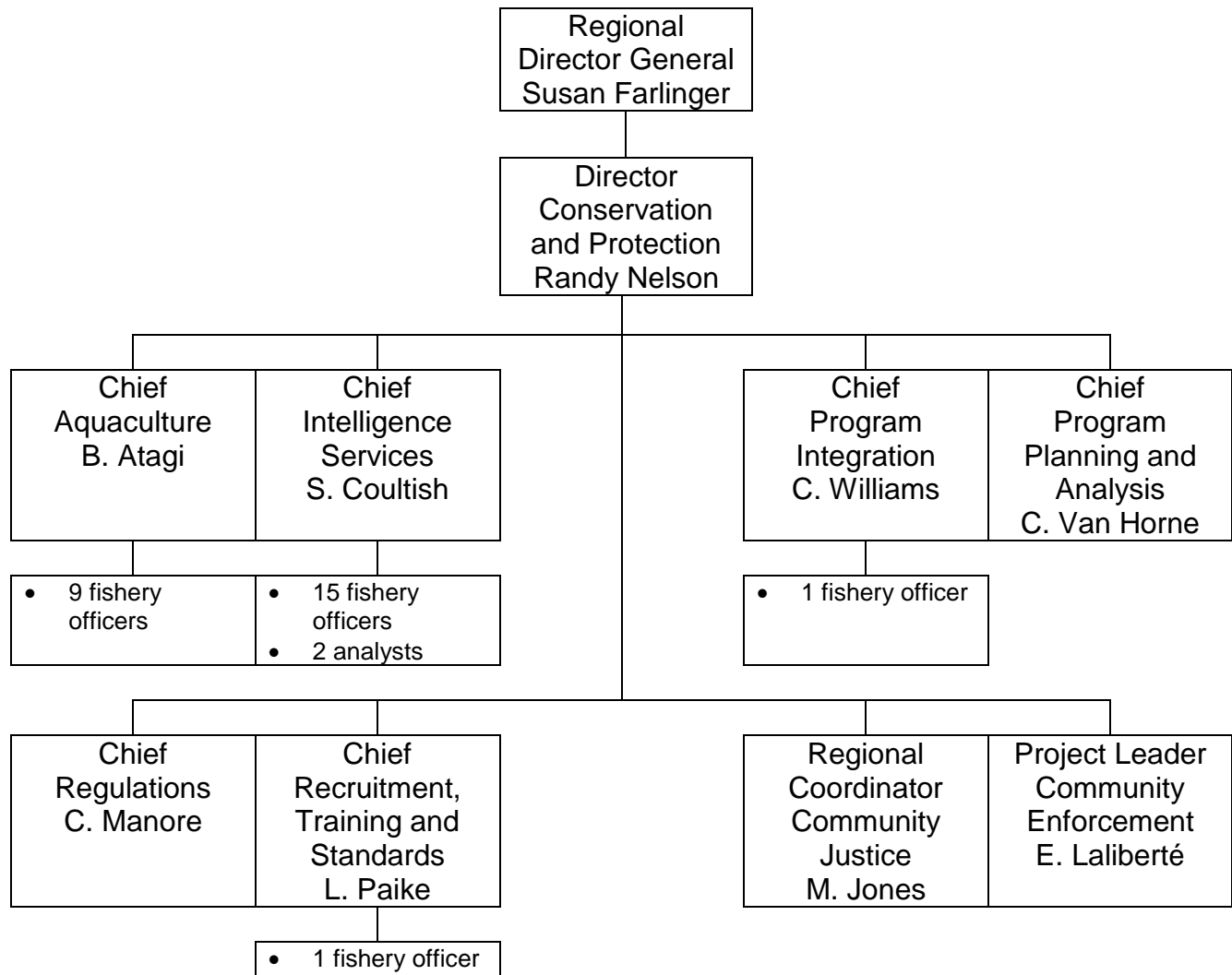
**Figure 3: Pacific Region Conservation and Protection Organizational Structure for Area Offices**



29 In addition to Area Chiefs, the Regional Director C&P also has direct line reporting relationships with several regional chiefs and coordinators. These chiefs oversee specific C&P activities, such as aquaculture enforcement, investigation and intelligence services, program integration, program planning and analysis, regulations, recruitment, community justice and community enforcement.



**Figure 4: Pacific Region Conservation and Protection Regional Chiefs and Coordinators**



30 A 2008 Management Review Report, prepared jointly by the RCMP and DFO, found that the change to line reporting in Pacific Region C&P increased the responsibilities of regional headquarters staff, but did not come with an increase in regional headquarters capacity.<sup>66</sup> As a result, existing capacity issues at regional headquarters were amplified such that “the Regional Director [C&P] is over taxed with a multitude of duties to ensure the Branch not only operates on a day to day basis, but is strategic in its outlook.”<sup>67</sup> To address this, the 2008

<sup>66</sup> CAN143420 at p. 12-13

<sup>67</sup> *Ibid.*

Management Review Report recommended that the Regional Director C&P hire additional staff to whom responsibilities could be delegated.<sup>68</sup>

### *Fishery Officers*

- 31 Fishery officers are often viewed as the “face of the Department.”<sup>69</sup> Designated under s. 5(1) of the *Fisheries Act*, fishery officers hold the powers and protections of peace officers under the *Criminal Code* while enforcing the *Fisheries Act*, the *Coastal Fisheries Protection Act*,<sup>70</sup> certain First Nations fisheries laws<sup>71</sup> and associated regulations. Enforcement training, fisheries knowledge and special certification are required to become a fishery officer.<sup>72</sup> The position is not without risk.<sup>73</sup> Nationally, fishery officers face an average of 50 violent incidents per year while performing their duties of conservation and protection.<sup>74</sup>
- 32 Fishery officers have specific powers of inspection under the *Fisheries Act*.<sup>75</sup> A fishery officer “may enter and inspect any place, including any premises, vessel or vehicle, in which the officer or guardian believes on reasonable grounds there is any work or undertaking...in respect of which [the *Fisheries Act*] or the regulations apply”<sup>76</sup> including conducting tests and taking measurements, and requiring any person to produce books, records, or other documents that the officer “believes on reasonable grounds contain information that is relevant to the

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<sup>68</sup> *Ibid.* at p. 13

<sup>69</sup> CAN057525 at p. 4

<sup>70</sup> As described by DFO, peace officer status pursuant to the *Criminal Code* is only conferred on fisheries officers while performing duties or functions under the *Fisheries Act* or *Coastal Fisheries Protection Act*. Fishery officers do not have peace officer status while enforcing any other legislation. Unless designated under other legislation, fishery officers have no authority to take enforcement action other than under the fisheries laws for which they have been designated or appointed. Should an officer choose to take enforcement action under any other legislation or under the *Criminal Code* when they are not performing their duties under the *Fisheries Act* or *Coastal Fisheries Protection Act*, that officer will be considered to be acting as a private citizen: CAN285246 at p. 10. A detailed table setting out fishery officer authorities under legislation administered by the Department is contained at p. 7 of the Draft National Enforcement Policy for Conservation and Protection: CAN285246.

<sup>71</sup> *Fisheries Act*, s. 5(4).

<sup>72</sup> For a description of training, see CAN185466.

<sup>73</sup> CAN185940 at p. 7

<sup>74</sup> *Ibid.* at p. 18

<sup>75</sup> Note that powers of inspection under the *Fisheries Act* also may apply to fisheries guardians.

<sup>76</sup> *Fisheries Act*, s. 49(1).

administration of this *Act* or the regulations.”<sup>77</sup> One limit on the powers of inspection is that a fishery officer may not enter a “dwelling-house without the consent of the occupant except under the authority of a warrant issued under subsection (3).”<sup>78</sup>

33 Fishery officers also have certain powers of search and seizure, and in some cases, the power to arrest without warrant.<sup>79</sup> For further discussion of these powers, refer to paragraphs 41-43 of the commission’s policy and practice report entitled “Enforcement of the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*.”

34 The key activities of a “GT-04” or field level fishery officer are as follows:<sup>80</sup>

- Carries out compliance inspections and enforcement of the various Fisheries-related Acts and Regulations that govern fishing activity in the aboriginal, commercial, recreational and international fisheries and protect fish habitat and the aquatic environment. Investigates any contraventions of the above legislation by persons or corporations under Canadian jurisdiction or international agreements in domestic or international waters. Conducts patrols by foot, vehicle, program vessel, CCG vessels, fixed and rotary winged aircraft, all-terrain vehicles and snowmobiles. Fishery Officers are the conservation and protection enforcement services for Fisheries and Oceans Canada.
- Acts as lead investigator or as a member of a team of fishery officers to collect evidence, including forensic evidence on major cases, prepares violation reports, prepares court briefs, prepares and executes court documents such as information to obtain search warrants, search warrants, information, summonses, subpoenas, appearance notices and voluntary penalty tickets. As the primary advisor to Crown Counsel, provides advice, guidance and direction in the prosecution of all violation cases. Presents evidence in court as the arresting officer, crown and/or expert witness.
- Promotes stewardship of the fisheries resources and fish habitat among the various user groups private and public sector industries that may impact on fish habitat and the general public. Presents and promotes adherence to the

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<sup>77</sup> *Ibid.*, s. 49(1) (a)-(d)

<sup>78</sup> *Ibid.*, s. 49(2)

<sup>79</sup> *Ibid.*, s. 49.1, 50, 51

<sup>80</sup> DFO Website: <http://www.dfo-mpo.gc.ca/fm-gp/enf-loi/description-eng.htm>

Code of Conduct for Responsible Fishing and develops community relationships to support and encourage a strong conservation ethic.

- Investigates and gathers intelligence and/or conducts audits on fishing and habitat-related activities to provide status reports on harvesting activities and/or habitat degradation for use by supervisors and/or fish/habitat managers including the Science Sector of the Department.
- Participates in the development of training programs, trains, mentors, leads and provides feedback on the progress of new recruits, colleagues and enforcement partners, and trains individuals from other enforcement agencies and/or public organizations.
- Develops and delivers public education and awareness presentations.
- Acts as a senior departmental liaison in communities and provides assistance to other federal, provincial, local and international enforcement agencies.

35 In 2010, Pacific Region C&P staff proposed, for discussion, that fishery officers be designated as “Special Provincial Constables” in order to give them “clarity when facing unique enforcement challenges” such as “criminal activity outside of their fisheries enforcement mandate.”<sup>81</sup> According to Pacific Region C&P, the proposed Special Provincial Constable designation “is not meant to be a mandate creep but simply a measure the Department is taking in order to minimize liability to officers that are faced with exigent circumstances in the course of their duties that fall outside of *Fisheries Act* enforcement.”<sup>82</sup>

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<sup>81</sup> CAN203359 at p. 2

<sup>82</sup> *Ibid.*

## Priorities and Priority Setting

36 Every year, Pacific Region C&P staff identify operational priorities and develop work plans to organize their activities. This section of the policy and practice report describes recent priorities and explains how they were established.

### Overall Process for Developing Operational Priorities

37 According to C&P, there are four stages applied to translate high level government priorities into day-to-day fishery officer activities. They are as follows:

- Government of Canada annual agenda and priorities are translated into broad DFO objectives<sup>83</sup>

Each year, the Government of Canada's agenda and priorities are set out in the Speech from the Throne and in other broad policy announcements. DFO staff in Ottawa gather and assess these Government of Canada objectives and, in consultation with regional staff, will determine what role DFO can play in achieving them. This analysis results in an annual DFO Report on Plans and Priorities, which is provided to Treasury Board for Parliamentary approval. Once approved, this Report on Plans and Priorities sets out DFO's accountabilities and funding levels for the year.<sup>84</sup>

- Broad DFO objectives are considered in developing a national business plan for the Ecosystems and Fisheries Management sector (of which C&P is a part)<sup>85</sup>

Each DFO sector must develop an annual business plan that takes into account the broad DFO objectives set out in the Report on Plans and Priorities. Annual business plans establish sector and program priorities. As the C&P program is a part of the Ecosystems and Fisheries Management ("EFM") sector, C&P staff will develop a C&P-specific section in the EFM business plan.<sup>86</sup> This section articulates C&P priorities that may be national or regional in application, and will be approved by the Director General C&P, the Assistant Deputy Minister EFM, and then the Deputy Minister.<sup>87</sup>

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<sup>83</sup> CAN014457 at p. 1

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

<sup>86</sup> Under a new process this year, C&P and other EFM sub-activities will prepare their own business plans, which will then be incorporated under an EFM sector plan.

<sup>87</sup> C&P content in the national EFM business plan may also undergo an integrated risk management process, described below: CAN145132 at p. 13.

The Assistant Deputy Minister EFM is accountable to deliver on the EFM sector business plan as a whole, and he will hold the Director General C&P accountable for delivery of the C&P component.<sup>88</sup>

- C&P priorities are considered in developing regional operational priorities<sup>89</sup>

In the Pacific Region, the Regional Chief of Program Planning and Analysis will consider the C&P priorities contained in the EFM business plan together with other DFO strategic directions (such as Ministerial announcements or directions from the Regional Director General), to draft a set of regional operational priorities. These draft regional operational priorities are tested and validated using an “integrated risk management” process (described below) that allows for input from the Regional Director C&P and Chiefs, as well as Area Directors, program managers and representatives from other sectors.<sup>90</sup>

The Regional Director C&P is accountable for delivery of regional operational priorities.

- Regional operational priorities are translated into area- and detachment-level workplans<sup>91</sup>

Once regional operational priorities have been validated through the integrated risk management process, they are considered by C&P Area Chiefs and supervisors in the development of area- and detachment-level workplans.<sup>92</sup> These workplans guide the day-to-day activities of C&P staff and may vary based on the compliance challenges faced by a particular area.<sup>93</sup>

### Integrated Risk Management

38 DFO describes integrated risk management as follows:

*Integrated risk management involves the culture, structures and processes for a proactive, systematic and explicit organization-wide discipline that identifies, assesses, manages and communicates all risks that can have a meaningful impact on the achievement of important objectives.*<sup>94</sup>

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<sup>88</sup> CAN014457 at p. 1

<sup>89</sup> *Ibid.* at p. 2

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> For sample minutes from the 2008-2009 South Coast C&P work planning workshop, see CAN062394.

<sup>93</sup> Compliance challenges in 2009-2010 for the South Coast, BC Interior and Lower Fraser Areas, for example, are set out in CAN021962 at p. 12, 16, and 20.

<sup>94</sup> CAN002943 at p. 4. For another description, see CAN004037 at p. 36.

And

*Integrated risk management presents an opportunity to define defensible operational priorities in response to an objective risk assessment process, enabling better utilization and justification of resources directed towards specific identified risks ...[to] facilitate informed decisions within a context of uncertainty and a continuous change environment.<sup>95</sup>*

39 Integrated risk management facilitates the prioritization of C&P fields of activity.

Fields of activity include the following:<sup>96</sup>

- Aboriginal Fisheries
- Aquaculture
- Canadian Shellfish Sanitation Program
- Habitat Management
- Commercial Fisheries Management
- Recreational Fisheries Management
- Management of Non-Consumptive Activities
- International Obligations
- Marine Safety and Security
- Oceans Management
- *Species At Risk Act* (“SARA”)

40 These fields of activity are prioritized by assessing how important they are to national and regional priorities as well as the level of risk associated with each activity in terms of achievability.<sup>97</sup> The achievability and importance of each activity is then plotted on a matrix. For example, Figure 5 illustrates the C&P prioritization of activities that resulted from the March 2010 Pacific Region integrated risk management workshop.

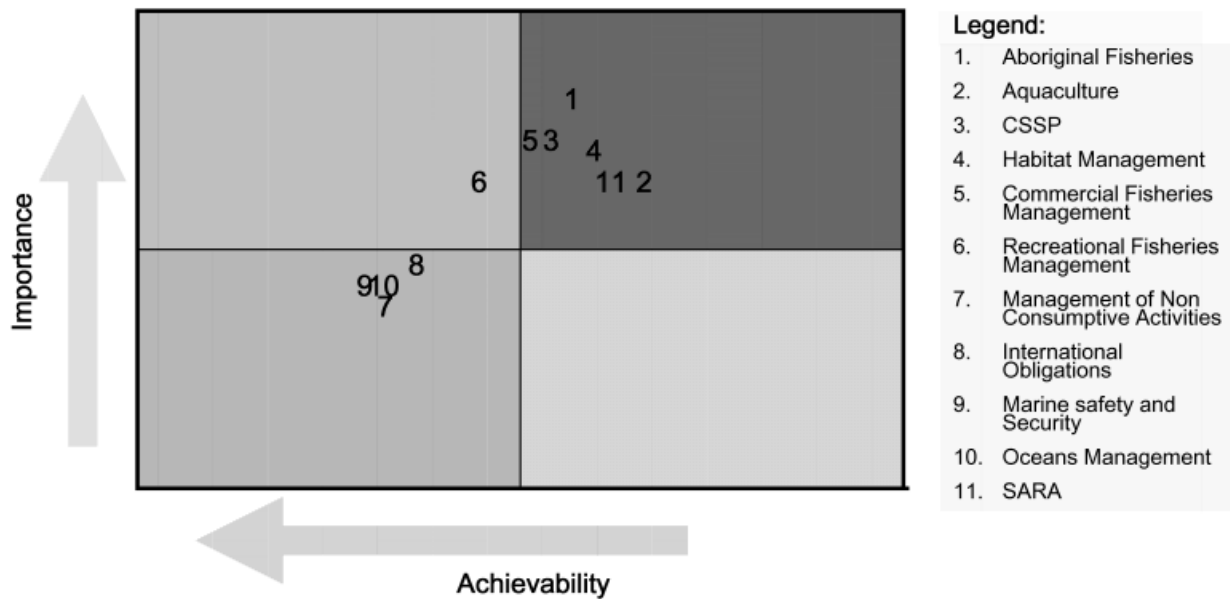
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<sup>95</sup> CAN010869 at p. 6

<sup>96</sup> CAN224173 at p. 10

<sup>97</sup> Risks include the following: insufficient human resource capacity; not engaging in the most effective activities or having the right tools to achieve the C&P mandate; not being able to invest in and maintain infrastructure; not having sufficient knowledge and skills to support operational requirements; unclear roles and responsibilities; eroding voluntary compliance; increased civil disobedience; etc: *Ibid.* at p. 11.

**Figure 5: Pacific Region C&P Prioritization, Integrated Risk Management Workshop, March 2010<sup>98</sup>**



- 41 After prioritizing activities, participants to an integrated risk management session<sup>99</sup> develop “mitigation measures” to address high priority and high risk fields of activity. For example, in March 2010, mitigation measures associated with the aquaculture field of activity included: “engage industry”, “communication strategy”, “clarify roles and responsibility (top priority)” and “develop comprehensive training strategy.”<sup>100</sup>
- 42 The move towards an integrated risk management approach to determining C&P operational priorities comes as a result of the 2004 DFO Compliance Review and Modernization Initiative.<sup>101</sup>

<sup>98</sup> *Ibid.* at p. 14

<sup>99</sup> As an example, participants to the Pacific Region 2010 IRM Workshop included Regional Chiefs and Area Chiefs for C&P, as well staff from other DFO Programs: *Ibid.* at p. 5.

<sup>100</sup> *Ibid.* at p. 16

<sup>101</sup> CAN145132 at p. 13



### Work Planning for Temporary or Targeted Funds

43 In addition to the overall operational planning and integrated risk management processes described above, separate work planning exercises are used to plan the expenditure of temporary or targeted funds. These funds may arise in response to previous reports, such as the “Williams Funding” allocated in response to recommendations from the 2004 Fraser River Salmon Fishery Post-Season Review prepared by the Hon. Bryan Williams, Q.C., (the “Williams Report”), or from time-limited initiatives, such as the Pacific Integrated Commercial Fisheries Initiative.

### Priorities

#### *National Priorities*

- 44 The DFO Sustainable Fisheries and Aquaculture Business Plan for 2008-09 to 2010-11 fiscal years sets out C&P national priorities as follows:<sup>102</sup>
- Continue the modernization of the departmental compliance program as part of the Fisheries Renewal Strategy
  - Managing Third Party contractual arrangements for the delivery of monitoring and surveillance activities (i.e. At-Sea Observers and contracted air surveillance)
  - Refresh core compliance information management systems (second year of Compliance System Refresh Initiative)
  - Follow up on national C&P audit including development and implementation of Management Action Plan<sup>103</sup>
  - Transition to line-reporting management structure for C&P
  - Continue implementation of [Habitat Compliance Modernization] and National Protocol

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<sup>102</sup> Draft: CAN255979 at p. 85

<sup>103</sup> The “national C&P audit” is described later in this policy and practice report as the 2009 C&P Audit.

45 For the 2010-11 fiscal year, C&P again listed and ranked various national issues as being either high, medium or medium/low priority.<sup>104</sup> The following table lists national issues and sub-issues that C&P ranked as “high priority” for the 2010-11 fiscal year:

**Table 2: C&P National Issues and Sub-Issues ranked as “high priority” for 2010-11<sup>105</sup>**

National Issue	Sub-Issue
Review of Budgets	Develop and implement strategy to identify options to address salary shortfall of \$3M to \$4M dollars  Prepare for Strategic Review
National Evaluation of C&P Program and internal A-Base Review	--
Follow-up on 2008/09 C&P Audit recommendations	Develop national policies  Strategic planning
Habitat Issues	Response to the Auditor General's Report on Habitat Enforcement
Compliance Review and Modernization Initiatives	Performance measurement  Operational planning and budgeting process  Compliance systems refresh
Aquaculture in BC	--
Canadian Shellfish Sanitation Program	--
Traceability	European Union, illegal unregulated and unreported catch audit requirement
International Commitments	--

<sup>104</sup> CAN251560

<sup>105</sup> *Ibid.*

Review of Job Descriptions	--
Marine Security Operations Centres	Staffing and reporting alignment
Air Surveillance	Implementation of new contract Options for surveillance in the Arctic
Pacific Salmon Judicial Inquiry	--
Canadian Coast Guard Liaison	Performance measurement Fleet renewal Marine Enforcement Officer review Recruitment
Sustainable Fisheries Initiatives	Stock sustainability checklist IFMPs Marine Stewardship Council certification Newfoundland Contracted Guardian Program review

### *Pacific Region Priorities*

46 After reviewing the national issues for 2010-11, Pacific Region C&P identified the priority items expected to have the greatest effect on Pacific Region C&P activities.<sup>106</sup> After performing an integrated risk management exercise, Pacific Region C&P ranked draft 2010-11 operational priorities as follows:<sup>107</sup>

<sup>106</sup> CAN178147 at p. 1

<sup>107</sup> *Ibid.* at p. 3. Note that the Southern Integrated Fisheries Management Plan will also identify area-specific compliance issues to be addressed by C&P in a given fiscal year: CAN004037 at p. 36.

- 1) Aquaculture
- 2) Aboriginal Fisheries
- 3) *Species at Risk Act*
- 4) Canadian Shellfish Sanitation Program
- 5) Habitat Compliance
- 6) Commercial Fisheries
- 7) Recreational Fisheries
- 8) Marine Safety and Security (tied for 7)
- 9) International Obligations (tied for 7)
- 10) Non-consumptive Activities
- 11) Oceans

47 Pacific Region C&P staff then developed several mitigation strategies for highly ranked operational priorities.<sup>108</sup>

#### *Area-level Priorities*

48 At the area-level, C&P priorities will take into account regional priorities as well as the compliance challenges faced by particular areas. In 2009-10, Pacific Region C&P staff identified several compliance challenges in the South Coast, Lower Fraser and BC Interior areas related to salmon fisheries enforcement, which are set out in the following table.<sup>109</sup>

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<sup>108</sup> CAN178147 at p. 3-6

<sup>109</sup> CAN021962

**Table 3: Area-level 2009-10 Compliance Challenges related to Salmon Fisheries Enforcement<sup>110</sup>**

Area	Compliance Challenges related to Salmon Fisheries Enforcement
South Coast <sup>111</sup>	<ul style="list-style-type: none"> <li>• illegal sales</li> <li>• conservation and selective fishing measures</li> <li>• aquaculture</li> <li>• decrease in recreational fishery compliance</li> <li>• reduced at-sea capabilities</li> </ul>
Lower Fraser <sup>112</sup>	<ul style="list-style-type: none"> <li>• chronic non-compliance to regulations and licence conditions by a particular First Nations group, resulting in weekly charges, forfeitures and arrests</li> <li>• crowds of anglers on Lower Fraser River systems due to the large population in the Lower Mainland resulted in significant snagging issues on spawning grounds and over limit issues on systems such as Stave and Vedder, where fishing violations are frequently encountered</li> </ul>
BC Interior <sup>113</sup>	<ul style="list-style-type: none"> <li>• unprecedented poor returns resulting in prolonged closures and limited First Nations fishing opportunities</li> <li>• cancelled recreational opportunities, protest fishing activity, gillnets not meeting an eight inch mesh restriction</li> <li>• allowable retention of “mortally wounded” sockeye</li> <li>• ongoing staff vacancies in some BCI detachments (50% capacity at times)</li> </ul>

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.* at p. 12

<sup>112</sup> *Ibid.* at p. 20

<sup>113</sup> *Ibid.* at p. 16

## Policy Framework

49 The Director General C&P is accountable for the development and application of national policies<sup>114</sup> and the Regional Director C&P in the Pacific Region is accountable for the development and application of regional policies.<sup>115</sup> This section of the policy and practice report describes a selection of policies applicable to enforcement of Fraser River sockeye salmon fisheries.

### National Policies of General Application

50 An undated Draft National Enforcement Policy for Conservation and Protection<sup>116</sup> aims to provide direction to all C&P staff, and in particular, sets out the following guiding principles for fishery officers:<sup>117</sup>

- Compliance with fisheries laws is mandatory;
- In promoting compliance with fisheries laws, officers will emphasize preventing violations;
- Officers will apply fisheries laws in a manner that is fair, predictable, impartial and consistent. They will use rules and processes securely founded in law, in keeping with the *Canadian Charter of Rights and Freedoms*;
- A risk-based approach will be applied whereby officers will respond to suspected violations of fisheries laws, giving priority to those that have resulted in the greatest harm, or pose the greatest risk of harm, to the fisheries resource, to fish habitat or to public health; and
- Officers will encourage reporting by the public of suspected violations of fisheries laws, and will respond to all such requests in accordance with priorities established within C&P.

51 The Draft National Enforcement Policy for Conservation and Protection goes on to describe policies governing several types of fishery officer activities. These include: the detection of violations through inspections, searches and seizures;

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<sup>114</sup> CAN203247. See also CAN024036 at p. 2.

<sup>115</sup> CAN024036 at p. 4

<sup>116</sup> CAN285246

<sup>117</sup> *Ibid.* at p. 5

choosing an appropriate enforcement option among warnings, tickets, seizure, restorative justice, arrest and others; and responding to the media. This document also includes a table that sets out the authorities of fishery officers established under the various legislation administered by DFO.

52 In response to a 2004 Compliance Review and Modernization Initiative, C&P developed a National Compliance Framework.<sup>118</sup> This National Compliance Framework was completed and introduced to fishery officers in April 2007.<sup>119</sup> It articulates eight principles underlying the C&P program as follows:

- Proactive – promote voluntary compliance
- Collaborative – build support through partnerships
- Problem solving – special attention to specific problems
- Risk based – effort and response proportional to risk
- Innovative – optimal use of technology and other tools
- Intelligence-led – increased role of intelligence and analysis in supporting enforcement operations
- Cost efficient/effective – better use of resources; and
- Balanced – appropriate mix of activities undertaken to achieve compliance

53 The National Compliance Framework also sets out the “Three Pillar Approach” to C&P’s compliance management programming. The three pillars are as follows:

- Pillar One - Education and Shared Stewardship

This includes informal and formal education of the public, co-management and partnerships.<sup>120</sup>

- Pillar Two – Monitoring, Control and Surveillance

This includes patrols, inspections, third-party monitoring, interagency partnerships, and fishery officer responses to non-compliance.<sup>121</sup>

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<sup>118</sup> CAN285247. See also CAN145132.

<sup>119</sup> CAN145132 at p. 19

<sup>120</sup> *Ibid.* at p. 11

<sup>121</sup> *Ibid.*

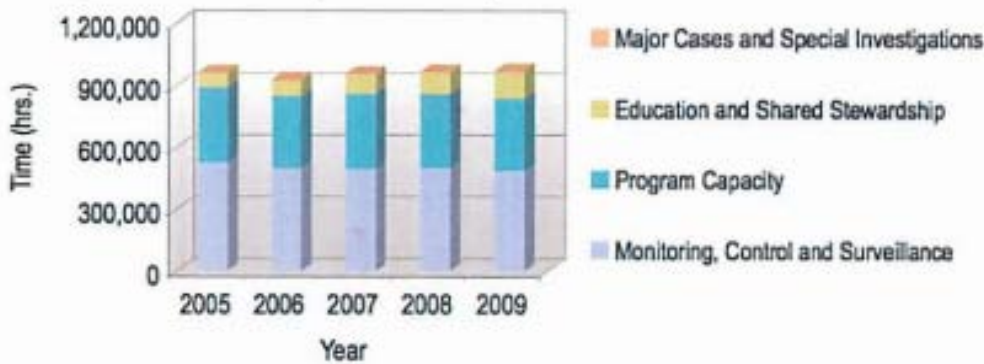
- Pillar Three – Major Cases and Special Investigations

This includes formal intelligence gathering and analysis, retroactive offence detection and investigation, and the use of specialized skills and technology.<sup>122</sup>

54 In addition to each of these pillars, C&P is supported by staff who develop “program capacity”. Program capacity activities may include priority setting, administration, fishery officer recruitment and training, and similar activities. Activities conducted by C&P under each of the three pillars and as part of the program capacity element are discussed later in this policy and practice report.

55 Figure 6 illustrates the national percentage of fishery officer time spent on each of the three pillars, and on the program capacity element from 2005 to 2009.<sup>123</sup>

**Figure 6: C&P Effort By Major Elements of Compliance Management Model, 2005 to 2009**<sup>124</sup>



56 In 2007, C&P developed a National Situational Compliance Model.<sup>125</sup> This Compliance Model sets out the factors affecting compliance and the various

<sup>122</sup> *Ibid.*

<sup>123</sup> A similar graph illustrating Pacific Region fishery officer time spent on each of the three pillars was not available. However, the Department has provided to the commission a summary of the hours spent by Pacific Region fishery officers on various activity types (which are associated with the three pillars). These activities include patrols, forensic audits, surveillance, prosecutions, investigations, public relations, etc. See “Answer 4(a) – Summary of Hours Spent by Activity Type”, Non-Ringtail document.

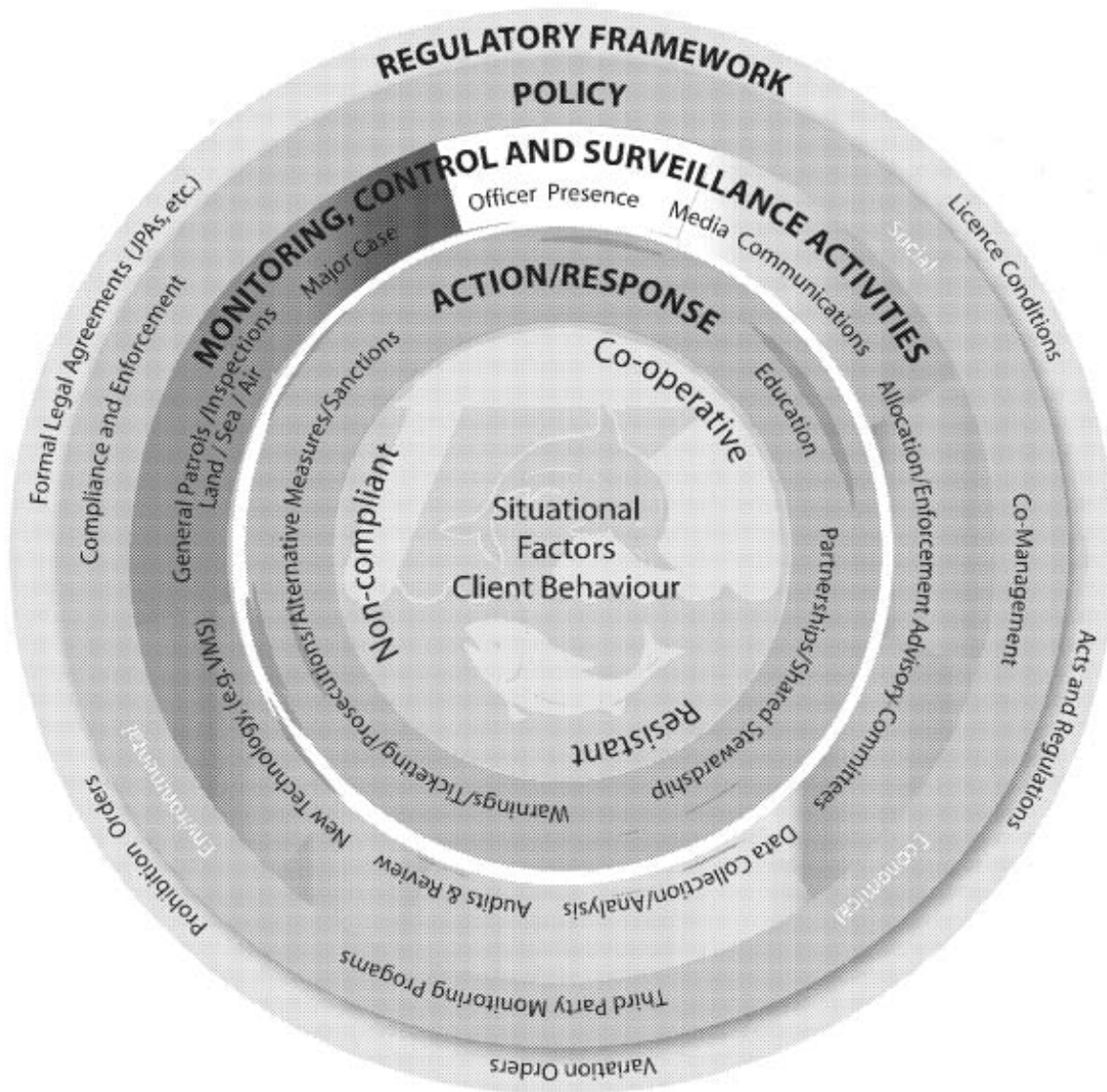
<sup>124</sup> CAN185940 at p. 9

<sup>125</sup> CAN257322



actions fishery officers make undertake to influence certain behaviours. Figure 7 is the copy of National Situational Compliance Model.

**Figure 7: National Situational Compliance Model**<sup>126</sup>



57 The outer ring of the Situational Compliance Model describes the requirement for a sound “regulatory framework”, including acts, regulations, powers, licence conditions and so on, to support C&P’s monitoring control and surveillance activities. The next ring from the outside represents the broad departmental policy objectives that C&P personnel are to take into account when developing

<sup>126</sup> *Ibid.* at p. 2

compliance strategies. These policy objectives include co-management of the resource, economic considerations and various fisheries and habitat management policies. The third ring from the outside lists several of the monitoring, control and surveillance activities that are available to C&P. These include officer presence, major cases, media communications, and participation on advisory committees, among other activities. The fourth ring identifies actions and responses that C&P may take to deter illegal activities, such as education, shared stewardship, warnings, tickets or prosecutions.

### National Policies Related to Aboriginal Fisheries

- 58 The 1993 Policy for the Management of Aboriginal Fishing<sup>127</sup> is described in detail in the commission's policy and practice report entitled, "Department of Fisheries and Oceans Policies and Programs for Aboriginal Fishing." This policy contains a brief enforcement section,<sup>128</sup> which provides, *inter alia*, that normal enforcement procedures will apply to Aboriginal fishing, subject to the terms of Aboriginal fishing agreements. Informal protocols on enforcement may be entered into with Aboriginal fishing organizations, and where delay will not compromise the effectiveness of enforcement, DFO staff shall consult with an Aboriginal organization before taking any enforcement action on its members. In all cases, DFO staff will inform and consult with the relevant Aboriginal organization after taking any enforcement action. In addition, the Policy for the Management of Aboriginal Fishing describes the role of Aboriginal fishery guardians.
- 59 The 1993 Department of Fisheries and Oceans National Procedural Guidelines for Enforcement of Aboriginal Fishing for Food, Social and Ceremonial Purposes<sup>129</sup> establishes processes to be followed by fishery officers and Aboriginal fishery guardians. The guidelines are intended to ensure that fishery officers and guardians perform their duties in a manner consistent with the Policy

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<sup>127</sup> CAN008679

<sup>128</sup> *Ibid.* at p. 10

<sup>129</sup> CAN001560

for the Management of Aboriginal Fishing and the Aboriginal Fisheries Strategy.<sup>130</sup> According to these guidelines, officers and guardians will follow “procedures that differ from the enforcement policies in effect prior to the *R. v. Sparrow* decision in May 1990, and to some extent from enforcement procedures employed with respect to fishing not based on Aboriginal rights or treaty rights.”<sup>131</sup> The guidelines add that fishery officers and guardians must follow the enforcement procedures that may be agreed to under Aboriginal fishing agreements.<sup>132</sup>

60 The 1993 National Enforcement Policy Relating to Indian Band Fishing By-laws<sup>133</sup> and the 1993 National Enforcement Procedural Guidelines Relating to Indian Band Fishing By-laws<sup>134</sup> set out procedures for fishery officers in enforcement of *Fisheries Act* regulations on reserves. These documents state the Department’s view that where by-laws made by Indian bands conflict with provisions of regulations made under the *Fisheries Act*, “valid Indian band by-laws, made pursuant to the *Indian Act*, will prevail over *Fisheries Act* regulations dealing with the same subject matter, to the extent of any inconsistencies.”<sup>135</sup> Where bands do not have valid fishing by-laws, then the regulations made under the *Fisheries Act* apply.<sup>136</sup> Note that the *R. v. Nikal*<sup>137</sup> and *R. v. Lewis*<sup>138</sup> cases decided by the Supreme Court of Canada in 1996 clarify the geographic limits to band by-law jurisdiction over fisheries adjacent to reserves. For a description of these cases, see the commission’s paper entitled, “The Aboriginal and Treaty Rights Framework Underlying the Fraser the River Sockeye Salmon Fishery” and the submissions of counsel in response.<sup>139</sup>

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<sup>130</sup> *Ibid.* at p. 2

<sup>131</sup> *Ibid.* at p. 3

<sup>132</sup> *Ibid.* at p. 3

<sup>133</sup> CAN000062

<sup>134</sup> CAN000063

<sup>135</sup> CAN000062 at p. 2

<sup>136</sup> CAN000063 at p. 3

<sup>137</sup> [1996] 1 S.C.R. 1013

<sup>138</sup> [1996] 1 S.C.R. 921

<sup>139</sup> See Cohen Commission Hearings Transcripts, October 26, 2010.

### Other Operational Policies

61 A suite of national policies also guide C&P activities in relation to certain topics. Among other things, these national C&P policies cover the following issues:<sup>140</sup>

- Code of Conduct
- Use of Personal Protective Equipment
- Officer Credentials
- Use of Force
- Harassment
- Uniforms
- Firearms Use, Wearing and Storage
- Serious Violent Incident Reporting
- Psychological Assessment of Officers
- Officer Suicide
- Admission of Liability

62 In addition to the national policies, region-specific policies or guidelines may be developed in response to regional issues.<sup>141</sup>

63 A 2009 internal audit of C&P (the “2009 C&P Audit”) recommended as a high priority that the “Director General C&P should, in conjunction with the regions and with other sectors as appropriate, update existing policies and further develop a comprehensive suite of program policies and procedures which are centrally managed to strengthen and standardize compliance and enforcement efforts as a cohesive Departmental Enforcement Service.”<sup>142</sup> The 2009 C&P Audit listed examples of policies that exist for other federal law enforcement agencies (such as the RCMP or the Canadian Forces Military Police) which do not exist for C&P. For example, as of 2009, C&P did not have national policies related to the following topics:<sup>143</sup>

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<sup>140</sup> CAN024036 at p. 23

<sup>141</sup> *Ibid.* at p. 23

<sup>142</sup> *Ibid.* at p. 6; CAN253051 at p. 7. Note that in 2005, the Williams Report similarly recommended that “C&P Division urgently needs a clear policy mandate and the resource with which to implement it. Morale will remain low among enforcement officers until this issue is addressed”: CAN002496 at p. 41

<sup>143</sup> CAN024036 at p. 23

- Patrol Officer Functions and Responsibilities
- Jurisdiction, Borders and Enforcement Scope
- Plain Clothes Operations, Equipment Standard and Dress Code
- Training, Fitness, Qualification and Re-Certification
- Public Complaints
- Internal Discipline
- Major Case Pre-Qualifying / Investigation Policy
- Intelligence Officer / Departmental Responsibilities
- Crime Prevention
- Criminal Intelligence Program and Use or Sharing of Intelligence Information and Data Management
- Officer Safety Protocols
- Court Procedures and File Management
- Ongoing Self-Audit and Evaluation
- Supervisor Availability and On-Call Requirements

64 In response to the 2009 C&P Audit, C&P developed a new process for identifying and prioritizing policy needs.<sup>144</sup> Several policies have since been drafted. For example, in February 2011, former Director General C&P Paul Steele announced that national policies in relation to Pillar Three activities (Major Cases and Special Investigations) were being developed. These include a new National Human Source Policy (regarding informants) and a National Special Investigation / Undercover Policy.<sup>145</sup>

*National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*

65 In 2005, Canada tabled its National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (“NPOA-IUU”) at a meeting of the United Nations’ Food and Agricultural Organization’s Committee on Fisheries in Rome.<sup>146</sup> Although it is a plan and not a policy, the NPOA-IUU outlines the existing policies and legislation in Canada that address the problem

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<sup>144</sup> *Ibid.* at p. 18

<sup>145</sup> National Update on Pillar 3 Implementation, Paul Steele, February 2011, Non-Ringtail document.

<sup>146</sup> CAN005285 at p. 6. For a brief description of the *FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, see the commission’s policy and practice report entitled “International Law Relevant to the Conservation and Management of Fraser River Sockeye Salmon” at para. 145.

of illegal, unreported and unregulated fishing.<sup>147</sup> It also identifies Canada's ongoing programs and projects to prevent, deter and eliminate illegal, unreported and unregulated fishing. These include fisheries management renewal, legislative renewal, improving monitoring operations, and implementing dockside monitoring and market traceability measures.<sup>148</sup>

## **Pillar One: Education and Shared Stewardship**

66 Pillar One of the National Compliance Framework consists of public education and shared stewardship activities, including classroom education, promotional campaigns and the engagement of community partners, First Nations and other fishing sectors.<sup>149</sup> According to DFO, the benefits of education and shared stewardship programs are as follows:

*Educational activities raise awareness and understanding resulting in a more informed public and resource users, improving their ability to comply with regulatory requirements. Promotional campaigns cultivate a conservation ethic in stakeholders and the general public, motivating them to higher rates of voluntary compliance.*<sup>150</sup>

...

*Engagement of First Nations, clients, and other interest groups in compliance management decision-making and in the delivery of compliance functions increases a sense of ownership and stewardship responsibility in the management regimes or aquatic resources.*<sup>151</sup>

67 C&P has placed an increasing emphasis on the importance of education and shared stewardship activities. Nationally, fishery officer time spent on education and shared stewardship functions has almost doubled between 2005 and 2009, increasing from 6.6% to 12.8% of total fishery officer effort.<sup>152</sup>

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<sup>147</sup> CAN005285 at p. 6

<sup>148</sup> DFO Website on NPOA-IUU: <http://www.dfo-mpo.gc.ca/npoa-pan/npoa-iuu-eng.htm>

<sup>149</sup> CAN185940 at p. 9

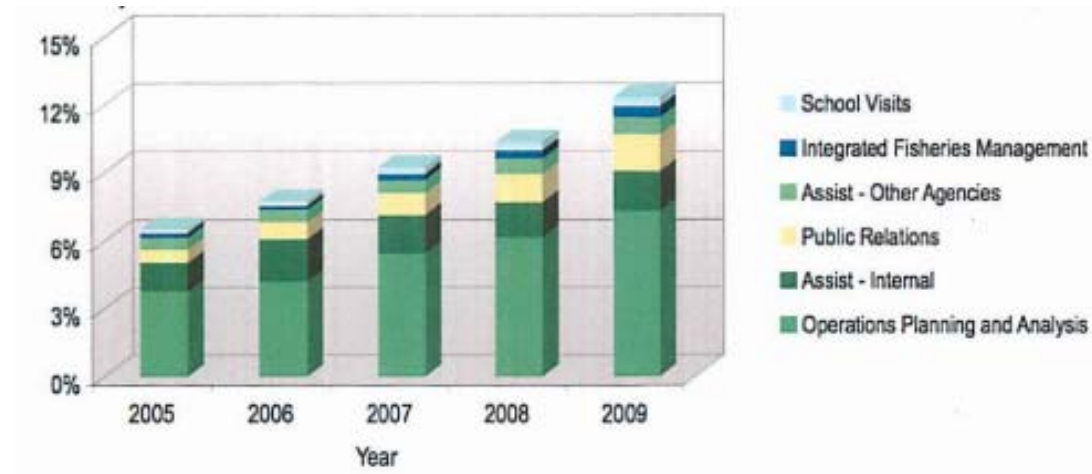
<sup>150</sup> CAN216047 at p. 3

<sup>151</sup> *Ibid.* at p. 4

<sup>152</sup> CAN185940 at p. 9 and 13

68 Figure 8 illustrates the increasing fishery officer effort spent on education and shared stewardship activities from 2005 to 2009.

**Figure 8: National C&P Effort Allocated to Education and Shared Stewardship, 2005 to 2009**<sup>153</sup>



### Education and Community Outreach

69 C&P fishery officers participate in several education and community outreach activities, including visiting elementary and post-secondary schools to give presentations on the importance of protecting Canada’s aquatic resources. Sometimes, presentations will be made jointly with local First Nations. For example, in 2006, fishery officers from C&P’s Lillooet detachment worked with members of the Nlaka’Pamux and St’at’imc Nations to bring aquariums to classrooms, so that students could raise coho eggs to fry and release them into natal streams.<sup>154</sup>

70 The annual “Pulling Together” canoe trip is another example of community outreach. In 2009, this was a week-long canoe journey from Hope to Gibsons that brought together RCMP and C&P fishery officers with First Nations youth in a relationship-building exercise.<sup>155</sup> Pulling Together is designed to develop positive working relationships and to promote mutual understanding. DFO states

<sup>153</sup> *Ibid.* at p. 13

<sup>154</sup> CAN038337

<sup>155</sup> CAN053712. A different route is selected each year.

that the program has contributed to its ability to reach agreements with First Nations on enforcement matters, and has generally lead to more orderly fisheries.<sup>156</sup>

- 71 Fishery officers also build relationships with community groups and First Nations by attending their events. For example, fishery officers attend and present at Integrated Harvest Planning Committee meetings, and at sectoral meetings such as those of the Sport Fishing Advisory Board. In 2009, fishery officers attended the Cheam and Chehalis First Nations First Salmon Ceremonies, and reported being well received and thanked for their participation.<sup>157</sup> To keep up relationship-building, each First Nation is also assigned a C&P liaison officer, who they can call with any concerns.<sup>158</sup>

### Shared Stewardship

- 72 C&P promotes shared stewardship of fisheries resources by engaging communities and First Nations in monitoring and compliance activities. In regards to the public generally, DFO encourages anyone witnessing a fisheries violation to report it to their “Observe, Record, Report” hotline (1-800-465-4336) or to call Crime Stoppers (1-800-222-TIPS).<sup>159</sup>
- 73 With regards to First Nations, DFO enters into Aboriginal fisheries agreements as part of the Aboriginal Fisheries Strategy. Such agreements may include enforcement-related provisions, and may provide for the engagement of Aboriginal fishery guardians. C&P fishery officers will participate in the development of fisheries agreements and in the development of enforcement provisions in particular.<sup>160</sup> According to DFO, this assists both First Nations and C&P to build a better understanding of each other’s goals in the conservation and

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<sup>156</sup> *Ibid.* at p. 2

<sup>157</sup> CAN099246 at p. 1

<sup>158</sup> CAN022832

<sup>159</sup> DFO Observe, Record, Report Website: <http://www.dfo-mpo.gc.ca/fm-gp/enf-loi/report-signaler-eng.htm>

<sup>160</sup> CAN0383377 at p. 2



stewardship of the fishery, and helps to reconcile cultural differences that may have caused friction in the past.<sup>161</sup>

## **Pillar Two: Monitoring, Control and Surveillance**

74 Pillar Two of the National Compliance Framework consists of monitoring, control and surveillance activities aimed at detecting and deterring illegal activities.<sup>162</sup> These include patrols, guard duty, general investigations, prosecutions, stakeouts and offshore arrests.<sup>163</sup> According to the 2006-2007 Pacific Region C&P Integrated Human Resources Plan, “monitoring, control and surveillance has been the cornerstone of [the C&P] program for decades.”<sup>164</sup> However, as stated in the 2009 C&P National Outlook, “any reinvestment in Pillar [One] or Pillar [Three] activities, in the absence of new resources, need to come from this category.”<sup>165</sup>

### *Fishery Officer Pillar Two Activities*

75 About half of C&P’s effort is devoted to monitoring, control and surveillance functions. Of this, a third of national C&P time is spent on patrols, followed by investigations (11%), and prosecution/court time (5%). Figure 9 illustrates the amount of C&P effort nationally allocated to monitoring, control and surveillance from 2005-2009.

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<sup>161</sup> CAN038337 at p. 2

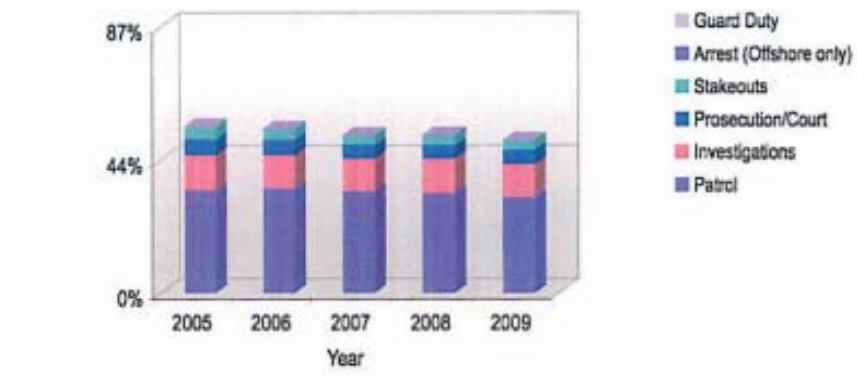
<sup>162</sup> CAN185940 at p. 15

<sup>163</sup> *Ibid.* at p. 15 and CAN216047 at p. 3.

<sup>164</sup> CAN017094 at p. 1

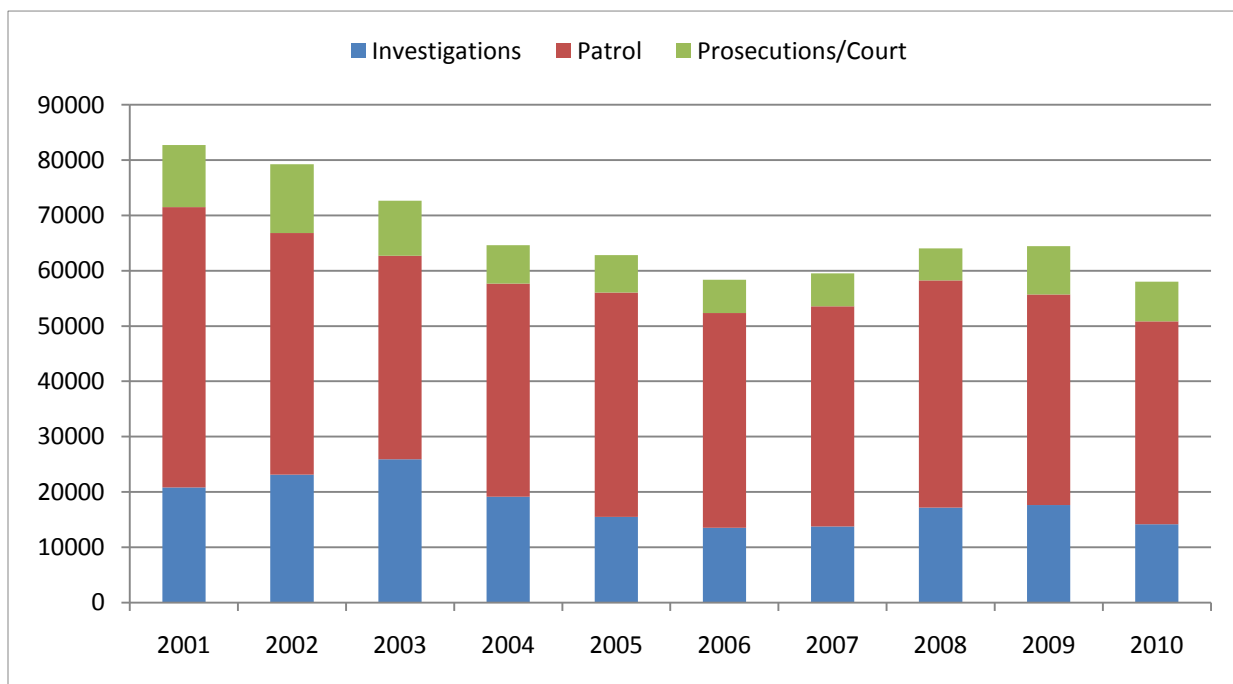
<sup>165</sup> CAN185940 at p. 15. The 2009 C&P National Outlook is a report issued by the C&P Program that presents its activities, achievements and directions for 2009.

**Figure 9: National C&P Effort Allocated to Monitoring, Control and Surveillance, 2005 to 2009<sup>166</sup>**



76 In the Pacific Region, patrols, investigations and prosecutions/court time similarly make up the bulk of monitoring, control and surveillance time.

**Figure 10: Pacific Region C&P Hours spent Patrols, Investigations and Prosecution/Court in BC Interior, Lower Fraser and South Coast Areas, 2000 to 2010<sup>167</sup>**



<sup>166</sup> *Ibid.* at p. 15

<sup>167</sup> Chart derived from "Answer 4(a) – Summary of Hours Spent by Activity Type", Non-Ringtail document.

## Patrols

77 Fishery officer patrols are carried out on land (72%: foot, truck, ATV), on the water (22%) and in the air (5%: airplane, helicopter).<sup>168</sup> According to DFO, patrols “provide the most effective means of detecting violations; they serve as a strong deterrent against illegal activity because of the risks of being caught; and, they provide the perfect opportunity to promote voluntary compliance by explaining the rules, and why they are important to the conservation and protection of fish and fish habitat.”<sup>169</sup> As such, “patrols are still the main tool used to detect and deter non-compliance and are still considered to be the foundation of an effective compliance enforcement program.”<sup>170</sup>

78 Aerial patrols conducted under the National Air Surveillance Program are often highlighted as an important tool for monitoring the Pacific Region’s expansive coastline. According to DFO:

*Because of the sheer size of its marine territory, coverage in Pacific Region is scatter-shot at best. Some areas of the coast are not patrolled for weeks or months at a time because there are simply not enough resources to do so. These fjords and inlets are teeming with sea life and favoured destinations for illicit activities.*<sup>171</sup>

79 The greater part of the BC’s coast is not accessible by land, and C&P has a limited number of sea vessels capable of monitoring this area.<sup>172</sup> As a result, DFO has stated that “the aerial surveillance program is the only viable offshore monitoring program.”<sup>173</sup>

80 Prior to the 2005-06 fiscal year, however, Pacific Region received relatively few flying hours under the National Air Surveillance Program. This changed in 2005,

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<sup>168</sup> National figures for 2005-2009: CAN185940 at p. 10

<sup>169</sup> CAN185940 at p. 10

<sup>170</sup> CAN257683 at p. 1

<sup>171</sup> CAN063179 at p. 6

<sup>172</sup> *Ibid.* at p. 13

<sup>173</sup> *Ibid.*

when \$5 million in marine security funding was allocated to the region.<sup>174</sup> This increased funding allowed for an aircraft to be maintained year round in the Pacific Region (as opposed to being flown in for part of the year), for more fishery officers to be trained in aerial surveillance, and for an increase in aerial surveillance hours from 630 in 2004-05 to 1500 in 2005-06.<sup>175</sup>

81 Table 4 indicates the number of hours flown as part of the National Air Surveillance Program in Pacific, Maritimes and Newfoundland/Labrador regions from 2000 to 2008.

**Table 4: Fishery Officer National Air Surveillance Program, Comparison of Fixed Wing Flying Hours in Pacific, Maritimes and Newfoundland/Labrador Regions, 2000 to 2008**<sup>176</sup>

Fiscal Year	Pacific Region Hours	Maritimes Hours	Newfoundland / Labrador Hours
2000-01	293	1000	1900
2001-02	300	1000	1900
2002-03	550	1410	2540
2003-04	630	1280	2270
2004-05	630	1215	2156
2005-06	1500	1500	2650
2006-07	1400	1300	2426
2007-08	1400	1300	2426

82 However, in the 2008-09 fiscal year, Pacific Region flying hours were reduced to 1155 hours.<sup>177</sup> According to Pacific Region C&P, this resulted in “a very conservative mission schedule, elimination of night missions and weekend and holiday flying.”<sup>178</sup> Also, “to minimize [overtime] expenditures, missions were scheduled during regular business hours.”<sup>179</sup> A 2008-09 Pacific Region National

<sup>174</sup> CAN024051 at p. 10

<sup>175</sup> *Ibid.* See also CAN063719.

<sup>176</sup> CAN024051 at p. 10

<sup>177</sup> CAN063179 at p. 5

<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.*

Aerial Surveillance Program Annual Report (“2008-09 Annual Report”) expressed the following frustrations with reduced flight time:

- “...flying hour allocations in the range of 1155 hours are insufficient to provide adequate coverage in Pacific Region.”<sup>180</sup>
- “No night missions resulted in a lower presence and deterrence effect. Flight crews and fishery officers are losing their night-time aerial surveillance skills.”<sup>181</sup>
- “These measures are not consistent with effective surveillance practices. Word gets around fast that DFO is not flying outside of regular business hours. Not only the credibility, but the effectiveness of the [aerial surveillance program] was significantly compromised.”<sup>182</sup>

83 The 2008-09 Annual Report recommended that Pacific Region flying hour allocations be returned to the 1400-1500 hour level, and that “continuing to fly ‘banker’s hours’ in 2009/10 because of inadequate funding is a discredit to the department” and would cause a decline in the program’s credibility and effectiveness.<sup>183</sup> Similar comments were made to the Hon. Bryan Williams, Q.C., in 2004: “illegal activity does not happen in the daytime when planes are flying over; it happens at night.”<sup>184</sup> However, flying hours in 2009-10 did not increase significantly, at 1,188.<sup>185</sup>

84 In 2005, DFO received extra funding as part of a “special four-year allotment for implementation of recommendations arising from the Williams Report” and some of this allotment was used towards helicopter surveillance on the Fraser River

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<sup>180</sup> *Ibid.*

<sup>181</sup> *Ibid.* at p. 6

<sup>182</sup> *Ibid.*

<sup>183</sup> *Ibid.* at p. 7

<sup>184</sup> CAN002496 at p. 35

<sup>185</sup> CAN063685 at p. 8

(for catch monitoring and enforcement).<sup>186</sup> This funding and its associated flight hours are separate from the National Air Surveillance Program.<sup>187</sup>

Fraser River Deployments

85 In response to the Williams Report, C&P instituted a seasonal deployment of fishery officers from throughout the Pacific Region to the BC Interior and Lower Fraser River areas during Fraser River sockeye return migrations.<sup>188</sup> This involves relocating fishery offices for one to three weeks during the period of June 15 to September 15.<sup>189</sup>

86 Table 5 lists the number of fishery officers seasonally deployed to the Lower Fraser River and the BC Interior from different regional detachments from 2005 to 2010.

**Table 5: Number of Fishery Officers seasonally deployed to the Lower Fraser River and BC Interior from other Areas in the Pacific Region, 2005 to 2010**<sup>190</sup>

Year	To Lower Fraser River	To BC Interior
2005	21 <sup>191</sup>	10
2006	31	12
2007	8	4
2008	8	8
2009	10	9
2010	1	3

87 Deployment of fishery officers to the Fraser River may have impacts on areas from which officers are being withdrawn. In 2006, the South Coast Area sent 14 fishery officers to the Lower Fraser River, and 9 fishery officers to the BC

<sup>186</sup> CAN024051 at p. 12

<sup>187</sup> *Ibid.*

<sup>188</sup> Answer 1c - Deployed Fishery Officers 2005-2010, Non-Ringtail document.

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

<sup>191</sup> An additional 4 fishery officers were deployed from the Central & Arctic Region.

Interior.<sup>192</sup> This amounted to a loss of approximately 55 out of 362 available officer weeks from the South Coast due to Fraser River deployments, or about a 15% reduction in South Coast patrol capacity during its peak summer fishing period.<sup>193</sup> As a result, some offices in the South Coast area had to be closed for several days, and other offices had days with only one fishery officer on shift.<sup>194</sup> In 2006, South Coast offices received numerous complaints about poaching and about a lack of C&P service while fishery officers were redeployed.<sup>195</sup>

88 The North Coast offices were also required to provide officers to the Fraser River. In 2006, the North Coast provided 13 fishery officers to the Lower Fraser and three fishery officers to the BC Interior.<sup>196</sup> This amounted to the loss of approximately four full time equivalents from June 1 to September 18 in a year when the North Coast was “facing a number of vacancies that combined with the Fraser deployments resulted in a nearly 50% reduction in Fishery Officers throughout the summer season.”<sup>197</sup> As a result, the Terrace office saw a 37% reduction in patrol hours,<sup>198</sup> the Smithers office was “void of any officers during the busiest time of the season”<sup>199</sup> and the Prince Rupert office was able to assemble only one 24-hour surveillance operation to address “almost daily reports of illegal FSC [food, social, ceremonial] sales activities.”<sup>200</sup>

89 Deployment of fishery officers was significantly reduced in 2010. Only one fishery officer was deployed to the Lower Fraser and only three were deployed to the BC Interior.<sup>201</sup> However, the number of field level fishery officers stationed in the Lower Fraser and BC Interior areas has remained fairly constant over this time period.

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<sup>192</sup> Answer 1c - Deployed Fishery Officers 2005-2010, Non-Ringtail document.

<sup>193</sup> CAN043588. See also CAN080353.

<sup>194</sup> CAN080350

<sup>195</sup> *Ibid.*

<sup>196</sup> Answer 1c - Deployed Fishery Officers 2005-2010, Non-Ringtail document.

<sup>197</sup> CAN043587 at p. 1

<sup>198</sup> *Ibid.* at p. 3

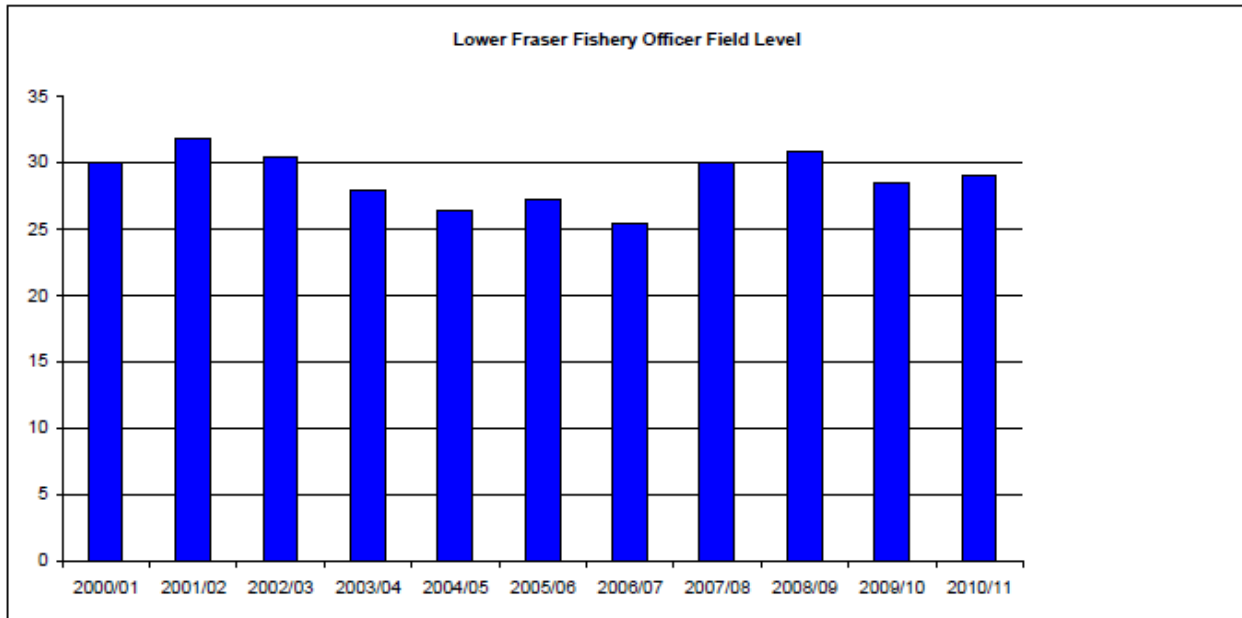
<sup>199</sup> *Ibid.* at p. 4

<sup>200</sup> *Ibid.* at p. 2

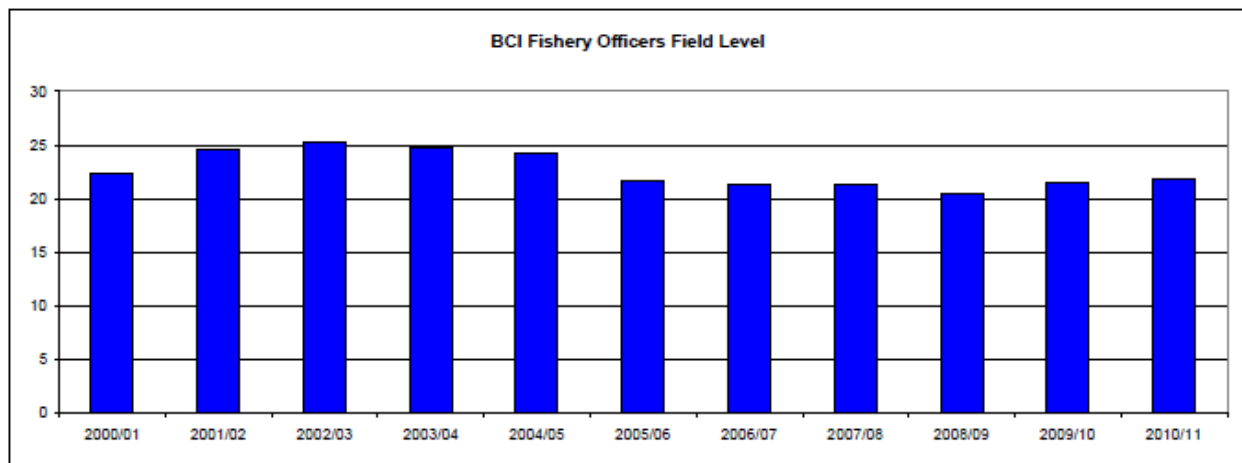
<sup>201</sup> Answer 1c - Deployed Fishery Officers 2005-2010, Non-Ringtail document.

90 Figure 11 illustrates the number of field level fishery officers stationed in the Lower Fraser Area and Figure 12 illustrates the number of field level fishery officers stationed in the BC Interior Area.

**Figure 11: Field Level Lower Fraser Fishery Officers, 2000-2011<sup>202</sup>**



**Figure 12: Field Level BC Interior Fishery Officers, 2000-2011<sup>203</sup>**



<sup>202</sup> Answer 1a + 1b – Field and Non-field Officers Chart 3, Non-Ringtail document

<sup>203</sup> *Ibid.*



## Traceability Programs

- 91 As of June 1, 2009, the European Union (“EU”) has required that all fisheries imports be certified as not illegal, unregulated or unreported catch.<sup>204</sup> The EU represents approximately 15% of Canada’s fisheries export market, and Canada was given until September 1, 2010 to comply with this requirement.<sup>205</sup> In response, DFO has established a catch certification office to issue between 14,000-20,000 certificates per year,<sup>206</sup> and C&P has been asked to audit these certificates in accordance with EU illegal, unregulated and unreported catch audit requirements.<sup>207</sup> The C&P audit office was established in late 2010, and audits are now being conducted.
- 92 Traceability programs, such as the certification and audit of catch, are intended to address food-safety requirements, address emerging market-place requirements (e.g. EU requirements, above, and eco-labelling),<sup>208</sup> and to support fishery conservation objectives by facilitating regulatory compliance.<sup>209</sup> Traceability aligns with C&P activities because it involves the tracking fish from their origin through to storage and processing. However, DFO views itself as “one player of many,”<sup>210</sup> and expects that other groups will also play a role. These include the Canadian Food Inspection Agency, Agriculture and Agrifood, Audit Services Canada, the Province of BC, First Nations, the commercial fishing industry, and environmental non-government organizations (“ENGOS”).<sup>211</sup>
- 93 Exactly how traceability objectives ought to be achieved, however, appears to be a work in progress. In recent years, several catch certification and traceability models have been proposed to DFO by consultants.<sup>212</sup> First Nations, such as

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<sup>204</sup> CAN013746 at p. 2

<sup>205</sup> *Ibid.*

<sup>206</sup> *Ibid.* at p. 3

<sup>207</sup> *Ibid.* at p. 2 and CAN185940 at p. 6.

<sup>208</sup> CAN254220 at p. 11

<sup>209</sup> CAN036275 at p. 11

<sup>210</sup> CAN053265 at p. 4

<sup>211</sup> *Ibid.* See also CAN254220 at p. 10.

<sup>212</sup> For example, CAN019627 and CAN053266.

the Chehalis First Nation, have also piloted traceability programs.<sup>213</sup> Some of these projects have been supported by the Pacific Integrated Commercial Fisheries Initiative (“PICFI”)<sup>214</sup> which is set to expire on March 31, 2012.<sup>215</sup>

*First Nations Enforcement Agreements and Safety Protocols*

- 94 The Review of the 2002 Fraser River Sockeye Fishery,<sup>216</sup> chaired by Pat Chamut, recommended that DFO consult with First Nations and stakeholders on enforcement issues. Partnership agreements and protocols with First Nations and stakeholders were to be developed or improved, wherever possible. This was intended to formalize shared roles and responsibilities in enforcement, improve monitoring and catch reporting, address co-management issues and improve on-the-ground interactions between the parties.<sup>217</sup> In response to this recommendation, DFO continued to develop enforcement agreements and safety protocols with First Nations.<sup>218</sup>
- 95 Enforcement agreements and safety protocols may influence fishery officer monitoring, control and surveillance actions by setting out a set of procedures, or guidelines, to be followed in response to certain violations. One commonly used enforcement provision emphasizes consultation as follows:

*C&P Personnel will attempt to consult with the representative of the First Nation before taking any enforcement action relating to fishing pursuant to a fishing agreement, except where prior consultation would compromise the effectiveness of an enforcement action. Where prior consultation would compromise the effectiveness of the enforcement action, DFO will consult with the representative of the First Nation immediately after taking enforcement action.*<sup>219</sup>

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<sup>213</sup> CAN004930

<sup>214</sup> CAN036275 at p. 2

<sup>215</sup> For more information on PICFI, see the commission’s policy and practice report entitled, “Department of Fisheries and Oceans Policies and Programs for Aboriginal Fishing.”

<sup>216</sup> CAN002450

<sup>217</sup> CAN206269 at p. 8

<sup>218</sup> *Ibid.*

<sup>219</sup> See for example, CAN039296 at p. 1, or CAN256420, or CAN019248, or MTM000099 at p. 31.

96 Although enforcement agreements and safety protocols will vary, common provisions may address the disposition of fish or gear seized,<sup>220</sup> the use of warnings, involvement of Aboriginal fishery guardians, or the types of prosecutions expected for certain violations.<sup>221</sup>

### **Pillar Three: Major Cases and Special Investigations**

97 Pillar Three of the National Compliance Framework consists of major cases and special investigations. This pillar focuses attention on solving complex compliance issues that pose a significant threat to resource sustainability and cannot be adequately addressed through education and shared stewardship or regular monitoring, control and surveillance activities.<sup>222</sup> It involves the use of strategic and tactical intelligence techniques, including covert operations, high-tech surveillance, search warrants, and computer forensics, to address illegal fishing and other activities. Information is gathered and analysed, creating intelligence products that are shared with other agencies in a cooperative manner.<sup>223</sup> The ultimate goal is to identify high value targets and build major case files for prosecutions.<sup>224</sup>

98 In the 2009 C&P National Outlook, former Director General C&P Paul Steele describes the organized and covert illegal activities that major cases and special investigations are designed to address:

*While compliance rates are generally high, the compliance rate measure cannot fully include the influence of sophisticated violators who tend to operate in an organized and covert fashion. These “hidden harms” are very difficult to detect through traditional patrol and inspection activities, yet they pose threats to public health and to ongoing sustainability of valuable stocks. A small number of undetected, large-scale violators can account for a substantial element*

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<sup>220</sup> See for example, CAN039296 at p. 2.

<sup>221</sup> See for example, CAN039296, or CAN256420, or CAN019248, or MTM000099.

<sup>222</sup> CAN185940 at p. 9

<sup>223</sup> CAN216047 at p. 4. See also CAN185940 at p. 20.

<sup>224</sup> CAN216047 at p. 4

*of non-compliance which is not reflected in the measured compliance rate for fisheries.*<sup>225</sup>

99 According to DFO, not only do large-scale violations cause harms on their own, but the presence of serious illegal activity can have a significant negative effect on the willingness of others to comply voluntarily.<sup>226</sup> In recognizing the threat of organized and covert illegal activities to the resource, DFO has determined that a national intelligence-based approach to fisheries enforcement is required.<sup>227</sup> As a result, C&P has committed to expanding its major case and special investigation activities going forward.<sup>228</sup>

### Pillar Three Implementation Status

100 Major cases and special investigations is a relatively new element of C&P's overall compliance management model and is still under development.<sup>229</sup> A National Intelligence and Major Case Management Implementation Committee<sup>230</sup> has been formed under the direction of the Director General C&P. This Committee has developed a Pillar Three National Implementation Project Management Plan.<sup>231</sup> This Project Management Plan sets out the areas in which capacity building efforts are to be focussed. C&P's Pillar Three principles are also articulated as follows:<sup>232</sup>

- C&P will be compliant with all legislated and policy requirements
- C&P will continue to support data and process interoperability
- C&P will utilize Government of Canada's "community of interest" tools where possible
- C&P will utilize "commercial, off-the-shelf" technology and training where possible

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<sup>225</sup> CAN185940 at p. 16

<sup>226</sup> CAN244665 at p. 3

<sup>227</sup> CAN024036 at p. 4

<sup>228</sup> CAN185940 at p. 9

<sup>229</sup> *Ibid.* and at p. 20

<sup>230</sup> The Pacific Region member of the National Intelligence and Major Case Management Implementation Committee is Scott Coultish. See also CAN043273 for a Record of Discussion from a National Intelligence and Major Case Management Committee workshop.

<sup>231</sup> National Update on Pillar Three Implementation, Paul Steele, February 2011, Non-Ringtail document at p. 5.

<sup>232</sup> *Ibid.* at p. 1.

- C&P will share all relevant information between regions, recognizing that information is a corporate asset
- A region undertaking a component of the Pillar Three Project Management Plan does so on behalf of C&P nationally

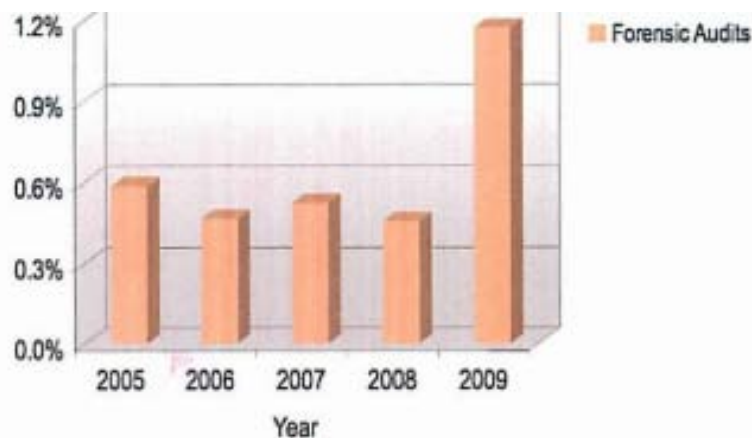
101 So far, developments in Pillar Three activities include: increasing fishery officer effort and training for major case management and special investigations; focussing on intelligence-led policing; and the development of information management systems to assist in intelligence gathering and analysis.

*Increasing Fishery Officer Effort and Training*

102 Nationally, major cases and special investigations currently account for a relatively small portion of overall fishery officer effort, or roughly 1% of effort as of 2009.<sup>233</sup>

103 Figure 13 illustrates the national percentage of fishery officer time allocated to major cases and special investigations from 2005 to 2009.

**Figure 13: C&P National Effort Allocated to Major Cases and Special Investigations 2005-2009<sup>234</sup>**



104 C&P has stated that the amount of time spent nationally on investigations will increase.<sup>235</sup> Fishery officers are receiving training on major case management

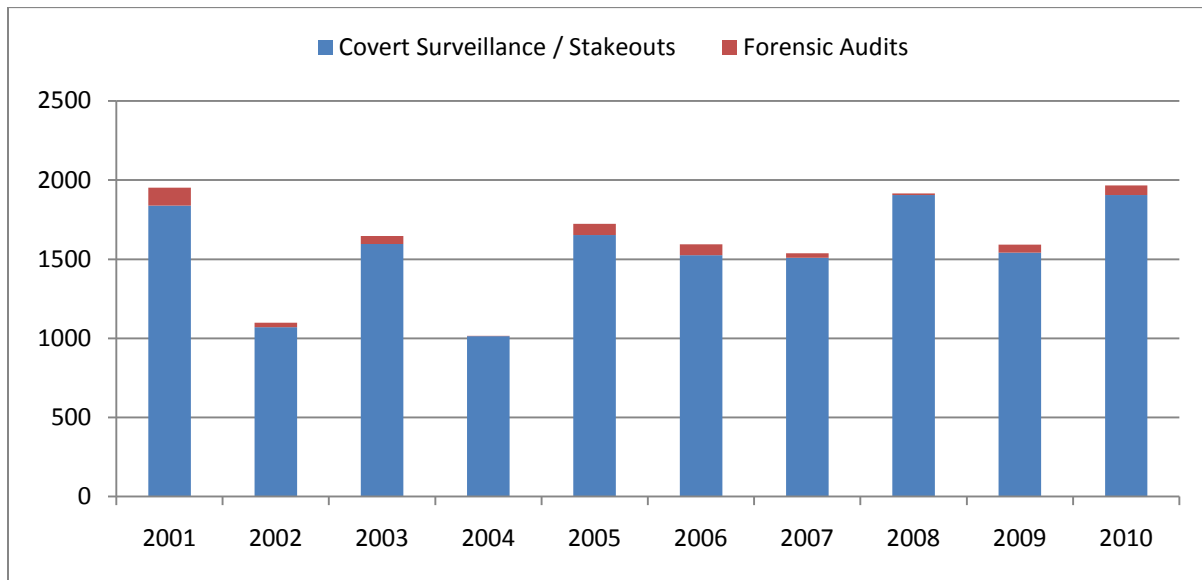
<sup>233</sup> CAN185940 at p. 9

<sup>234</sup> *Ibid.* at p. 20

and intelligence analysis and, in 2011, C&P in Ottawa negotiated a memorandum of understanding with the Privy Council Office's Intelligence Analysts Learning Program to secure intelligence analyst training for fishery officers.<sup>236</sup>

105 In the Pacific Region, effort spent on Pillar Three activities may be higher than the national average due to Williams funding directed at special investigations, and PICFI funding provided to create a “dedicated C&P unit with specialized training and expertise in fisheries plant inspections and associated strategic auditing, as well as major case management training.”<sup>237</sup> PICFI funding is also used to provide supplemental training in inspections and auditing to the general fishery officer cadre, so that they are trained to support major cases and special investigations.<sup>238</sup>

**Figure 14: Pacific Region C&P Hours spent on Covert Surveillance/Stakeouts and Forensic Audits in BC Interior, Lower Fraser and South Coast Areas, 2000 to 2010<sup>239</sup>**



<sup>235</sup> *Ibid.*

<sup>236</sup> National Update on Pillar 3 Implementation, Paul Steele, February 2011, Non-Ringtail document at p. 3-4.

<sup>237</sup> CAN036275 at p. 13

<sup>238</sup> *Ibid.*

<sup>239</sup> Chart derived from “Answer 4(a) – Summary of Hours Spent by Activity Type,” Non-Ringtail document.

### Intelligence-led Policing

106 According to DFO, its Pillar Three activities are “limited and unstable without a foundation of intelligence” and a system of intelligence-led policing is required to allow C&P to apply its resources in a strategic manner.<sup>240</sup> For example, illegal sales activity is especially difficult to address through the traditional monitoring, control and surveillance activities of general duty fishery officers because it requires extensive surveillance to track fish from the point of harvest to sale.<sup>241</sup> Having intelligence information to target specific violators or locations might allow fisheries officers to allocate their surveillance efforts in a more efficient and effective manner.

107 Intelligence-led policing is “a structured process which involves gathering and analyzing intelligence, identifying and targeting problems and evaluating results.”<sup>242</sup> It involves five steps which are repeated in a cycle as follows:<sup>243</sup>

- Step One – Gather Information
- Step Two – Analyze Information
- Step Three - Identify and Target Problems
- Step Four - Table Intelligence Products for use in Operations  
(e.g. Strategic Assessments, Tactical Assessments,  
Problem Profiles, Target Profiles)
- Step Five - Evaluate Results

108 Although aspects of intelligence-led policing have been applied in the Pacific Region since 2001,<sup>244</sup> PICFI funding has more recently supported further developments in intelligence-led policing initiatives.<sup>245</sup>

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<sup>240</sup> CAN075653 at p. 6

<sup>241</sup> CAN216711 at p. 2

<sup>242</sup> CAN063995 at p. 9

<sup>243</sup> *Ibid.* at p. 10

<sup>244</sup> CAN047514 at p. 2

<sup>245</sup> CAN036275

## *Information Management Systems*

109 According to the 2009 C&P National Outlook, the Pacific Region is leading the implementation of intelligence analysis tools.<sup>246</sup> These include an intelligence analysis software tool called “I2” and a major case management tool called “X-Fire”.<sup>247</sup> Information contained in both I2 and X-Fire will be made available to all fishery officers.<sup>248</sup> In addition, C&P is considering the national expansion of the Pacific Region’s inspections database, which captures vessel, industry facility and road vehicle inspections data.<sup>249</sup>

## *Pacific Region Intelligence and Investigation Services Unit*

110 In the Pacific Region, Pillar Three activities are coordinated by the Intelligence and Investigation Services (“I&IS”) Unit. This unit is composed of 14 investigative fishery officers, one senior compliance officer and two analysts, lead by the Chief of Intelligence Services (presently Scott Coultish). The Chief of Intelligence Services reports directly to the Regional Director C&P.

111 Although Pillar Three and the National Compliance Framework are relatively new to C&P, the I&IS Unit evolved from the C&P Special Investigations Unit (“SIU”) created in 1985.<sup>250</sup> The I&IS unit and its officers have a long history of investigating major *Fisheries Act* violations in the province, particularly those involving Fraser River salmon. For example, following the Williams Report in 2005, the “main thrust of SIU efforts was directed at illegal sales issues on the lower Fraser River.”<sup>251</sup>

112 The I&IS Unit also assists with Fraser River fisheries enforcement by providing support to Fraser River detachments, assisting with apprehending violators of

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<sup>246</sup> CAN185940 at p. 20

<sup>247</sup> *Ibid.* “X-Fire” is pronounced “cross-fire”. “I2” is pronounced “eye-two”.

<sup>248</sup> National Update on Pillar Three Implementation, Paul Steele, February 2011, Non-Ringtail document at p. 2

<sup>249</sup> *Ibid.* at p. 3

<sup>250</sup> CAN352876 at p. 3

<sup>251</sup> CAN080354



illegal fishing and sales, and assisting with protest fisheries by providing intelligence gathering and strategic planning for enforcement issues, aerial surveillance and photographic documentation. In addition, this unit has undercover fishery officers who are authorized to purchase fish covertly and who can assist with the forensic audit of fish plants.<sup>252</sup>

#### *Selected Investigations Relevant to Fraser River Salmon*

- 113 Commission staff requested a list and brief description of the major cases and investigations conducted by the SIU or I&IS units from 2000 to 2010. This information is contained in two Non-Ringtail documents entitled “Answer 5 - I&IS Cases and Investigations 2009-2010” and “Answer 5 - I&IS Cases and Investigations 2000-2010”. Please refer to these documents for a more complete list of major cases and investigations by the SIU and I&IS units.
- 114 The following is a summary of selected major cases and investigations conducted in the Pacific Region that are relevant to Fraser River salmon. This summary does not include information from ongoing investigations or from cases that are still before the courts.

#### *Fraser River Illegal Sales Projects – 2005*

- 115 A series of Fraser River illegal sales projects were conducted in 2005, following the release of the Williams Report and recommendations for strengthened fisheries enforcement on the Fraser River. These projects took place from August to September 2005, and involved SIU fishery officers being brought into the Lower Fraser River from throughout the province. According to DFO, “for the first time in years, undercover fishery officers that are designated under s. 25 of the Criminal Code of Canada were able to purchase fish covertly” and this was successfully used in these investigations.<sup>253</sup> As a result, approximately 15

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<sup>252</sup> *Ibid.*

<sup>253</sup> *Ibid.*

businesses and individuals were charged with illegal sales during a two month period.<sup>254</sup>

#### *Project Humpty Dumpty – 2005*

116 Project Humpty Dumpty was a data collection, crime analysis and profiling exercise. It was designed to produce an operational intelligence assessment identifying the scope and magnitude of food, social and ceremonial (“FSC”) salmon entering the commercial marketplace. Its focus was on monitoring FSC salmon catching, storage, distribution, market mixing and allegations of sales involving FSC salmon.<sup>255</sup>

117 No specific information on the outcome of Project Humpty Dumpty has been identified; however, information gathered in this operation may have been applied to subsequent projects described below.

#### *Project Ice Storm – 2005*

118 In October 2005, the SIU and general duty fishery officers conducted “Project Ice Storm.”<sup>256</sup> This was a large scale audit of over 100 fish processing and storage facilities in the Lower Mainland, and another 25 facilities on Vancouver Island.<sup>257</sup>

119 As a result of these audits, C&P estimated that slightly less than two million pounds of FSC caught sockeye salmon were being held in 110 cold storage plants throughout the Lower Mainland as of October 2005.<sup>258</sup> These calculations were verified by a third party, Consulting and Audit Canada, who concluded that 1,973,810 pounds of FSC sockeye salmon were in cold storage.<sup>259</sup> A further 27,000 pounds of sockeye were found in cold storage facilities on Vancouver

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<sup>254</sup> *Ibid.*

<sup>255</sup> CAN352880 at p. 2

<sup>256</sup> CAN353570 at p. 7

<sup>257</sup> CAN352876 at p. 6

<sup>258</sup> CAN352877 at p. 2. See also CAN076976 at p. 1.

<sup>259</sup> CAN096904 and CAN096905.

Island.<sup>260</sup> In 2005, the total FSC sockeye salmon harvest was an estimated 457,000 pieces by Lower Fraser First Nations, and 279,000 pieces by marine area First Nations.<sup>261</sup> There was no directed Fraser River commercial or First Nations' economic opportunity sockeye salmon fishery in 2005.<sup>262</sup>

- 120 DFO determined that the storage of FSC fish did not amount to an offence. Rather DFO concluded that “an offence would only occur if 2005 Fraser River sockeye are sold.”<sup>263</sup> No charges were laid as a direct result of Project Ice Storm.<sup>264</sup>

#### *Project Royal Flush – 2006*

- 121 In July 2006, Project Royal Flush was designed to investigate a particular fish processing and storage facility in the Lower Mainland that was suspected of laundering FSC fish.<sup>265</sup> However, this investigation was made difficult by the number and frequency of FSC fisheries, economic opportunity fisheries and commercial fisheries in the Fraser River and approach areas in 2006.<sup>266</sup> Additional information obtained during the investigation suggested that the facility in question was operating in a legitimate manner and that efforts should be diverted to other targets.<sup>267</sup>

#### *Fraser River Illegal Sales Projects – 2008*

- 122 Several projects undertaken in 2008 were directed at the sales of FSC salmon. These included the tracking of FSC fish sales to a particular store, monitoring a target suspected of transporting large quantities of FSC sockeye to Alberta, surveillance of individuals in possession of “a lot of FSC fish from different Aboriginal bands in the Lower Mainland” and surveillance of individual sockeye

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<sup>260</sup> CAN076976 at p. 1

<sup>261</sup> *Ibid.* at p. 2

<sup>262</sup> *Ibid.*

<sup>263</sup> *Ibid.*

<sup>264</sup> Answer 5 - I&IS Cases and Investigations 2000-2010, Non-Ringtail document.

<sup>265</sup> CAN117254

<sup>266</sup> *Ibid.*

<sup>267</sup> CAN352878 at p. 3. See also CAN353569 at p. 1.

sales in Vancouver.<sup>268</sup> It does not appear that any of these projects resulted in charges, and some investigations were discontinued “due to other higher priority projects.”<sup>269</sup>

## **Program Capacity**

- 123 As discussed above, DFO’s National Compliance Framework consists of three pillars: education and shared stewardship; monitoring control and surveillance; and major cases and special investigations. Supporting these three pillars is a fourth element, known as “program capacity.”
- 124 Program capacity involves the development and support of a skilled, equipped, well-informed, safe and effective workforce.<sup>270</sup> Related activities include the recruitment and training of fishery officers,<sup>271</sup> supervisory duties, attending meetings, managing equipment and facilities, and general office duties. Overall, program capacity took up more than one third of all C&P effort from 2005 to 2009.<sup>272</sup>
- 125 Figure 15 illustrates the percentage of C&P effort allocated to program capacity. Notes attached to this figure indicate that 14% of time was spent on general office duties, 7% on student training, 5.5% on equipment and facility management, 5% on meetings and 3% on supervisory duties.<sup>273</sup>

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<sup>268</sup> CAN352874

<sup>269</sup> *Ibid.* See also Answer 5 - I&IS Cases and Investigations 2000-2010, Non-Ringtail document

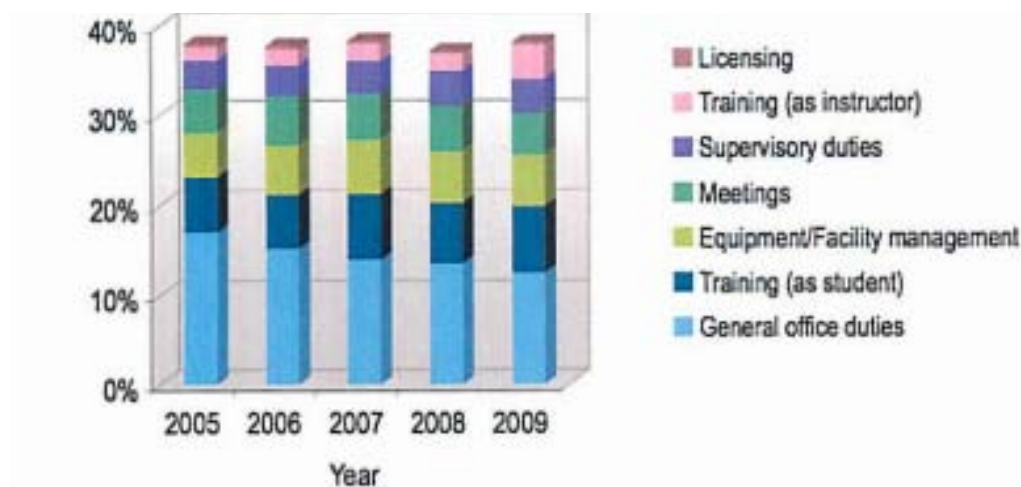
<sup>270</sup> CAN185940 at p. 22

<sup>271</sup> *Ibid.*

<sup>272</sup> *Ibid.*

<sup>273</sup> *Ibid.*

Figure 15: C&P Effort Allocated to Program Capacity, 2005 to 2009<sup>274</sup>



## Budget, Personnel and Equipment

### Budget

#### *National Budget*

126 In 2004, C&P faced significant budget pressures. These were described in a 2005 Ministerial briefing note as follows:

*The Conservation & Protection Programs in most DFO regions have faced significant budget pressures in 2004-05 and previous years. This is primarily due to factors such as departmental reductions to meet government-wide cuts, scheduled reductions due to B-base funding, e.g. Marshall funding, unavoidable increases to fixed and operating costs, and additional salary costs incurred by contract settlements and the reclassification of fishery officer positions.<sup>275</sup>*

127 To address these pressures, and in response to the Williams Report in 2005, DFO increased the budget for C&P (discussed further below). At the time, the Department also advocated the importance of long-term financial stability to C&P. For example, a 2005 briefing note gave the following answer in response to a question as to what would be done to resolve the lack of fishery officer funding into the future:

<sup>274</sup> *Ibid.*

<sup>275</sup> CAN036445 at p. 1

*A comprehensive review of DFO compliance programs has recently been initiated as part of the Fisheries Management Renewal Initiative. One of the primary objectives of this review will be to develop strategies for modernizing and ensuring long-term financial stability for the C&P program.*<sup>276</sup>

- 128 In 2006, a memorandum for the Minister similarly emphasized the Department's commitment to long-term stability in funding and fishery officer levels in the Pacific Region.<sup>277</sup>

*The Department has now identified enforcement and compliance as a key principle and objective essential to the management of fisheries. To this end, the Department will be securing the number of fishery officers in BC at levels that will allow for effective enforcement, and will be ensuring that the number of fishery officers in the Fraser River remain at levels equivalent in 2005, whose enforcement was judged to be a substantial improvement over the previous year....In 2006, on-going funding has been secured for the long term support of enforcement and compliance in the Fraser River.*<sup>278</sup>

- 129 The 2009 C&P Audit, drafted by the DFO Audit and Evaluation Directorate, stated that the "annual C&P budget for the [National Headquarters] and all Regions totals approximately \$120 million."<sup>279</sup> This was composed of \$60 million in salaries, \$10 million operations and maintenance, \$10-20 million air surveillance, and the remainder to purchase and maintain equipment and information systems.<sup>280</sup>

- 130 By the 2010-11 fiscal year, the national C&P budget under Fisheries and Aquaculture Management totalled approximately \$98 million (\$52 million for

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<sup>276</sup> *Ibid.* at p. 2-3

<sup>277</sup> CAN036633

<sup>278</sup> *Ibid.* at p. 3-4

<sup>279</sup> CAN057521 at p. 4, and CAN024036 at p. 2. Note that this value differs from financial information contained in another document provided to the commission: "7 C&P Financial Data 2006-07 to 2010-11", Non-Ringtail document.

<sup>280</sup> CAN057521 at p. 4

salaries and \$46 million for other operating expenses)<sup>281</sup> However, part of this budget reduction may be attributed to the transfer of “Fleet Operational Readiness” funding in the amount of \$19,330,100 to the Canadian Coast Guard; funding which is still applied in support of C&P activities.<sup>282</sup>

131 In 2010-11, C&P identified a “chronic salary shortfall of about \$3.4 million” created following the first round of a government-wide “Budget Alignment Strategic Review.”<sup>283</sup> To address this shortfall, C&P reviewed sources of funds outside of the regular operations and maintenance requirements to determine where cuts could be made. These sources included air surveillance, the national radio plan, major capital (vehicles and equipment), overtime, and others. A total of \$3.38 million was found, on a one-year basis, to deal with this shortfall.<sup>284</sup> However, C&P anticipated the following impacts as a result of this interim cost savings plan:<sup>285</sup>

- Reduction in air surveillance hours by about 15% from the four year average
- Reduced efficiency and morale as a result of the reduction in overtime
- Vehicle live cycle management needs seriously compromised after no investment in 2009-10. Rust out and higher maintenance costs down the road will tax C&P’s limited operations and maintenance funds.
- Limited ability to meet all radio communication needs, which was identified as a serious health and safety requirement

132 In addition to the salary shortfall, in 2010-11, C&P prepared to deal with further potential budget cuts of \$4.2 million. To meet these cuts, C&P developed a strategy that would see no fishery officer training and recruitment program in

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<sup>281</sup> CAN202979.

<sup>282</sup> See “7 C&P Financial Data 2006-07 to 2010-11”, Non-Ringtail document.

<sup>283</sup> CAN202979

<sup>284</sup> *Ibid.*

<sup>285</sup> *Ibid.*

2010-11, further cuts to air surveillance, and cuts to operations and maintenance and overtime. The anticipated impacts of the cost saving plan were as follows:<sup>286</sup>

- No Fishery Officer Career Progression Program in 2010-11 (\$800,000)

*Inability to maintain full complement of Fishery Officers in the field. Increased number of vacancies. Close to 20 percent of Fishery Officer positions in Quebec Region will become vacant by 2011 with no capacity to fill. This represents the first step in moving towards a C&P program with fewer Fishery Officers nationwide. This will necessitate office closures and an overall reduction in field presence. No new capacity to meet new program requirements for CSSP and Traceability. Real savings only occur in year three in the amount of about \$3M. New requirements for Aquaculture in Pacific Region will be addressed separately and recruitment will depend on the availability of new funds for this new program.*<sup>287</sup>

- Further cuts to Air Surveillance (\$1.1 million)

*In addition to the \$500 K cut to the air surveillance program to deal with the current salary shortfall, this additional \$1,100 K is as much as we can reduce while still respecting the contractual obligations of 4000 hours. This represents a 30 percent reduction (down to 4125 hours) in flying hours relative to the four year average of 5800 hours. It is only sustainable for one year because in 2011/12 there will be no more carry-forward. It will result in a major reduction in coverage rates of the fisheries and other activities like habitat protection and monitoring of the Marine Protected Areas. Compliance rates will decrease and other assets like our vessels will not be as effectively deployed. It will also result in a significant drop in the amount of data brought to the table at the Marine Security Operation Centers and the DFO decision to cut back may well be questioned by other departments that depend on this data (e.g. DND).*<sup>288</sup>

- Cuts to Operations and Maintenance and Overtime in the Regions (\$2.3 million)

*These reductions will have a direct impact on the extent of field activities including at least a 20 percent reduction in patrols, inspections and/or investigations. The public, fishers and other*

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<sup>286</sup> *Ibid.*

<sup>287</sup> *Ibid.* Note that the Fishery Officer Career Progression Program has recently been called the “foundation for [C&P’s] compliance and enforcement program” in the Fisheries and Aquaculture Management (“FAM”) sector MMRS 2011-2012 Draft Program Descriptions: CAN216047.

<sup>288</sup> CAN202979



*stakeholders will notice a significant reduction in field presence. Compliance rates will likely drop significantly in a number of fisheries and it may be difficult to maintain peaceful and orderly fisheries. The program will not achieve its target outputs and expected results based on its performance measurement framework. The gap between the demands on the program and its ability to meet its Monitoring, Control and Surveillance responsibilities will be seriously increased. Further erosion of [fishery officer] morale.<sup>289</sup>*

133 The potential C&P budget cut of \$4.2 million did not occur in fiscal year 2010-11, and the cost saving plan described above was not implemented.

#### *Pacific Region Budget*

134 The Pacific Region C&P budget is set out in the following table.

**Table 6: Pacific Region C&P Budget Allocation and Year End Actual Expenditure, 2005 to 2011<sup>290</sup>**

Fiscal Year	Budget Allocation (\$000's)	Year End Actual (\$000's)
2005-06	19,591.4	19,854.4
2006-07	16,188.8	18,040.3
2007-08	17,236.4	19,644.2
2008-09	18,539.6	20,678.4
2009-10	18,682.7	20,634.6
2010-11	18,461.0**	--

\*\* Initial budgeted value only, before proposed 5% funding cut of \$923,100.<sup>291</sup>

135 In the 2010-11 fiscal year, Pacific Region C&P faced a 5% budget cut, which, along with other allocation issues, resulted in an approximate \$1.1 million salary deficit.<sup>292</sup> This salary shortfall will grow in the Pacific Region to \$3.0 million in 2012, if PICFI funding is not renewed.<sup>293</sup>

<sup>289</sup> *Ibid.*

<sup>290</sup> CAN185911 and CAN202979. Note that these values differ from financial information contained in another document provided to the commission, which identifies "main estimates" rather than budget allocations: "7 C&P Financial Data 2006-07 to 2010-11", Non-Ringtail document. See also "13 Funding Final", Non-Ringtail document.

<sup>291</sup> CAN202979

<sup>292</sup> CAN159261 at p. 2

<sup>293</sup> FTE Utilization Summary for Fiscal Years 2000/01-2010/11, Non-Ringtail document.

136 For the next three years,<sup>294</sup> less than one third of Pacific Region’s Ecosystems and Fisheries Management budget will be allocated to C&P. In contrast, over 50% of the Ecosystems and Fisheries Management budgets for DFO’s Gulf, Maritimes, National Capital, and Newfoundland/Labrador regions will be allocated to C&P.<sup>295</sup>

*“Williams” and PICFI funding*

137 The Pacific Region C&P budget was bolstered by DFO’s response to the Williams Report in 2005 and by the Pacific Integrated Commercial Fisheries Initiative (“PICFI”) in 2007. In 2005, the Hon. Bryan Williams, Q.C., made the following recommendation to DFO:

*29. Illegal fishing in the Fraser River has been described as rampant and out of control. This is unacceptable. DFO must properly enforce the Fisheries Act and Regulations and initiate measures to provide a reasonable estimate of the scope of illegal activity and the number of fish actually taken.*<sup>296</sup>

138 Although DFO did not agree that illegal fishing was rampant or out of control,<sup>297</sup> it nevertheless contributed significant additional funds to C&P’s enforcement of Fraser River salmon fisheries. In 2005 alone, \$2.7 million in incremental funding was allocated to the management of Fraser River salmon, including \$250,000 for aerial surveillance, \$1.6 million for “Williams implementation” (C&P overtime and operational funds for field work) and \$500,000 for C&P capital expenditures (e.g. vehicle replacement).<sup>298</sup> Portions of another \$2.5 million were allocated to Fraser River fisheries enforcement “to stabilize enforcement and catch monitoring programs throughout the region.”<sup>299</sup> This included funds to strengthen

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<sup>294</sup> Fiscal years 2011-12 to 2013-14

<sup>295</sup> Answer 13 (h) – Budget Reductions – 3 Year Funding, Non-Ringtail document, reproduced in Appendix 6.

<sup>296</sup> CAN202061 at p. 18

<sup>297</sup> *Ibid.*

<sup>298</sup> CAN174152 at p. 3

<sup>299</sup> *Ibid.* See also CAN053268 at p. 2.

enforcement regarding illegal sales by C&P's Special Investigations Unit (now called, the Intelligence and Investigation Services Unit).<sup>300</sup>

- 139 In functional terms, the Williams funding allowed for increased surveillance, temporary deployment of fishery officers to the Fraser River during peak salmon migration times, increased day-time and night-time patrols, officer overtime, helicopter patrols, restorative justice programs and operating expenses related to Fraser River fisheries enforcement.<sup>301</sup> It also supported compliance management activities on interception fisheries carried out on Fraser-bound stocks.<sup>302</sup> For graphs illustrating changes to officer overtime expenses for C&P Lower Fraser, BC Interior, South Coast and Special Investigations Unit following the Williams Report in 2005, see Appendix Five.
- 140 One year after Williams funding came into effect, the Fraser Valley West C&P detachment reported a four-fold increase in patrols (including a 10-fold increase in night patrols), leading to 34 more nets seized and twice the number of violations encountered as compared to the previous year.<sup>303</sup> At the Lillooet detachment, Williams funding allowed for a 100% increase in night-time patrols and a 100% increase in the number of nets seized.<sup>304</sup> There were also numerous frozen fish storage plant inspections throughout the Lower Mainland in the fall of 2005, as a result of Williams funding.<sup>305</sup>
- 141 According to C&P, the changes in fishery officer presence “before and after” the Williams funding indicates that patrols and presence can have a significant impact on voluntary compliance.<sup>306</sup>

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<sup>300</sup> CAN352876 at p. 4

<sup>301</sup> CAN053268 at p. 2

<sup>302</sup> *Ibid.*

<sup>303</sup> CAN004141

<sup>304</sup> *Ibid.* at p. 2

<sup>305</sup> *Ibid.*

<sup>306</sup> CAN068516 at p. 4

*Levels of [monitoring, control and surveillance] activity have been allowed to drop in the past due to budgetary shortfalls, e.g. 2004, which has led to increased non-compliance (particularly poaching by unlicensed fishers), a higher risk of conflicts between fisheries resource user groups and strong demands for increased fishery officer presence from the fishing industry, politicians and the general public.*<sup>307</sup>

- 142 However, according to Pacific Region C&P's Chief of Enforcement Operations at the time, "just making yourself present (boat etc. in the area) will increase [the] level of compliance" because there is a "positive correlation between presence and effectiveness – giving teeth where there may not have been teeth."<sup>308</sup>
- 143 In May 2007, C&P submitted an "Operating Budget Carry Forward/ Pressure Request," seeking extension of Williams funding.<sup>309</sup> This request stated that Williams funding from 2005 to 2007 had resulted in "improved enforcement, deploying fishery officers to crucial areas or hot spots, augmented restorative/community justice capacity, strengthened catch monitoring programs, improvements to catch validation, reporting timelines and traceability, improved estimates of unauthorized catch, implementation of pilot real-time catch programs and improvements to Fraser salmon management structures and decision making processes."<sup>310</sup> According to this funding request, not extending Williams funding would negatively affect staff morale, and "a credible response to Fraser salmon management issues would not be possible, which would undermine efforts to improve conservation and sustainable management of the fishery."<sup>311</sup>
- 144 In July 2007, the Pacific Integrated Commercial Fisheries Initiative ("PICFI") was announced. Williams funding, which had been designed to "augment compliance

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<sup>307</sup> CAN244665

<sup>308</sup> CAN009015 at p. 2

<sup>309</sup> CAN265169

<sup>310</sup> *Ibid.* at p. 1

<sup>311</sup> *Ibid.* at p. 2

activities and bolster patrol coverage”<sup>312</sup> was not continued as a separate funding source. Rather, \$1.2 million in Williams funding was included as a component of PICFI, which is scheduled to sunset at the end of March in 2012.<sup>313</sup>

- 145 C&P staff have raised concerns regarding the incorporation of Williams funding into temporary PICFI funds. One senior fishery officer states that “loss of Williams funding following the conclusion of PICFI in 2012 will severely compromise C&P Pacific Regions’ ability to deliver the program recommended by Williams/SCOFO [Standing Committee on Fisheries and Oceans] and endorsed by the Minister.”<sup>314</sup>
- 146 Other fishery officers have expressed concerns as to the “different terms of reference” for PICFI, which is designed to support transformative change<sup>315</sup> as opposed to the focus on bolstering enforcement coverage associated with Williams funding.<sup>316</sup> For a fuller description of PICFI, refer to the commission’s policy and practice report entitled “Department of Fisheries and Oceans Policies and Programs for Aboriginal Fishing.”

### Personnel

- 147 Nationally, C&P has “experienced a lack of stability in its human resources.”<sup>317</sup> For example, budget cuts made prior to the Williams Report affected hiring and resulted in many vacant positions in the fishery officer program.<sup>318</sup> A hiring freeze was instituted in 2004, resulting in almost three years of no recruitment,<sup>319</sup> and zero graduates from the fishery officer recruitment program in 2005.<sup>320</sup>

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<sup>312</sup> CAN085782

<sup>313</sup> For a detailed breakdown of how this \$1.2 million is used, see the 09/10 PICFI Enhanced Accountability spreadsheet at CAN180196 and CAN193759.

<sup>314</sup> CAN053268 at p. 3

<sup>315</sup> CAN056484 at p. 6; CAN036275 at p. 13.

<sup>316</sup> CAN085782. See also CAN056484 at p. 6.

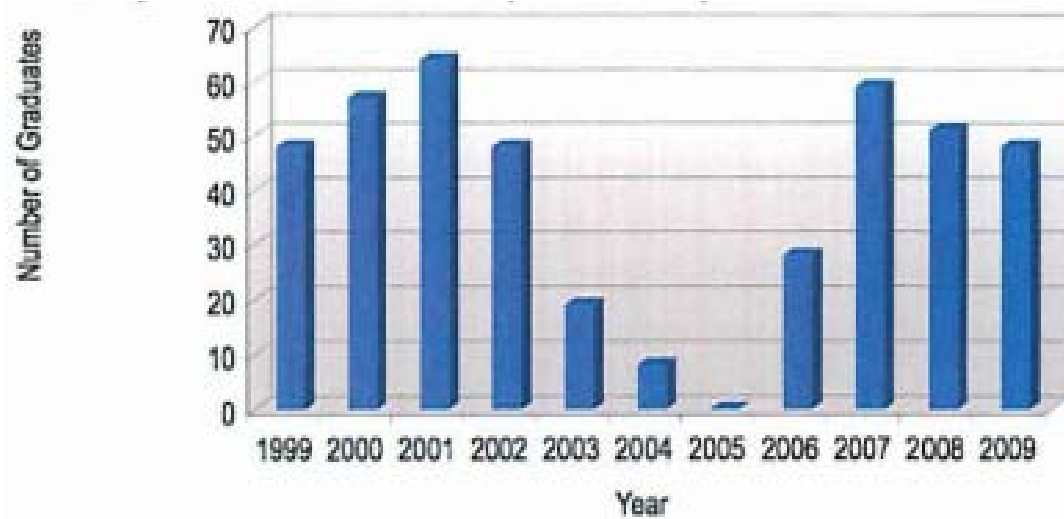
<sup>317</sup> CAN244665

<sup>318</sup> CAN185940 at p. 23

<sup>319</sup> CAN021529 at p. 12

<sup>320</sup> CAN185940 at p. 23

**Figure 16: National C&P Fishery Officer Career Progression Program Graduates, 1999 to 2009<sup>321</sup>**



- 148 Increased fishery officer funding after the Williams Report and the SCOFO Report resulted in aggressive recruiting in 2006-07. However, as described by former Director General C&P Paul Steele in April 2010, fishery officer numbers may decline as a result of new budget pressures:

*Between our C&P salary shortfall and other cuts we currently have a surplus of about 55-60 positions nationally that we've been told we need to manage by attrition over the next couple of years. This is before any potential cuts under [Strategic Review] are considered. In Pacific Region, the sunseting of PICFI in 2012 will also affect current [fishery officer] positions.<sup>322</sup>*

- 149 Similar trends were seen in the Pacific Region, where fishery officer numbers decreased from 184 in 2000 to a low of 149 in 2006.<sup>323</sup> Pacific Region C&P was slated to cut an additional 24 fishery officers in 2006, until that decision was

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<sup>321</sup> *Ibid.*

<sup>322</sup> CAN115283 at p. 4

<sup>323</sup> See Table 7.

reversed by then-Minister Loyola Hearn<sup>324</sup> and an influx of funding to C&P resulted in an increase of fishery officer positions through to 2011.<sup>325</sup>

**Table 7: Pacific Region Field-Level and Non-Field-Level Fishery Officer Full Time Equivalents, 2000-2011**<sup>326</sup>

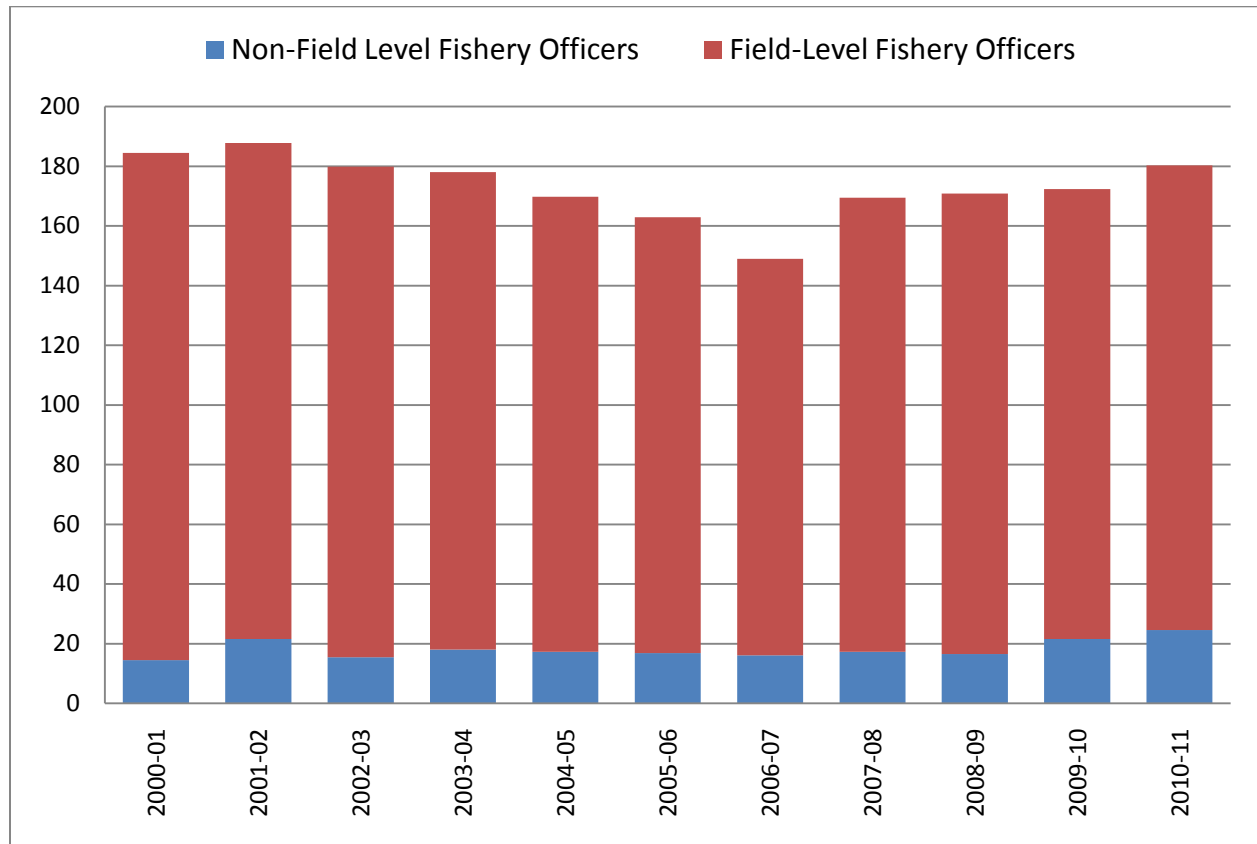
Fiscal Year	Non-Field Level Fishery Officer FTEs	Field Level Fishery Officer FTEs	Total Fishery Officer FTEs
2000-2001	14.53	169.93	184.46
2001-2002	21.59	166.18	187.77
2002-2003	15.42	164.43	179.85
2003-2004	18.05	160.03	178.08
2004-2005	17.24	152.51	169.75
2005-2006	16.85	146.04	162.89
2006-2007	16.10	132.85	148.95
2007-2008	17.32	152.14	169.46
2008-2009	16.54	154.32	170.86
2009-2010	21.52	150.82	172.34
2010-2011	24.54	155.79	180.33

<sup>324</sup> CAN021529 at p. 13

<sup>325</sup> Answer 1a+1b – Field and Non-field Officers, Non-Ringtail document

<sup>326</sup> *Ibid.*

**Figure 17: Pacific Region Field-Level and Non-Field-Level Fishery Officer Full Time Equivalents, 2000-01 to 2010-11<sup>327</sup>**



150 Table 7 and Figure 17 do not reflect vacant fishery officer positions.

Approximately 10% of the fishery officer positions in the Pacific Region are either vacant or are filled by individuals on long-term leave.<sup>328</sup>

151 Pacific Region C&P is presently experiencing a salary shortfall. The Budget Alignment Strategic Review resulted in reduced Pacific Region C&P budgets for the 2010-11 fiscal year, and a deficit of approximately \$1.1 million salary dollars.<sup>329</sup> Although approximately \$800,000 of that deficit was to be relieved through temporary transfers from national headquarters, approximately \$350,000

<sup>327</sup> *Ibid.*

<sup>328</sup> Answer 3 – Vacancies & Long-term Leave, Non-Ringtail document

<sup>329</sup> CAN159261 at p. 2



in salary shortfall was to be addressed by the Region through vacancies in fishery officer positions.<sup>330</sup>

- 152 In addition to fishery officers, Canadian Coast Guard Marine Enforcement Officers (“MEOs”)<sup>331</sup> and Aboriginal Fishery Guardians also play a role in fisheries enforcement. MEOs provide a “higher overall presence of fisheries compliance and personnel throughout BC’s vast marine coastline than what C&P could have achieved using terrestrial fishery officers” and this presence assisted in “maintaining a higher level of deterrence to illegal fishing.”<sup>332</sup> In the mid-1990s, there were as many as 55 MEOs trained in the Pacific Region, representing 29% of the region’s armed enforcement capacity.<sup>333</sup> However, this number has significantly declined in recent years.<sup>334</sup>
- 153 In 2008, the Canadian Coast Guard announced its intention to discontinue the MEO program entirely, and this remained under consideration in 2010.<sup>335</sup> C&P staff have expressed concerns that the termination of the MEO program will result in additional demands on C&P fishery officers<sup>336</sup> and as many as 30-35 additional fishery officers may be required to provide an enforcement presence on mid-shore patrol vessels if the Canadian Coast Guard continues to move away from its enforcement capacity.<sup>337</sup>
- 154 Aboriginal Fishery Guardians also assist in performing fisheries monitoring and enforcement functions. For a fuller description of the Aboriginal Guardian Program, refer to the commission’s policy and practice report entitled

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<sup>330</sup> *Ibid.*

<sup>331</sup> Also called Marine Fishery Officers.

<sup>332</sup> CAN108254. See also CAN080352.

<sup>333</sup> Answer 2(b) +(c) – Canadian Coast Guard Marine Fishery (Enforcement) Officer Program, February 25, 2011, Non-Ringtail document

<sup>334</sup> *Ibid.*

<sup>335</sup> *Ibid.*

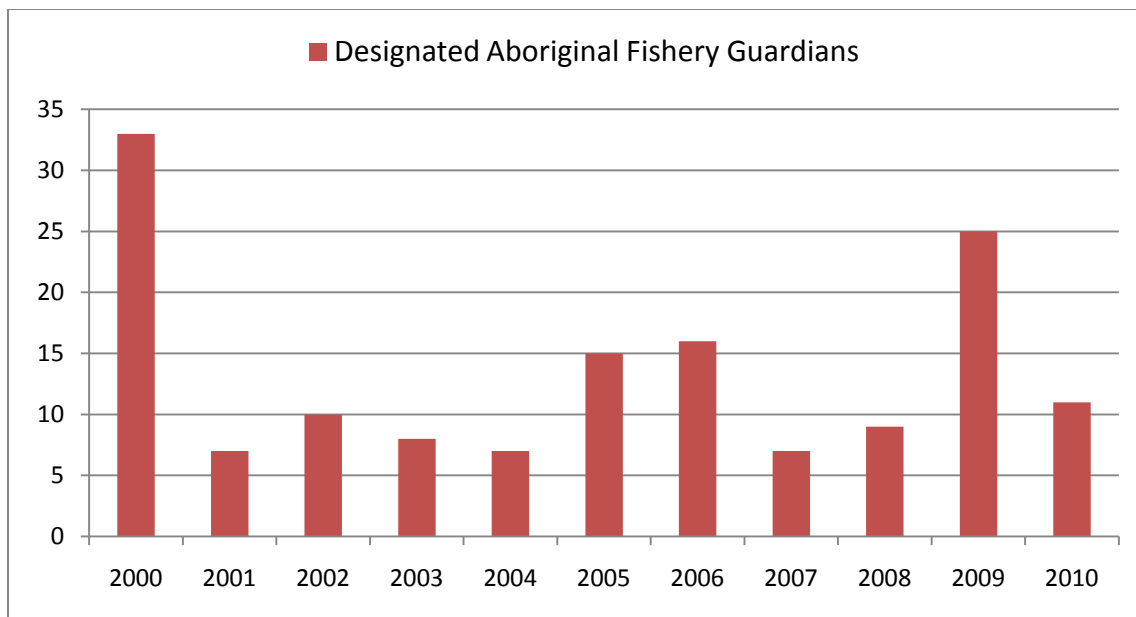
<sup>336</sup> CAN108254

<sup>337</sup> Answer 2(b) +(c) – Canadian Coast Guard Marine Fishery (Enforcement) Officer Program, February 25, 2011, Non-Ringtail document. The actual number of officers required may depend on the number of mid-shore vessels assigned to the Pacific Region, which has not yet been confirmed.

“Department of Fisheries and Oceans Policies and Programs for Aboriginal Fishing.”<sup>338</sup>

155 The number of designated Aboriginal Fishery Guardians has varied year to year from 2000 to 2010. Note that designations are linked to a trained candidate being hired by a First Nation that signs off on a Comprehensive Fisheries Agreement and there may be a wide variety in the functions of individual Aboriginal Fishery Guardians depending on the expectations of the hiring First Nation.<sup>339</sup> A national review of the Aboriginal Fishery Guardian training program is underway, and Pacific Region C&P has expressed its commitment to this program provided that there is national direction, sustainable funding and support to develop policies, roles and responsibilities.<sup>340</sup>

**Figure 18: Designated Aboriginal Fishery Guardian 2000 to 2010**<sup>341</sup>



156 The decline of the MEO program and instabilities in the Aboriginal Guardian Program may have impacted the level of assistance that C&P has received in fulfilling its enforcement mandate. According to the Regional Director C&P,

<sup>338</sup> See also CAN008880 at p. 3 and CAN008723 for information on Aboriginal Fishery Guardians.

<sup>339</sup> Answer 2(a) – Aboriginal Guardians or Fishery Officers, February 23, 2011, Non-Ringtail document

<sup>340</sup> *Ibid.*

<sup>341</sup> *Ibid.*

Randy Nelson, the loss of assistance from MEOs, Aboriginal Guardians and other sources, has led to a considerable workload increase for Pacific Region fishery officers and has created a “workforce capacity gap” for Pacific Region C&P.<sup>342</sup>

### Equipment

#### *Land Vehicles*

157 Following the Williams Report in 2005, Pacific Region C&P received additional funds to support capital requirements. For example, in 2005, Pacific Region C&P received an additional \$500,000 to purchase new land vehicles (trucks, cars, ATVs).<sup>343</sup> However, potential cuts to operations and maintenance funds have led to national C&P concerns that “vehicle life cycle management needs [are being] seriously compromised after no investment in 09/10, with potential rust out and higher maintenance costs down the road.”<sup>344</sup> According to Regional Director C&P, Randy Nelson, approximately 40% of the existing vehicle fleet in the Pacific Region is due for replacement, in accordance with DFO’s vehicle use policy.

#### *Watercraft*

158 Each year, a Small Craft Allocation Plan Program Committee meets to allocate \$5 million in small craft funding amongst the Coast Guard, C&P, Science and the Oceans, Habitat and Enhancement Branch. C&P typically receives 35% of this \$5 million.<sup>345</sup> In 2009-2011, however, the Small Craft Allocation Plan Program Committee received additional funds of \$7 million per year. As a result, C&P received \$8 million in funding for small watercraft in the 2009-2011 fiscal years.<sup>346</sup>

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<sup>342</sup> CAN115283 at p. 3

<sup>343</sup> CAN174152 at p. 3

<sup>344</sup> CAN202979

<sup>345</sup> CAN185940 at p. 24

<sup>346</sup> *Ibid.*

- 159 Pacific Region C&P expects to receive four new mid-shore vessels.<sup>347</sup> However, whether or not fishery officers will be deployed on these vessels to conduct enforcement work is uncertain. According to Pacific Region C&P, it “has very limited capacity to have enforcement presence on board” these mid-shore vessels, and “DFO does not have a credible Fisheries Patrol Vessel enforcement program.”<sup>348</sup>
- 160 The 2009 National Outlook states that C&P’s “small craft fleet will be in great shape for many years to come.”<sup>349</sup> According to Regional Director C&P, Randy Nelson, approximately 10-15 of Pacific Region C&P’s rigid hull inflatables were identified in 2011 as requiring a refitting, which is estimated to cost between \$10,000 to \$15,000 per boat.

### *Airplanes*

- 161 A Provincial Airlines fixed wing aircraft was deployed on a full time basis to the Pacific Region starting in fiscal year 2005-06. Prior to that, an aircraft was deployed from the East coast to the Pacific Region for three to four months of the year.<sup>350</sup> As a result of this redeployment, and additional funding, aerial surveillance hours in the Pacific Region increased from 630 in 2004-05 to 1500 in 2005-06.<sup>351</sup> As described in the section of this policy and practice report on “Monitoring, Control and Surveillance”, however, flight hours have since decreased to just less than 1200 hours per year.<sup>352</sup>

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<sup>347</sup> Answer 2(b) + (c) – Canadian Coast Guard Marine Fishery (Enforcement) Officer Program, February 25, 2011, Non-Ringtail document . The actual number of vessels distributed to the various DFO regions has not yet been confirmed.

<sup>348</sup> *Ibid.*

<sup>349</sup> CAN185940 at p. 24

<sup>350</sup> CAN133258

<sup>351</sup> CAN024051 at p. 10. See also CAN063719.

<sup>352</sup> CAN063685 at p. 8

## Radios

- 162 In 2007, C&P proposed to replace radio equipment and ancillary components throughout the Pacific Region, including new base stations.<sup>353</sup> According to this proposal, radio systems provide a vital health and safety link for personnel working in remote and dangerous situations. However, the equipment fishery officers had was “aging, becoming increasingly costly to maintain and is due for life-cycle replacement” at a cost of \$11.21 million over three years.<sup>354</sup> The proposal further stated that if radio systems were not replaced or upgraded, there would be a “significant health and safety risk to field staff” and “current programs may be suspended.”<sup>355</sup>
- 163 In 2009, the proposal for replacing and upgrading radio equipment remained outstanding. Again, C&P identified an “extreme” health and safety risk for field staff, together with an “extreme” regulatory risk that was “almost certain” since the radio system was no longer in compliance with Industry Canada regulations.<sup>356</sup>
- 164 In 2010, however, funding cuts required to make-up for a national C&P salary shortfall of \$3.4 million meant that there would be a “limited ability to meet all radio communication needs, which is a serious health and safety requirement.”<sup>357</sup>

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<sup>353</sup> CAN008630

<sup>354</sup> *Ibid.*

<sup>355</sup> *Ibid.* at p. 9

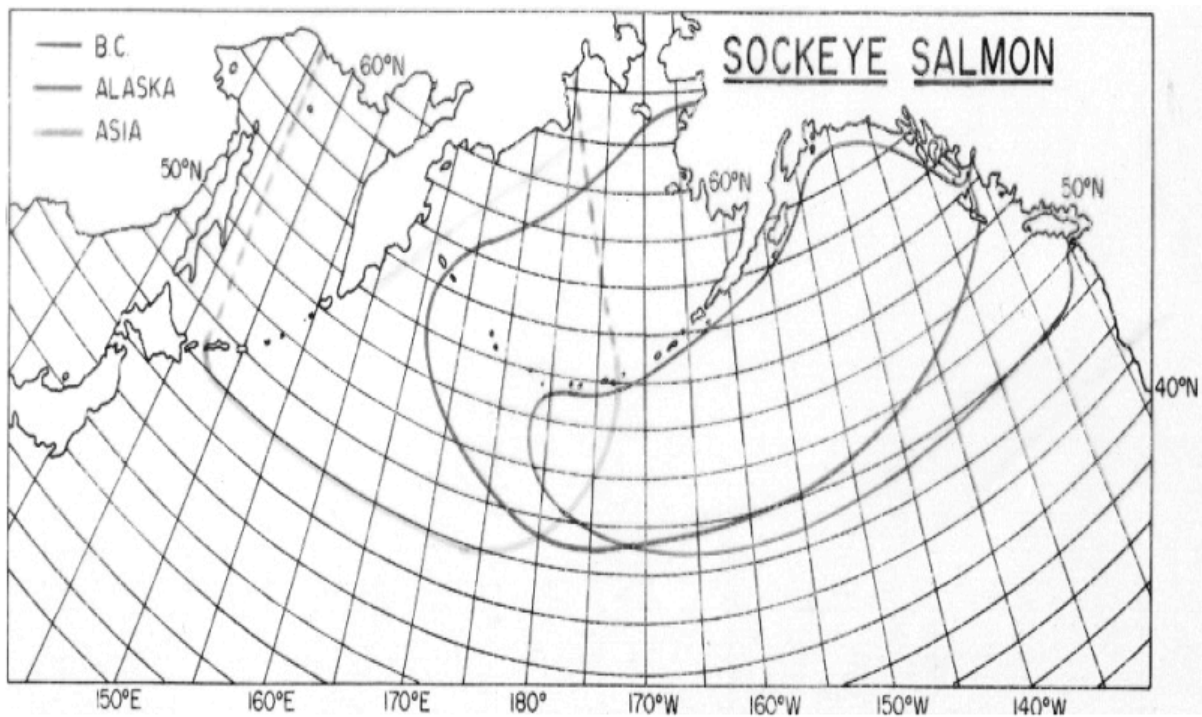
<sup>356</sup> CAN008632 at p. 10

<sup>357</sup> CAN202979

## High Seas Drift Net Fishing

165 Fraser River sockeye salmon spend approximately two years in the open ocean, including areas of the North Pacific that reach far beyond the exclusive economic zone of Canada. Figure 19 illustrates the approximate migration patterns for Asian, Alaskan and British Columbian sockeye salmon as understood by C&P in 2009.

**Figure 19: Sockeye Salmon High Seas Migration, as understood by C&P, 2009**<sup>358</sup>



<sup>358</sup> CAN278573

166 At one time, fishing for sockeye salmon on the high seas was legal and lucrative. According to Terry Glavin's book "*Dead Reckoning*", a 1989 study completed by a team of scientists from DFO's Pacific Biological Station estimated that during the 1980s, 331 tons of Canadian salmon were caught on the high seas annually, as by-catch in the mid-Pacific high seas drift net fishery.<sup>359</sup> Recognizing the untenable nature of high seas drift net fishing at the time, the United Nations General Assembly resolved in 1991 to prohibit large scale drift net fishing on the high seas.<sup>360</sup> This resolution was followed by the 1992 Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, signed by Canada, Japan, Korea, Russia and the United States.<sup>361</sup>

#### *North Pacific Anadromous Fish Convention and Commission*

167 The North Pacific Anadromous Fish Convention (the "Convention") prohibits fishing for anadromous fish stocks (including Fraser River sockeye salmon) in the Convention Area,<sup>362</sup> which includes the waters of the North Pacific Ocean and its adjacent seas, north of 33 degrees north latitude and beyond the 200-mile exclusive economic zones of coastal states.<sup>363</sup>

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<sup>359</sup> CAN010186 at p. 71

<sup>360</sup> CAN225176 at p. 2

<sup>361</sup> China also participates in some activities under the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean. For more information on the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, see the commission's policy and practice report entitled, "International Law Relevant to the Conservation and Management of Fraser River Sockeye Salmon".

<sup>362</sup> NPAFC Website: [http://www.npafc.org/new/about\\_convention.html](http://www.npafc.org/new/about_convention.html)

<sup>363</sup> CAN225176. See also CAN225155 at p. 1.





make recommendations with respect to conservation measures, scientific research activities and enforcement actions to be undertaken by the parties.<sup>370</sup>

*Is High Seas Drift Net Fishing an Ongoing Problem?*

- 170 Whether or not high seas drift net fishing remains an ongoing threat to Fraser River sockeye salmon stocks is unclear. DFO has stated that high seas drift net fishing is under control, due to the enforcement efforts of the NPAFC. For example, a 2005 DFO press release states that the annual enforcement operations contributed to by Canada “has helped to reduce [illegal, unreported, and unregulated] fish harvesting in international waters of the North Pacific by about 90 percent since its peak in 1998.”<sup>371</sup> An undated DFO high seas drift net mission document also describes the risk to salmon stocks as “low”, although high for squid and albacore tuna,<sup>372</sup> and a 2005 email from a DFO scientist to Salmon Head Paul Ryall states that “the NPAFC provides complete protection for salmon” and “it is a piece of cake to convince anyone with half a brain that there is no high seas fishing for salmon except for the occasional vessel that tries it and usually gets caught...”<sup>373</sup>
- 171 American scientists have expressed similar confidence. In his presentation at the Pacific Salmon Commission’s June 2010 Workshop on the Decline of Fraser River Sockeye, Dr. Phil Mundy of the Alaska Fisheries Science Centre rejected the hypothesis that unreported catch on the high seas could be a contributor to the Fraser River sockeye salmon decline.<sup>374</sup> He points to the lack of sightings of high seas drift net vessels in 2009 as the foundation for the current “conventional wisdom” that high seas drift net harvest of salmon has greatly diminished.<sup>375</sup>

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<sup>370</sup> *Ibid.*, Article IX

<sup>371</sup> CAN005292 at p. 2

<sup>372</sup> CAN225155

<sup>373</sup> CAN133814

<sup>374</sup> Synthesis of Evidence from a Workshop on the Decline of Fraser River Sockeye, June 15-17, 2010, prepared for the Pacific Salmon Commission, August 31, 2010 (Appendix C, Part 2), Non-Ringtail document.

<sup>375</sup> *Ibid.*, at p. 84

- 172 In contrast, Department of National Defence (“DND”) and certain DFO documents suggest that high seas drift net fishing may still be an issue. An internal DND newsletter called the “Lookout” reported that Canadian long-range Aurora aircraft identified “six vessels, each bearing the telltale signs of high seas driftnetters” during high seas patrols in 2008.<sup>376</sup> Similarly, a DFO press release states that “in 2006 alone, Aurora patrols spotted more than 20 squid jiggers fitted with illegal nets.”<sup>377</sup>
- 173 Sightings of high seas drift net vessels do not always lead to apprehensions. Between 1993 and 2007, NPAFC members apprehended only 16 vessels for illegally fishing in the Convention Area. Although these vessels were primarily apprehended within a “high threat” area in the Western Pacific Ocean that some say are not within the migratory range of Fraser River sockeye salmon, a DFO press release suggests that some populations of BC sockeye “have particularly long migrations that may extend to the Asian side of the Pacific Ocean.”<sup>378</sup> Therefore, it is not clear whether, or how many of, these apprehended vessels may have caught Fraser River sockeye salmon.
- 174 That high seas drift net vessels may catch Canadian sockeye was confirmed in a 2000 DFO press release.<sup>379</sup> It describes how, in 1999, a stateless vessel was found to have caught six tonnes of sockeye and chum salmon by driftnet fishing on the high seas.<sup>380</sup> An analysis of the sockeye salmon aboard that ship, conducted by the U.S. National Marine Fisheries Service, found that approximately 15% of the sockeye salmon on board had originated from British Columbia stocks.<sup>381</sup> In 2007, an Indonesian vessel was apprehended for high

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<sup>376</sup> CAN179230 at p. 2. See also CAN005285 at p. 3.

<sup>377</sup> CAN005291 at p. 2. Note that squid jiggers are a type of boat that may be outfitted with high seas drift nets, and may attempt to blend in with other boats fishing for squid legally.

<sup>378</sup> CAN070256

<sup>379</sup> CAN053977 at p. 1

<sup>380</sup> *Ibid.*

<sup>381</sup> *Ibid.*

seas drift net fishing, and was found to contain 90 tonnes of salmon (including pink, coho and sockeye), the origin of which was not specified.<sup>382</sup>

175 The number of vessels detected and apprehended for high seas drift net fishing has been reported by both DFO and the NPAFC for the period from 1993 to 2009. As set out in the table below, these numbers do not match. While the NPAFC reports between zero and one detected and apprehended vessel annually since 2001,<sup>383</sup> DFO documents suggest that there may have been a resurgence in high seas drift net fishing from 2006 to 2008, with 47 high seas drift net vessels detected in 2007, and seven vessels apprehended.<sup>384</sup>

**Table 8: Number of Detected and Apprehended Vessels on the High Seas, according to DFO<sup>385</sup> and the NPAFC<sup>386</sup>**

Year	DFO Reported Numbers		NPAFC Reported Numbers	
	Detections	Apprehensions	Detections	Apprehensions
1993	6	2	6	2
1994	1	0	1	0
1995	3	1	3	1
1996	1	1	1	1
1997	6	2	6	2
1998	9	4	9	4
1999	11	3	11	3
2000	2	1	2	1
2001	0	0	0	0
2002	0	0	0	0
2003	0	0	0	0
2004	1	1	1	1
2005	0	0	0	0
2006	26	1	0	0
2007	47	7	1	1
2008	11	2	0	0
2009	0	0	0	0

<sup>382</sup> NPAFC Website: [http://www.npafc.org/new/enforcement\\_activities.html](http://www.npafc.org/new/enforcement_activities.html)

<sup>383</sup> NPAFC Enforcement Activities Website: [http://www.npafc.org/new/enforcement\\_activities.html](http://www.npafc.org/new/enforcement_activities.html)

<sup>384</sup> CAN225176 at p. 2-3. See also CAN179230 at p. 2 and CAN005285 at p. 3 for DFO documents that point to higher detection numbers than those reported by the NPAFC.

<sup>385</sup> CAN225176 at p. 2-3. See also CAN179230 at p. 2 and CAN005285 at p. 3 for DFO documents that point to higher detection numbers than those reported by the NPAFC.

<sup>386</sup> NPAFC Enforcement Activities Website: [http://www.npafc.org/new/enforcement\\_activities.html](http://www.npafc.org/new/enforcement_activities.html)

Canada's contribution to the enforcement of high seas drift net fishing

176 Since 1991, Canada has contributed fishery officer time and the use of DND Aurora long-range aircraft for aerial surveillance patrols over the North Pacific Ocean.<sup>387</sup> These patrols are called "Operation Driftnet". Originally, Canada expended 216 Aurora patrol hours per year, spread over five weeks, on high seas drift net surveillance.<sup>388</sup> This was reduced to 180 hours in the early 1990s<sup>389</sup> and has continued to decrease since then. According to DFO, its "allocation of Aurora hours has been reduced in part as a result of a lack of funds for Aurora operations and equipment problems of an aging fleet of aircraft."<sup>390</sup> In 2008, Aurora aircraft missed some patrols due to mechanical breakdowns<sup>391</sup> and in 2009, Aurora aircraft patrolled for only 40 hours over a period of ten days.<sup>392</sup> Nevertheless, a September 2009 report to Treasury Board states that DFO is "maintaining strong monitoring, control and surveillance presence in the Northeast Pacific through Operation Driftnet (long-range air surveillance)."<sup>393</sup>

177 Table 9 sets out the total hours flown by Aurora aircraft on high seas drift net patrols from 2004 to 2009.

**Table 9: Total North Pacific Patrol Hours Flown for Aurora Aircraft, 2004-2009**

Year	2004 <sup>394</sup>	2005 <sup>395</sup>	2006 <sup>396</sup>	2007 <sup>397</sup>	2008 <sup>398</sup>	2009 <sup>399</sup>
Total Hours Flown	159	166.7	168.6	166	114	40

<sup>387</sup> CAN225176 at p. 2

<sup>388</sup> *Ibid.*

<sup>389</sup> *Ibid.*

<sup>390</sup> CAN024051

<sup>391</sup> CAN179230 at p. 1. See also CAN063179 at p. 7, which states that "HSDN losing DND support as aging Aurora fleet is decommissioned, and increasingly unreliable due to mechanical breakdowns."

<sup>392</sup> CAN076098 at p. 7

<sup>393</sup> CAN014408 at p. 5

<sup>394</sup> CAN076096 at p. 5

<sup>395</sup> CAN076097 at p. 4

<sup>396</sup> CAN076105 at p. 5

<sup>397</sup> CAN076107 at p. 4

<sup>398</sup> CAN076102 at p. 4

<sup>399</sup> CAN076098 at p. 7

- 178 DFO has stated that the Government of Canada’s decision to delay replacement of its long-range aircraft fleet until 2020 will mean that “Aurora hours for DFO will likely diminish over time due to the small number of available aircraft.”<sup>400</sup> As an alternative, DFO has been testing the use of radar satellite imagery, which has been used to direct patrols by Canada and other NPAFC countries to suspected high seas drift net vessels.<sup>401</sup>
- 179 Some other NPAFC countries have also been decreasing their high seas enforcement presence. For example, since 2009, Korea has stopped providing enforcement activities in the NPAFC Convention Area due to “financial and geographic constraints.”<sup>402</sup> Japan has also cut its enforcement presence down from 127 vessel patrol days and 118 flight hours in 2009<sup>403</sup> to 100 vessel patrol days and only 18 flight hours in 2010.<sup>404</sup>

### **Prosecutions and Restorative Justice**

- 180 The violation of harvest-related *Fisheries Act* provisions, regulations and associated licence conditions may result in prosecutions and fines. This section of the policy and practice report briefly describes such prosecutions, including impact statements, charges, fines and convictions rates. It also briefly discusses the use of restorative justice programs as an alternative to traditional court processes. This policy and practice report focuses only on the prosecutions and restorative justice procedures directly related to C&P, without consideration of the broader policies and practices related to the federal charge assessment process generally, or the specific practices of crown counsel.

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<sup>400</sup> CAN024051 at p. 11

<sup>401</sup> CAN076098 at p. 3

<sup>402</sup> CAN225170 at p. 3

<sup>403</sup> *Ibid.*

<sup>404</sup> *Ibid.* at p. 5

## Prosecutions

### *Charge Files and Impact Statements*

- 181 The first step in preparing for prosecution of a fisheries violation is for a fishery officer to compile the necessary information in a charge file. Special considerations are required in preparing a charge file for Aboriginal fisheries violations. As described in the commission's paper entitled "The Aboriginal and Treaty Rights Framework Underlying the Fraser River Sockeye Salmon Fishery," there is an Aboriginal right to fish for food, social and ceremonial purposes. *Fisheries Act* provisions, regulations or licence conditions may *prima facie* infringe upon this right, and if so, a justification is required in order for such provisions, regulations and licence conditions to be enforced. The most commonly applied justification is conservation.
- 182 Conservation needs and measures, however, in the context of Aboriginal rights claims must be documented and proven in court. In order for charges to be approved in respect of Aboriginal fishing violations, fishery officers rely upon "impact statements" from DFO resource managers that set out the specific conservation objectives and the rationale for management actions implemented in the particular fishery during the time period relevant to the violation.<sup>405</sup> Without this information, the charge file cannot be reviewed.<sup>406</sup>
- 183 Some fishery officers have expressed frustrations over not receiving fisheries management impact statements in a timely manner, which may undermine the ability, credibility and morale of fishery officers in enforcing violations in the Aboriginal fisheries.<sup>407</sup> As of May 2009, C&P sought to address this issue by

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<sup>405</sup> CAN015725 at p. 1

<sup>406</sup> *Ibid.* at p. 2. For more detail on the charge approval process, see the 1993 *National Procedural Guidelines for Enforcement of Aboriginal Fishing for Food, Social and Ceremonial Purposes*, which applies to all Aboriginal peoples with within and outside of treaties: see CAN001560 and "Answer 11 – Average time for decision-implementation", Non-Ringtail Document.

<sup>407</sup> CAN015725 at p. 3

assigning a fishery officer to collect impact statements and enter them onto a computer system that is accessible to other fishery officers.<sup>408</sup>

### *Charge Approval*

184 After a fishery officer has compiled sufficient supporting documentation for a charge file, that file is then provided to the Department of Justice (“DOJ”) for charge approval. According to DFO, the “timing of DOJ decisions has been an issue since 2002” and delays in getting charge approval decisions has “resulted in delays of ‘due process’ for the accused.”<sup>409</sup> Data from 2003 to 2009 indicates that, on average, only 34% of charge decisions are made within 90 days.<sup>410</sup> The percentage of charge decisions made within 90 days, 180 days, one year, and over one year are as follows:<sup>411</sup>

Within 90 days:	34%
90 – 180 days:	20%
180 – 365 days:	21%
More than one year:	5%

185 Approximately 20% of files are withdrawn for a variety of reasons, or are settled out of court, and are therefore not included in the timing of charge decisions described above.<sup>412</sup>

186 Not all charges are approved. The following table sets out the number of charges laid, and the number of charges not approved, by area and sector from 2004 to 2009. It appears that in some years, the number of charges not approved may exceed the number of charges laid. For example, in the BC Interior Area in 2009, only two charges were laid in the First Nations fishery, whereas 77 charges were not approved.

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<sup>408</sup> CAN104129

<sup>409</sup> Answer 11 – Average time for decision-implementation, Non-Ringtail document

<sup>410</sup> *Ibid.*

<sup>411</sup> *Ibid.*

<sup>412</sup> *Ibid.*

**Table 10: Number of Charges Laid and Charges Not Approved by Area and Sector from 2004 to 2009<sup>413</sup>**

Year	South Coast Area			Lower Fraser Area			BC Interior Area		
	FN	Comm	Rec	FN	Comm	Rec	FN	Comm	Rec
2004	20	153	25	45	33	24	0	0	1
	4	5	1	66	17	8	5	0	0
2005	32	50	9	111	44	62	2	0	0
	12	16	10	82	5	9	11	0	1
2006	18	22	27	53	25	80	6	0	3
	20	4	1	19	0	9	4	0	0
2007	2	98	32	18	17	67	0	0	2
	5	3	2	57	6	16	6	0	0
2008	0	57	57	19	24	258	0	0	2
	4	2	17	15	1	56	0	0	0
2009	14	51	42	34	70	153	2	0	3
	19	4	7	0	11	23	77	0	3

\*Top number is charges laid, bottom number is charges not approved. Not all charges may be in relation to Fraser River sockeye salmon. This table does not include information on violations by the following action types: charges pending or under review, charges diverted, Inspectors Directions, licence sanctions requested, Native Protocols, persons or persons unknown, seizures, tickets issued or warnings issued. Incomplete data provided for 2010 was excluded.

### *Conviction Rates*

187 In the 2009 National Outlook, C&P is described as having a national conviction rate of 80% on all of its prosecutions.<sup>414</sup> This includes tickets (44%), which for this purpose are deemed by DFO as convictions, and convictions in court (36%).<sup>415</sup> Only 4% of charges were stayed and 3% resulted in acquittals.<sup>416</sup>

<sup>413</sup> Answer 9 – Number & Type of Actions taken in respect of Violations by Area & Sector, Non-Ringtail document. See also Answer 10 – Percentage of charges approved, Non-Ringtail document, which states that “For the period of 2003-2009, on average DOJ approved 88.4% of recommended charges.”

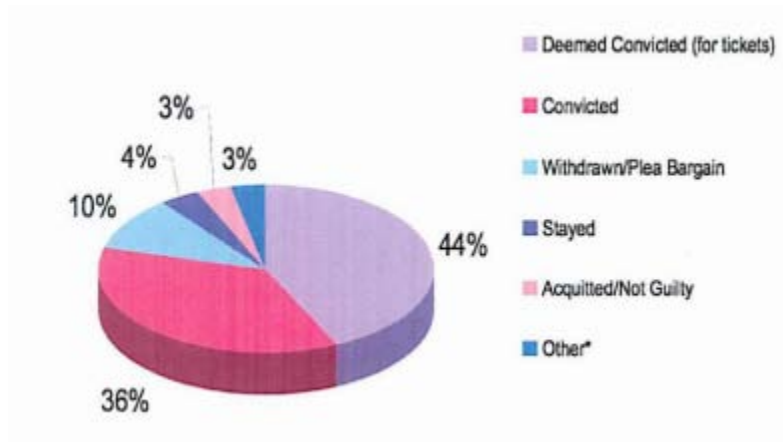
<sup>414</sup> CAN185940 at p. 18

<sup>415</sup> *Ibid.*

<sup>416</sup> *Ibid.*



**Figure 21: National C&P Prosecution Results in 2009<sup>417</sup>**



\*Other includes cases dismissed or other prosecution results

### *Fines*

188 Convictions, whether obtained through court proceedings or tickets (deemed convictions), may result in the issuance of monetary fines. The maximum fine for a ticketable offence under the *Fisheries Act* is \$1,000,<sup>418</sup> although many prescribed fines are less than \$100. For a list of ticketable offences and associated fines, refer to Schedule VIII of the *Fishery (General) Regulations* and Schedule VIII of the *British Columbia Sport Fishing Regulations, 1996*. For other offences, where a conviction is obtained in court, the maximum fine is generally either \$100,000 or \$500,000, depending on the particular offence and on the manner of proceeding under the *Criminal Code*.<sup>419</sup>

<sup>417</sup> *Ibid.*

<sup>418</sup> *Fisheries Act*, s. 79.7(5)(b)

<sup>419</sup> *Ibid.*, s. 79. Note that maximum fines are higher (up to \$1 million) for offences under sections 35(1) (harmful alteration of habitat), 36(1) (throwing overboard of certain substances) and 36(3) (deposit of deleterious substances).

**Table 11: Dollar Value in Fines Issued and Received by Area and Sector from 2000 to 2009<sup>420</sup>**

Year	South Coast Area			Lower Fraser Area			BC Interior Area		
	FN	Comm	Rec	FN	Comm	Rec	FN	Comm	Rec
2000	6,000	14,312	53,850	4,110	23,495	104,866	3,700	0	5,900
2001	2,550	16,899	74,135	7,550	63,093	230,113	450	1,850	7,235
2002	950	35,990	41,505	9,658	143,549	108,359	3,050	0	8,345
2003	1,200	25,130	43,895	3,480	13,571	104,028	707	0	6,045
2004	11,400	21,770	36,460	11,406	7,255	64,490	0	25,000	7,245
2005	36,500	20,183.5	32,520	16,890	4,505	45,305	0	40,000	3,250
2006	3,600	77,55	28,320	4,713	40,545	71,753	0	0	3,830
2007	1,000	22,325	49,725	5,550	6,143	91,915	4,500	0	4,105
2008	0	19,700	68,291	5,700	3,833	14,5985	500	0	5,830
2009	35	9,330	69,085	6,526	19,905	16,3945	550	0	1,280
Total	63,235	193,395	497,786	75,583	325,894	1,130,759	13,457	66,850	53,065

\*These fines do not account for the creative sentencing and remedial packages ordered by the courts. Values are rounded to the nearest dollar. Incomplete data provided for 2010 was excluded.

189 Since 2004, approximately \$1.35 million in fines has been issued and paid in the South Coast, Lower Fraser and BC Interior Areas. However, approximately \$1 million in additional fines remain outstanding.<sup>421</sup>

### Restorative Justice

190 Restorative justice is an alternative to the usual legal process for dealing with violations. It is a process whereby everyone who is affected by an offence is invited to share their views, explain how they have been impacted by the violation and to determine what is required to make things right.<sup>422</sup> The process focuses on the needs of the victims and the community as well as on accountability and repairing harm. In the end, an agreement is typically reached outlining how the harms will be repaired. This agreement may involve education, contribution to research, relinquishing of fishing privileges, or community service etc.<sup>423</sup>

<sup>420</sup> Answer 12 – Total Dollar Value of Fines Issued and Received by Area & Sector, Non-Ringtail document

<sup>421</sup> *Ibid.*

<sup>422</sup> CAN185940 at p. 14

<sup>423</sup> *Ibid.*

191 As part of the investigative process leading to the Williams Report, C&P fishery officers advised the Hon. Bryan Williams, Q.C. that restorative justice “is a very effective, efficient way to deal with violations.”<sup>424</sup> They also told Williams that, although restorative justice was being applied primarily to Aboriginal fisheries offences at the time,<sup>425</sup> it could be used to address violations in all fisheries and also for habitat offences. Randy Nelson (presently Regional Director C&P) described the broad applicability of restorative justice as follows:

*I see restorative justice as having potential not just for Aboriginal cases. It could be used for a recreational fisher, commercial fisher, farmer, rancher, logger, corporation, cottage owner or anyone who violates the fisheries law. Imagine a sport fisher being directed by a restorative justice process to attend a local fish and game club to talk for 10 minutes about his offence and answer questions from the members, or a commercial fisher having to write to Western Fisheries and tell them how important the law can be. Peer pressure and embarrassment are far more effective than a monetary fine that often never gets paid. Restorative justice is also quicker, would save court time, money and allows the victim to be heard.<sup>426</sup>*

192 The Williams Report recommended that “DFO should increase and enhance the Restorative Justice Program and apply it to all sectors.”<sup>427</sup>

193 Shortly after receiving the Williams Report, DFO set out an implementation plan to address several of the recommendations that it contained. This included funding towards restorative justice training for fisheries officers throughout the Pacific region.<sup>428</sup> In addition, some First Nations received funding through Aboriginal Fisheries Agreements towards the development of local restorative justice capacity and programs.<sup>429</sup>

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<sup>424</sup> CAN241260 at p. 9

<sup>425</sup> CAN287210

<sup>426</sup> CAN241260 at p. 10

<sup>427</sup> CAN002496 at p. 41

<sup>428</sup> CAN004141 at p. 2

<sup>429</sup> See for example, CAN078331 at p. 20.

194 The following table sets out the number of Aboriginal fisheries violations in the Lower Fraser, BC Interior and South Coast areas that were diverted to alternative processes from 2000 to 2009.

**Table 12: Number of Aboriginal fisheries violations diverted from conventional court processes or dealt with under First Nations protocols from 2000 to 2009<sup>430</sup>**

Year	South Coast Area		Lower Fraser Area		BC Interior Area	
	FN Protocol	Other Diversion	FN Protocol	Other Diversion	FN Protocol	Other Diversion
2000	7	0	22	0	33	0
2001	19	0	3	0	40	1
2002	2	0	12	0	54	2
2003	9	0	5	4	34	7
2004	3	1	14	1	62	4
2005	15	1	7	7	7	120
2006	11	1	4	17	7	48
2007	4	6	2	7	29	42
2008	3	21	2	3	21	74
2009	10	6	1	4	37	77

\*Incomplete data provided for 2010 was excluded.

<sup>430</sup> Answer 9 – Number & Type of Actions taken in respect of Violations by Area & Sector, Non-Ringtail document

## Databases and Information Management Systems

195 C&P relies on three databases and information management systems to record and measure its results.<sup>431</sup> These are as follows:

- Departmental Violations System (“DVS”)

DVS records observed contraventions and prosecutions of fisheries regulations. This includes information on the number and types of violations (e.g. illegal sales, unauthorized gear types, closed area fishing, etc.) that occur by area (South Coast, Lower Fraser, BC Interior etc) and by sector (Aboriginal, Commercial, Recreational). The DVS system also records the types of actions undertaken by officers in response (e.g. investigation initiated, response pending, unable to respond, etc.) and the outcome of those actions (e.g. charges laid, ticket issued, seizures, etc.).

DVS is undergoing modifications to facilitate more detailed capture and reporting of activities and to improve its precision in tracking prosecutions and outcomes.<sup>432</sup>

- Fishery Officer Effort and Activity Tracking System (“FEATS”)

FEATS tracks fishery officer activity. This includes information on the hours spent by fishery officers on certain activities (e.g. patrol, forensic audits, surveillance, public relations etc.) and the subject matter being addressed (e.g. Aboriginal – salmon, Habitat – hydro, or Aquaculture – salmon, etc.).

FEATS is also undergoing modifications to more precisely capture fishery officer time spent on inspections and audits.<sup>433</sup>

- Fishery Operations System (“FOS”)

FOS is a web-based computer information system with a central data repository and software tools to input, output and manage fisheries data.<sup>434</sup> The types of information that FOS stores includes, *inter alia*, catch data, vessel activity and effort, fishery openings, notices and compliance incidences and inspections.<sup>435</sup>

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<sup>431</sup> CAN193760 at p. 2. Data management systems for C&P are also described in the commission’s policy and practice report entitled, “Habitat Enforcement: Sections 35 and 36 of the *Fisheries Act*.”

<sup>432</sup> CAN193760 at p. 2

<sup>433</sup> *Ibid.*

<sup>434</sup> CAN018785 at p. 9

<sup>435</sup> *Ibid.*

FOS is also being updated to accommodate inspections data. This will allow analysts to track the histories of individual processors and to track trends in their behaviors and activities.<sup>436</sup>

## Program Modernization Initiatives and Audits

196 In September 2004, C&P was tasked by the Departmental Management Committee to “redefine and modernize” the compliance program, with the primary purpose of “integrating cross-sectoral issues and needs in a comprehensive DFO compliance strategy.”<sup>437</sup> This led to the Compliance Review and Modernization Initiative, which focused on, *inter alia*, shifting to the Three Pillars approach, enhanced recruitment and training, developing an integrated risk management process, linking resources to program objectives, enhancing information systems, and strengthening program performance measurement.<sup>438</sup> The Compliance Review and Modernization Initiative also led to the region-wide implementation of the Restorative Justice Program, an increased emphasis on relationship building with Aboriginal and local fishing communities, and the development of an intelligence led compliance management model.<sup>439</sup>

197 In June 2009, DFO released its 2009 C&P Audit, which was a review of the processes in place during fiscal year 2007-08.<sup>440</sup> It found that inadequate policies reduced program effectiveness, increased risk, and may affect C&P’s credibility with the public, with courts, and with other enforcement services.<sup>441</sup> In particular, the audit’s findings include the following:<sup>442</sup>

- There was confusion within C&P as to what agreements were in place because there was no central coordinator to manage and monitor

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<sup>436</sup> CAN193760 at p. 2

<sup>437</sup> CAN206056 at p. 31

<sup>438</sup> *Ibid.* See also CAN145132 at p. 13 regarding integrated risk management.

<sup>439</sup> CAN057525 at p. 5. The National Compliance Modernization Initiative was to be completed by the end of 2005: CAN265655 at p. 3.

<sup>440</sup> CAN024036

<sup>441</sup> *Ibid.* at p. 2-3

<sup>442</sup> *Ibid.*

memoranda of understanding or other agreements to make sure that they were current

- C&P programs were delivered regionally with an area level focus, without a national compliance and enforcement strategy. This resulted in six independent programs rather than one cohesive national program with common objectives and priorities that can be linked from strategic to tactical levels. There was no overarching policy document to facilitate delivery of regional programs consistent with a broader departmental plan.
- C&P had no analytical capacity with respect to the significant compliance, enforcement and statistical information that it holds. It is not able to effectively monitor and plan compliance and enforcement activities or to produce timely information to meet internal needs.
- There were weaknesses in processes to monitor persons designated as fishery officers, guardians or inspectors.

198 As a result, the 2009 C&P Audit issued a series of recommendations for C&P, which were as follows:

- The Director General C&P should, in conjunction with Regions and with supported Sectors as appropriate, update existing policies and further develop a comprehensive suite of program policies and procedures which are centrally managed to strengthen and standardize compliance and enforcement efforts as a cohesive Departmental Enforcement Service. *(High importance)*
- The Director General C&P should annually, in conjunction with Regional authorities review all compliance and enforcement memoranda of understanding and major formal agreements with other sectors, departments, levels of Government and other enforcement services as a means to improve accountability and to ensure the agreements remain current, relevant and effective. *(High importance)*
- The ADM Fisheries and Aquaculture Management and ADM Oceans and Habitat should revise the National Habitat Compliance Protocol to make a clear distinction between administrative and law enforcement functions, to facilitate a common collaborative approach across the department and to mitigate the potential health and safety risk to habitat officials. *(High importance)*
- The Director General C&P should, in consultation with other Sectors and Regions, promulgate an annual DFO compliance and enforcement strategy that communicates strategic program objectives and priorities with performance measures and allocates the nationally controlled resources to guide Regional planning and maximize the effectiveness of the decentralized operations through a cohesive departmental plan. *(Medium importance)*

- The Director General C&P should establish minimum national enforcement equipment scales and specifications for application in all Regions; and monitor future program requirements through lifecycle planning in cooperation with the Regional HQs. (*Low importance*)
- The Director General C&P should establish a national intelligence program in partnership with other organizations to more effectively manage the program by possessing the capacity to: advise other sectors of trends or threats adversely affecting fisheries resources and fish habitat; promulgating effective strategic guidance for Regional C&P activities; and supporting the Regional efforts in all three pillars with useful intelligence products. (*Medium importance*)
- The ADM Fisheries and Aquaculture Management should strengthen controls for fishery officer, guardian and inspector designations pursuant to Sections 5 and 38 of the Fisheries Act by: centralizing the designation and monitoring authority under the Director General C&P; and making compliance with the code of Conduct for Fishery Officers, or for other enforcement services, their own professional enforcement code of conduct or equivalent measures agreeable to the Director General C&P, a condition of designation under the Act. (*Medium importance*)
- The Director General C&P should develop competency profiles stating knowledge, skill and experience standards and expand the FOCPP beyond GT-04 through the management levels to support human resource development and succession planning. (*Low importance*)
- The Director General C&P should introduce a professional standards audit program independent of line reporting relationships to maintain professional competencies at all levels. (*Low importance*)
- The Director General C&P should introduce a formal public complaint process independent of line reporting as a means to enhance professional competence, accountability and transparency for those who perform fisheries and habitat compliance, inspection and enforcement functions pursuant to Section 5 and 38 of the Fisheries Act. (*Medium importance*)<sup>443</sup>

199 In response to the 2009 C&P Audit, C&P prepared a management action plan setting out intended actions in response to each of the ten recommendations.<sup>444</sup>

200 For a list of previous reports and recommendations related to fisheries enforcement, see Appendix 1.

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<sup>443</sup> *Ibid.* at p. 17-22

<sup>444</sup> CAN024036. See also CAN285255.



## Appendix 1: Selected Previous Recommendations Regarding Fisheries Enforcement

The following tables contain a selection of recommendations from previous reports that relate to fisheries enforcement. This is not a comprehensive list of all recommendations that may have been made in relation to this topic. In particular, general recommendations that bear on fisheries management or that fall within other sections of the commission's hearings may or may not have been included.

### 2005 – The Hon. Bryan Williams, Q.C.: The 2004 Southern Salmon Fishery Post-Season Review<sup>445</sup>

Number	Recommendation
25.	"The regulation requiring that all nets be clearly marked as to their ownership should be vigorously enforced. Unidentified nets should be subject to immediate removal and confiscation. The penalty for leaving nets where they can continue to fish during closed periods should be substantial."
26.	"At the present time, DFO through its C&P Division is not maintaining a credible enforcement presence and not properly enforcing the <i>Fisheries Act</i> and <i>Regulations</i> including those that relate to habitat protection. Accordingly, DFO must ensure that adequate resources are available and that the budget and staffing available for enforcement be increased." (p. 40-41)
27.	"DFO should focus on empowering user groups with the responsibility of providing enforcement within their own sectors. Of course, ultimately such activity must be overseen by DFO." (p. 41)
28.	"C&P Division urgently needs a clear policy mandate and the resources with which to implement it. Morale will remain low among enforcement officers until this issue is addressed." (p. 41)
29.	"Illegal fishing in the Fraser River has been described as rampant and out of control. This is unacceptable. DFO must properly enforce the <i>Fisheries Act</i> and <i>Regulations</i> and initiate measures to provide a reasonable estimate of the scope of this illegal activity and the number of fish actually taken." (p. 41)
30.	"Enforcement must also include adequate presence to deter the concealing of over harvesting of fish by participants from all sectors." (p. 41)

<sup>445</sup> CAN002496

31.	“Throughout the South Coast there is an ongoing problem with the illegal sale of fish, both fish that have been caught as part of an FSC entitlement and fish that have been illegally harvested. We heard little evidence of ally serious effort to prevent this activity. This situation is intolerable and must be addressed by DFO.” (p. 41)
32.	“DFO should develop and have in place as early as possible in 2005 a system to more accurately record illegal nets and fishing in the Fraser River and the approach waters. This system should include overflights at varying times during closed periods of all waters in order to provide for accurate assessment of the number of illegal activities.”
33.	“DFO should maintain a complete record, by species, of all fish found in confiscated nets.” (p. 41)
34.	“Night patrols should be undertaken on a regular but variable basis, particularly in those areas where illegal fishing is being reported.” (p. 41)
35.	“DFO should increase and enhance the Restorative Justice program and apply it to all sectors.” (p. 41)
36.	“Pacific Region enforcement should be organized as a separate branch ultimately reporting to a senior person with enforcement experience and line authority throughout B.C. This person must be a member of the Regional Management Committee.” (p. 41)
37.	“The Committee heard testimony from a number of C&P officers who felt their enforcement powers had been undermined by their inability to conduct vehicle checks at roadblocks. This issue as well as their law-enforcement status should be reviewed by the department.” (p. 41)
38.	“In view of the threat to the resource posed by illegal activity DFO should review the level of penalties it can impose and consider requesting increases commensurate with the infraction and administrative sanctions, including licence suspensions, which can act as an effective deterrent.” (p. 41)
39.	“A higher level of traceability needs to be in place. DFO should work with stakeholders to identify their harvest.” (p. 42)

**2004 – Tom Wappel : Here we go again... or the 2004 Fraser River Salmon Fishery – report of the Standing Committee on Fisheries and Oceans<sup>446</sup>**

Number	Recommendation
9	“That the Department of Fisheries and Oceans allocate more resources and implement procedures to ensure that prosecutions are not dropped because the chain of evidence has been broken.”

**2004 – D. McRae and P. Pearse: Treaties and Transitions, Toward a Sustainable Fishery on Canada’s Pacific Coast<sup>447</sup>**

Number	Recommendation
[FM] 4	“Failure to comply with DFO’s limit on the number of vessels should result in closure of the fishery.” (p. 27, 28)

**2003 – Patrick Chamut: Review of the 2002 Fraser River Sockeye Fishery<sup>448</sup>**

Number	Recommendation
8	<p data-bbox="337 1001 542 1035">“Enforcement”</p> <p data-bbox="337 1073 1328 1142">“It is recommended that the Department consult with First Nations and stakeholders on enforcement issues:</p> <ul data-bbox="435 1180 1498 1545" style="list-style-type: none"> <li>• There will be pre-season meetings involving Conservation and Protection staff from Area offices to address anticipated monitoring enforcement issues, coordinated strategies, and priorities.</li> <li>• There will be post-season meetings to review the outcome of these strategies, and progress related to partnership arrangements and protocols.</li> <li>• Partnership arrangements and protocols with First Nations and stakeholders should be developed or improved, wherever possible. These would formalize the shared roles and responsibilities, and could include improved monitoring and catch reporting, co-management issues, or on-ground interactions between the parties.</li> </ul> <p data-bbox="337 1583 1463 1688">As well, external members of the Steering Committee advocate more funding to support enforcement activities related to the conduct of Fraser River sockeye fisheries.”</p>

<sup>446</sup> CAN002454

<sup>447</sup> CAN001130

<sup>448</sup> CAN002450

2003 – Tom Wappel: The 2001 Fraser River Salmon Fishery, Report to SCOFO<sup>449</sup>

Number	Recommendation
5.	<p>“That funding be restored to DFO at levels adequate to the tasks of restoring science and enforcement programs critical to the conservation of the resource, habitat protection, enhancement and recruitment of professional fisheries managers and prosecution of commercial and recreational fisheries.”</p>
6.	<p>“That DFO fund and support activities of more fisheries officers;</p> <p>That any person who has been convicted of a fisheries violation, not be designated as guardian;</p> <p>That DFO provide the resources for guardians to complete all phases of their training;</p> <p>That the monitoring and enforcement component be separated out of AFS agreements and that the guardian program be funded directly to ensure stability of the program and to provide autonomy to Aboriginal fisheries officers and guardians; and</p> <p>That, to provide greater independence for Aboriginal fisheries officers and guardians, they, together with DFO fisheries officers, be responsible to the head of DFO enforcement.”</p>

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<sup>449</sup> CAN002446

1995 – **John Fraser: Fraser River Sockeye 1994, Problems and Discrepancies**<sup>450</sup>

Number	Recommendation
12	“We recommend that enforcement be recognized once again as an essential element of the fishery management process.”
13	“We recommend that for the 1995 fishing season, DFO institute a plan to ensure that an effective and credible enforcement level is re-established.”
14	“We recommend that DFO review the regulations pertaining to the various fisheries and implement changes needed to ensure they are enforceable.”
15	“We recommend that DFO undertake an in-depth investigation of 1994 abuse of fishing laws.”
16	“We recommend that DFO revisit its policy of non-criminal administrative sanctions (which include licence suspensions) with a view to making such a policy more workable and expanding its application.”
17	“We recommend that DFO establish an enforcement branch in DFO Pacific Region, headed by a director with extensive law enforcement experience, to report to the Regional Director-General and be responsible for developing and maintaining enforcement capability at a level of competence and coverage which would ensure that the Minister's mandated duty to conserve and protect Canada's Pacific fisheries resources will be fulfilled properly.”
18	“We recommend that DFO institute an "observe, record, report" program with a communications centre that operates 24 hours per day and seven days per week.”
20	“We recommend that DFO expedite the implementation of an effective training program to develop fisheries management, enforcement and administrative capacity within First Nation communities.”
21	“We recommend that DFO, in consultation with First Nations, separate food and commercial fish in time and space to promote more effective enforcement.”

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<sup>450</sup> CAN032201

**1992 – Peter Pearse: Managing Salmon in the Fraser, Report to the Minister of Fisheries and Oceans on the Fraser River Salmon Investigation<sup>451</sup>**

<b>Number</b>	<b>Recommendation</b>
<b>Essential Conditions for Success</b>	
5	<p><i>Strict Enforcement</i></p> <p>“Probably the biggest single obstacle to progress in developing new policy is the widespread perception that fishing was out of control on the Fraser last Summer”</p> <p>“Any new agreements [with FN] must have strong enforcement designed to generate the support and co-operation of native signatories through joint programs, monitoring and surveillance.”</p> <p>“... the Department must accept ultimate responsibility for enforcement.”</p>
<b>Agreements</b>	
11	<p><i>Guardians</i></p> <p>“... guardians are inadequately trained.”</p> <p>“... some guardians were fishermen themselves and therefore had an obvious conflict of interest.”</p> <p>“... guardians were often stationed where they were expected to enforce regulations against family members and relatives.”</p> <p>“These problems must be avoided in the future.”</p>

**1982 – Peter Pearse: Turning the Tide: A New Policy for Canada’s Pacific Fisheries**

<b>Number</b>	<b>Recommendation</b>
<b>Enforcement Recommendations</b>	
1	<p>“To encourage and facilitate reporting of violations by the general public, the Observe, Record and Report Program should be expanded with appropriate publicity, to seven days a week, eight a.m. to midnight daily.” (p. 208)</p>
2	<p>“Bounties for fisheries prosecutions should be retained and the public should be encouraged to report violations.” (p. 208)</p>
3	<p>“The Department should abandon its vague and inappropriate credible voluntary deterrence policy as its primary aim in enforcement and replace it with a vigorous</p>

<sup>451</sup> CAN002473

	and well-organized enforcement capability in line with the recommendations made below.” (p.208)
4	“In the Pacific region a special enforcement unit should be created whose <i>exclusive</i> responsibilities will be enforcement. Their duties should <i>not</i> include resource management.” (p.208)
5	“At Pacific region headquarters in Vancouver, a senior enforcement officer and support staff should be appointed and placed directly in charge of all fishery enforcement officers. The enforcement officers should be responsible directly to headquarters, rather than through area managers as they are now. “ (p. 209)
6	“If the need arises, a special task group operating from headquarters should be created, along the lines of the disbanded General Investigation Unit, to supplement district enforcement officers during hectic periods and to investigate complex crimes when necessary.” (p. 209)
7	“The Fisheries Act should clearly confer peace officer status on enforcement officers, other fishery officers and fishery guardians.” (p. 209)
8	“The provisions of the Fisheries Act that deal with obstructing fishery officers should be eliminated or redrawn to conform with the powers and rights they have under the Criminal Code as peace officers.” (p. 209)
9	“The owner or registered charterer of a vessel should be made liable to prosecution for any illegal fishing activities carried out by the vessel regardless of whether or not he is actually on board when the offence is committed, unless he is able to prove that the skipper of the vessel was in control without his consent.” (p. 209)
10	“The Department of Justice should designate a senior staff lawyer in its Vancouver regional office to oversee all prosecutions under the Fisheries Act.” (p. 210)
11	“In consultation with the Department of Justice, the Department of Fisheries and Oceans should have the power to choose and appoint the lawyers who will act as prosecutors under the Fisheries Act and regulations.” (p. 210)
12	“The court liaison service should be maintained and if necessary expanded to ensure that all useful information about developments in fisheries law is disseminated throughout the province to enforcement officers and prosecutors, including statistical information for use in sentencing.” (p. 210)
13	“The biological laboratories of the federal government in the Pacific region should accept and test properly collected samples presented by citizens, and the Department of Justice should be available to assist with legal proceedings.” (p. 211)

14	“The education of the judiciary in fisheries law and policy should be encouraged through the appropriate channels of the provincial court system.” (p. 211)
15	“The penalty provisions in the Fisheries Act should be thoroughly reviewed to eliminate all anachronisms, inconsistencies and ambiguities.” (p. 215)
16	“For illegal fishing the Act should provide for a higher scale of fines. The maximum fine for commercial violators should be raised from \$5,000 to \$10,000.” (p. 215)
17	“For all offences that seriously threatened fisheries or habitat the Crown should be able to proceed by way of indictment instead of only summarily as is presently the case for most, and judges should be authorized to impose fines that are higher than the upper limits stipulated for summary convictions.” (p. 215)
18	“To discourage repeat violators, second and subsequent offences of all kinds should draw high mandatory minimum levels of fines, which should vary according to the kind of offence: commercial, sportfishing, pollution, habitat destruction, and so on.” (p. 215)
19	“Through its court liaison program and its prosecutors, the Department should systematically review all court decisions and report to the Department of Justice those where sentences are abnormally low and should be appealed to higher courts.” (p. 215)
20	“The Department should pursue an aggressive policy in seizing vessels and equipment when offenders are caught and charges are laid.” (p. 215)
21	“In flagrant cases, Crown counsel should oppose applications to court by the accused for the release of equipment pending trial. For others, where circumstances warrant, they should argue for substantial bonds, approximating the market value of the vessel and equipment under seizure.” (p. 215)
22	“Illegally caught fish and illegal equipment should be forfeited to the Crown, as at present.” (p. 215)
23	“All categories of licenses – commercial, sport and Indian – should be liable to suspension for a violation of the terms of the license, the Fisheries Act or the regulations, upon the conviction of the license holder.” (p. 216)
24	“License cancellation should be invoked for the most flagrant of violations and recalcitrant repeat offenders.” (p. 216)
25	“The holder of a quota license who exceeds his annual quota by five percent or less should be required to pay a royalty surcharge on the excess. The surcharge should be fixed approximately at the average landed price for the species during



	<p>the month in which the infraction occurs. Where the licensee exceeds his quota by more than five percent, the Minister should be authorized to deduct the full amount of the excess from the licensee's quota eligibility in the following season, and impose the surcharge. For flagrant and repeat violations the Minister should be authorized to suspend the licensee's right to exercise his quota in the fishery for the following season or to cancel it permanently. "(p. 216)</p>
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## Appendix 2: List of Documents Referenced in this Report

TITLE	DOCUMENT IDENTIFIER OR SOURCE
Bulletin: National Enforcement Policy Relating to Indian Band Fishing By-laws, 1993	CAN000062
Bulletin: National Enforcement Procedural Guidelines Relating to Indian Band Fishing By-laws, 1993	CAN000063
Department of Fisheries and Oceans National Procedural Guidelines for Enforcement of Aboriginal Fishing for Food, Social and Ceremonial Purposes, March 1993	CAN001560
2004 Southern Salmon Fishery Post-Season Review, Hon. Bryan Williams, Q.C.	CAN002496
DFO, Integrated Risk Management (IRM) Policy, July 2004	CAN002943
Pacific Region Draft 1 Integrated Fisheries Management Plan, Salmon, Sothern B.C. June 1, 2010 - May 31, 2011	CAN004037
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Canada's Actions Against Overfishing, undated (est. early 2009)	CAN005285
Aerial Surveillance Patrols Curb Illegal Fishing in North Pacific, DFO Press Release, August 9, 2007	CAN005291
Fisheries Patrols Launched in North Pacific, DFO Press Release, April 29, 2005	CAN005292
Capital Project Summary Note, Pacific Region Radio System Narrowbanding, September 10, 2007	CAN008630
C&P Radio System - Narrowbanding "ISN", July 29, 2009	CAN008632

Policy for the Management of Aboriginal Fishing, August 6, 1993	CAN008679
Aboriginal Fisheries Guardians Activity: Training Action Plan, Aboriginal Policy and Governance, July 2008	CAN008723
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DFO, C&P Corporate Risk Discussion, January 29, 2010	CAN009015
Previous Standing Committee Recommendations Pertaining to Changes to the Fisheries Act, undated	CAN009600
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Dead Reckoning: Confronting the Crisis in Pacific Fisheries, Terry Glavin, 1996	CAN010186
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Pacific Region C&P Pressure & Priority Documents, Draft Submission, January 15, 2010 (revised February 8, 2010)	CAN010869
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DFO, Letter to Tony Jacobs of Tsawwassen First Nation, March 3, 2005	CAN012698
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Untitled DFO report, undated (est. 2009)	CAN017020

2006-07 Integrated Human Resources Plan Conservation and Protection Pacific Region, January 5, 2007	CAN017094
DFO, Regional Management Committee, Decision Paper, October 12, 2005	CAN018647
Sto:lo Comprehensive Fisheries Agreement, CFA 2009-1912, April 1, 2009 to March 31, 2010	CAN019248
IUU Catch Certification Validation and Verification Procedures for Canadian Fish Products Exported to the European Union, Draft by B. John Emberley & Associates Ltd., March 30, 2009	CAN019627
Untitled DFO report, undated (est. 2009)	CAN019703
Pacific Region Integrated Fisheries Management Plan, Salmon, Southern B.C. June 1, 2009- May 31, 2010	CAN019977
DFO Achievements, February 8 2006-November 15, 2006	CAN021529
Pacific Region Conservation and Protection 2009 Program Results (Salmon), Presentation to Integrated Harvest Planning Committee, January 19, 2010	CAN021962
A summary of the Fisheries and Oceans Canada (DFO) and Cheam First Nation joint relationship building initiative, February 24, 2005	CAN022006
Liaison Officers Assigned to FN Communities in the Lower Fraser Area, undated	CAN022832
Stratos Inc., Evaluation of the Pacific Region Conservation and Protection Line Reporting Pilot, June 12, 2007	CAN024022
DFO, Audit of the Conservation and Protection Program, Final Audit Report, June 18, 2009	CAN024036
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Conservation and Protection, BC Interior, July 2008	CAN034461

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Conservation and Protection Program Logic Model, July 2008	CAN034467
PICFI Delivery Approach, DFO, undated (est. 2008)	CAN036275
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Pacific Integrated Commercial Fisheries Initiative (PICFI) Governance Charter, December 14, 2007	CAN041259
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Summary of 2006 Fraser River Deployment Impacts North Coast C&P Operations	CAN043587
Summary of 2006 Fraser River Deployment Impacts South Coast C&P Operations, April 12, 2006	CAN043588
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Enforcement Operations Business Plan, April 1 2006- March 31 2009, undated (est 2005)	CAN047522
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National Aerial Surveillance Program, Annual Report, Pacific Region, 2008-2009 Fiscal Year, by W. Saunby, DFO, April 2009	CAN063179
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PICFI Williams \$ Work Plan Year 2 (2008-2009)	CAN068516
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Pacific Region Conservation and Protection, February 19, 2008	CAN076020
2004 High Seas Drift Net Enforcement Report by Robert Martinolich, DFO, submitted to NPAFC by Canada, October 2004	CAN076096
2005 High Seas Drift Net Enforcement Report by Robert Martinolich, DFO, submitted to NPAFC by Canada, October 2005	CAN076097
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2008 High Seas Drift Net Enforcement Report, by Robert Martinolich and Mike Weston, DFO, submitted to NPAFC by Canada, November 2008	CAN076102
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Email from Gred Savard re Response to SCOF0 Report, March 26, 2005	CAN089067
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2005 Plant Audit Lower Mainland and Vancouver Island Compilation of sockeye by owner	CAN096904
2005 Plant Audit Lower Mainland and Vancouver Island	CAN096905
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Synthesis of Evidence from a Workshop on the Decline of Fraser	<a href="http://www.psc.org">http://www.psc.org</a>

River Sockeye, June 15-17, 2010, prepared for Pacific Salmon Commission, 31, August 2010	/pubs/FraserSockeyeDeclineWorkshopReport.pdf
Synthesis of Evidence from a Workshop on the Decline of Fraser River Sockeye, June 15-17, 2010, prepared for Pacific Salmon Commission, 31, August 2010 (Appendix C, Part 2)	<a href="http://www.psc.org/pubs/FraserSockeyeDeclineWorkshopAppCpt2.pdf">http://www.psc.org/pubs/FraserSockeyeDeclineWorkshopAppCpt2.pdf</a>
13 Detailed Annual Budget SIU	Non-Ringtail document
13 Detailed Annual Budget BCI	Non-Ringtail document
13 Detailed Annual Budget L Fraser	Non-Ringtail document
13 Detailed Annual Budget S Coast	Non-Ringtail document
13 Funding Final	Non-Ringtail document
Answer 1a +1b – Field and Non-field Officers	Non-Ringtail document
Answer 1a + 1b – Field and Non-field Officers Chart 3	Non-Ringtail document
Answer 1c- Deployed Fishery Officers	Non-Ringtail document
Answer 2(a) – Aboriginal Guardians or Fishery Officers, February 23, 2011	Non-Ringtail document
Answer 2(b) +(c) – Canadian Coast Guard Marine Fishery (Enforcement) Officer Program, February 25, 2011	Non-Ringtail document
Answer 3 – Vacancies & Long-term Leave	Non-Ringtail document
Answer 4(a) – Summary of Hours Spent by Activity Type	Non-Ringtail

	document
Answer 5 – SIU/I&IS Cases and Investigations, 2000-2010	Non-Ringtail document
Answer 5 - I&IS Cases and Investigations 2009-2010	Non-Ringtail document
Answer 9 – Number & type of actions taken in respect of violations by Area & Sector	Non-Ringtail document
Answer 10 – Percentage of charges approved	Non-Ringtail document
Answer 11 – Average time for decision-implementation	Non-Ringtail document
Answer 12 – Total Dollar Value of Fines Issued & Received by Area & Sector	Non-Ringtail document
Answer 13 (h) – Budget Reductions – 3 Year Funding	Non-Ringtail document
Answer 13 (i to l) – AB based expenditures	Non-Ringtail document
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Fisheries and Oceans Canada Organizational Structure, Presentation to Cohen Commission, August 11, 2010	Non-Ringtail document
National Update on Pillar 3 Implementation, Paul Steele, February 2011	Non-Ringtail document

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- Figure 20: North Pacific Anadromous Fish Commission Convention Area
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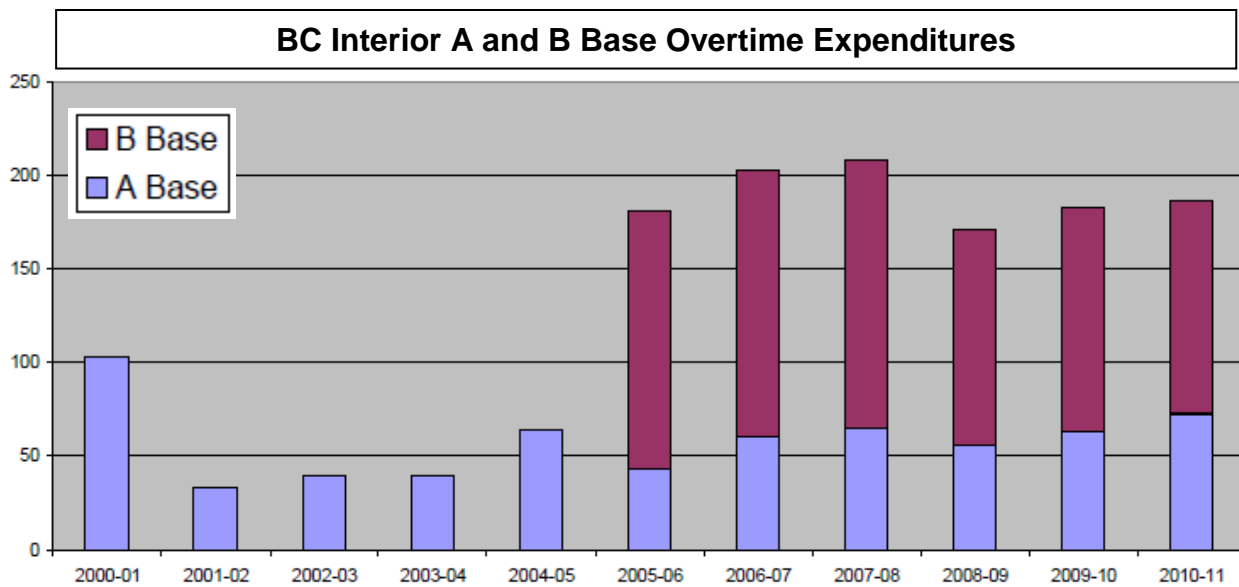
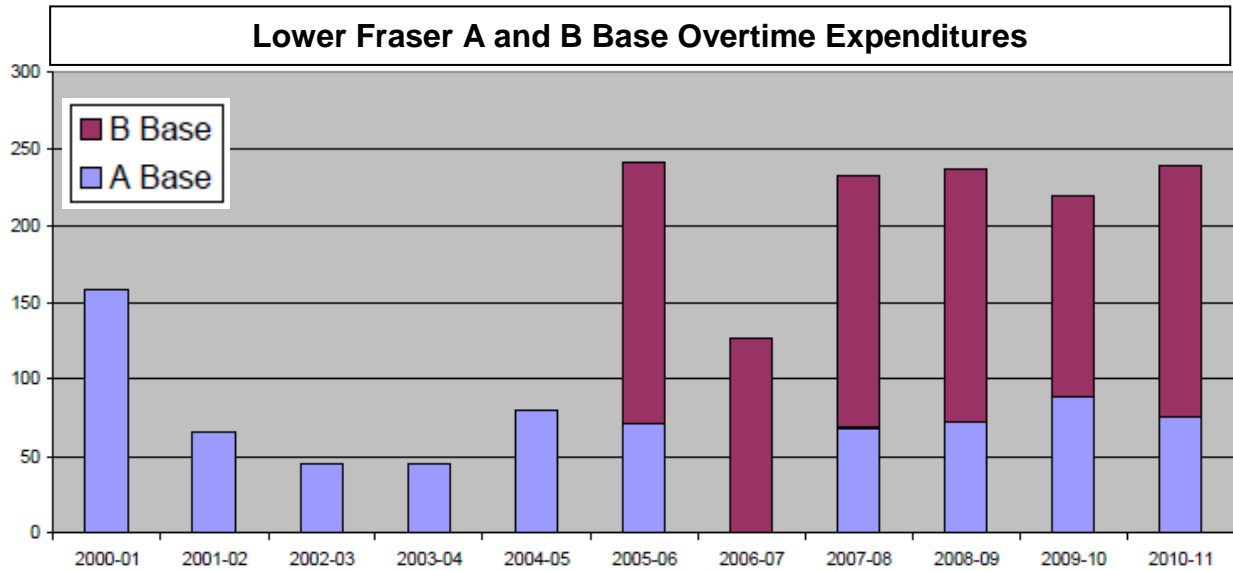
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#### Appendix 4: List of Acronyms

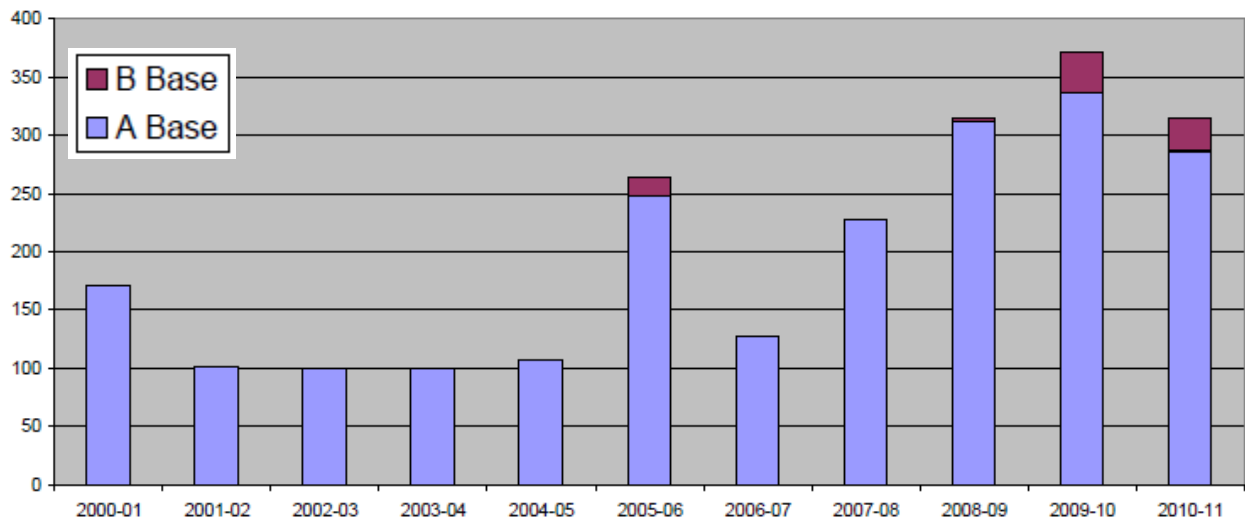
BCI	BC Interior
C&P	Conservation and Protection
CCG	Canadian Coast Guard
DFO	Department of Fisheries and Oceans
DND	Department of National Defense
DVS	Departmental Violations System
EFM	Ecosystems and Fisheries Management
ENGO	Environmental non-government organization
FAM	Fisheries and Aquaculture Management
FEATS	Fishery Officer Effort and Activity Tracking System
FOS	Fishery Operations System
FSC	Food, social, ceremonial
HSDN	High Seas Drift Net
IFMP	Integrated Fisheries Management Plan
I&IS	Intelligence and Investigation Services Unit
IRM	Integrated Risk Management
MCM	Major Case Management
MEO	Marine Enforcement Officer
NPAFC	North Pacific Anadromous Fish Commission
PICFI	Pacific Integrated Commercial Fisheries Initiative
SARA	<i>Species At Risk Act</i>
SCOFO	Standing Committee on Fisheries and Oceans
SIU	Special Investigations Unit

**Appendix 5: A-Base and B-Base Overtime Expenditures for C&P Lower Fraser, BC Interior, South Coast and Special Investigations Unit, 2000-01 to 2010-11<sup>452</sup>**

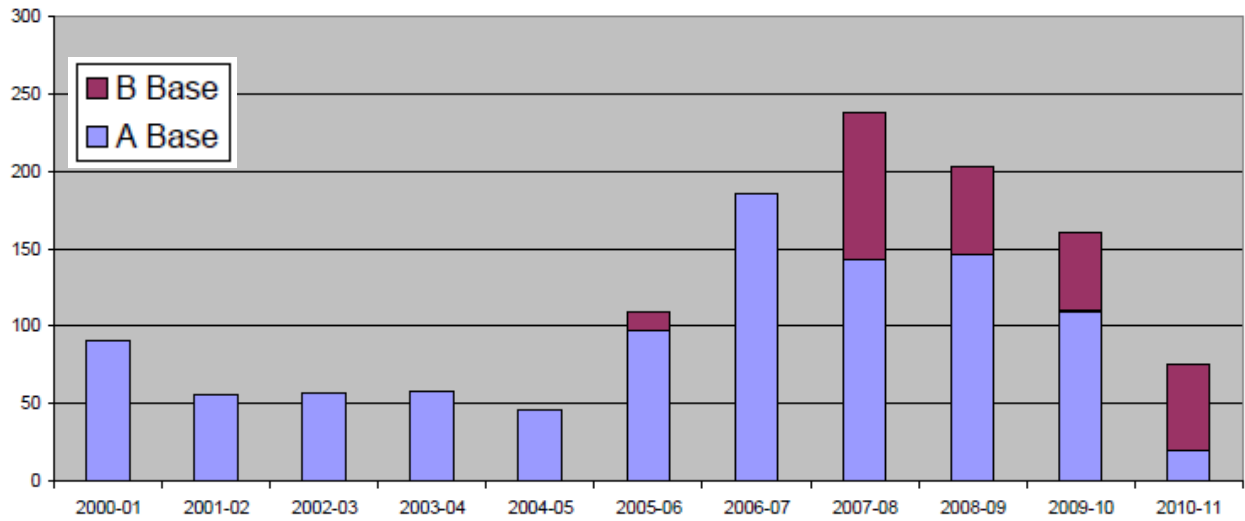


<sup>452</sup> Answer 13 (i to l) – AB Based Expenditures, Non-Ringtail document

**South Coast A and B Base Overtime Expenditures**

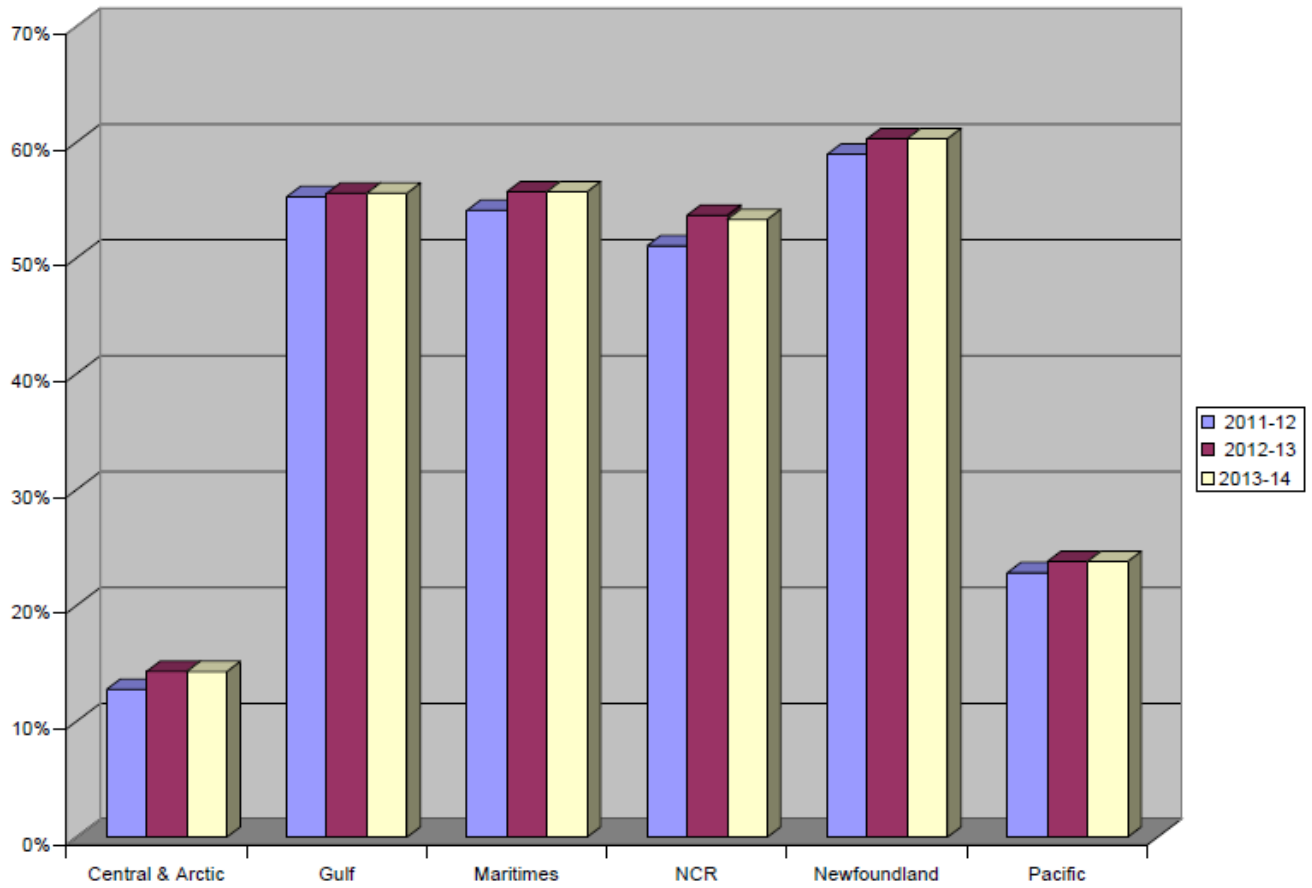


**SIU and I&IS A and B Base Overtime Expenditures**



**Appendix 6: Allocated C&P Resources within Ecosystems and Fisheries Management by Region, 2011-12 to 2013-14<sup>453</sup>**

Including Salmon Enhancement Program



<sup>453</sup> Answer 13 (h) – Budget Reductions – 3 Year Funding, Non-Ringtail document

Excluding Salmon Enhancement Program

