

## **Fisheries and Oceans Canada**

### **2008 Corporate Risk Profile**

#### **Final Version**

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## Executive Summary

### SECTION 1. - INTRODUCTION

This is the 2008 update of the Corporate Risk Profile (CRP) for Fisheries and Oceans Canada (DFO). This complete CRP consists of: key corporate risk identification, assessment and prioritization; assignment of senior management accountabilities for mitigation; and, identification of additional mitigation strategies. As well, the CRP contains sections on: the context and drivers for integrated risk management (IRM); the governance of IRM; communications; and, the methodology to derive the CRP. There is then a detailed analysis of each of the eight corporate risks.

### SECTION 2. - CONTEXT

The Departmental Management Committee (DMC) must meet its **risk management imperative** of having and providing assurance that all significant risks are identified, assessed, managed and controlled, within available resource limits. The information on risk exposure and mitigation must be integrated into business planning, resource allocation, performance management and decision-making generally.

The IRM Framework of Treasury Board Secretariat (TBS) calls for a regular update of the CRP. In addition, TBS has two other policies to promote the proactive management of corporate risks: the Management Accountability Framework (MAF) and the Internal Audit Policy.

The MAF defines management in the federal public service and includes risk management as one of its main elements. Under MAF, TBS assesses annually the state of risk management of each department and agency. The CRP is a principal document for demonstrating acceptable IRM to TBS and providing strategic direction to mitigation.

The Internal Audit Policy requires the Chief Audit Executive, the Internal Audit Branch and the independent Departmental Audit Committee, all, to review the Corporate Risk Profile and departmental risk management arrangements and controls.

DFO committed in its 2008-09 *Report on Plans and Priorities* (RPP) to approve the 2008 *Corporate Risk Profile* and to incorporate its highlights

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into the 2009-2010 *Report on Plans and Priorities*. As well, DMC is to develop and implement an annual process for integrated risk management.

### **SECTION 3. - GOVERNANCE**

The Departmental Management Committee (DMC) is in effect the Integrated Risk Management Committee. DMC is supported by **Risk Mitigation “Champions”** for each risk who are selected from DMC membership. They oversee the development, implementation, monitoring and evaluation of the mitigation strategies. Also supporting DMC are: the **Integrated Risk Management Office (IRMO)** responsible for providing advice and coordination of IRM across the department; and the **Integrated Risk Management Coordinators (IRM Team)**, appointed for the sectors, the Canadian Coast Guard (the agency) and regions by DMC members to facilitate IRM within their respective programs.

There is also the IRM Annual Cycle Process, a set of guidelines, whose purpose is to operationalize integrated risk management department-wide and give structure to the assessment, control, governance, management and reporting of significant corporate risks and related matters.

### **SECTION 4. - COMMUNICATIONS**

To foster better IRM practice across the department, DFO uses several communications fora and mechanisms including DMC Risk Champions, IRM Coordinators Network, the Annual Cycle Process, Integrated Risk Profile Workshops, the website and learning events at the sector, agency and regional levels.

### **SECTION 5. – METHODOLOGY FOR THE CRP**

To update the DFO Corporate Risk Profile, there are 4 main phases:

1. Risk Identification: This consists of the preliminary list that creates an updated register of risks, containing all risks that have been formally identified across DFO in various business line risk profiles as well as through consultations with senior management.
2. Risk Assessment and Prioritization: DMC prioritizes eight corporate risks from the preliminary list as shown in the CRP highlights list below. Each of the risks was assessed in terms of likelihood and impact.

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3. Selection of Risk Champions: Risk champions are selected from DMC membership. See the CRP highlights below. For selection criteria, please refer to the section on Governance.
4. Risk Mitigation Analysis: For each key corporate risk, the respective risk mitigation champions conducted a review of existing mitigation measures and did a gap analysis to determine if further mitigation was required. Recommendations were made on what additional mitigation response would be required to deal adequately with the risk as indicated in the CRP highlight list below.

### CRP Highlights<sup>1</sup>

Risk and Champions	Mitigation Highlight <sup>2</sup>
<p><b>Risk: 1. Human Capital</b></p> <p><b>Champions:</b></p> <p><b>DM – Michelle d’Auray<sup>3</sup>, Bob Lambe, Faith Scattolon and Jim Jones</b></p> <p><b>There is a risk that DFO will be unable to attract, develop and retain sufficiently qualified human resources to deliver on its mandate.</b></p>	<p>The Department will identify gaps in the way in which recruitment, development, and retention are undertaken and develop a framework to help ensure that filling the gaps is connected to the business drivers that are shaping where the business of the Department is moving and needs to go.</p>

<sup>1</sup> The Corporate Risk Profile is referenced in the 09-10 Report on Plans and Priorities (RPP).

<sup>2</sup> For a description of the existing mitigation measures, please refer to *Review of Existing Mitigation Measures for DFO's 8 Corporate Risks in 2008, March 2009*. For questions and comments, please contact: Ron Sisk Integrated Risk Management Office, 613-993-5831

<sup>3</sup> Mme d’Auray moved to the Canada Public Service Agency, effective March 2, 2009.

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<p><b>Risk: 2. Information for Decision-making</b></p> <p><b>Champions:</b></p> <p><b>Wendy Watson-Wright and Bob Lambe</b></p> <p><b>There is a risk that sufficient and appropriate information will not be available on a timely basis to support decision making.</b></p>	<p>The Department will launch the development of an Information Management Strategic Plan that will establish an enterprise approach to information management and will improve the management of information across the department.</p>
<p><b>Risk: 3. Organizational Adaptability</b></p> <p><b>Champions:</b></p> <p><b>Claire Dansereau and Richard Nadeau</b></p> <p><b>There is a risk that DFO will be unable to effectively adapt to emerging priorities, directions and environmental conditions.</b></p>	<p>The Department will use the implementation of two new policy initiatives (Fisheries Renewal and new policy for oceans management) occurring within two of its sectors to monitor and assess strategies developed by the sectors to address emerging priorities and directions. It will also continue to bolster its planning activities and regional committee work.</p>
<p><b>Risk: 4. Internal Alignment.</b></p> <p><b>Champions:</b></p> <p><b>Cal Hegge and Jim Jones</b></p> <p><b>There is a risk that activities, accountabilities and resources within DFO will not be optimally aligned to meet objectives.</b></p>	<p>The Department will use its Integrated Planning Committee through which a risk-based process prioritizes departmental funding pressures in line with activities and accountabilities, to refine the in-year process for matching resources with priorities.</p>
<p><b>Risk: 5. Physical Infrastructure</b></p> <p><b>Champions:</b></p> <p><b>George Da Pont, Cal Hegge and Paul Sprout</b></p> <p><b>There is a risk that DFO will be unable to invest in or maintain the infrastructure necessary to achieve its objectives.</b></p>	<p>The Department will continue with key mitigation measures including the Long Term Capital Plan process with its Centres of Expertise by category of asset and the program-driven requirements analysis. It will establish senior management accountabilities for asset management and develop a system to provide comprehensive and integrated asset information.</p>

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<p><b>Risk: 6. Stakeholder Expectations</b></p> <p><b>Champions: Michaela Huard, Jim Baird and Nancy Hurlburt</b></p> <p><b>There is a risk that DFO will be unable to manage expectations and maintain the confidence of stakeholder groups, the public, media and elected officials.</b></p>	<p>To help stakeholder groups to better understand what they can expect with respect to DFO programs, services and information, DFO is to assess communications and consultation mechanisms as well as outreach efforts. For managers and employees department-wide, DFO is to assess learning and training strategies to seek ways to foster more consistent and disciplined follow-through with respect to core messages on priorities and strategic directions.</p>
<p><b>Risk: 7. Partnering and Collaboration</b></p> <p><b>Champions:</b></p> <p><b>Mimi Breton and Faith Scattolon</b></p> <p><b>There is a risk that DFO will be unable to create and sustain effective partnerships, or that there will be failures on the part of third parties on which DFO relies.</b></p>	<p>For all sectors, the Canadian Coast Guard and internal services both nationally and regionally, the department will review and assess all the types of collaborative arrangements that it has with organizations inside and outside the department, be they public or private. The associated risks will be identified and the cost-effectiveness and efficiency of mitigation controls over them assessed. Recommendations to DMC for improvements will be made where required. Also, barriers to establishing collaborative partnerships, including barriers related to procurement and contracting will be identified and solutions proposed where required to DMC.</p>
<p><b>Risk: 8. Legal and Compliance</b></p> <p><b>Champions:</b></p> <p><b>Claire Dansereau, Dave Bevan and François Daigle</b></p> <p><b>There is the risk that DFO will make decisions which will be successfully challenged before the courts, and result in either significant financial liability or negative effects on DFO's legislative or regulatory authorities or that DFO will not be able to ensure public compliance with its legislation and regulations.</b></p>	<p>The Department will develop and assess a complete, department-wide inventory of key mitigation measures for this risk.</p>

## **SECTION 1. - INTRODUCTION**

This is the 2008 update of the Corporate Risk Profile (CRP) for Fisheries and Oceans Canada (DFO).

The CRP, together with the department's Integrated Risk Management (IRM) Policy, the Integrated Risk Management Implementation Guidelines, the draft IRM Annual Cycle Process, and the Handbook on Developing and Validating Risk Profiles, forms DFO's IRM Framework and reflects DFO's leadership and commitment to the implementation of a proactive approach to the identification, assessment and mitigation of key corporate risks<sup>4</sup>.

A complete CRP consists of:

- key risk identification and prioritization (The key corporate risks were confirmed at DMC, January 22, 2008)
- assignment of senior management accountabilities for mitigation of the key risks (Risk champions were selected for each key corporate risk from among the DMC membership on June 19, 2008.)
- identification of mitigation strategies for the key risks (These were validated by the risk champions during November 2008.)

This 2008 CRP starts out with a section on the context within which the CRP was developed and updated. In that section, the senior management imperative to pursue risk management and the drivers for integrated risk management are explained.

The next section describes the methodology used to identify, assess and prioritize the key corporate risks. Those risks represent a consolidation of horizontal risks found in a series of risk profiles at the program and sub-activity levels as per the Program Activity Architecture (PAA).

Following that is a section on the governance of IRM at DFO that explains how roles and responsibilities for IRM have been assigned to the DMC membership. There is also an outline of the roles and responsibilities of the IRM Coordinators Network and the Integrated Risk Management Office.

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<sup>4</sup> These documents can be found at [http://review-examen.ncr.dfo-mpo.gc.ca/irm/index\\_e.asp](http://review-examen.ncr.dfo-mpo.gc.ca/irm/index_e.asp).

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Finally, the key corporate risks are presented. There is an overview of the risks and then for each risk, there are:

- the sources of the risk and risk drivers
- the gap analysis to identify where additional mitigation is required, and
- additional mitigation measures: the approaches and strategies that are to be the focus of attention of the risk champions to address mitigation.

There is an appendix which provides a list of the risk profiles at the program and sub-activity levels (also referred to as the “sector” or business line risk profiles, and include the Canadian Coast Guard which is a special operating agency) used to compile this Corporate Risk Profile.

## **SECTION 2. - CONTEXT**

Government-wide expectations of good governance and sound management emphasize that all material organizational risks should be considered in all planning and delivery activities, both at the strategic and operational level.

Senior management must meet its **risk management imperative** of having and providing assurance that all significant risks are identified, assessed, managed and controlled, within available resource limits. Senior management must understand the full extent and consequences of exposure to risk. The information on this exposure is used explicitly to inform business planning, resource allocation, performance management and decision-making generally.

In April 2001, the Treasury Board Secretariat (TBS) developed the *Integrated Risk Management (IRM) Framework* to guide federal government departments in incorporating IRM into management practices, through a comprehensive organization-wide approach to managing risks. TBS's IRM Framework establishes the development and regular update of a Corporate Risk Profile (CRP) as a key step in IRM.

The main benefits of IRM can be felt in terms of enhanced progress in the achievement of objectives. Other benefits from IRM include having a vital early warning system to avoid costly surprises, enhanced predictability and minimization of disruptions, strengthened corporate governance, ability to capitalize on opportunities and compliance with central agency requirements.

In addition to the TBS IRM Framework, there are two additional policy drivers from the Treasury Board Secretariat that promote the proactive management of corporate risks:

- the Management Accountability Framework (MAF) introduced in 2003, and
- the Internal Audit Policy updated in 2006.

### **#2.1 Management Accountability Framework**

The MAF is a set of 10 elements or expectations that define management in the federal public service. Using indicators to gauge management performance for each of the elements, TBS assesses annually the state of

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management of each department and agency. The MAF represents a key step forward in linking risk and performance, and embedding IRM into departmental planning and operational practices. One of the 10 elements within the Framework is Risk Management.

Incorporating the logo that identifies the 10 MAF elements, the following figure identifies the Risk Management indicators used in MAF Round V for assessing the state of risk management:

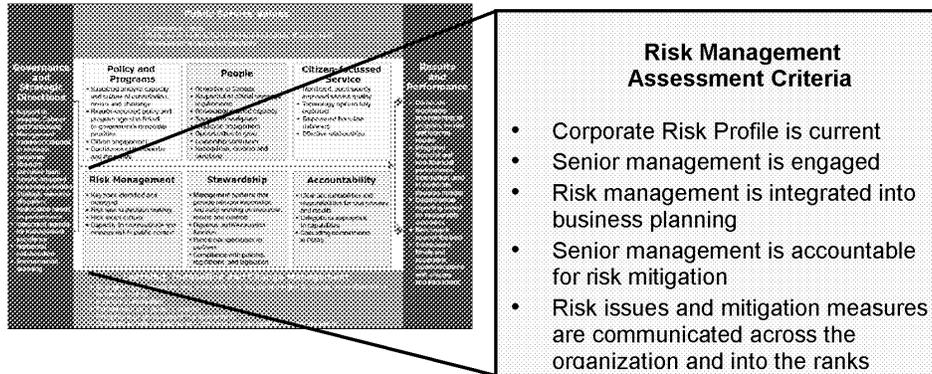


Figure 1: MAF Risk Management Indicators

The MAF rating scale has 4 levels: strong, acceptable, opportunity for improvement and attention required. In MAF Round V (2007-08), TBS assessed IRM to be acceptable with this caveat:

“While risks have not yet been assigned to senior management for active monitoring, we note the Department's intent and commitment to do so and on this basis have provided an Acceptable rating.”

This update of the Corporate Risk Profile contributes to meeting that commitment. In it, among other things, risk champions for each corporate risk have been selected from the DMC membership and processes are in place to allow them to monitor progress on mitigation. This demonstrates well that accountabilities for the mitigation of the key corporate risk have been assigned to members of top management.

## #2.2 The Internal Audit Policy

The Internal Audit Policy, to be implemented by 2009, requires:

- At DFO

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- The Chief Audit Executive to provide assurance<sup>5</sup> to the DM on the management control frameworks including the state of risk management.
- The Internal Audit Branch to carry out a risk assessment of the audit universe when planning internal audit engagements.
- The independent Departmental Audit Committee to review, at least annually, the Corporate Risk Profile and Departmental Risk Management Arrangements.
- At TBS
  - The Office of the Comptroller General to report to TB on the overall state of risk management across government.

#### #2.4 DFO Commitments

DFO reported these commitments with respect to IRM in the 2008-09 Report on Plans and Priorities:

- The Departmental Management Committee (DMC) will approve the 2008 *Corporate Risk Profile*. The *Corporate Risk Profile* identifies and prioritizes key risks; sets out senior management accountabilities; and specifies mitigation measures and strategies.
- Highlights of the 2008 *Corporate Risk Profile* will be incorporated into the 2009-2010 *Report on Plans and Priorities* to demonstrate the integration of risk management into strategic business planning.
- DMC will oversee the development and implementation of an annual process for integrated risk management that will support:
  - Updating the Corporate Risk Profile
  - Governance by DMC
  - Regular reporting to DMC on mitigation progress
  - Integration into business planning, including integration into the cycle of the *Report on Plans and Priorities* and the *Departmental*

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<sup>5</sup> While the idea of holistic opinion has been an integral part of the IA policy, TBS has come to a realization that no department is yet able to in fact provide such opinion by April 1, 2009. This requirement will therefore not be called on, and Chief Audit Executives are not expected to be able to render such opinion for that date. No new date has been provided. Thus, "holistic opinion" was changed to "assurance".

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*Performance Report*, staff work plans and management  
accountability accords

- Communication and consultation with principal stakeholders
- Internal Audit Policy requirements.

Thus, the importance of maintaining a current corporate risk profile cannot be understated. It informs and is informed by other major department-wide strategic processes such as:

- The MAF assessments by TBS
- The Report on Plans and Priorities
- The environmental scans
- Internal Audit Policy assessments

### **SECTION 3. - GOVERNANCE**

The Departmental Management Committee (DMC) must oversee integrated risk management. It is in effect the Integrated Risk Management Committee. It must have and provide assurance that all significant risks are identified, assessed, managed and controlled, within its resource limits.

This governance approach is consistent with the Integrated Risk Management Policy of DFO adopted in 2004 whose principles include the declaration that the Departmental Management Committee explicitly defines the corporate context, criteria and practices for managing key risks.

DMC must regularly review DFO's process of risk identification, assessment, monitoring, control and management. It should provide clear direction on the criteria for assessing levels of risk and direction on tolerable levels of risk. DMC should seek to ensure horizontal collaboration and the establishment of corporate priorities in resource allocation in the development and implementation of mitigation strategies such that IRM supports the achievement of DFO objectives throughout the department.

There are 3 main groupings or teams that support DMC in meeting its IRM responsibilities and accountabilities along with a structured process:

- Groups
  - **Risk Mitigation “Champions”** (selected from DMC membership: oversight of corporate risk identification, assessment and prioritization, mitigation content, IRM process and mitigation results monitoring and evaluation)
  - **Integrated Risk Management Office (IRMO)** (coordination/centre of expertise on: risk identification, assessment and mitigation; departmental compliance with the MAF risk management element including development of the annual CRP; integration of RM into to performance management and business planning; IRM annual cycle process and mitigation progress reporting; content challenge function; quality control of IRM methodologies; mitigation monitoring, reporting to DMC and evaluation of the effectiveness of the mitigation in controlling risk and achieving DFO's outcomes and objectives; and, support to the

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- risk mitigation champions), and
- **Integrated Risk Management Coordinators (IRM Team)**  
(appointed by DMC members: coordination support for the IRM annual cycle process such as content on risk identification, assessment and prioritization, mitigation implementation, monitoring, reporting to DMC and evaluation of RM effectiveness)
- Structured Process
  - The IRM Annual Cycle Process

### #3.1 The Risk Mitigation Champions

The key corporate risks in 2008 are mostly internal **horizontal** risks which means that most members of DMC have at least some mitigation responsibilities for them. Therefore, there is a need to have coordinators/facilitators for each risk at DMC to help manage what could otherwise be disparate fragmented mitigation initiatives in a coherent coordinated manner for the DMC. There has to be a lead voice that works with the IRM community and can bring a coherent coordinated perspective to DMC.

To facilitate the coordination of mitigation effort, risk management champions were selected from among the DMC membership for each of the key risks. There is at least one regional as well as one sector or agency champion for each risk. In close collaboration with any functional Office of Primary Interest (OPI) or others with specific standing mandates or assignments from DMC related to the key risks, the champions seek to clarify mitigation priorities as well as to develop or confirm mitigation measures and accountabilities for their individual risks for validation by DMC. They monitor and report to DMC on mitigation progress. DMC assesses progress and manages accordingly.

In the context of integrated risk management, the roles and responsibilities for the risk champions include:

- clarification of the priorities and areas of focus for mitigation
- development or confirmation of specific mitigation measures and accountabilities
- action plan development or confirmation
- coordination of action plan implementation
- active monitoring, evaluation of progress and reporting to DMC

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- identification of required resources for consideration by DMC as a whole
- fostering collaboration across sectors, the agency and regions
- choice of indicators for targeting and tracking mitigation progress
- assuring integration with planning and decision-making such as RPP
- DPR, midterm review, business and HR planning, and performance management
- communications/training oversight
- generally, complying with directions from DMC as a whole
- providing strategic perspective
  - attention to overarching strategies, policies, guidelines, processes and organizational structures (minimize transactional content to controls)
  - top management proactive involvement
  - top-down perspective
  - department-wide holistic view, comprehensive in scope
  - for mobilizing necessary resources and people
  - long-term impact and focus especially on external environment (e.g., client base, program effectiveness in achieving departmental outcomes and objectives)

Selection criteria for the champion of a specific risk include:

- sector, agency or region most acutely impacted or affected by the risk (a primary consideration)
- good fit with existing roles and responsibilities such as ones that are:
  - functional (e.g., Human Resources, Legal Services)
  - related to sub-committee work of DMC (e.g., Finance, Information, HR, Legal, Science, Policy)
  - related to special task forces or issue champions (e.g., HR Champions)
  - related to priority initiatives noted in the RPP 08-09
- special interest in or knowledge about an issue.
- a combination of any or of all the above.

Other selection considerations are:

- co-champions to add depth and to share workload
- regional participation
- avoidance of overlap and duplication

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- integration and linkages with existing initiatives, accountabilities processes, systems and procedures
- the risks are everyone's business.

### **#3.2 Integrated Risk Management Office (IRMO)**

The purpose of the IRMO is to support the DMC in its oversight of integrated risk management across the department. Functions of the IRMO include:

- fostering compliance with TBS policies such as MAF and the Internal Audit Policy
- updating the corporate risk profile
- management of the annual cycle process including workshops for developing and validating business line risk profiles
- integration of risk management department-wide into business, performance and financial planning and management
- policies, guidelines, handbooks and procedures
- communications: internal as well as external consultations and liaison,
- training and organizational learning
- methodologies, approaches, tools and techniques for risk identification, assessment, and prioritization (e.g., structured workshops, statistical analysis and application of the heat map matrix)
- mitigation measure development, progress monitoring, reporting and evaluation
- assessment and recommendations on the deployment of resources necessary for risk mitigation and its progress monitoring
- membership on risk mitigation champion teams
- research, development, testing and implementation of systems and controls for risk mitigation measurement methodologies and models

Without limiting the scope, the roles and responsibilities of the IRMO, as a centre of IRM expertise, include:

- coordination / “whip” of the IRM Annual Cycle Process (e.g., the production of the Corporate Risk Profile by working closely with the risk mitigation champions, the IRM Network Coordinators and other functional or branch experts.)

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- advice and input to help DFO meet the requirements of central agencies such as those of TBS's Management Accountability Framework and Internal Audit Policy
- facilitating and fostering quality control, discipline and consistency in the practice of IRM (operationally and strategically, across the department and into the ranks)
- liaison with and support, advice, guidance, services and support to managers and staff across the department particularly in the areas of business planning, performance management, audit, evaluation and financial management
- assessing the impact of risk mitigation measures on performance and internal controls as well as alignment with management, business planning and decision-making objectives
- chair and secretary of the IRM Coordinator Network meetings
- *ex officio* participant in activities such as IRM workshops and training sessions with quality control as a main priority
- statistical analysis on the financial, economic or socio-economic impact of mitigation measures related to departmental strategic outcomes and performance objectives
- IRM methodology research and reporting such as on leading best IRM practices
- training of IRM coordinators on DFO methodology and IRM workshop approaches
- training, learning and awareness sessions about IRM across the organization
- promotion of an IRM culture and developing and maintaining a framework, process, tools and structure to formally and systematically identify, assess and manage risks at all levels across the department
- providing advice and communications on best practices, strategies, methodologies, policies, risk assessment and analytical techniques that support effective and efficient IRM, department-wide.
- liaison, consultations and sharing lessons learned with other agencies, parties, entities and organizations, public and private both inside and outside the department for the purpose of fostering improvements in IRM (e.g., Treasury Board Secretariat and the Canadian Standards

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Association)

- information management, corporate memory and archiving for IRM, including website management for IRM (e.g., risk registry, workshop results, and business line risk profiles)
- developing and implementing an IRM communications plan
- evaluation, as requested, of proposed DFO initiatives to ensure compliance across the department with the relevant elements in the IRM framework of policies, practices and procedures

### **#3.3 Integrated Risk Management Coordinators Network**

Membership consists of representatives from the sectors, the agency and regions who are selected by members of DMC.

The roles and responsibilities of the members of the department-wide IRM Network generally consist of coordination, liaison and point of contact between the Integrated Risk Management Office (IRMO) and DMC members both collectively and as Risk Mitigation Champions. The functions would include but not be limited to:

- coordinating DMC member approvals under the IRM Annual Cycle Process for:
  - selection of sectoral, agency and regional IRM coordinators
  - choice between conducting IRM Workshops or carry-overs of previous sectoral, agency, program, sub-activity or regional risk profiles for informing the updating the CRP
  - choice of doing regional risk profiles (RDGs)
  - approval of the Work Plan to update the CRP (e.g., planning national, zonal or regional IRM Workshops)
  - choice of participants in CRP related IRM Workshops
  - sign-off on IRM Workshop results
  - approval of the CRP
- coordination of planning, information gathering and reporting requirements to support matters specific to integrated risk management issues such as:
  - MAF compliance
  - DMC briefings
  - updating sector, regional and corporate risk profiles

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- IRM sectoral, agency and regional IRM Workshops
- “carried-over” sectoral, agency, program, sub-activity or regional risk profiles
- mitigation plans and mitigation monitoring reports
- communications, learning and training plans, outputs and results
- service level agreements between ADM and RDG
- sector, agency, regional and departmental business plans
- sector, agency, regional and departmental performance plans and monitoring
- mid-year reviews
- website updates
- other priority setting documents
- IRM Workshop preparation and facilitation for sectors, agency and regions
- annual *post mortem* review, as a team, of the IRM cycle just completed, including its effectiveness, efficiency and relevance; and, review of processes, practices and procedures.

### #3.4 The Annual IRM Cycle Process

How the above-mentioned groups work together is guided by the Annual IRM Cycle Process, a set of procedures and arrangements that is being steadily implemented. Its overall objectives are:

- to operationalize department-wide integrated risk management
- to give department-wide structure to the assessment, control, governance, management and reporting of significant corporate risks and related matters
- to bring a strategic, systematic and comprehensive focus to the broad common risks that require sustained attention by the Departmental Management Committee

The process functions consist of repeatable, verifiable, scheduled steps within the department-wide governance structure, that will support:

- updating the Corporate Risk Profile
  - prioritized risks
  - mitigation strategies and related senior management accountabilities for priority risks (champions)

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- reporting regularly to the Departmental Management Committee
- integrating risk priorities into decision-making, business planning, performance management, resource allocation and monitoring; reports to Parliament
- complying with the Management Accountability Framework (MAF) and Internal Audit Policy requirements;
- aligning with the DFO strategic outcomes; and, overall, risk-based decision-making. (PAA)
- communicating with internal and external stakeholders on key risk matters (embedded)

This comprehensive proactive process for IRM offers several advantages by assisting in:

- having a more formal and thorough approach that is both anticipatory and preventative
- clarifying accountabilities of senior management
- properly documenting risk management activities and procedures (evidence-based)
- maintaining fresh information and making it accessible to all key stakeholders
- fostering better 2-way communications about risk management across the department and into its ranks
- embedding IRM communications mechanisms, tools and practices among staff and managers such as by:
  - establishing the channels that facilitate the “dialogue” among the players
  - “hardwiring” certain organization-wide protocols, practices and procedures by guiding main players: information requirements, deadlines, milestones, deliverables, accountabilities
  - facilitating information exchange and providing proof thereof
  - maintaining fresh information and making it accessible to all key stakeholders
- accommodating a broad and complex range of risks
- shifting DFO from using a fragmented, ad hoc and narrow approach for IRM to one that is integrated, continuous, and broadly focused
- accommodating DFO’s matrix management model.



## **SECTION 4. - COMMUNICATIONS**

In order to help operationalize integrated risk management and to get effective follow-through on the Corporate Risk Profile, DFO must rely on a continuous process for keeping internal and external stakeholders in the loop and for staying informed about risk management and about what is expected of them: generating and sharing relevant information among the right people, achieving understanding, and getting appropriate action; and getting meaningful feedback.

To foster effective communications and consultations across the department and regions and into its ranks, DFO uses several mechanisms:

### Internal Audiences

- DMC Risk Champions
- IRM Coordinators Network
- Integrated Risk Management
- Annual Cycle Process
- Risk Profile Workshops and related events at the sector, agency or business line and regional levels, supported by the Handbook on Developing and Validating Risk Profiles
- Embedding of risk management matters into the business planning cycle at all levels in the organization.

### External Audiences

- DFO Consultation Framework and Associated Toolbox

These mechanisms, described above in the Governance section, together facilitate two-way, iterative and on-going information exchanges:

- Top management disseminates information on expectations about focus and direction, policies, performance, opportunities, roles and responsibilities, accountabilities, risks and controls
- Lower levels feed top management with relevant, accurate, timely information on the implementation and effectiveness of risk management
- Four-way communications in the DFO matrix model.

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Desired outcomes of this communications approach are:

- Communications:
  - Foster awareness, understanding, buy-in, motivation, application and practice of IRM – behaviour
  - Clarity: common language, objectives, accountabilities, expectations, risks and risk tolerances
- Consultations
  - Getting feedback from a broad base of stakeholders
  - Build trust and confidence – relations are crucial
- Continuous Improvement Culture
  - Dissemination of information & information sharing; lessons learned.

## **SECTION 5. - METHODOLOGY**

The approach to update and define the DFO Corporate Risk Profile involved 4 main phases:

- Risk Identification
- Risk Assessment and Prioritization
- Selection of Risk Champions from among DMC Membership
- Risk Mitigation Analysis.

### **5.1 Phase One – Risk Identification – Preliminary List**

Risk identification is the most complex phase and provides the basic data for compiling the corporate risk profile. It has 2 steps. This phase starts with the preliminary list that creates an updated register of risks, containing all risks that have been formally identified across DFO through various business line risk profiles. A total of 17 such risk profiles (see Appendix A) and approximately 100 risk events were analysed and aggregated to develop the preliminary list of corporate risks for DFO's 2007-08 corporate risk profile update. DFO's environmental scan and risk-based audit plan were also reviewed for potential sources of risk.

This list was then used to facilitate the second step of the Risk Identification phase – namely, validating the risks identified through the preliminary analysis and making any necessary additions resulting from senior management consultations. This was done through a series of individual meetings and teleconferences with DFO's senior management.

## 5.2 Phase Two – Risk Assessment and Prioritization

In Phase Two, a risk assessment workshop for DMC members was held January 22, 2008 to confirm and prioritize the preliminary list of the key corporate risks. The prioritized list of key corporate risks for 2008 is:

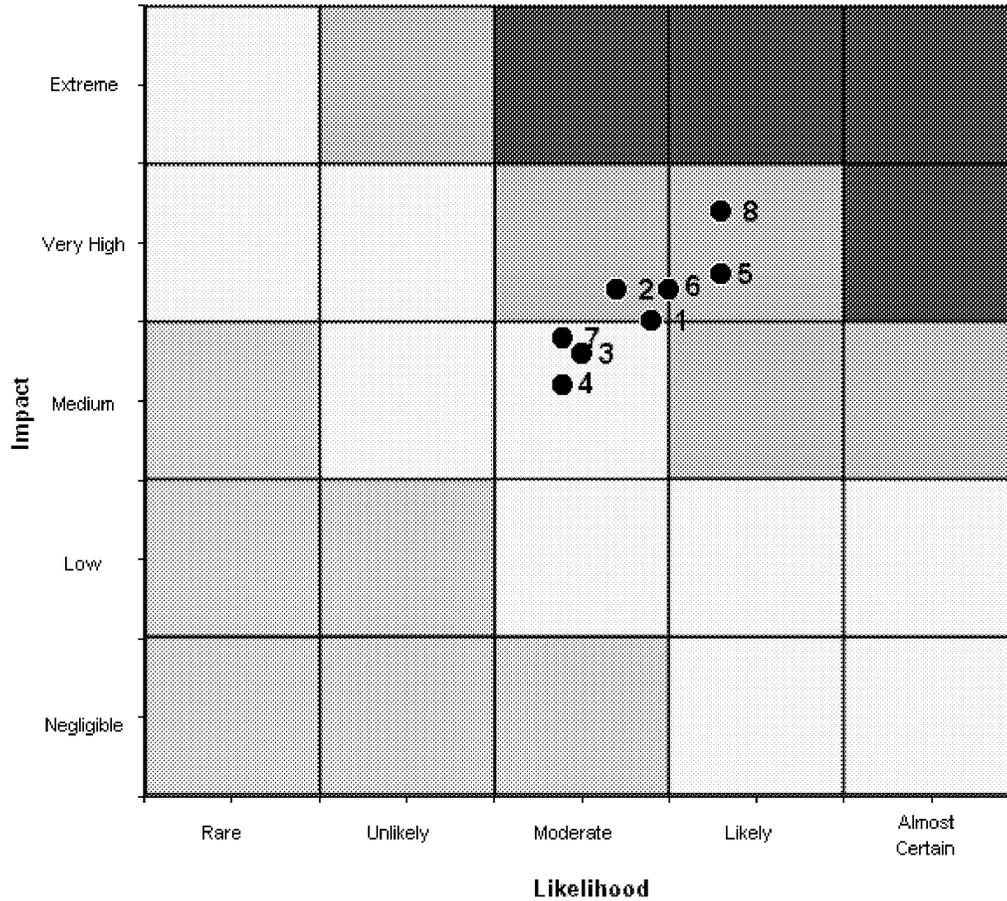
<b>1. Human Capital</b>	<b>There is a risk that DFO will be unable to attract, develop and retain sufficiently qualified human resources to deliver on its mandate.</b>
<b>2. Information for Decision-making</b>	<b>There is a risk that sufficient and appropriate information will not be available on a timely basis to support decision making.</b>
<b>3. Organizational Adaptability</b>	<b>There is a risk that DFO will be unable to effectively adapt to emerging priorities, directions and environmental conditions.</b>
<b>4. Internal Alignment</b>	<b>There is a risk that activities, accountabilities and resources within DFO will not be optimally aligned to meet objectives.</b>
<b>5. Physical Infrastructure</b>	<b>There is a risk that DFO will be unable to invest in or maintain the infrastructure necessary to achieve its objectives.</b>
<b>6. Stakeholder Expectations</b>	<b>There is a risk that DFO will be unable to manage expectations and maintain the confidence of stakeholder groups, the public, media and elected officials.</b>
<b>7. Partnering and Collaboration</b>	<b>There is a risk that DFO will be unable to create and sustain effective partnerships, or that there will be failures on the part of third parties on which DFO relies.</b>
<b>8. Legal and Compliance</b>	<b>There is the risk that DFO will make decisions which will be successfully challenged before the courts, and result in either significant financial liability or negative effects on DFO's legislative or regulatory authorities or that DFO will not be able to ensure public compliance with its legislation and regulations.</b>

Due to the importance of the risks and their potential impact on the remaining corporate risks, DMC has indicated that it will provide additional

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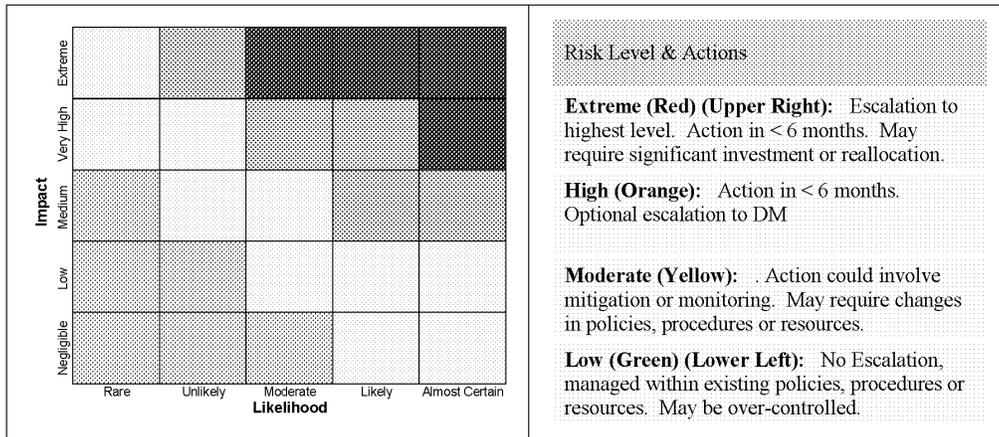
oversight over the Human Capital and Information for Decision-making risks.

Anonymous voting was used to generate a colour-coded “heat map” or matrix on the expected impact and probability of occurrence with these results:



The colouring can be interpreted approximately as follows:

Each of the risks will be assessed in terms of likelihood of occurrence and impact to the organization. This will result in a ranking of each risk as **extreme, high, moderate** or **low**, as illustrated below.



The consensus is strong on the need for these risks to be managed and monitored by DMC and its members.

**5.3 Phase Three – Assignment of Senior Management Accountabilities for Mitigation**

The current risk champions as selected from DMC membership June 19, 2008 at an extended DMC meeting are:

Risk	Sector/Agency	Region
1. Human Capital	DM – Michelle d’Auray <sup>6</sup>	Bob Lambe, Faith Scattolon, Jim Jones
2. Information for Decision- making	Wendy Watson-Wright	Bob Lambe
3. Organizational Adaptability	Claire Dansereau	Richard Nadeau
4. Internal Alignment	Cal Hegge	Jim Jones
5. Physical	George Da Pont	Paul Sprout

<sup>6</sup> Mme d’Auray moved to the Canada Public Service Agency, effective March 2, 2009.

<b>Infrastructure</b>	<b>Cal Hegge</b>	
<b>6. Stakeholder Expectations</b>	<b>Michaela Huard</b>	<b>Jim Baird, Nancy Hurlburt</b>
<b>7. Partnering and Collaboration</b>	<b>Mimi Breton</b>	<b>Faith Scattolon</b>
<b>8. Legal and Compliance</b>	<b>Claire Dansereau</b> <b>Dave Bevan</b> <b>François Daigle</b>	

For selection criteria, please refer to the section on Governance.

#### **5.4 Phase Four – Risk Mitigation Analysis**

For each key corporate risk, the respective risk mitigation champions conducted an initial review of existing mitigation measures and did a gap analysis to determine if further mitigation was required. Recommendations were made on what additional mitigation response would be required to deal adequately with the risk within the given resource limits.

The results of this detailed analysis are in the next section.

The gap analysis of the existing mitigation measures for each corporate risk is informed in part by the report entitled *Review of Existing Mitigation Measures for DFO's 8 Corporate Risks in 2008*, March 2009, prepared by the Integrated Risk Management Office (IRMO).

## **SECTION 6. – KEY CORPORATE RISKS – DETAILED ANALYSIS**

This section provides detailed analysis of each risk, including risk definition, key risk sources, gap analysis of existing mitigation measures<sup>7</sup>, and recommended additional mitigation measures.

All sectors and the agency were asked to provide information on how they mitigate risks associated with managing stakeholder expectations and maintaining their confidence. Champions have reviewed the mitigation measures identified by the sectors and the agency. An analysis of the MAF V assessment of DFO by TBS also served as an information source. For more detail, see the report entitled *Review of Existing Mitigation Measures for DFO's 8 Corporate Risks in 2008*, prepared by the Integrated Risk Management Office (IRMO).

### **Risk 1: Human Capital**

#### **Risk Definition**

There is a risk that DFO will be unable to attract, develop and retain sufficiently qualified human resources to deliver on its mandate.

#### **Risk Mitigation Champions**

- Michelle d'Auray, Deputy Minister (Until March 2, 2009)
- Bob Lambe, Regional Director General, Central and Arctic Region
- Faith Scattolon, Regional Director General, Maritimes Region
- James Jones, Regional Director General, Gulf Region

#### **Sources of Risk/Risk Drivers**

DFO is facing labour market challenges in some areas such as attrition due to retirements and recruitment and retention challenges due to competition for appropriately skilled and experienced staff. Competition for skilled resources has intensified across government, with many organizations

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<sup>7</sup> For a description of the existing mitigation measures for all 8 corporate risks, please refer to *Review of Existing Mitigation Measures for DFO's 8 Corporate Risks in 2008, February 2009*. For questions and comments, please contact: Ron Sisk Integrated Risk Management Office, 613-993-5831

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making use of the levers at their disposal to attract resources (e.g., providing higher classifications for positions). DFO is struggling to facilitate staffing of vacant positions in a timely manner as many managers are conducting staffing actions from the side of their desks while dealing with many other priorities and pressures.

Challenges in recruiting and retaining staff are intensified in those programs where long-term funding of the program is unsure, as staff seeking stability and predictability are apt to seek other positions. In some areas of the department, the skills and competencies required are highly specialized (e.g., fishery officers). Developing this expertise in personnel requires significant time and resource investment.

Workload pressures on personnel have also been identified as a source of attrition. Pressures are associated with the increased complexity and volumes of work stemming from increased reporting requirements, horizontal files (e.g., climate change, sustainable development, and security), and trade globalization.

DFO faces continuing challenges in meeting language requirements. Improvement is expected (both within DFO and by the Commissioner of Official Languages) in DFO's ability to address linguistic minority communities. Structural constraints such as Government of Canada recruitment procedures and policies (e.g., Full Time Equivalent (FTE) caps and challenges with adapting the Public Service Modernization Act) limit DFO's ability to conduct recruitment in a timely fashion and to conduct adequate succession planning; for example, through job shadowing. This risk is exacerbated by constrained capacity within DFO's HR function.

This risk is also driven by the Information for Decision-making risk, as it impacts DFO's ability to quantify work requirements and the associated resource requirements to support workforce planning and succession planning.

### **Gap Analysis of Existing Mitigation**

All sectors and the agency were asked to provide information on how they mitigate risks associated with the human capital risk. The Champions had meetings to review the mitigation measures identified by the integrated risk management coordinators.

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The Champions concluded that not all the elements are in place to deal with this risk. Efforts are spotty and uneven. A lot is being done (e.g., the Policy Sector/Agency ES/EC Development Program) but the work is fragmented. This is due in large part to the complicated situation: obligations vary as do target groups, legal issues, diverse sectors and the agency each with different objectives, and different regional requirements. There is a need to pull the strategies together to have a comprehensive, coherent approach.

Mitigation measures to address this Human Capital risk must be connected to the business drivers that are shaping where DFO business is moving to. There is a need for a framework to facilitate this transition. Efforts must be directed at:

- recruitment, informed by succession planning
- retention, and
- development (including knowledge transfer)

to enable DFO to adapt to where the department's business is going and where it needs to go.

The Champions acknowledged the work-in-progress being undertaken by the Canadian Coast Guard, Science and Fisheries and Aquaculture Management in attempting to link hiring to the work that will need to be done over the coming years. If the business of DFO is changing there is a need to have a sense that DFO efforts in these areas of recruitment, retention and development are aligned in the right direction. Many strategies are focussed to mitigate regional risk but there are inconsistencies across regions, the sectors and the agency requiring a more comprehensive approach in certain areas.

A big challenge is to have a comprehensive approach across the regions by drilling down from requirements of the sectors and the agency to determine what is critical in each region (e.g., director development, management competencies, career planning, engineers, and targets for employment equity and official languages).

The champions consider that the risk has been appropriately defined but there is a need to anchor mitigation strategies around a more concise definition of core types of functions that need to be addressed and then to explicitly link these mitigation strategies to the department's ability to attract, develop and retain.

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Work is needed to develop indicators to help monitor, track and report progress to DMC on the mitigation. (e.g., turnover rates for retention).

### **Additional Mitigation Measures**

To better respond to this risk, the following additional mitigation action measures are called for:

- map mitigation measures against workforce and workplace (Management Accountability Framework - People Component) priorities set out in the Integrated Business/HR Plan and by DMC in order to:
  - identify gaps in the areas of recruitment, development and retention
  - identify the need for any further measures/actions to address mitigation gaps.
- develop indicators to help monitor, track and report progress to DMC on the impact of the mitigation measures.

**Risk 2: Information for Decision-making****Risk Definition**

There is a risk that sufficient and appropriate information will not be available on a timely basis to support decision-making.

**Risk Mitigation Champions**

- Wendy Watson-Wright, Assistant Deputy Minister, Science Sector
- Bob Lambe, Regional Director General, Central and Arctic Region

**Sources of Risk/Risk Drivers**

This risk is driven by a combination of a lack of tools, constrained capacity, regional inconsistencies in processes, and unreliable or missing performance data. Specific drivers include a lack of formalized historical record-keeping and information management practices that increase the potential for corporate knowledge to reside with individuals and not be properly archived for timely access. Staff departures (as a result of retirements or attrition) can magnify this risk, as the corporate knowledge base may be incrementally reduced. Regional practices for entering data vary as do regional business conditions (e.g. environment, stakeholder groups, economics, etc.), which has the potential for creating inconsistencies in data sets from region to region in the various sectors or the agency.

While performance indicators have been developed in certain areas (e.g., Human Resources, International Fisheries and Oceans Governance Strategy, Coast Guard, Science), DFO has not implemented a cohesive performance management practice across the department for tracking effectiveness related to the strategic outcomes and enabler services effectiveness. This is due in part to workload pressures that affect managers' and staff members' ability to find time to put plans and systems in place to identify data needs and collect, monitor quality and analyze data. As such, some elements of pertinent information are not being collected; for example, harvest data, catch monitoring, and industry data. As well, there is uncertainty and limited data regarding the effects of climate change on fish stocks.

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For those managing fisheries, information on specific fisheries is often collected and held in regional databases that are not easily accessible. There is no national standard for data collection or for systems in which to store this information.

There is a need for the Coast Guard to improve its ability to produce, access, apply and manage the information needed for critical business and operational decision-making and performance measurement. This information is critical for supporting day-to-day operations as well as strategic decision-making.

The department does not have a defined enterprise information architecture in place. As the demand for the Electronic Knowledge Management Environment (EKME) grows within DFO, further investments are required for upgrades, maintenance and training, in order for the system to be successfully rolled out across the department. Funding pressures have resulted in a greater reliance on third parties for data collection. Third party failures have the potential to exacerbate this risk. This risk is also driven by the Human Capital risk, as DFO has limited numbers of staff with appropriate information management skills.

Further information for reporting to central agencies is constrained due to a lack of formal mechanisms (e.g., reporting on DFO's consultation efforts, documentation of consultation activities and on outcomes that support and/or are used for decision-making.)

### **Gap Analysis of Existing Mitigation**

DFO has an information vision and there are important strategic processes and organizational structures in place such as the DMC Information Management Board and the Knowledge Transfer Agreements for preserving corporate memory. However, initiatives tend to occur in a fragmented and incomplete manner. Many initiatives underway or planned represent a mix of the operational and the strategic. Efforts across regions, the sectors and the agency are uncoordinated. Practices are inconsistent. There is little information on how mitigation progress can be monitored, tracked and reported to DMC. Greater department-wide coordination is needed. Policies and guidelines for information management are minimal.

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There is also the need to clarify the nature of the risk to get a better understanding of what it means. Preserving corporate memory is a major element.

### **Additional Mitigation Measures**

To help bring coherence and cohesion to information management across the department, DFO is developing a major strategic initiative that will strongly support the mitigation of this risk. DFO is in the foundation stages of an initiative, the Information Management Strategic Plan (IMSP), to bring DFO to its Information Vision through the improvement of the management of information across the department, the outcomes of which will include improved information for decision-making. This initiative under development in 2008/09 will guide, with periodic revisions, the improvement of information management over the next 5 years in DFO/CCG.

There is a high degree of alignment between DFO's approved Information Vision ("Information used for decision-making and program delivery in DFO is accurate, relevant, comprehensive and timely.") and Risk #2 ("There is a risk that sufficient and appropriate information will not be available on a timely basis to support decision-making.")

The government has also committed to building a more efficient and centralized regulatory process for major natural resource projects. DFO's Habitat Management Program will continue to improve its environmental assessment and review procedures, particularly for low- and medium-risk projects. This includes strengthening compliance monitoring and improving the collection and use of performance data on habitat management.

The IMSP will establish an enterprise approach to IM. The approved IM Framework for the department brings under oversight of governance the key elements of enterprise IM, which will develop incrementally as the IMSP is implemented:

- Information requirements across the department will be better defined.
- Information and application architectures will form part of the developing larger enterprise architecture, and will provide flexible structures for data and applications to adopt, bringing consistency while meeting business requirements.

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- IM strategic planning and accountability will include a comprehensive performance management framework across the department.
- An IM Policy Framework will promote consistency across regions through a suite of policies, directives, standards, guidelines and best practices;.
- Rationalized and improved information systems will prevent redundance and promote interoperability across systems and sharing of information.
- Strategic IM infrastructure such as EKME, the Internet and Intranet presence, collaboration tools and search engine will support the capture and management of corporate memory.
- People and IM capacity will be improved by upgrading the IM skills in IM staff and staff at large.
- An Improved IM Service Delivery Model, suited to DFO's needs, will assure staff of the availability of appropriate IM services when required.

The IMSP will identify and track information management initiatives across DFO/CCG through the business planning process, where program and corporate parts of the department identify the mitigation measures for their key IM risks. The mitigation measures from across the department in all the regions for Risk #2 will be analyzed in order to map them to elements of the IM Framework, identify priority areas, common requirements, IM risks to be addressed, potential solutions to be developed, existing solutions and solution patterns to be elevated for re-use. Similarly, mitigation measures for other risks which contain information-related aspects will be identified and tracked under the IMSP umbrella. DFO-wide governance of IM initiatives will be established in the context of implementation of the IMSP.

Senior management will receive reports on progress of the IMSP. It will also see a more structured and focused corporate approach to the integration of information risk management into business planning. Improved decision-making outcomes and less risk will be visible in high priority areas where investments have been made. DFO as a whole will benefit from these investments through their incorporation into the enterprise approach established by the IMSP.

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As integrated risk management becomes embedded and further developed in the business planning of the department, mitigation measures to the Risk for Decision-making identified by the programs, corporate sectors and the agency will inform and continuously improve the IM Strategic Plan and its implementation. The end state will be a reduction in risk to decision-making and program delivery, as IM planning and services increasingly become an integral part of program design and delivery.

In the coming year the risk mitigation champions, in collaboration with the Information Management Board and the CIO, are committed to these additional mitigation measures:

- In collaboration with the IRMO, finalizing the identification and assessment of the major strategic mitigation measures in place or planned for this risk. Emphasis will be on the strategic policies, organizational structures, guidelines, processes, service level agreements, technologies, channels and mechanisms.
- Scoping out the current functioning information management systems, in each sector and the agency.
- For the IMSP, in the context of addressing this risk, identifying key timelines, costs, deliverables, oversight, governance and success factors
- Coordinating the development of indicators for DMC to monitor, track and report on the progress of the key mitigation measures.
- Renewing the systems, processes and procedures that support economic and statistical analysis within DFO.
- Recommendations will be made for improvements and additional mitigation measures where necessary.

**Risk 3: Organizational Adaptability****Risk Definition**

There is a risk that DFO will be unable to effectively adapt to emerging priorities, directions and environmental conditions.

**Risk Mitigation Champions**

- Claire Dansereau, Associate Deputy Minister
- Richard Nadeau, A/Regional Director General, Quebec Region

**Sources of Risk/Risk Drivers**

DFO's ability to effectively adapt to emerging priorities, directions and environmental conditions is driven by internal constraints and the number and complexity of factors present in DFO's external environment. The impacts of climate change may directly affect DFO operations and investment requirements in many programs and regions, for example: changes in water levels and marine and freshwater habitat, increased marine traffic in Arctic, and storm surges. The deterioration of health and stocks, threats to biodiversity, human rights issues and enhanced marine security are raising international expectations for DFO to respond. Furthermore, global overcapacity in the harvesting sector increases the chance of actions such as illegal, unreported and unregulated fishing activity (IUU), which can have a detrimental impact on the sustainability of the Canadian resource base. Increasing globalization of trade requires DFO to adapt to international players (e.g., Asia), some with cultures and practices that may be dissimilar to those of Canada. A significant percentage (85%) of Canadian fish product is exported and large buyers (e.g., Wal-Mart), increasingly require Marine Stewardship Council (MSC) certification.

The current revisions being considered for the *Fisheries Act* will remove absolute ministerial discretion, providing more transparency and predictability in decision-making and increasing the involvement of fish harvesters in the decision-making. This will require a shift in DFO's culture, from an operational and social policy department to more emphasis on a regulatory role. While a revised *Act* holds great potential as a

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transformational tool, it can be expected that there will be resistance to this change, both internally and with external clients/stakeholders.

DFO is operating in an environment characterized by a large number of diverse stakeholder groups, each with a set of needs and expectations, which may at times be competing. Stakeholders have a high expectation for active and extensive consultation and communications by DFO in its planning and operations, which can impede DFO's responsiveness and efficiency of decision-making. DFO's ability to meet emerging directions and requirements is at times inhibited by internal constraints such as funding pressures, capacity issues, and access to information to support decision making. For more information, refer also to the Human Capital, Information for Decision-making and Internal Alignment risks.

### **Gap Analysis on Existing Mitigation**

Annual planning activities such as strategic and business planning, human resource planning, environmental scanning, and the implementation of integrated planning for organizational business plans help to mitigate this risk. A Policy Integration Committee and regional integration mechanisms exist, as well as consultation mechanisms for inter-departmental, national, regional and industry consultation. The proposed new Fisheries Act will assist the department in meeting evolving needs. Other practices that mitigate this risk include regional federal/provincial/territorial governance structures and committees, regular consultation with the Department of Justice, and international consultations and negotiations.

Champions have evaluated this risk and are in agreement that they can provide assurance that it is being properly managed.

### **Additional Mitigation Measures**

- The champions will work closely with two sectors having each a major new policy initiative to implement:
  - Fisheries and Aquaculture Management with its Fisheries Renewal initiative
  - Oceans, Habitat and Species at Risk with a new policy dealing with the oceans
- In the coming year the Champions intend to:
  - monitor, assess and report to DMC on progress with the strategies

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developed by both sectors to address the elements of the cultural changes required to implement the new policies.

- establish linkages between the implementation strategies and Human Resources requirements.
- ensure that these strategies address the horizontal nature of this particular risk and that they serve as models for mitigating risks of important cultural changes across the department when needed; and
- coordinate development of indicators for DMC to monitor, track and report on the progress of the mitigation measures.

**Risk 4: Internal Alignment****Risk Definition**

There is a risk that activities, accountabilities and resources within DFO will not be optimally aligned to meet objectives.

**Risk Mitigation Champions**

- Cal Hegge, Chief Financial Officer and Assistant Deputy Minister, Corporate Services
- Jim Jones, Regional Director General, Gulf Region

**Sources of Risk/Risk Drivers**

The alignment of resources to priorities and commitments is an area of challenge, as DFO's financial position is constrained. DFO is facing increased operational costs, due to various factors including fuel costs and high overtime costs. However, spending estimates are often based on historical data and limited performance measurement data. There is an approximate \$20 million annual revenue shortfall resulting from estimates originally agreed to during Program Review. Furthermore, DFO maintains only a \$5 million DM's reserve for unplanned pressures. From an internal process perspective, clarity on the financial position of the department within a year time-frame is often inhibited by challenges related to accurate forecasting, which continue to be addressed.

In addition, DFO is often asked to deliver programs with little or no funding (e.g. Committee for International Trade of Endangered Species, and the Canadian Shellfish Sanitation Program ). This puts added pressure on the Department to deliver on emerging priorities, while still being asked to deliver on historical commitments.

As new legislative and Central Agency requirements arise, the Department's existing capacity is often taxed, as additional resources are not always provided to meet new requirements. In some instances, regions are not funded for expected litigations, which often results in operating budget shortfalls over the course of the year as litigation materializes. Certain

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programs face funding pressures impacting DFO's ability to do long-term planning within such programs.

The department's management model, combined with matrix reporting relationships results in complexity and the potential for inconsistencies between regional and headquarter perceptions of requirements and priorities.

All federal departments are subjected to "strategic reviews". Their occurrence is planned for every 4 years. DFO has been subjected to recent reviews including DAAP, another in 2003 and finally the Budget Alignment Strategic Review (BASR I) of last year. This year the Department will embark on "Strategic Review" as the second phase of the BASR exercise.

### **Gap Analysis of Existing Mitigation**

The information gathered from the sectors, internal services and the CCG indicates that they have a lot of very good initiatives to mitigate that risk with initiatives either currently in place or planned. The Champions' assessment of this information can be summarized as follows:

- Each sector/internal service/agency has initiated or will be initiating mitigation measures to manage this risk.
- Efforts are being made for each sector/internal service/agency to live within their budgets.
- All sectors/internal services/agency and regions seek to find efficiencies in their operations.

Champions also indicated that there are two important mitigation measures in place supported by an efficient process. They include the IPC or Integrated Planning Committee (co-chaired by the DG, Finance and Administration, DG, Human Resources and DG, Strategic Priorities and Planning) and the Finance Committee (chaired by the Chief Financial Officer). The IPC used a risk-based process to prioritize departmental funding pressures. Important new measures were mentioned which help alleviate some aspects of this particular risk (i.e., for any new funding received for new programs, Corporate Services automatically receives a percentage of these funds).

Champions identified the fact that each year the department faces funding pressures ranging from \$15M to \$75M. Although there is a risk-based process led by the IPC to prioritize this exercise, the recurrent aspect of

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these shortfalls could be managed better and the process to prioritize funding pressures could be strengthened.

### **Additional Mitigation Measures**

The Champions will work with the DMC Finance Committee, the Integrated Planning Committee, and the BASR II Steering Committee (as members):

#### In the coming year

- to refine the in-year process for matching resources with priorities and service levels including funding pressures
- to examine the advantages and disadvantages of a reserve
- to identify how to have the current financial information system synchronized with the Program Activity Architecture
- to identify and use measures for DMC to monitor mitigation progress

#### In the medium term

- to consider establishing an internal strategic review process to position the department for future strategic reviews.

**Risk: 5. Physical Infrastructure****Risk Definition**

There is a risk that DFO will be unable to invest in or maintain the infrastructure necessary to achieve its objectives.

**Risk Mitigation Champions**

- George Da Pont, Commissioner, Canadian Coast Guard
- Cal Hegge, Chief Financial Officer and Assistant Deputy Minister, Corporate Services
- Paul Sprout, Regional Director General, Pacific Region

**Sources of Risk/Risk Drivers**

Certain DFO program activities (e.g., Science, FAM) and sub-activities (e.g., SCH) along with the Canadian Coast Guard have a high degree of dependency on infrastructure to carry out their work. The condition of this infrastructure varies, with much of it requiring investments to bring it up to standards and to ensure effective life-cycle management. It also has an increasing cost for maintenance that is not funded.

DFO and CCG are moving towards life-cycle management, but progress is slow due to limited funding and a need to have better information on the condition of many of the assets, particularly those in remote sites. Available capital funding is targeted to those projects that have gone through a rigorous evaluation process but important and necessary work often has to be deferred for years. There is limited operational funding available to perform preventative maintenance as most of the available money has to be earmarked to address pressing health and safety matters that could also be sources of risk. As well, minor capital gets converted to operational needs.

There have been significant investments over the past few years that are making a difference. About three years ago both DFO and CCG received additional capital money. This funding is having a positive impact. In addition, over the past few federal budgets, a total of \$1.4 billion has been earmarked for the acquisition of about 17 new Coast Guard vessels. This

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will result in a major improvement in the large vessel fleet as the new vessels begin to arrive beginning in 2011. Nevertheless, despite these investments, there remains an approximate \$30 million shortfall in maintenance funding for real property and an \$800 million shortfall in capital funding, based on a conservative amortization rate.

Aging assets are leading to longer repair and servicing periods as well as increased maintenance and repair costs, further affecting both program delivery and the department's financial position.

The physical environment and geographical dispersion of DFO's activities makes it challenging and costly to maintain some of the assets, particularly those in remote sites. Furthermore, a lack of adequate information on the state of many of the assets makes it more difficult to identify and prioritize maintenance requirements. Government-wide initiatives are trying to address some of these issues but progress is slow. For example, a study to rationalize federal science labs by first developing a condition report for the inventory has been stalled due to lack of funding.

Finally, DFO and CCG have more infrastructure than is needed to deliver its mandate and services. Divesting of unnecessary infrastructure has been challenging for a variety of reasons: heritage considerations (i.e. lighthouses), significant environmental clean-up costs that have to be addressed before disposal (many sites); negative impacts on jobs in small communities and in some cases, discomfort that new technologies can effectively replace physical infrastructure (e.g., discontinue fog horns). Money has to be spent to maintain some infrastructure that is no longer required. Accelerating divestitures and consolidation of facilities where it makes sense would help relieve some of the pressures and free up those funds for more critical sites.

### **Gap Analysis of Existing Mitigation**

Current mitigation processes have been identified and assessed by the Champions Team. Essentially, required capital expenditures are assessed according to set criteria which give the greatest weight to health and safety risks, and management oversight is provided through a structured reporting process. In particular, the **Long Term Capital Plan** process, with its Centres of Expertise and program-driven requirements analysis, strongly supports the mitigation of this risk.

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Given the level of resources available to DFO, the mitigation measures in place provide an acceptable level of control of investments. According to the MAF V assessment of DFO by TBS in the area of effectiveness of Asset Management, the department's efforts in investment planning are now considered a best practice as the organization has an evergreen investment strategy that includes all asset classes, informs investment decisions and is aligned with organizational priorities.

DFO should continue with key mitigation measures including the Long Term Capital Plan process with its Centres of Expertise and program-driven requirements analysis.

### **Additional Mitigation Measures**

The overriding risk is that DFO does not have sufficient resources to invest in maintaining its asset base. Given this situation there are two overarching strategies: working with the central agencies (TBS, PCO and Finance) to try to access additional funding and divesting infrastructure that is no longer required. Both are challenging and not likely to produce significant results in the short term (i.e. next 2-3 years). The upcoming Strategic Review, tentatively scheduled for 2010/11, should help accelerate divestitures.

Additional mitigation measures should be:

- Monitoring related MAF assessments and proposing mitigation strategies
- Development of a system and the compilation of data to provide comprehensive and integrated asset information
- Definition of senior management accountabilities for asset management (noting that the Real Property Accountability Framework was approved by DMC Oct 28./08), and
- Strategic Review, tentatively scheduled for 2010/11, to accelerate divestitures.

**Risk 6: Stakeholder Expectations****Risk Definition**

There is a risk that DFO will be unable to manage expectations and maintain the confidence of stakeholder groups, the public, media and elected officials.

**Risk Mitigation Champions**

- Michaela Huard, Assistant Deputy Minister, Policy Sector
- Nancy Hurlburt, Assistant Commissioner, Maritimes Region
- Jim Baird, Regional Director General, Newfoundland Region

**Sources of Risk/Risk Drivers**

The Department is at risk of being perceived as unable to provide necessary or expected levels of service to Canadians. Changes in our ability to partner with industry and others also threatens our relations with stakeholders.

An increasingly diverse set of stakeholder groups and interest groups are involved in DFO's areas of work. For example, it used to be perceived that commercial fish harvesters were our key if not sole interlocutors with respect to fisheries management. There is of course a wider spectrum of stakeholders, including Aboriginal groups, recreational fish harvesters, boaters, habitat and oceans users, environmental groups and organizations, natural resource industries such as oil and gas, foundations, marine transport entities, and Canadians in general. Furthermore, the focus has broadened to include a broader range of views including sustainability issues, which makes consensus more difficult to achieve. Many of these stakeholder or interest groups have views that are divergent from DFO's and they often have different agendas. In addition, agendas are starting to converge in new ways: e.g. environmental sustainability is becoming a key factor in consumers and buyers purchasing choices.

Modern information and communication technology enable small groups to be more effective in putting forward their positions on issues.

The current environment in which DFO operates is one of heightened public scrutiny and awareness of the potential impacts of industrial activity. There

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is increased public interest in, and scrutiny of, actions taken by industry and the government's efforts towards mitigating such impacts.

In these circumstances it is increasingly important that DFO do all it can to clearly articulate its strategic directions, be able to demonstrate coherence between programs, and seek out new ways of communicating its messages to this increasingly diverse and complex set of stakeholders. Key messages on DFO priorities must be well-defined and communicated in a consistent, coordinated way by all sectors, the agency and regions of the department. DFO must be careful to speak with a single voice.

Deterioration of fish stocks, biodiversity, human rights issues and commitments associated with marine security are combining to drive a heightened focus on international dimensions of DFO work.

There can also be resistance to change where clients perceive that services are being reduced or removed.

### **Gap Analysis of Existing Mitigation**

Based on the information provided, DFO has been and continues to be active in developing and using a diverse range of communications and consultations mechanisms to inform stakeholders about what they can reasonably expect from DFO in the way of programs and services. The mechanisms are a mix of measures from the very strategic to the very operational and include multiple and regular consultations with generally sub-groups of stakeholders on Integrated Fisheries Management Plans, stock assessment findings, environmental assessments, integrated oceans management plans and consultations with First Nations and aboriginal groups.

The Canadian Coast Guard Agency, in particular, has conducted or is in the processing of conducting a number of exercises aimed at mitigating stakeholder expectations with respect to an increased demand for services through: a level of service review, a search and rescue needs analysis; and consultations with stakeholders as per DFO's Consultation Framework and Toolbox. CCG has also worked to improve client engagement through the National Marine Advisory Board (NMAB) and Strategic Advisory Council (SAC).

Greater emphasis might be put on ensuring appropriate planning, coordination, conduct and follow-up of consultations. Although a number of

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internal and external communications tools exist such as the Report on Plans and Priorities; inter and intranet sites; Oceans and Echo publications; literally dozens of scientific publications; notifications of stock assessment meetings; and open houses, feedback with respect to their efficiency and effectiveness should be reviewed.

There is not a lot of information on progress being made against this risk or how it would be measured, tracked and reported. There is a need to develop clarity on how to measure, track and report on progress in this context.

### **Proposed Additional Mitigation Measures**

In light of the preliminary analysis of existing mitigation measures and based on discussions with DMC colleagues, the champions conclude that DFO would benefit by having a more comprehensive understanding of its various stakeholder groups.

Inside the department, it is especially important that messages are effectively conveyed to managers and staff. Policies and priorities must be understood internally and acted upon in a coherent manner across sectors, the agency and regions.

Additional effort should be considered with respect to assessing the effectiveness and efficiency of internal and external communications and consultation mechanisms. The following mitigation measures for monitoring by DMC should be:

For each program, nationally and regionally:

- identify, confirm or validate the major external stakeholder groups;
- for the major external stakeholder groups, identify and assess the communications and consultation channels, tools and mechanisms in place to be able to help stakeholders understand what they can expect with respect to DFO programs, services and information, given its mandate and its resource levels; and make recommendations for improvements where necessary;
- review outreach efforts for consistency of messages and effectiveness;
- place a greater emphasis on the necessity for a consistent approach to conducting meaningful consultations;

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- for managers and employees, identify and assess learning and training strategies, policies, guidelines and processes and identify and assess the technologies, channels and mechanisms in place to be able to help them understand and act in a disciplined way with respect to core messages, priorities and programs and make recommendations for improvements where necessary;
- continue with the Web Renewal Initiative;
- identify indicators to allow DMC to monitor progress in addressing this risk; and
- link these findings and mitigation measures to those of the partnership/collaboration risk as well as those of the legal and compliance risk as it relates to the legal Duty to Consult with Aboriginal groups.

The idea is to encourage full use of existing processes, structures, and technologies but to also examine and be conscious of new ways to conduct outreach to engage stakeholder groups. Channels of consultation and communications should be complete and target the appropriate, relevant stakeholder groups.

**Risk 7: Partnering and Collaboration****Risk Definition**

There is a risk that DFO will be unable to create and sustain effective partnerships, or that there will be failures on the part of third parties on which DFO relies.

**Risk Mitigation Champions**

- Mimi Breton, Assistant Deputy Minister, Oceans, Habitat and Species at Risk Sector
- Faith Scattolon, Regional Director General, Maritime Region

**Definition<sup>8</sup>**

Partnering and collaboration, as the terms are used here, are understood to be collaborative arrangements. From the perspective of the department, a collaborative arrangement is an arrangement between the department and one or more parties (inside or outside government) where there is an explicit agreement to work cooperatively to achieve public policy objectives and where there is:

- delineation of authority and responsibility among partners
- joint investment of resources (such as time, funding or expertise)
- allocation of risk among partners
- mutual or complementary benefits

This broad definition allows for a wide variety of arrangements that can be classified in many ways, including purpose, type of activity, duration, geographical scope, number and identity of partners, institutional arrangement, type of agreement, extent of power sharing and the role of government. In terms of what is being shared, partnering arrangements may be:

- consultative (share information);

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<sup>8</sup> As per TBS, *Managing Collaborative Arrangements: A Guide for Regional Managers*, 2003, p. 3

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- contributory (share financial and other support according to one's capacity);
- operational (share work); or
- collaborative (share decision-making).

These categories can be cumulative, rather than mutually exclusive.

### **Sources of Risk/Risk Drivers**

DFO relies heavily on a broad range of suppliers, contractors, and third parties to support the delivery of its programs (for example, contractors who place aids-to-navigation, shipbuilders, provincial inspectors for aquaculture sites, catch-monitors, CCG auxiliaries, harbour authorities, Aboriginal groups and communities, volunteer groups in the Salmonid Enhancement Program, etc.). The lack of multi-year agreements with some third parties creates potential uncertainty or instability for DFO (that is, if agreements are not renewed, DFO would have to find alternatives to support program delivery).

PWGSC, a key partner on whom DFO relies for procurement activities is experiencing constrained capacity, which may expose DFO to potential delays in procurement (e.g., CCG patrol vessels). The federal and provincial jurisdictions that DFO works within may also at times have different priorities and timeframes for action, which may result in uncoordinated efforts or responses of key partners. It is expected that multidisciplinary and multinational collaborations will increase as issues continue to take on a global dimension (e.g., climate change).

Some partnerships or third party arrangements may push the department in directions inconsistent with departmental priorities. For example, the introduction of the user fee model has changed partner and client expectations, with increased expectations for involvement in departmental decision-making.

This risk is driven by funding pressures, and the Human Capital and Organizational Adaptability risks. For example, in the larger national and international science and technology community, DFO is obligated to contribute knowledge, funding, facilities and is increasingly required to collaborate internationally (e.g., the conduct of science, peer review and provision of delegations to international commissions), which can be challenging in the face of funding pressures and human capital constraints.

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In addition the recent *Laroque* decision has limited DFO's ability to partner with stakeholders in previously approved fashions (e.g., joint project agreements, and co-management agreements). Work is underway to review how to move forward with many of these agreements to ensure that partnering and collaboration with the fishing industry is done in a manner consistent with this court decision.

### **Gap Analysis of Existing Mitigation**

Based on the information provided, DFO has been and continues to be active in developing and sustaining a diversified range of partnering arrangements. They are a mix of measures from the very strategic to the very operational. However, at this point there is not a complete and comprehensive picture of the variety of collaborative arrangements DFO has.

Also, it is not clear if there are adequate departmental and government controls and guidelines over the management of collaborative agreements and if there is consistent compliance with those controls across the department. Controls are understood to be measures to improve the effectiveness and efficiency of collaborative arrangements as well as to minimize the risks of not meeting their goals and objectives and of being non-compliant with rules and regulations.

For mitigation measures in place, there is not a lot of information on progress being made or how it would be measured, tracked and reported. There is a need to develop clarity on how to measure, track and report on progress in terms of the effectiveness and efficiency of mitigation (e.g., plans with targets and strategies that can be tracked).

Some important policies and guidelines already exist for the negotiation and development of collaborative agreements including such references as:

- CFIA, *Overcoming Barriers to S&T Collaboration*, 2006
- DFO, *Pacific Region Program Manager's Guide to Partnering*, 2000
- DFO, *Policy on Collaborative Arrangements*, effective December 1, 2008
- TBS, *Managing Collaborative Arrangements: A Guide for Regional Managers*, 2003
- Health Canada, *Guidelines for Effective Collaboration*

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- DFO, Habitat Management, *Guidelines for Federal-Provincial-Territorial (FPT) Agreements on Fish Habitat Management*, June 2002
- *DFO Science Collaborative Guide*

The relevance and completeness of the list of controls and guidelines, for use now and in the future, must be assessed and updated.

### **Additional Mitigation Measures**

In light of the preliminary analysis based on the Information Sheets from the sectors, the agency and regions and MAF V assessment, the champions conclude that DFO would benefit by having a comprehensive understanding of its partnership and collaborative agreements. The following mitigation measures should be undertaken.

#### **1. Review of Key Relationships**

In the MAF V assessment of DFO by TBS, TBS called for DFO to further develop a comprehensive overview of organizations that the department is partnering with and outline key relationships.

The Champions Team is in agreement with this recommendation and proposes the following course of action that would be fully coordinated with the departmental MAF response. To undertake such a review, a small working group of some sectoral, agency and regional representatives could be established to examine the following aspects of partnering and collaboration.

For all sectors, the agency and internal services both nationally and regionally:

- Identification of all organizations (within and outside the federal government; public and private sectors; profit and non-profit) with whom the department has collaborative arrangements
- Identification of the types of collaborative arrangements with these organizations, along with accountabilities, authorities, purpose and the relative frequency of occurrence
- Identification, assessment and prioritization of the types of risk by type of collaborative arrangement, e.g., Financial Risk (costs could be higher than forecast/partner may not deliver on financial commitment), Project/Technical Risk (Project may take longer than anticipated or will fail), Policy Risk (change in government policy direction may reduce

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relevance of project), Legal Risk (Partners / other may sue, e.g., Larocque)

- Assessment of the cost-effectiveness and efficiency of mitigation controls over the various collaborative arrangements, including scrutiny of aspects such as:
  - the nature, extent, relevance and necessity of existing policies, guidelines, authorities, governance, processes, procedures, and strategies
  - the consistency of awareness, understanding and practice of required controls across regions, while recognizing regional circumstances.

Generically speaking, guidelines, processes and policies would be expected to provide direction or a frame of reference for conceptualizing, planning, negotiating and documenting a collaborative arrangement. They would cover in a comprehensive way matters such as: purpose and specific intentions of the arrangement (deliverables); alignment with mandate and program objectives; benefits; description of programs, products or services; accountabilities, roles and responsibilities; authorities; definitions; resource details; timing; risk assessment; monitoring, reporting and evaluation; adjustment, expansion, renewal, dispute resolution and termination clauses; and termination.

- Identification of any additional control measures that might be required to strengthen the control framework over collaborative arrangements, along with an implementation plan for them
- Identification of:
  - specific barriers to establishing collaborative partnerships, including barriers related to procurement and contracting.
  - possible solutions to the barriers, and
  - specific actions to implement solutions to overcome these barriers.

Barriers are defined as impediments or challenges that prevent the most effective collaboration between two or more parties<sup>9</sup>.

The purpose of the review of key relationships from the risk management perspective is to determine if DMC has and can provide assurance that all

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<sup>9</sup> See CFIA, *Overcoming Barriers to S&T Collaboration*, 2006, p. 4

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significant risks related to entering into collaborative arrangements are identified, assessed, and cost-effectively controlled and managed. DMC needs to understand the full extent and consequences of exposure to significant risks arising from its partnering and collaborative relationships.

Recognized is the pressing need to find ways to work with “partners” within and outside the department in order to deliver services and programs efficiently and in response to community needs.

Improving horizontal management, that is, working better collaboratively across organizational boundaries, should help improve DFO to be more effective and efficient.

N.B.

It should be noted that this review will be conducted in a manner complementary to and in close collaboration with two other related exercises:

- A special initiative led by some members of DMC has been launched with the purpose of finding ways to better use partnering agreements involving financial arrangements with parties outside the department to meet common goals and objectives.
- The Policy Sector is also undertaking a comprehensive review of all DFO federal/provincial Memoranda of Understanding.

## **2. Development of key indicators for DMC to track the progress of the mitigation responses**

- Results of mitigation must be measured and evaluated by DMC to be able to give assurance that risk mitigation is effective and efficient, and demonstrate that fact.
- Matters such as indicator definitions along with cost-effective data collection and reporting on the results of mitigation should be addressed.

**Risk: 8. Legal and Compliance****Risk Definition<sup>10</sup>**

There is the risk that DFO will make decisions which will be successfully challenged before the courts, and result in either significant financial liability or negative effects on DFO's legislative or regulatory authorities or that DFO will not be able to ensure public compliance with its legislation and regulations.

This risk has two distinct components:

**A. Legal Component:**

The risk that DFO will make decisions which will be successfully challenged before the courts, and result in either significant financial liability or negative effects on DFO's legislative or regulatory authorities; and/or

**B. Compliance Component:**

The risk that DFO will not be able to ensure public compliance with its legislation and regulations.

**Risk Mitigation Champions**

- Claire Dansereau, Deputy Minister
- Dave Bevan, Assistant Deputy Minister, Fisheries and Aquaculture Management Sector
- François Daigle, Senior General Counsel<sup>11</sup>

**Sources of Risk**

The legal authority for DFO's programs and activities is found in several statutes and their respective regulations. These statutes set out DFO's legal mandate, powers and duties. They include the *Fisheries Act*, *Species at Risk Act*, and the *Canadian Environmental Assessment Act*. The acts were

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<sup>10</sup> This risk was initially defined in a very broad fashion. (There is a risk that DFO, in its operations, will be found non-compliant with the applicable governing law and policies, or will not be able to ensure public compliance with its legislation and regulations.) The legal risk portion was refined slightly.

<sup>11</sup> Mr. Daigle left the department effective March 2, 2009.

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written at different times and affect multiple programs, the sectors and the agency. In some instances, the various acts may have conflicting or competing requirements such as inconsistent timelines or processes. In addition, there are numerous government-wide policies and regulations with which DFO must comply (e.g., *Access to Information, Management of Information Technology Security, Common Look and Feel, Privacy Act, and Government Security Policy*).

Exacerbating this risk is the increasingly litigious environment. Fish harvesters are launching civil suits questioning DFO's constitutional/statutory authority to make access and allocation decisions. Aboriginal groups continue to seek court recognition of Aboriginal rights, including the right to fish. Recent "duty to consult" court decisions require DFO to consult with Aboriginal groups when making fisheries management and habitat decisions, resulting in an increase in complex litigation.

There is a global and domestic push for more enforcement of foreign over-fishing, resulting in more costly prosecutions of foreign vessels. Environmental assessments of large projects result in a high volume of litigation for DFO, due to the differing interests of developers, aboriginal groups, environmental groups, and a regulatory department such as DFO. Courts, DFO and fish harvesters have differing views on the legal nature of a licence to fish, often resulting in litigation. Relatively new legislation, such as the *Species at Risk Act*, and the proposed fisheries bill can be expected to result in litigation, as the courts interpret new provisions.

Adding further complexity is the interpretation of policy or legislation, which can vary. Variations can occur across regions, due to geographical dispersion and the associated differences in business conditions. There are some gaps in the availability of national guidance (e.g., policies, procedures and tools), which may compound the issue of program inconsistency. Furthermore, the absolute discretion of the Minister set forth in the *Fisheries Act* also adds challenges around national consistency, as the absolute discretion allows for different stances to be adopted in different constituencies. Finally, participation of DFO personnel on boards of national and international organizations has the potential to expose DFO to liability where participation on boards may have associated fiduciary duties.

### **Gap Analysis on Existing Mitigation**

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DFO has a wide range of controls over legal and compliance risks, from very strategic to very operational measures. However, it would benefit from an exercise to complete and validate the mitigation measures DFO has in place for the Legal and Compliance components of this risk. A complete and comprehensive picture of the controls is needed.

### **Existing Mitigation Measures: Legal Component**

Identified to this point are the following existing mitigation measures:

#### **A. Legal Component**

There are several dimensions to this risk. These include:

##### **A-1) DFO'S OWN MANDATE LEGISLATION**

There is a legal risk that a court will hold that DFO has no statutory authority for a program. DFO is required to comply with its own mandate legislation, such as the *Department of Fisheries Act*, *Fisheries Act*, *Coastal Fisheries Protection Act*, *Canada Shipping Act, 2001*, and *Oceans Act*. DFO has no powers other than those given to it by statute. For example, when DFO implements a program without clear legal authority, and that program is challenged in the courts, there is a legal risk that a court will hold that DFO has no statutory authority for such a program. Recent cases are:

- authority to impose administrative sanctions (*Matthews decision*);
- authority to make allocations of fish for the purpose of financing DFO science/fisheries management activities (*Larocque decision*);
- whether there is authority to issue habitat letters of advice (*Cassiar Watch litigation*);
- whether there is authority to "expropriate" allocations without compensation (*Anglehart litigation*); and
- whether there is authority to require fish harvesters to sign a waiver agreement as a condition of receiving financial assistance (*Arsenault litigation*).

DFO mitigates the risk of legal challenges to its statutory authority by:

- obtaining legal advice from DFO Legal Services on its authorities, whenever it is implementing new and existing legislation, regulations, policies, procedures, operations, and fisheries management plans;

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- participating in legal awareness training courses offered by DFO Legal Services to Fisheries officers, habitat biologists, CCG officers and crews, the Canadian Hydrographic Service, and all sectors, the agency and regions, on DFO authorities;
- participating in the DFO Legal Risk Management process where DFO managers and DFO Legal Services lawyers scan for DFO's legal risks; the lawyers make recommendations to the Legal Risk Management Committee on how to manage DFO's legal risks, in particular cases or issues; and DFO senior managers decide on how to proceed in response to those recommendations. (This process is currently under review); and/or
- amending its legislation to provide clear statutory authority.

There is also a legal risk that stakeholders, such as environmental non-government organizations (ENGOS) and Aboriginal groups, whose interests are negatively affected by lack of public compliance with DFO's statutes and regulations, will bring court challenges to clarify the interpretations of its authorities, in order to ensure public compliance, e.g.:

- *Alexandra Morton litigation*, in which environmentalists seek a court ruling that the management and regulation of aquaculture is exclusively federal jurisdiction;
- *Ecology Action Centre decision*, in which an environmental group unsuccessfully sought to require DFO to consider habitat implications when making Fisheries management decisions;
- *Petitcodiac Riverkeeper litigation*, in which an environmental group applied to a court for a mandatory injunction to force DFO to apply the *Fisheries Act* to require the province to allow passage of fish at a causeway.

DFO is mitigating its legal risk related to new interpretations of its authorities by:

- obtaining legal advice about the nature of its legal authorities, and any legal duties to act; and
- preparing and retaining documentation which will enable DFO to prove that the decision to enforce or not enforce legislation is a policy decision, and as such, not reviewable by the courts.

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## **A-2) LEGISLATION WHERE DFO SHARES RESPONSIBILITY WITH OTHER DEPARTMENTS**

DFO is required to comply with legislation where it has shared responsibility with other departments, such as the *Canadian Environmental Assessment Act ("CEAA")*, and *Species at Risk Act ("SARA")*.

Since *SARA* is relatively new legislation, there are legal issues with regard to the identification of species' critical habitat, orders prohibiting destruction of critical habitat, the tools used to ensure that critical habitat is legally protected, and the Crown's ability to meet *SARA's* statutory deadlines:

- *Environmental Defence Canada v. Minister of Fisheries and Oceans* (Nooksak Dace litigation)
- *David Suzuki Foundation v. Minister of Fisheries and Oceans* (resident killer whale population litigation).

ENGOs, developers and Aboriginal groups frequently challenge DFO's *CEAA* decisions, such as how wide to scope an environmental assessment of a project.

DFO mitigates *SARA* and *CEAA* legal risks by:

- obtaining legal advice and training from DFO Legal Services on *SARA* and *CEAA* legal issues;
- developing policy and operational guidelines;
- implementing information management systems (including information related to performance measurement and tracking of *SARA*-related timelines and deadlines);
- participating in the DFO Legal Risk Management process where DFO managers and DFO Legal Services lawyers scan for DFO's legal risks; the lawyers make recommendations to the Legal Risk Management Committee on how to manage DFO's legal risks, in particular cases or issues; and DFO senior managers decide on how to proceed in response to those recommendations. (This process is currently under review); and
- considering amendments to *SARA* as part of the five-year legislative review;
- operating its Major Projects Review Branch, which works directly with regional staff managing major projects, to manage these in a consistent manner and to tackle issues that may arise from the Fisheries Act, Species at Risk Act or environmental assessment perspectives. In

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addition, the Branch provides policy and guidance around the application of the CEAA.

### A-3) COMMON LAW REQUIREMENTS

There is a legal risk that DFO will not comply with common law requirements, such as:

- the Crown's duty to consult and in some cases accommodate Aboriginal groups when making a decision which may adversely affect aboriginal or treaty rights, e.g.:
  - *Tulsequah Chief Mine decision*;
  - *Taku River decision*; and
  - *T'sou-ke Nation litigation*.
- DFO employees' duty to carry out their duties without negligence:
  - *Acadien II (Transportation Safety Board investigation, CCG independent investigation, potential litigation)*; and
  - *Melina & Keith II (litigation)*.

DFO mitigates the legal risk that a court will hold that it has not complied with common law requirements by:

- coordinating with other departments and following certain cross-government policies such as the Interim Guidelines for Federal Officials on the Duty to Consult and Accommodate Aboriginal Groups, developed by Indian and Northern Affairs Canada and the Department of Justice in consultation with implicated departments;
- DFO continuing to contribute to the GoC Action Plan on the legal Duty to Consult including representation on interdepartmental committees and the establishment of a DFO working group comprised of regional, sectoral and agency representatives;
- obtaining legal advice from DFO Legal Services;
- regular consultation with the Department of Justice (DOJ);
- Agreements with Aboriginal organizations;
- training of field officers (e.g., Aboriginal guardians, etc);
- consultation with Aboriginal organizations;
- risk management guidelines to support DFO officials in engaging Aboriginal groups;
- the Aboriginal Communal Fishing Licence Regulations, which provide a regulatory framework for fishing by Aboriginal organizations;

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- development of program management frameworks (e.g., program governance charters and risk-based audit frameworks).
- operational training for CCG officers and crew;
- participating in DFO Legal Services legal awareness training on common law powers and duties; and
- participating in the DFO Legal Risk Management process where DFO managers and DFO Legal Services lawyers scan for DFO's legal risks; the lawyers make recommendations to the Legal Risk Management Committee on how to manage DFO's legal risks, in particular cases or issues; and DFO senior managers decide on how to proceed in response to those recommendations. (This process is currently under review).

#### **A-4) CONSTITUTION AND CHARTER**

There is a legal risk that DFO will be challenged for non-compliance with section 35 of the *Constitution Act 1982*, which recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada. The case law has interpreted this provision to mean that any infringement of aboriginal or treaty rights must be justified in accordance with the test provided in the *Sparrow* case.

DFO mitigates its s. 35 *Constitution Act, 1982* legal risk through programs, such as the Aboriginal Fisheries Strategy, the Pacific Integrated Commercial Fisheries Initiative, and the Atlantic Integrated Commercial Fisheries Initiative which all have legal risk management components in them.

DFO is also required to comply with the *Charter*, such as section 8 of the *Charter* which provides citizens with the right to be secure against unreasonable search and seizure. There is a legal risk that if DFO fails to comply with the *Charter* when carrying out its inspections, investigations and prosecutions, then the prosecutions will be unsuccessful.

DFO mitigates its *Charter* legal risk by:

- obtaining legal advice, from DFO Legal Services, and through them, from specialized services in the Department of Justice head office, such as the Constitutional and Administrative Law section, and from the Public Prosecution Service of Canada;
- participating in extensive legal training provided by DFO Legal Services to fishery officers in order to ensure that DFO complies with the *Charter*; and

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- participating in the DFO Legal Risk Management process where DFO managers and DFO Legal Services lawyers scan for DFO's legal risks; the lawyers make recommendations to the Legal Risk Management Committee on how to manage DFO's legal risks, in particular cases or issues; and DFO senior managers decide on how to proceed in response to those recommendations. (This process is currently under review).

#### **A-5) CENTRAL AGENCY LEGISLATION AND POLICIES**

DFO is also required to comply with central agency legislation and policies, such as the *Official Languages Act*, the *Federal Accountability Act*, the *Financial Administration Act*, the *Access to Information Act*, the *Privacy Act*, the *Public Service Employment Act*, the *Public Service Staff Relations Act*, and the TB Common Look and Feel policy. However, the legal risk of DFO failing to comply with central agency legislation and policies is generally low but there is occasionally high impact litigation arising from central agency legislation and policies:

- *the Larocque decision* and other use of fish cases, such as the *Iverson class action litigation*, arose out of the interpretation of the *Financial Administration Act*.

DFO's legal risk of not complying with central agency legislation and policies is mitigated in that:

- central agencies administer their statutes and policies, and manage the risk for DFO, for example, by offering centralized accreditation and mandatory training;
- central agencies already hold DFO accountable for compliance with their statutes and policies;
- DFO participates in the DFO Legal Risk Management process where DFO managers and DFO Legal Services lawyers scan for DFO's legal risks; the lawyers make recommendations to the Legal Risk Management Committee on how to manage DFO's legal risks, in particular cases or issues; and DFO senior managers decide on how to proceed in response to those recommendations. (This process is currently under review);
- DFO Legal Services provides legal advice and legal training with regard to central agency legislation and policies. DFO, including sectors, the CCG and regions can mitigate its risk by coming to DFO Legal Services early in the development of its policies and programs;

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- DFO shares information with and obtains advice from central agencies to ensure applicable provisions are complied with when DFO is developing policies and regulations, such as:
  - the licence fee review;
  - regulatory modifications, such as payment of licence fees by instalments; and
  - use of fish policies.

#### **A-6) TREATIES AND CONVENTIONS**

There is a legal risk that DFO will incur considerable legal expenses in defending claims under international obligations, such as the North American Free Trade Agreement (NAFTA); and will have to pay significant damages awards if it is held not to comply with treaties and conventions, such as NAFTA:

- *White's Point Quarry* NAFTA claim.

Further review is required to ensure completeness of the mitigation measures for this aspect of the risk.

#### **B. Compliance Component**

There is a compliance risk that DFO will not be able to ensure public compliance with its mandate legislation and regulations, because of resource or other constraints.

In order to mitigate the compliance risk, DFO has education programs, compliance strategies, policies, guidelines, and enforcement programs to ensure public compliance with its legislation, such as:

- Fisheries and Aquaculture Management ("FAM") undertakes compliance promotion and education, monitoring, control and surveillance activities, use of sanctions to deter non-compliance, and use incentives to encourage compliance.
- FAM has already incorporated a compliance risk assessment process as part of IRM and in the process of developing an operational compliance risk assessment process.
- FAM Fisheries Renewal ("FAM FR") will promote strong conservation outcomes through rules based decision-making that is transparent, rigorous and systematic through risk management frameworks based on precautionary and ecosystem approaches. Promotion of a conservation

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ethic is one of the most important preconditions for sustainable management and compliance in the fisheries. ]

- FAM FR realizes that economic prosperity in the fisheries sector can be achieved through improved collaboration and policy coherence along the seafood value chain so that all involved can work jointly to improve sustainable resource use, competitiveness and long-term economic viability. This collaboration and coherence leads to better compliance with effective conservation measures.
- The FAM Compliance Review and Modernization initiative has identified a lack of major case management and intelligence gathering and analysis capacity as a major gap in dealing with Illegal Unreported and Unregulated ("IUU") fishing activities.

Further review is required to ensure completeness of the mitigation measures for this aspect of the risk.

### **Additional Mitigation Measures**

#### **A. Legal Component**

- According to the MAF V assessment by TBS in the context of the “Strong” assessment it received for Values and Ethics, DFO is encouraged to monitor and evaluate the effectiveness of activities to address fear of reprisal.

#### **B. Compliance Component**

- The FAM Compliance Review and Modernization initiative has identified a lack of major case management and intelligence gathering and analysis capacity as a major gap in dealing with Illegal Unreported and Unregulated ("IUU") fishing activities. The Champions will follow up on this.

#### **A. & B: Both Legal and Compliance Components**

##### **Legal Framework Controls Inventory**

In light of the preliminary analysis based on the Information Sheets from the sectors, the agency and regions and MAF V assessment, the champions conclude that DFO would benefit by having a more comprehensive picture and understanding of the mitigation measures or controls over legal and compliance matters.

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Completeness and clarity are required, nationally and regionally, on the departmental processes, organizational structures, policies and guidelines for the management of legal and compliance risks.

It is recommended that a complete, department-wide inventory of key mitigation measures be prepared and assessed for each of the components in the Legal and Compliance risk.

- **Scanning for Legal Risks**

Processes for scanning for legal risks will be reviewed in order to assist in improving the capacity and practices related to anticipating, understanding, reporting and responding to new statutory, regulatory and judicial requirements, decisions and events that could potentially affect the achievement of departmental objectives.

- **Formal Enforcement Strategies**

For programs that have a high volume of enforcement actions, a review will be made to determine the need for national and regional enforcement and compliance strategies.

- **Development of Mitigation Progress Indicators to track, monitor, assess and report to DMC on the progress on the mitigation responses**

Indicators will be developed to allow DMC to monitor the progress of the mitigation measures.

## Appendix A

### List of Sector/Agency or Business Line Risk Profiles

The following risk profiles were inputs to the development of the preliminary risk list for DFO's corporate risk profile update:

1. Aquaculture
2. Climate Change
3. Science Sector Integrated Performance and Risk Management Framework
4. Small Craft Harbours
5. Communications
6. Aboriginal Policy & Governance
7. Oceans Program
8. Human Resources
9. IM & TS
10. Canadian Coast Guard
11. International Fisheries & Oceans Governance
12. Resource Management
13. Salmonid Enhancement Program
14. Habitat Management
15. Conservation and Protection
16. Finance and Administration
17. Real Property Management, Safety and Security

Please note that the above list of profiles does not cover all of the program activities of the Department of Fisheries and Oceans. Profiles were not available at the time of the CRP update project for the following program activities: Executive Direction, Strategic Policy, Legal Services, Corporate Review, and, Environment.

The following references were also used during the development of program and sub-activity level risk profiles as well as in the preparation of this report.

Fisheries and Oceans Canada. "2008-2009 Report on Plans and Priorities."  
HYPERLINK: [http://www.tbs-sct.gc.ca/rpp/0809/fo-po/fo-po\\_e.asp](http://www.tbs-sct.gc.ca/rpp/0809/fo-po/fo-po_e.asp)

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Fisheries and Oceans Canada. "Departmental Performance Report: Period ending March 31, 2007." HYPERLINK: <http://www.tbs-sct.gc.ca/dpr-rmr/2006-2007/index-eng.asp>