getting tough on environmental crime?

HOLDING THE GOVERNMENT OF CANADA TO ACCOUNT ON ENVIRONMENTAL ENFORCEMENT

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Holding the Government of Canada to Account on Environmental Enforcement

December 2011

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executive summary

The Government of Canada is responsible for enforcing the environmental protection measures contained in many federal statutes.

Effective enforcement is essential if environmental legislation is to be complied with. As Environment Canada has acknowledged,

> "It is not enough to adopt laws; legislation must be effectively enforced."[1]

Enforcement ensures that violations do not go unpunished, thereby levelling the playing field for compliant actors and deterring potential offenders from polluting the environment.

Effective enforcement requires an engaged citizenry and access to information to empower public participation.

Environment Canada has stated that "publicizing the laying of charges and the results of prosecutions [acts as] an effective means of deterring potential offenders."[2]

Quebec's Environment Commissioner, Jean Cinq-Mars, a former senior official with Environment Canada, recently issued a report that arrived at a similar conclusion:

> the availability of enforcement data allows concerned citizens to report or request action on unacceptable situations, thus allowing them to play an active role in the protection of the environment.[3]

1 Environment Canada (1999), *Compliance and Enforcement Policy for the Canadian Environmental Protection Act: Introduction,* online: *http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=AF0C5063-1*.

2 Environment Canada (2011). Compliance and Enforcement Policy for the Canadian Environmental Protection Act, 1999, Measures to Promote Compliance, online: *http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=AF0C5063-1&offset=5&toc=show*.

3 Auditor General of Québec, *Rapport du Vérificateur general du Québec à l'Assemblée nationale pour l'année 2010-2011, Rapport du Commissaire au développement durable* (Montréal: March 2011) at para 1-34, p 1-8, online: *http://www.vgq.gouv.qc.ca/fr/fr_publications/fr_rapport-annuel/fr_2010-2011-CDD/fr_Rapport2010-2011-CDD.pdf*.

Despite the federal Conservative government's tough talk on environmental crime and the 2009 passing of the *Environmental Enforcement Act*—aimed at strengthening enforcement and penalty provisions under various statues—evidence of the government's enforcement record reveals an approach that is soft on polluters.

Members of the media, academia and civil society have all criticized the government for its inability or unwillingness to adequately "crack down" on environmental offenders.[4] Many of these observers have questioned the government's commitment to enforcing its statutory obligations. A cynic might suggest that the government is enacting progressive legislation to hide its poor enforcement practices from the public. A more optimistic perspective would be that government resources are constrained and that the EEA's full potential has yet to be realized.

Only time will tell.

But whether one prefers the cynic's or optimist's perspective, it is beneficial to analyze—on the basis of publicly accessible documents and data—how the federal government is fulfilling the deterrence and punishment objectives of its environmental legislation.

This, in turn, raises questions that go to the core of environmental accountability and good governance:

- What information must be made available to ensure that the federal government is held accountable for its enforcement responsibilities?
- What measures can be implemented to ensure the federal government is held accountable for its enforcement responsibilities?
- Does the federal government proactively disclose enforcement information in a manner that empowers civil society and enhances accountability?
- What roles do concerned citizens, academics and civil-society organizations play in promoting environmental compliance by regulated entities?
- What does the limited, publicly available information regarding inspections, investigations, prosecutions and convictions under federal environmental laws tell us about the government's commitment to environmental enforcement?

4 Andy Blatchford (2011), "Ottawa Unable to Nail Many for Green Crimes," The Canadian Press (6 February 2011), online: MSN *http://lifestyle.ca.msn.com/health-fitness/news/canadianpress-article.aspx?cp-documentid=27565406*; David Boyd (2003) *Unnatural Law: rethinking Canadian environmental law and policy* (Vancouver: UBC Press) at 237-41; April Girard et al, "Tracking Environmental Crime through CEPA: Canada's Environment Cops or Industry's Best Friend?" (2010) 35:2 *Canadian Journal of Sociology* 219.

With the above questions in mind, we highlight the deficiencies in enforcement information and the federal government's approach to disclosure.

We hope this report will spur enhanced citizen participation through improved access to reporting information and additional civil society oversight of enforcement activities.

In this report, we find among other things:

- There has been a consistent decline in environmental enforcement activities (including warnings, orders, etc.) since 2005-06 despite an increase in the number of enforcement officers, particularly under the *Canadian Environmental Protection Act* (CEPA).
- There are relatively few successful prosecutions under federal environmental legislation. The number of annual convictions, approximately 20 per year under CEPA, is extremely small in relation to the number of inspections, warnings and investigations.
- Average fines have been so low over the past three years, $10,524 per conviction under CEPA, that their use as an effetive deterrent is compromised.
- Information regarding the identity of environmental offenders, the exact location of the incident or violation and the exact nature of the violation are often limited, even in cases where there has been a successful conviction.
- Enforcement data under different federal environmental laws is often gathered using inconsistent methods and methodologies. Not only does that jeopardize public accountability, but it also complicates the comparison and analysis of enforcement data.
- Legal obligations to release annual reports detailing environmental enforcement are not being met in a timely manner.

What do our findings mean?

The federal government has a lot of work to do to prove to Canadians that it is aggressively enforcing environmental laws.

Public disclosure of enforcement information is poor across various statutes and under various responsible departments. Although steps toward more open government are being taken, these have not yet taken root in the environmental enforcement realm. The deficiencies in available enforcement information and the lack of proactive data disclosure undermine citizen participation in environmental enforcement. Canadians deserve a comprehensive, online environmental enforcement and compliance database so that they might find out what is, and is not, happening in their communities.

The average Canadian is right not to accept a "just trust us" approach to federal enforcement of environmental laws and regulations. The available evidence suggests a chronic under-enforcement of federal environmental laws. These findings should concern Canadians, and only serve to underscore the need for more disclosure.

Unfortunately, this is not a new story. The Commissioner of the Environment and Sustainable Development has previously audited the environmental enforcement activities of different departments, and concluded that they often don't even know themselves what enforcement is and is not occurring. Ecojustice urges the commissioner to continue to hold the federal government to account, so that the promise of a crackdown on environmental violations might be realized.

context

THE ENACTMENT OF THE *ENVIRONMENTAL ENFORCEMENT ACT*

The Government of Canada took steps to improve the enforcement of environmental legislation when it passed the *Environmental Enforcement Act* (*EEA*) in June 2009. On the day this law was adopted, former Environment Minister Jim Prentice said:

> "...in the election campaign, [the] government committed to bolster the protection of our water, air, and land through tougher environmental enforcement that [would hold] polluters accountable. ... This Act ... [will] provide a comprehensive, modern, and effective enforcement regime for Canada."[1]

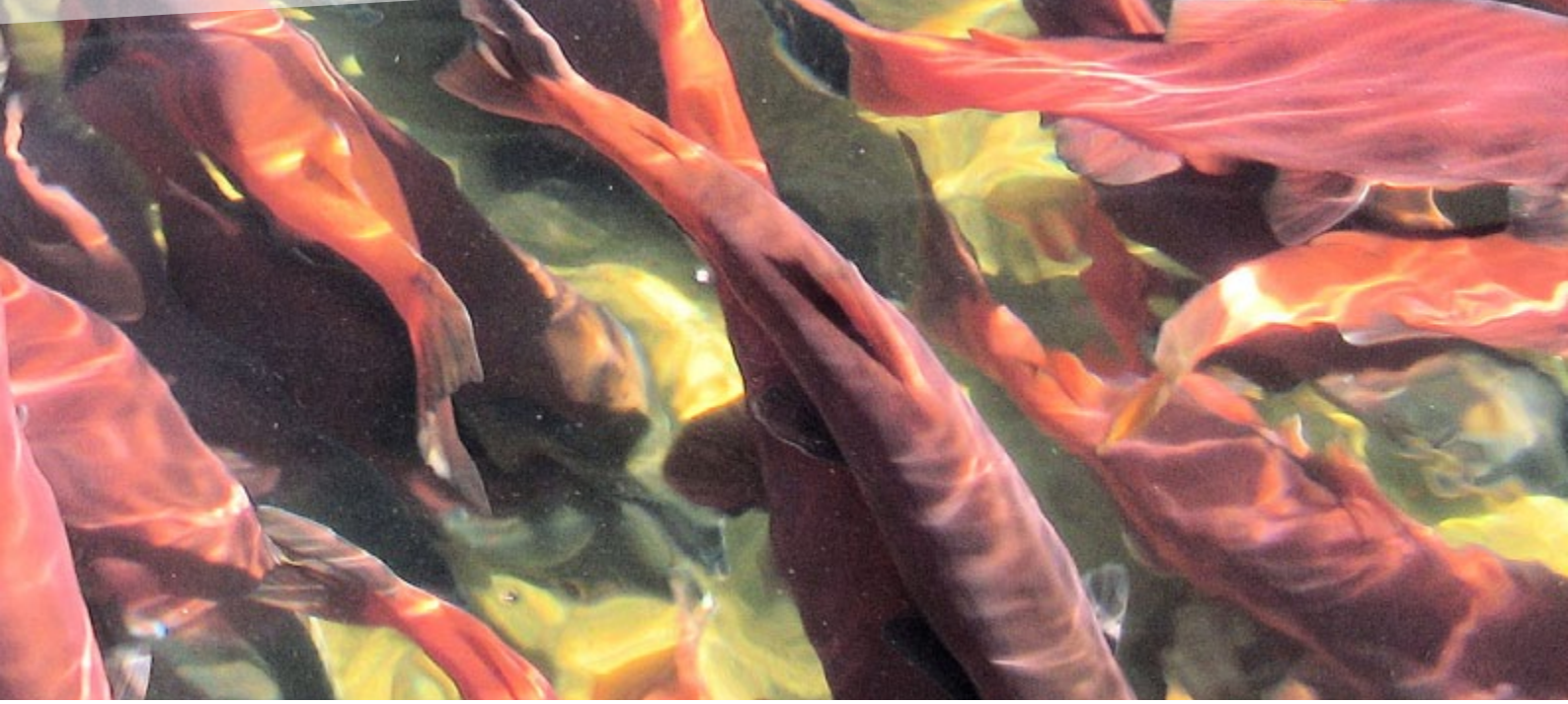
1 Environment Canada (2009), "New *Environmental Enforcement Act* Cracks Down on Environmental Offenders", press release (18 June 2009), online: *http://www.ec.gc.ca/default.asp?lang=En&n=714D9AAE-1&news=FFFAC43A-58E4-438C-A446-5A3FC290A0B9*

The EEA amends the enforcement provisions of nine federal environmental statutes[1] by introducing minimum fines and raising maximum fines for serious environmental offences for both individuals and corporations. These fines range from $100,000 to $6-million for large, first-time corporate offenders, with double penalty amounts for repeat offenders. The type of conduct that can lead to corporate officers' and directors' liability under these laws is also broadened. Furthermore, the EEA requires courts to consider a series of aggravating factors during sentencing, such as prior convictions, the occurrence of environmental damage, intentionally or recklessly committing an offence, benefiting financially from the offence and attempting to conceal the offence. Additionally, the EEA increases government powers to investigate and prosecute such violations and creates the *Environmental Violations Administrative Monetary Penalties Act* (EVAMPA) to create a scheme of administrative penalties for less serious violations of environmental laws.

However, only certain parts of the EEA came into force in December 2010. The amendments to the penalty schemes[2] established under *the Canadian Environmental Protection Act* (CEPA), the *Migratory Birds Convention Act* (MBCA), the *Canada Wildlife Act* (CWA), and the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* (WAPPRIITA) are not yet active.

1 *Canadian Environmental Protection Act, 1999; Canada Wildlife Act; Migratory Birds Convention Act; Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act; International River Improvements Act; Antarctic Environmental Protection Act; International River Improvements Act; Canada National Parks Act; Canada National Marine Conservation Areas Act; Saguenay-St. Lawrence Marine Park Act.*

2 See e.g. 144 C Gaz II, 26 (22 December 2010); and SI 2010, SOR/2010-91, online: Canada Gazette http://canadagazette.gc.ca/rp-pr/p2/2010/2010-12-22/html/si-tr91-eng.html



The EEA does not amend the *Fisheries Act* or the *Species at Risk Act (SARA)*, apparently because it only intended to amend statutes under the power of the Minister of the Environment and Parks.[3] Finally, the regulations needed to render EVAMPA effective in practical terms have not yet been adopted. The *Environmental Enforcement Act* and *Environmental Violations Administrative Monetary Penalties Act* may, once fully operative, provide a better legislative and regulatory framework to achieve compliance and enforcement with federal environmental legislation, but what difference they may make on the ground is unclear.

In terms of how the EEA affects the manner in which the federal government must provide environmental enforcement information to the public, the amendments are not far-reaching. The EEA resulted in the establishment by Environment Canada of a registry called the Environmental Offenders Registry. This public registry contains information regarding all corporate convictions, but nothing regarding acquittals or withdrawn charges—a major informational gap—for offences under each of the laws amended by the EEA. At present, however, the Environmental Offenders Registry contains only nine records (June 19, 2009 through November 18, 2011) of convictions under these laws.[4] Thus, it remains open to question whether the federal government's updated environmental enforcement regime, including the associated public reporting and disclosure of enforcement activity, will truly deliver on one of its main promises.

3 Canada Bill C-16, *Environmental Enforcement Act,* legislative summary, LS 636E, fn 78, citing House of Commons, Standing Committee on Environment and Sustainable Development, Evidence, 2nd Session, 40th Parliament, 26 March 2009, 9:50 (Ms. Cynthia Wright, Acting Assistant Deputy Minister, Environmental Stewardship Branch, Department of the Environment).

4 Environment Canada, Environmental Offenders Registry, online: *http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=1F014378-1*

part one

INFORMATION DISCLOSURE & ENVIRONMENTAL ENFORCEMENT

1 | ENFORCEMENT AND THE COMMUNITY RIGHT TO KNOW PRINCIPLE: BEYOND ACCESS TO INFORMATION REQUESTS

The concept of a Community Right to Know reflects the right to self-protection through access to information about chemicals, substances or conditions that may pose a risk to health or the environment.[1] The availability of environmental information allows citizens to make choices about the environmental risks to which they or their families should be exposed.[2] Access to environmental enforcement information is a crucial component of any approach to governance that seeks to satisfy the Community Right to Know principle.

Until the 1980s, public access to environmental information in Canada was a top-down process, left to the discretion of decision-makers.[3] The first steps towards empowering citizens and civil society began when the *Access to Information Act* became law in 1983 and the Office of the Information Commissioner of Canada was established to enforce it.[4]

The purpose of the *Access to Information Act* is to provide a right of access to records and personal information, in any format, held under the control of government institutions and subject to certain specific and limited exceptions.[5] The needs of the *Access to Information Act* are balanced against the *Privacy Act*, which ensures the privacy of individuals and corporations is protected. This right of access to public information applies to citizens and permanent residents of Canada as well as to individuals who are present in Canada.

In addition to promoting informed public decision-making, the *Access to Information Act* is concerned with advancing the values of participation and accountability in the democratic process.[6] It establishes that the availability of federal government information should be the norm, rather than the exception, and that decisions on the disclosure of government information should be reviewed independently of government.[7] The impact this law has had on transparency in public affairs by enhancing government accountability cannot be overstated.

1 Canadian Environmental Law Association (2006), *Creating Community Right-to-Know Opportunities in the City of Toronto* (January 2006) at 4, online: CELA www.cela.ca

2 Jamie Benedickson (2009) *Environmental Law* (Toronto: Irwin Law) at 380.

3 Andrew J Green et al (1998-1999) "Public Participation, Federalism and Environmental Law" 6 Buff Envtl LJ 170 at 178.

4 *CEPA* Office (1994) ed, *Reviewing* CEPA, *The Issues #9: Community Right to Know* (Hull, QC: Minister of Supply and Services) at 4.

5 *Access to Information Act,* RSC 1985, c A-1; *Privacy Act,* RSC 1985, c P-21.

6 [1997] 2 SCR 403, 148 DLR (4th) 385, 46 Admin LR (2d) 155, 132 FTR 55.

7 Environment Canada (2011). *Access to Information and Privacy Act* (ATIP), online: http://www.ec.gc.ca/default.asp?lang=En&n=DAF39D24-1

As former Supreme Court of Canada Justice Gérard La Forest stated in the landmark decision *Dagg v Canada (Minister of Finance)*:[1]

> The overarching purpose of Access to Information legislation ... is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.

Government records must be available to allow for public participation in environmental protection. But the Community Right to Know principle cannot be realized solely through access to information legislation, which requires citizen initiative to file an application and government co-operation to release the desired documents. Furthermore, Environment Canada has earned a less-than-stellar track record on access to information requests.

An April 2010 report card released by the interim Information Commissioner Suzanne Legault evaluated several federal departments on their compliance with the *Access to Information Act*.[2]

The commissioner's conclusions were highly critical, particularly concerning the ease of access and clarity of information. Environment Canada received a failing grade (F) in this report card due to its unsatisfactory performance in responding to access to information requests and was chastised for its failure to meet its statutory obligations:

> Environment Canada's Access to Information office described the last three years as challenging. This period coincides with an increase in public interest in environmental matters, which translated in 2008–2009 into a 35 per cent increase in requests and a 55 per cent increase in the number of pages reviewed from the year before. There was also a sizeable backlog of 276 files. The institution did not have the internal capacity to meet its legislated Access to Information obligations on a consistent basis in 2008–2009.[3]

Clearly, the Community Right to Know, regarding environmental enforcement, is not going to be achieved merely through access to information requests.

1 [1997] 2 SCR 403, 148 DLR (4th) 385, 46 Admin LR (2d) 155, 132 FTR 55.

2 Interim Information Commissioner of Canada (2010), *A Special Report to Parliament. Out of Time. 2008-2009 Report Cards* (Ottawa: Minister of Public Works and Government Services, 2010).

3 *Ibid* at 106. For a summary of Environment Canada's report card, see: *http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2008-2009_28.aspx*

Moving Towards an Open Government Approach to Enforcement: *National Pollutant Release Inventory*

The federal government's most prominent example of a public, web-accessible Community Right to Know mechanism is the National Pollution Release Inventory (NPRI), created in 1992 under the legislative authority of the *Canadian Environmental Protection Act*. The NPRI publishes information on releases to the environment of a wide range of substances. The 2009 NPRI reported the emissions of 347 regulated pollutants released, disposed of or sent for recycling at over 8,400 reporting facilities in Canada.[1] All Canadian companies with 10 or more employees and using 10 or more metric tons of a designated substance must disclose their environmental releases to the federal government.

The NPRI Online Data Search function allows users to create tables by combining a number of variables (e.g., year, facility, substance, location, type of industry, type of pollutant release, disposal or transfer). The database allows comparison of data over the years and within industrial sectors. Alternatively, users can download the entire NPRI database in Microsoft Access format and complete their own analysis. The data is also available for download in a format (.kmz) that allows for files to be cross-referenced with Google Earth, an online program that allows users to explore the globe virtually using satellite images. This allows users to search for reporting facilities in a specified location through postal code and community searches.

The main shortcomings of the NPRI database relate to data quality and the lack of information provided by Environment Canada to help users understand the data. As Scott Vaughan, the Commissioner of the Environment and Sustainable Development, pointed out in his 2009 fall report, "the Department should help users clearly understand the NPRI, its data, and the data's limitations regarding its completeness and accuracy."[2]

Although the NPRI is not a repository for environmental enforcement data (re: inspections, prosecutions, etc.), and while it only applies to CEPA-listed substances, it does provide Canadians with critical information about pollutant releases and transfers in their communities. Such information allows for self-assessment of exposure to environmental hazards and invites public oversight, leading to greater citizen-government engagement in the enforcement of this particular federal law. It has served as the source of data for innovative citizen initiatives such as *Emitter Beta* (www.emitter.ca), a website that allows for the geographic mapping and colour-coded ranking of different industrial emissions across Canada.

The NPRI is a positive contribution to the Community Right to Know principle and, provided that the shortcomings are resolved, suggests a model for how to distribute environmental enforcement information under federal environmental statutes.

1 Environment Canada (2010), 2009 NPRI Reviewed Facility Data Release, online: http://www.ec.gc.ca/inrp-npri/default.asp?lang=En&n=BA891E32-1

2 Office of the Auditor General of Canada (2008), 2009 Fall Report of the Commissioner of the Environment and Sustainable Development to the House of Commons (Ottawa: Minister of Public Works and Government Services) at para 3.65, online: http://www.oag-bvg.gc.ca/Internet/English/parl_cesd_200911_03_e_33198.html

II | PROACTIVE DISCLOSURE AND THE GOVERNMENT OF CANADA'S SLOW TRANSITION TO OPEN GOVERNMENT

For Canadians to exercise their right to know about environmental enforcement activities, the federal government must become more open and transparent. Not only must it provide information upon public request, but it must also proactively disclose comprehensive data online for use by civil society, neighbours of polluting industries, academia, regulated entities (industry and municipalities), and other governments.

Indeed, the link between transparency, the right to know and open government was highlighted in the interim Information Commissioner's latest annual report.[1] Commissioner Suzanne Legault stated that proactive disclosure "is a fundamental aspect of freedom of information and open government, and we strongly encourage institutions to consider its value."[2] She further remarked upon the importance of making information available to the public as a matter of course "without the public having to resort to the *Access to Information Act* to get it."[3]

More broadly speaking, the federal government has taken steps towards establishing a more open culture of governance. In March 2011, the government launched Open Data Pilot, a 12-month project aimed at improving the ability of the public to find, download, and use data collected by the government.[4] As well, the federal government has a proactive disclosure policy, which focuses on financial and human resources related information, and was implemented to enhance transparency and oversight of public resources.[5] The explicit purpose of this policy is to allow Canadians and Parliament to better hold the government and public sector officials to account.

However, the policy is only applied to limited categories of information, such as travel and hospitality expenses of officials, contracts over $10,000 and cases of "founded wrongdoing" (e.g., breaches of the law or misuse of public funds) at departments or agencies.[6]

1 Interim Information Commissioner of Canada (2010), *Annual Report 2009-2010, Achieving Results. Building for Success*, (Ottawa: Minister of Public Works and Government Services) at c 6 ("Getting the Message about Transparency and Open Government").

2 *Ibid* at 28.

3 *Ibid* at 28. At an intergovernmental level, Canada's federal and provincial Access to Information and Privacy Commissioners issued an Open Government Resolution, calling for governments at all levels across Canada to endorse open government and to proactively disclose information in open formats. The resolution states that "[a]ccess to information and privacy commissioners are advocates for open government and promote the paradigm shift from reactive to Proactive Disclosure, and ultimately to open government." See *Access to Information and Privacy Commissioners Call for Open Government* (1 September 2010), Office of the Information Commissioner of Canada, online: http://www.oic-ci.gc.ca/eng/med-roo-sal-med_nr-cp_2010_8.aspx

4 Government of Canada (2011), *Open Data Pilot Project*, online: http://www.data.gc.ca/default.asp?lang=En&n=F9B7A1E3-1

5 See Treasury Board of Canada (2011), online: http://www.tbs-sct.gc.ca/pd-dp/index-eng.asp

6 Environment Canada (2011), *Proactive Disclosure*, online: http://www.ec.gc.ca/default.asp?lang=En&n=390AF41B-1

TABLE 1 | SUMMARY OF STATUTORY REPORTING OBLIGATIONS

Statute	Reporting Obligation
Canadian Environmental Protection Act	**342. (1)** The Minister shall, as soon as possible after the end of each fiscal year, prepare and cause to be laid before each House of Parliament a report on the administration and enforcement of this Act for that year.
Fisheries Act	**42.1** (1) The Minister shall, as soon as possible after the end of each fiscal year, prepare and cause to be laid before Parliament a report on the administration and enforcement of the provisions of this Act relating to fish habitat protection and pollution prevention for that year. *Statistical summary* (2) The Annual Report shall include a statistical summary of convictions under section 40 for that year.
Species at Risk Act	**126.** The Minister must annually prepare a report on the administration of this Act during the preceding calendar year and must have a copy of the report tabled in each House of Parliament within the first 15 days that it is sitting after the completion of the report. The report must include a summary addressing the following matters: .... (e) enforcement and compliance actions taken, including the response to any requests for investigation; ...
Migratory Birds Convention Act	No general reporting obligation
Canada Wildlife Act	No general reporting obligation
The Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act	**28.** The Minister shall annually prepare a report with respect to the administration of this Act during the preceding calendar year and shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days that the House is sitting after its completion.

While Ecojustice applauds this shift towards open government that a proactive disclosure policy and the *Open Data Pilot* project may represent, they must be applied more broadly. Open government ought not to be selectively achieved.

The enforcement of Canada's federal environmental laws, supported by meaningful public engagement, requires the proactive publication of comprehensive enforcement and compliance data via the Internet. Although the National Pollutant Release Inventory (see sidebar, page 19) does not provide enforcement information *per se*, it does offer a web-based, downloadable and machine-readable model to build upon. But as outlined in the following section, the piecemeal enforcement information that is currently available does not constitute delivery on the promise of open government.

III | PIECEMEAL ENFORCEMENT INFORMATION MADE PUBLIC: AN INCOMPLETE PICTURE OF ENFORCEMENT

At present, only partial information regarding the federal government's enforcement of environmental laws is made publicly available. The information comes from three main sources:

- annual reports prepared pursuant to statutory requirements;
- Enforcement Notifications posted online; and
- news releases and departmental statements.

None of these sources, separately or in combination, provides the public with sufficient information to allow for a comprehensive evaluation of the federal government's enforcement efforts.

Statutory reporting obligations, including any requirement to publish annual reports regarding environmental enforcement, vary according to each law (see Table 1). Typically, annual reports provide basic enforcement information. However, the reports are dispersed across several Environment Canada websites and the available information is fragmented and released at unpredictable times throughout the year. The following examples illustrate the limited level of detail provided in the annual reports regarding key CEPA prosecutions in 2009-10:

> On June 4, 2009, the owner of a Nova Scotia company pleaded guilty to violating the *Disposal at Sea Regulations* and was fined $2,000.
>
> On October 20, 2009, a company from British Columbia was ordered to pay a $1,000 fine and make a $14,000 contribution to the EDF [Environmental Damages Fund] after pleading guilty to committing an offence under paragraph 272(1)(a) of CEPA 1999 for using more solvent than what is allowed under the company's Environment Canada permit.[3]

In these examples, there is no information about the company's name, its exact location, the specific CEPA substance or the quantity disposed of in violation of the regulations.

Where the law does not impose any obligation to publish an annual report, the public must rely upon Enforcement Notifications. Enforcement Notifications consist of a press release-style document with limited information concerning successful prosecutions, and are found on the Environment Canada website.[1] Unfortunately, Enforcement Notifications are typically limited to providing the name of the party prosecuted and convicted, the date and reason for the conviction and the amount of the penalty.

The third source of enforcement information comes from news releases and departmental statements, which may provide further information regarding charges and convictions that are also reported in the Enforcement Notifications. Ecojustice's research indicates that not all information provided in Enforcement Notifications is consistent with news releases.

At right is a recent example of an Enforcement Notification,[2] which was also made available as a news release.[3]

1 Environment Canada (2011), *Enforcement Notifications*, online : http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=8F711F37-1

2 Environment Canada (2011). IBID?

3 Environment Canada (2011), *News Release: CN Rail Convicted Under Fisheries Act for Diesel Spill*, online: http://www.ec.gc.ca/default.asp?lang=En&n=714D9AAE-1&news=96A4C151-B025-4F62-A98E-9CED5D5D5D6D; *Enforcement Notifications: CN Rail Convicted for Diesel Spill*, online: http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=1E61EB9E-1

CN Rail Convicted for Diesel Spill

March 14, 2011

SURREY, B.C.—On Friday, March 11, 2011, Canadian National Railway (CNR) Company was convicted in British Columbia Provincial court of an offence under the Fisheries Act.

Canadian National Railway was sentenced to pay a total of $75,000 for depositing a deleterious substance (diesel fuel) into waters frequented by fish. A total of $70,000 of these penalties is being directed to projects related to the conservation and protection of fish and fish habitat in the waters of the Fraser River and its tributaries.

On January 5, 2009, Environment Canada was notified of a diesel slick near the confluence of Barker Creek and the Fraser River. A subsequent investigation confirmed that a fuel pumping system, found on the CN Rail Thornton Yards property, was the source of the diesel release.

Environment Canada enforcement officers investigate potential offences under a number of Acts and Regulations including the *Canadian Environmental Protection Act, 1999*; the *Species at Risk Act*; the pollution prevention provisions of Canada's *Fisheries Act*; the *Migratory Birds Convention Act, 1994*; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* (WAPPRIITA). They help ensure that companies, government departments and agencies and the general public comply with legislation and regulations that protect Canada's environment.

Together, these sources of environmental enforcement information provide Canadians with a fragmented and incomplete picture. The most glaring weaknesses in enforcement information disclosure reflect the following structure/format and substance considerations:

» Overall compliance rates—i.e., the number of regulated entities divided by the number of violations—are not provided under any statute or regulation, with the exception of the *Metal Mining Effluent Regulations* under the *Fisheries Act*.[1] The federal government's failure to disclose compliance levels is unacceptable, and must be addressed.

» Very limited supplemental information is provided for each conviction in the annual report tables, particularly as regards the identification of the offenders (often a municipality or company), the exact location of the incident/violation and the exact nature of the violation (i.e., specific substances, quantities, etc.).

» The data on enforcement activities, such as inspections and investigations, lack context and are only useful to track trends because they are not normalized. That is, the number of annual inspections is not presented in relation to the associated number of total facilities, which would demonstrate the percentage of regulated facilities that are inspected each year, and the percentage of regulated facilities that are found to be in non-compliance.

» In general, there is no detailed information regarding cases that did not result in a conviction—mere inspections or investigations—or regarding charges that did not result in prosecution. The Government of Canada does not provide conviction rate statistics, as does the Environmental Protection Agency in the United States.

» Although administrative monetary penalties (AMPs) have only recently emerged as an enforcement tool, data concerning their use (number of AMPs by law/regulation, amounts imposed, etc.) would be useful in future disclosures.

» There are inconsistencies between the statistical information provided in the annual report and Enforcement Notifications from the same year. As illustrated in Table 2 (see page 34), the data with respect to number of convictions under particular regulations are, on occasion, materially different.

» Certain annual reports (*SARA* and *WAPPRIITA*) are based on the calendar year, while others (*CEPA*, *Fisheries Act*) are based on the government's fiscal year (April—March). This creates an unnecessary layer of complication when comparing enforcement data between various federal environmental laws.

1 Environment Canada, *Summary Review of Performance of Metal Mines Subject to the Metal Mining Effluent Regulations in 2009*, online: http://www.ec.gc.ca/Publications/default.asp?lang=En&xml=A0E3B5E2-DA9C-4B9C-9F13-19F4BA3BDB00

» Geographic data analysis, which would allow the public to learn how enforcement activities are carried out in a particular location or vis-à-vis a particular regulated entity, is not possible. As a result, there is no way for citizens or investors to know what is going on at a specific facility or company. This fundamental weakness reflects the fact that the tabular information provided in annual reports is destined for Parliament, as opposed to citizens concerned about pollution in their community.

Finally, it must be mentioned that none of these fragmented sources of information are available in searchable formats as is done with the NPRI or the U.S. Environmental Protection Agency's Enforcement and Compliance History Online (ECHO), which we will discuss in section five.

IV | NATIONAL ENFORCEMENT MANAGEMENT INFORMATION SYSTEM AND INTELLIGENCE SYSTEM (NEMISIS): FOR GOVERNMENT EYES ONLY

A fourth source of information, which is classified and not readily available to the public, is the National Enforcement Management Information System and Intelligence System (NEMISIS) electronic database. NEMISIS allows the federal government to collaborate extensively and interdepartmentally and to share environmental enforcement information. NEMISIS is used to track and manage federal enforcement activities with respect to six environmental protections and wildlife acts.[2] The data is available to Environment Canada inspectors, investigators, wildlife officers and managers, and is widely accessed and used by other federal departments (Fisheries and Oceans Canada, Health Canada) responsible for the enforcement of environmental laws. Non-sensitive information contained in NEMISIS may be obtained pursuant to Access to Information and Privacy (ATIP) requests.

NEMISIS includes recording, tracking and reporting of occurrences, inspections, investigations, persons, organizations and enforcement officers.[3] "As a management tool, NEMISIS can be used to monitor trends, set priorities and prepare regular and special purpose reports."[4]

2 Environment Canada (2010), *About the Enforcement Branch,* online: <*http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=F30B6366-1* The six laws covered by NEMISIS are the *Canadian Environmental Protection Act, 1999; the Fisheries Act; the Migratory Birds Convention Act, 1994; the Canada Wildlife Act; the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* and the *Species at Risk Act;* each of which will be evaluated subsequently in this report based on publicly available enforcement data.

3 Environment Canada (Evaluation Division, Audit and Evaluation Branch), *Evaluation of the Enforcement Program: Final Report* (Ottawa: Minister of the Environment, 2009) at c 4, online: *http://ec.gc.ca/doc/ae-ve/2009-2010/1076/p5_eng.htm#t4_0*

4 Environmental Canada (2004), Report of Seminar on National Enforcement Management Information System and Intelligence System- NEMISIS (Gatineau, Quebec), online: *http://www.ec.gc.ca/can-chil/default.asp?lang=En&n=D4EEEC4C-1*

Ecojustice recognizes the importance of this attempt at generating, organizing and sharing federal environmental enforcement data.

However, NEMISIS has been plagued by criticism, particularly about the accuracy and consistency of data entry.[1] In a June 13, 2010, article for the *Toronto Star*, Steve Rennie wrote, "In the past, Environment Canada has defended the NEMISIS database, which is riddled with missing, incomplete and inaccurate entries. In many cases the type and amount of contaminant spilled isn't known. But the department insists it has all the information it needs to track and prosecute polluters."[2]

Environment Canada's 2009-10 Evaluation of the Enforcement Program report found that the only performance information available on NEMISIS was with respect to two categories: "completed inspection and investigation reports" and "evidence and support for prosecution cases."

Regarding the utility of NEMISIS as a performance review mechanism, it was found that:

> There appears to be a general sense of frustration among many Program representatives because they believe the Enforcement Program has been cost-effective and quite successful at achieving its intended outcomes, yet this cannot be clearly demonstrated due to a lack of good performance data.[3]

We conclude that NEMISIS is an important internal enforcement database that should be examined closely to determine what, if any, additional information could be released to the public. But we are concerned that NEMISIS is not being used to its full potential. If the information this database contains is of limited use to senior management in evaluating high-level policy decisions around environmental enforcement, then there is reason to doubt the quality, accuracy and consistency of information that may eventually be released by the federal government for public consumption.

1 See Environment Canada (2010), *2009-2010 Annual Report: Evaluation of the Enforcement Program*, online: http://ec.gc.ca/doc/ae-ve/2009-2010/1076/p5_eng.htm

2 Steve Rennie, "Millions of Litres of Pollutants Dumped in Cities," The Star (13 June 2010), online: The Star http://www.thestar.com/news/canada/article/823043--millions-of-litres-of-pollutants-dumped-in-cities-analysis?bn=1

3 Environment Canada (2010), *2009-2010 Annual Report: Evaluation of the Enforcement Program*, "Are performance data collected against Enforcement Program activities and outcomes? If so, is the collected information used to inform senior management/decision makers?", online: http://ec.gc.ca/doc/ae-ve/2009-2010/1076/p5_eng.htm

V | DRAWING LESSONS FROM THE UNITED STATES: ENFORCEMENT AND COMPLIANCE HISTORY ONLINE (ECHO)

The enforcement and compliance data provided by Canada's federal government contrasts sharply with the Enforcement and Compliance History Online (ECHO) database managed by the U.S. Environmental Protection Agency. ECHO serves as a model for the centralizing of enforcement and compliance data and provides easy citizen access to information regarding the implementation of the *Clean Air Act, Clean Water Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, Federal Insecticide, Fungicide and Rodenticide Act* and the *Emergency Planning and Community Right to Know Act*.

ECHO combines information from six different sources into a one-stop shop for environmental enforcement data.[4] It provides fast, integrated searches of Environmental Protection Agency and state data for more than 800,000 regulated facilities under various laws. It also integrates inspections, violations, and enforcement information, including a record of facilities' compliance with environmental regulations and the dates, the types of violations and their seriousness, the nature of any enforcement action taken against a facility by the state or Environmental Protection Agency and whether any penalties have been issued.

ECHO allows communities to stay informed about enforcement and compliance issues with respect to local regulated facilities. Corporations can also monitor compliance of their facilities and investors are able to factor environmental performance into their decisions.[5] ECHO is searchable according to zip code or address, or using the map tool. It presents data in text or tables, can be sorted and analyzed in various ways and is available for download. It is also searchable by facility to obtain a snapshot of its compliance record, which includes:

- the number of inspections carried out by enforcement officials in the past five years;
- fiscal quarters in non-compliance over the past three years;
- formal enforcement actions in the past five years;
- informal enforcement actions in the past five years;
- penalties assessed;
- a "yes/no" indicator as to whether there are any current and significant violations; and
- the demographics of the area surrounding the facility.[6]

4 US Environmental Protection Agency (2011), *Enforcement & Compliance History Online (ECHO): Frequently Asked Questions,* "What are the benefits of ECHO?", online: http://www.epa-echo.gov/echo/faq.html

5 *Ibid*.

6 US Environmental Protection Agency (2011), Enforcement & Compliance History Online (ECHO): Frequently Asked Questions, "What reports are available from the ECHO site?", online: http://www.epa-echo.gov/echo/faq.html

In sum, ECHO provides a much more comprehensive picture of the U.S. federal government's environmental enforcement and compliance information in an online format that empowers communities and largely fulfills their "right to know."

VI | RECOMMENDATIONS ON ENVIRONMENTAL ENFORCEMENT INFORMATION DISCLOSURE

Canada's federal government would do well to emulate the ECHO approach, so that Canadians might find out for themselves, with a simple mouse click, what is going on (or not going on) with the enforcement of regulated facilities in their neighbourhood or community.

At present, only partial and piecemeal information regarding the federal government's enforcement of environmental laws is made available to Canadians through annual reports, Enforcement Notifications and news releases. None of these sources, separately or in combination, serve to provide the public with sufficient information to fully understand or evaluate enforcement efforts with respect to a particular community or facility. Ultimately, it is the public's ability to access and analyze government data that provides one of the most significant measures of government accountability, both for the regulator and the entities it regulates.

Ecojustice urges the federal government to grant Canadians immediate and universal access to enforcement data via the Internet. We recommend that the federal government give priority to the establishment of a comprehensive, regularly updated database of all federal environmental enforcement and compliance data, searchable by geographic area and by regulated entity. Once operational, such a database would:

- fulfill the Community Right to Know principle for all Canadian citizens;
- enable individuals and civil society to assist federal environmental regulators, leading to improvements in environmental performance and compliance;
- provide an excellent data source for innovative non- and for-profit initiatives, recognizing that dissemination of data is the raw material of innovation;[1]
- increase investor knowledge and awareness, leading to stronger markets;
- reduce the workload associated with attending to ATIP requests for information that need not be restricted; and
- create an economy of government resources and improve transparency.

1 David Eaves, "The Difference Data Makes," BCBusiness Online (8 October 2010), online: *http://www.bcbusinessonline.ca/bcb/business-sense/2010/10/08/difference-data-makes* "Governments are waking up to the fact that data—the quantitative information about their services and the communities they serve—is not simply a byproduct of operations but a strategic asset as valuable, if not more so, as a highway or road. While reliable government data helps streamline internal operations, it also presents strong opportunities for productivity gains and new service offerings within the business sector."

part two

ENFORCEMENT OF KEY FEDERAL ENVIRONMENTAL LAWS

chapter 1 | INTRODUCTION

Having outlined the partial and incomplete information upon which Ecojustice's analysis of federal environmental enforcement is based, we now turn to a statute-by-statute examination of this enforcement.

This report represents an original contribution to both the academic literature and policy discussions concerning environmental enforcement because it assesses the federal government's enforcement achievements in two ways.

First, it details the availability and quality of enforcement information available in relation to each of the following federal laws:

- *Canadian Environmental Protection Act;*
- *Fisheries Act;*
- *Species At Risk Act;*
- *Canada Shipping Act;*
- *Canada Wildlife Act;*
- *Migratory Birds Convention Act; and*
- *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act.*

Second, based on the available information, we draw conclusions and raise questions regarding the evolution of federal environmental enforcement over the past decade. Given the limited and sometimes inconsistent data, we evaluate the degree to which federal environmental laws are being enforced.

Understanding and critiquing enforcement based on available information requires an understanding of the relevant compliance and enforcement policy applicable to a given law.

For example, the Compliance and Enforcement Policy for the *Canadian Environmental Protection Act (CEPA)*[1] outlines the range of available enforcement activities, including:

- Inspections—the purposes of which are to verify compliance with CEPA and its regulations, and which may be conducted off-site (desk inspections) or on-site.
- Investigations—the purposes of which are to gather evidence and information relevant to a suspected violation from a variety of sources.
- Warnings
- Tickets
- Written directives
- Ministerial orders
- Injunctions
- Prosecutions
- Environmental Protection Compliance Orders (EPCOs)—the purposes of which are to secure an alleged violator's return to compliance, without use of the court system.
- Environmental Protection Alternative Measures (EPAMs)—the purposes of which are to allow for a negotiated return to compliance, based on an agreement with the regulated entity that is filed with the court and is a public document.

This report pays particular attention to the statistics concerning inspections, investigations, written warnings, prosecutions and convictions. It is beyond the scope of this report to evaluate the use of EPCOs and EPAMs.

1 Environment Canada (2010), *Compliance and Enforcement Policy for the Canadian Environmental Protection Act, 1999 (CEPA, 1999)* (Ottawa: Minister of Public Works and Government Services, 2001), online: http://www.ec.gc.ca/Publications/default.asp?lang=En&xml=326F7BE8-0483-4995-8E0E-F09719D202B8

chapter 2

ENFORCEMENT OF THE *CANADIAN ENVIRONMENTAL PROTECTION ACT* FROM 2000-2010

COMPLIANCE, which is the ultimate goal of any enforcement program, means conformity by regulated entities with requirements established by government to protect the environment, human health and safety. It refers to a state in which environmental requirements are achieved and maintained.

ENFORCEMENT is the application of a set of legal tools, both informal and formal (including inspections, investigations, warnings, orders, prosecutions, etc.), designed to impose legal sanction (e.g. penalty) to ensure a defined set of legal requirements is complied with.

The purpose of the *Canadian Environmental Protection Act* (CEPA)[1] is to prevent pollution and to protect environmental and human health by preventing and managing risks posed by harmful substances. CEPA also governs environmental and human health impacts of products of biotechnology, marine pollution, disposal at sea, vehicle, engine and equipment emissions, fuels, hazardous wastes and environmental emergencies. There are currently 56 regulations established pursuant to CEPA.[2]

1 *Canadian Environmental Protection Act*, RSC 1999, c 33.

2 Examples of regulations under *CEPA* include: *Disposal at*

1 | *CEPA* ENFORCEMENT INFORMATION

Although *CEPA* section 342(1) requires that the Minister of the Environment present an annual report "as soon as possible after the end of each fiscal year," historically, there have been problems related to the timely publication of these reports. No annual reports were available after the fiscal year 2004-05 until 2007. Reports for 2005-06 and 2006-07 became available only in November 2009. This elicited criticism from the Commissioner for Environment and Sustainable Development, who recommended that:

> Environment Canada should release... [due, unpublished] Annual Reports and ensure that future reports are released in a timely manner. In these reports, Environment Canada should present a complete and transparent picture of its previous year's compliance promotion and enforcement activities and related results, including compliance rates.[1]

The most recent *CEPA* annual report (April 2009 – March 2010) is available online,[2] archived alongside previous reports.[3] The Compliance and Enforcement section of the latest report provides details regarding Environment Canada's priorities for inspection, compliance promotion initiatives, an overview of the enforcement measures taken — including prosecutions, compliance orders and alternative measures—and a table of statistics. This table, reproduced in Appendix 3, lists the number of inspections, investigations and enforcement measures taken during the year pursuant to each *CEPA* regulation.

Consistency of statistical information between the table of statistics in the *CEPA* annual reports and the Enforcement Notifications is a concern, particularly for the years 2008-09 and 2009-10. As Table 2 indicates, in 2009-10 the data regarding convictions from each of these sources are materially different, not just in quantity, but also with respect to the regulations under which the convictions were obtained.

For the purposes of this report, Ecojustice has based the following enforcement analyses on the tables of statistics in the *CEPA* annual reports.

Sea Regulations; Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations; Ozone Depleting Substances Regulations; and Tetrachloroethylene (Use in Dry Cleaning and Reporting Requirements) Regulations.

1 Office of the Auditor General of Canada (2008), *2009 Fall Report of the Commissioner of the Environment and Sustainable Development to the House of Commons* (Ottawa: Minister of Public Works and Government Services), online: *http://www.oag-bvg.gc.ca/Internet/English/parl_cesd_200911_e_33253.html*

2 Environment Canada (2010), *Canadian Environmental Protection Act, 1999. Annual Report for April 2009 to March 2010* (Ottawa: Minister of Public Works and Government Services), online: *http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=39419FFB-1*

3 Environment Canada (2010), *Annual Reports: Archives,* online: *http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=477203E8-1*

TABLE 2 | CONSISTENCY OF CONVICTION INFORMATION PUBLISHED IN 2009-10

CEPA Regulation	Number of Convictions in Annual Report	Number of Convictions in Enforcement Notifications
Disposal at Sea	3	NONE REPORTED
Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations	4	1
NO Regulation	NONE REPORTED	2
Ozone Depleting Substances	NONE REPORTED	1
Solvent Degreasing	1	NONE REPORTED
Tetrachloroethylene (Use in Dry Cleaning and Reporting Requirements) Regulations	3	2
Vehicle, Engine and Equipment Emission Provisions	NONE REPORTED	1
Total	11	7

CEPA *Annual Report and Enforcement Notifications*

II | *CEPA* ENFORCEMENT PRIORITIES: THE PARADOX OF LESS ENFORCEMENT ACTIVITY

Enforcement activities undertaken under *CEPA* and its associated regulations are prioritized each year.

The following six regulations, out of a total of 54 regulations, were identified as priorities in 2009-10:

- *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*
- *Federal Halocarbon Regulations*
- *Off-Road Compression-Ignition Engine Emission Regulations*
- *Off-Road Small Spark-Ignition Engine Emission Regulations*
- *On-Road Vehicle and Engine Emission Regulations*
- *Perfluorooctane Sulfonate and its Salts and Certain Other Compounds Regulations*[1]

In 2009-10, those six regulations accounted for 18% of total inspections, 29% of investigations, 52% of written warnings and 44% of prosecutions conducted by the 188 *CEPA* enforcement officers. In 2008-09, the priorities were different, with the exception of the *Export*

1 Environment Canada (2011), *Canadian Environmental Protection Act, 1999, Annual Report for April 2009 to March 2010* (Ottawa: Minister of Public Works and Government Services, 2010) at s 10.3 (Enforcement Priorities), online: http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=39419FFB-1&offset=11&toc=show [Environment].

TABLE 3 | SUMMARY OF ENFORCEMENT ACTIVITIES FOR PRIORITIZED AND NON-PRIORITIZED *CEPA* REGULATIONS

	Number of Activities		% of Total Number of Enforcement Activities	
	2008/2009 (non-priority regulations)	**2009/2010** (priority regulations)	**2008/2009** (non-priority regulations)	**2009/2010** (priority regulations)
Inspections	535	249	11.6%	4.7%
Investigations	4	5	11.4%	11.4%
Written Warnings	188	46	17%	2.5%
Prosecutions	0	1	0%	4%

and Import of Hazardous Waste and Hazardous Recyclable Material Regulations. Paradoxically, as Table 3 demonstrates, a comparison of *CEPA* annual report statistics from 2008-09 and 2009-10 shows that there was increased enforcement activity (both in absolute and relative terms) of those regulations when they were not considered priorities.

This finding is nothing short of bizarre. One would assume that assigning a high priority to certain regulations would result in increased, not decreased, enforcement activity. This leads Ecojustice to question the value of prioritizing the enforcement of particular regulations.

III | *CEPA* ENFORCEMENT OFFICERS ON THE RISE

As indicated in Figure 1, the number of *CEPA* enforcement officers increased from 90 in 2000-01 to 188 in 2009-10. Ecojustice sees this growth as a positive development.

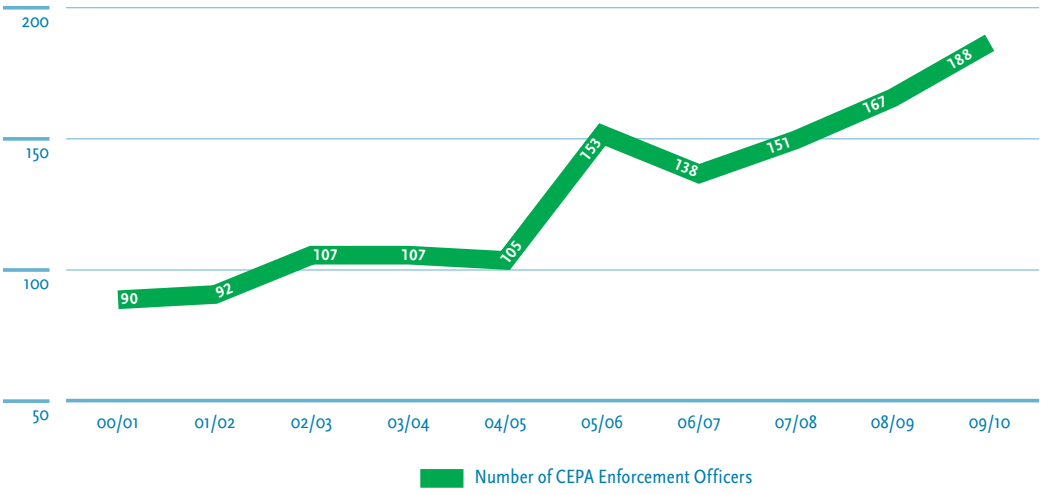
IV | *CEPA* INSPECTION NUMBERS INCREASE ONLY SLIGHTLY, DESPITE NEW ENFORCEMENT OFFICERS

Despite the more than two-fold increase in enforcement officers, the number of combined on-site and off-site inspections conducted has remained relatively stable – averaging slightly more than 5,000 per year – since 2004-05. Figure 2 shows a 17% increase in inspections from the year in which the most inspections took place (2004-05) as compared with the year in which the fewest inspections took place (2003-04).

There is no data regarding the total number of facilities/regulated entities, so it is not possible to determine the percentage that are inspected or warned each year. Interestingly, the number of written warnings issued (Fig. 2) has a weak correlation to the number of inspections conducted.

We would anticipate that an increase in the number of written warnings would correlate with an increase in inspections.

FIGURE 1 | NUMBER OF ENFORCEMENT OFFICERS, 2000-10 (FISCAL YEARS)



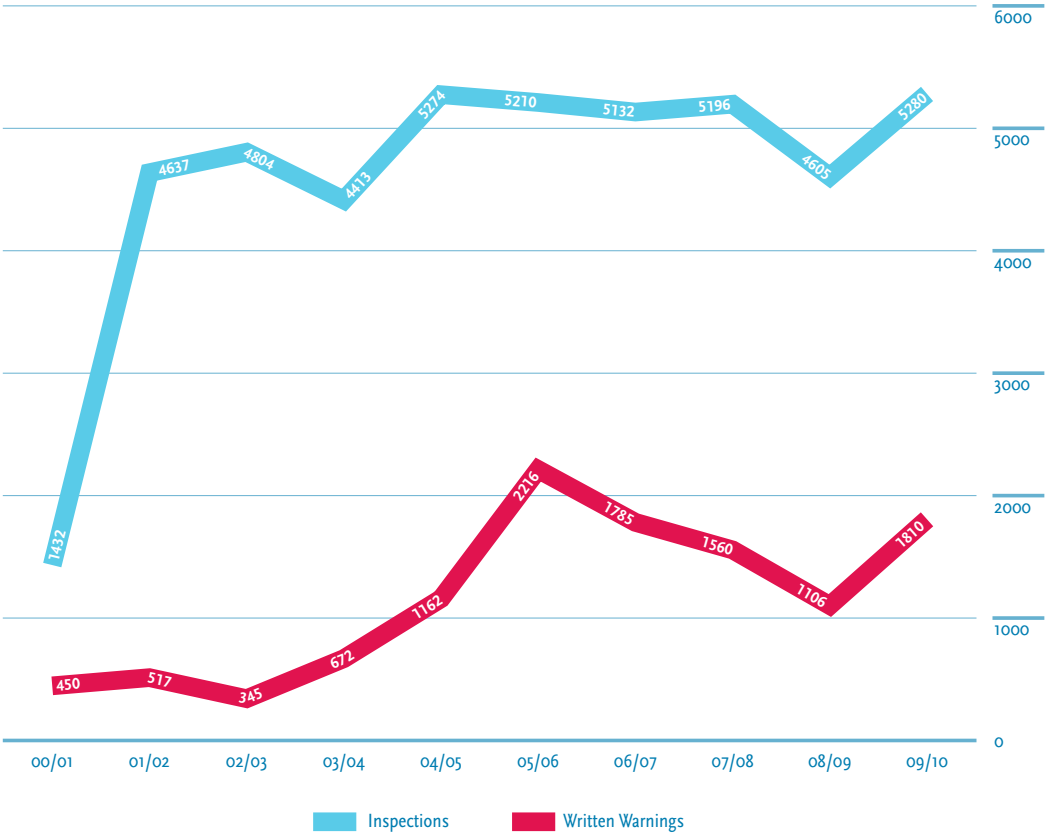
V | *CEPA* INVESTIGATION NUMBERS ARE ON THE DECLINE, WHILE PROSECUTION AND CONVICTION NUMBERS ARE LOW IN ABSOLUTE TERMS

As shown in Figure 3, the number of investigations also varies wildly by year, with a general decline shown since 2003-04, despite an increase in the number of enforcement officers. The numbers of prosecutions and convictions are very low in absolute terms. Apart from 2001-02 and 2009-10, there have been far fewer than 20 prosecutions and 20 convictions under *CEPA* each year.

VI | LIBERAL VS. CONSERVATIVE GOVERNMENTS ON *CEPA* ENFORCEMENT

Comparing the periods of Liberal and Conservative governance also yields some interesting results. Since the Conservative Party (2006-09 to 2009-10, fiscal years) replaced the Liberals (2001-02 to 2005-06, fiscal years) as the federal governing party, the average number of investigations has decreased by 7.8%. Inspections have increased 37.8% under the Conservative government, but the average number of inspections conducted per *CEPA* officer decreased by 27%. Overall, it would appear that the edge on *CEPA* enforcement commitment, in regards to the number inspections, goes to the Conservative government.

FIGURE 2 | COMPARING NUMBERS OF INSPECTIONS AND WRITTEN WARNINGS ISSUED, 2000-10 (FISCAL YEARS)



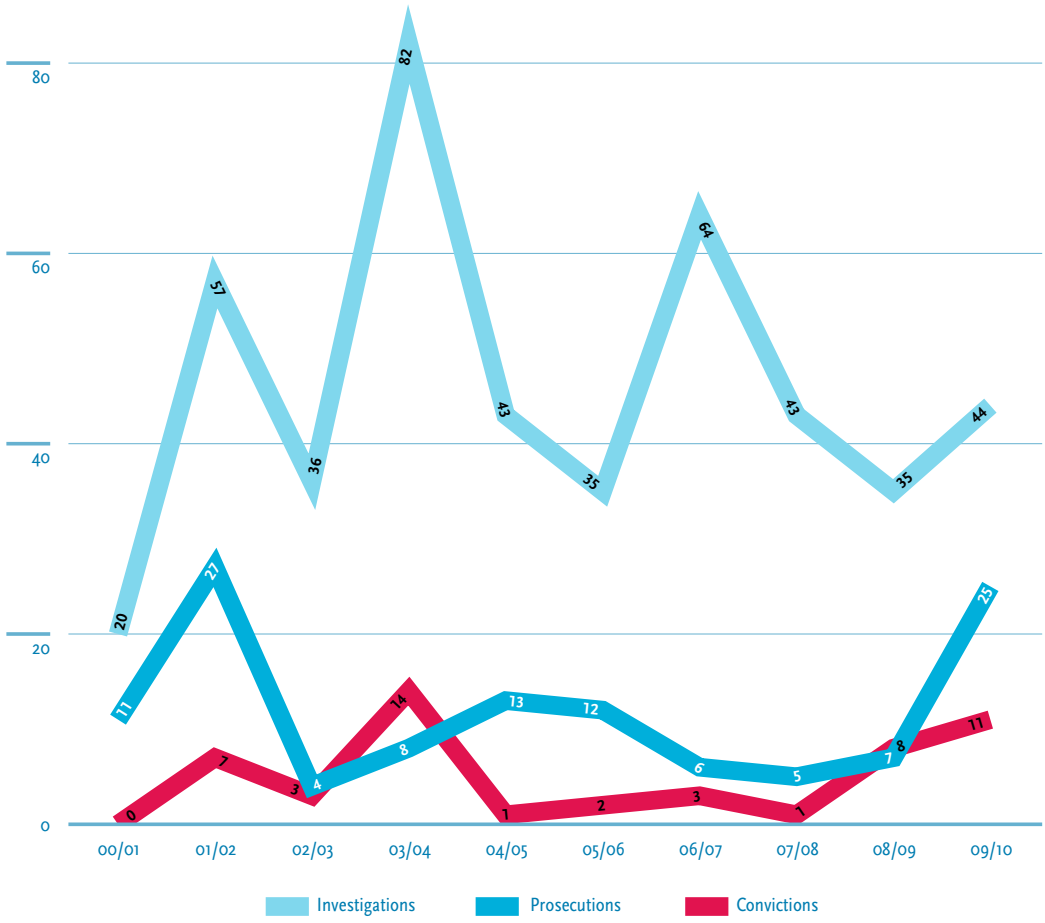
VII | *CEPA* PENALTIES AND FINES REMAIN LOW

Beyond the low absolute number of prosecutions and convictions, Ecojustice is concerned about the level of the fines imposed against those convicted of *CEPA* violations. Before the *Environmental Enforcement Act*, whose provisions have not yet fully come into force, the maximum fine under *CEPA* was $1,000,000 and/or three years in jail for indictable offences and $300,000 and/or six months in jail for summary conviction.[1] Appendix 1 summarizes the number of convictions under *CEPA* and the associated penalties assessed by the courts in the three years since March 2008.

During this period there have been 23 convictions under *CEPA* reported in the Enforcement Notifications. These convictions have resulted in a total of $242,050 in fines (less than one quarter of the maximum possible fine for any one conviction), an average of only $10,524 per conviction. The largest fine was $50,000 in September 2009 under the *Federal Halocarbon Regulations*. The next highest fine was $20,000. Ecojustice finds that small fines, small contributions to environmental funds and community service are the most common sanctions for *CEPA* violations.

1 *CEPA*, 1999, s 272(2).

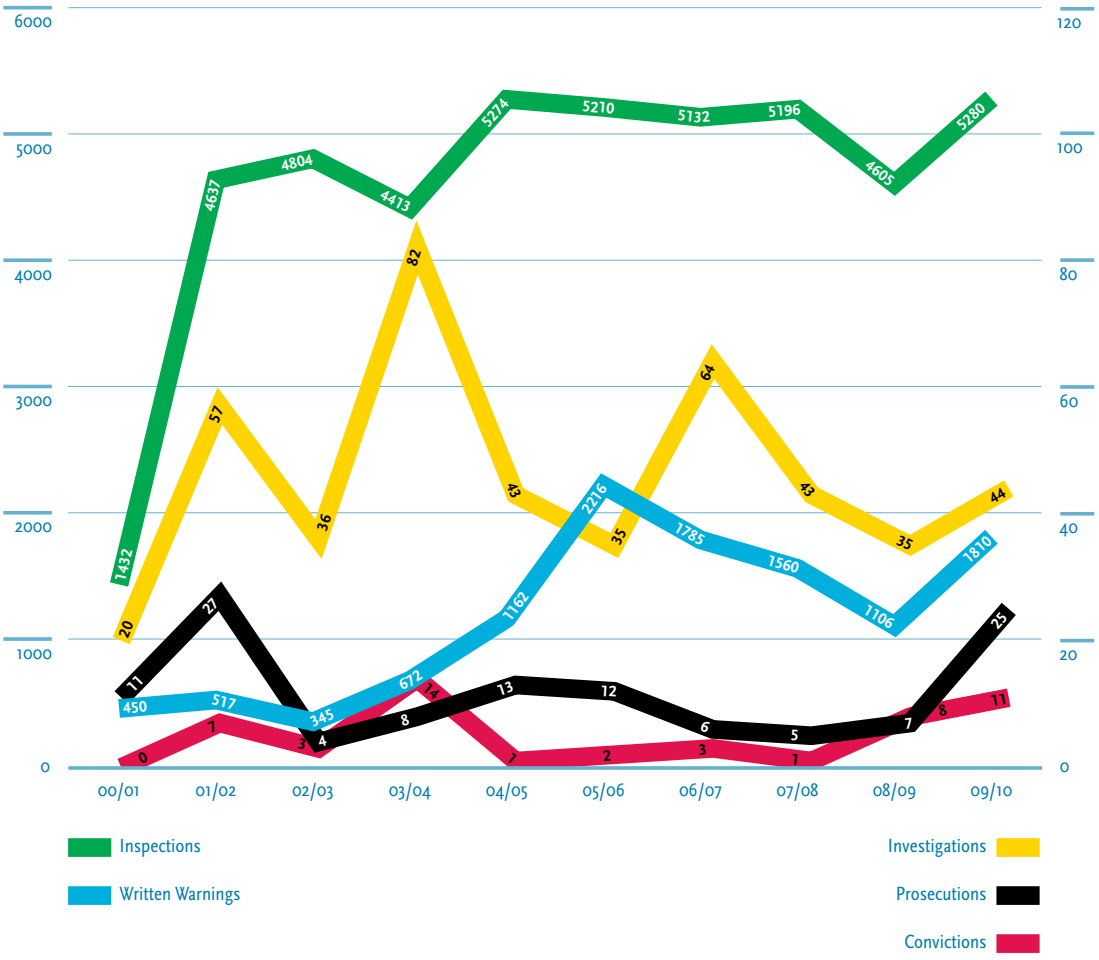
FIGURE 3 | NUMBER OF INVESTIGATIONS, PROSECUTIONS AND CONVICTIONS, 2000-10 (FISCAL YEARS)



VIII | SUMMARY OF KEY *CEPA* ENFORCEMENT TRENDS

Each of these enforcement activities—inspections, warnings, investigations, prosecutions and convictions—is summarized in Figure 4. It is clear that the slight increase in *CEPA* inspections and enforcement officers has not resulted in a corresponding increase in written warnings, prosecutions or convictions. Over 10 years, the federal government has added more officers and increased the number of inspections, yet the numbers of investigations and prosecutions have not reached levels achieved earlier in the decade. Written warnings are most frequently used to punish offenders. Arguably, warnings were effective in generating compliance, thereby reducing the need for prosecutions (although, as mentioned previously, compliance information is not available). It would be useful, therefore, to have more publicly available information regarding the results of warnings.

FIGURE 4 | NUMBER OF INSPECTIONS, WRITTEN WARNINGS, INVESTIGATIONS, PROSECUTIONS AND CONVICTIONS, 2000-2010



Ecojustice recognizes that investigations do not necessarily lead to prosecutions in the same fiscal year and that prosecutions begun in one year are not necessarily resolved in time for inclusion in the statistics for that same year. Therefore, it is hard to determine the proportion of prosecutions that result in convictions on a year-by-year basis. However, the more important conclusion we draw from the available data is that the total number of prosecutions and convictions is extremely small in relation to the number of inspections, warnings and investigations. Bringing an alleged violation to the attention of a regulated entity will not force the violator to return to compliance. Since the credible threat of a successful prosecution is crucial to achieving a deterrent effect, these low absolute numbers (and the small fines accompanying convictions) give rise to concern regarding the overall effectiveness of the *CEPA* enforcement regime.

chapter 3

ENFORCEMENT OF THE *FISHERIES ACT* FROM 2000-10

The *Fisheries Act*[1] is Canada's oldest federal environmental law and serves to protect waters that are or may be fish-bearing. The *Fisheries Act* is the source of 32 regulations including the *Petroleum Refinery Liquid Effluent Regulations,* the *Metal Mining Effluent Regulations* and the *Pulp and Paper Effluent Regulations*.

Fisheries and Oceans Canada (DFO) is responsible for administering section 35 of the *Fisheries Act*, which is the key fish habitat protection provision, prohibiting any work or undertaking that would cause the harmful alteration, disruption or destruction of fish habitat. Environment Canada administers section 36(3), the *Fisheries Act*'s key pollution prevention provision that prohibits the deposit of deleterious substances into waters frequented by fish, unless otherwise authorized.[2]

1 *Fisheries Act,* RSC 1985, c F-14.

2 Environment Canada (2011), *Reports and Statistics: Annual Reports and National Statistics. Canadian Environmental Protection Act and Fisheries Act,* online: http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=5C63F879-1.

1 | *FISHERIES ACT* ENFORCEMENT INFORMATION

Although the *Fisheries Act* is enforced by both DFO and Environment Canada, there is no single consolidated reporting format. Instead each department reports on its activities separately. This is problematic as they use similar, but distinct metrics (e.g., DFO does not report on inspections), making data comparison difficult.

The annual reports for the *Fisheries Act*, required under section 42(1), are published on DFO's website.[1] The timely publication of these reports is an ongoing issue, as the most recent published report on the website is from fiscal year 2008-09 (i.e., 12 months ending in March 2009). In 1998, non-governmental groups represented by counsel at Sierra Legal Defence Fund (now Ecojustice) brought a successful application for judicial review against the Minister of Fisheries and Oceans for failure to prepare and lay before Parliament the annual reports from 1995, 1996 and 1997.[2]

Information regarding Environment Canada's enforcement of the *Fisheries Act* is available through the CEPA registry or directly from the enforcement section of Environment Canada's website (the same Internet portal as other statutes enforced by Environment Canada).[3] The sources provide numerical information, i.e., the number of inspections (on-site and off-site), investigations, prosecutions, charges, convictions, contraventions, directives and written warnings. No other details are provided for written warnings, prosecutions, or any other measures found in the table. No names of violators or locations of violations are provided.

Information regarding the enforcement activities of DFO under the *Fisheries Act* is available on its website.[4] The Fish Habitat Protection Provisions information is divided into three tables. The first table contains the number of warnings issued, charges laid and alternatives to prosecution. It is divided by region (Newfoundland and Labrador, Maritimes, Gulf, Québec, Central and Arctic, and Pacific) but not by regulation. The second table outlines the number of convictions by region. The third table is a summary of convictions and alternative measures to prosecution such as contributions to the Environmental Damages Fund. It identifies the province where the offence occurred, the body of water and the section of the *Fisheries Act* that was violated, and provides the project description, the conviction/resolution date, the fine and the sentencing details.

1 Department of Fisheries and Oceans (2010), *Annual Reports to Parliament,* online: http://www.dfo-mpo.gc.ca/reports-rapports-eng.htm or http://www.dfo-mpo.gc.ca/habitat/role/141/reports-rapports/index-eng.htm.

2 *Friends of the Oldman River Society v Canada (Minister of Fisheries & Oceans)*, 29 CELR (NS) 315.

3 *Environment, supra* note 50.

4 Department of Fisheries and Oceans (2010), *Annual Reports to Parliament,* online: http://www.dfo-mpo.gc.ca/habitat/role/141/reports-rapports/index-eng.htm

II | DECREASE IN *FISHERIES ACT* WARNINGS, CHARGES & CONVICTIONS BY DFO

Figure 5 outlines the annual variations of warnings, charges and convictions that were undertaken by DFO from fiscal year 2001-02 until 2008-09 (the last year data is posted). The decrease in the number of warnings over this period, as well as charges and convictions after 2004-05, is a matter of concern. The number of charges plummets from a high of 71 in 2002-03 to a low of six in 2006-07. The number of convictions drops from a high of 33 in 2003-04 to a low of two in 2008-2009.

III | *FISHERIES ACT* INSPECTIONS BY ENVIRONMENT CANADA DECREASE MORE THAN 50% SINCE 2002–03

A similar downtrend is apparent (Figure 6) in the number of *Fisheries Act* inspections conducted by Environment Canada: the number of inspections has declined by more than 50% since 2002-09.

IV | *FISHERIES ACT* WARNINGS, PROSECUTIONS & CONVICTIONS BY ENVIRONMENT CANADA ARE LOW IN ABSOLUTE TERMS

Figure 7 outlines the number of written warnings, prosecutions and convictions by Environment Canada. There have been less than 17 prosecutions under the *Fisheries Act* in each of six of the past seven years.

This low figure is of particular concern when one considers that the average number of annual inspections exceeded 4,000, and when one considers that the number of warnings has increased over time. It is possible that these prosecution and conviction numbers have been skewed due to the fact that Environment Canada has entered into administrative agreements with different provinces to enforce those sections of the *Fisheries Act* for which it is responsible.

V | LIBERAL VS. CONSERVATIVE GOVERNMENTS ON *FISHERIES ACT* ENFORCEMENT

Once again, it is useful to compare the *Fisheries Act* enforcement data from the periods of Liberal (2001-02 to 2005-06, fiscal years) and Conservative (2006-07 to 2008-09) government. The average number of written warnings, charges and convictions obtained by DFO declined by -64%, -55% and -49% in every year since the Conservatives took power. Furthermore, between 2002-03 and 2005-06 (Liberal) and 2006-07 and 2008-09 (Conservative), the average number of written warnings by Environment Canada increased by 13% and the number of prosecutions decreased by 62%. Both of these trends suggest a weakened commitment to *Fisheries Act* enforcement under the Conservative government.

The Commissioner of the Environment and Sustainable Development (CESD) reported on the enforcement of *Fisheries Act* provisions by both Environment Canada and DFO in 2009. The findings of the 2009 spring report by the CESD were nothing short of damning. In particular:

» DFO did not have a systematic approach to monitoring proponents' compliance with the conditions of its project approvals (para. 1.38).

» A lack of enforcement documentation was found in the Environment Canada files reviewed (para. 1.46), and due to the lack of documentation, the CESD could not determine whether DFO was following its Compliance and Enforcement Policy. The CESD could not find evidence of what, if any, actions the Department had taken to inspect or investigate alleged violations or what enforcement actions it had taken (para. 1.47).

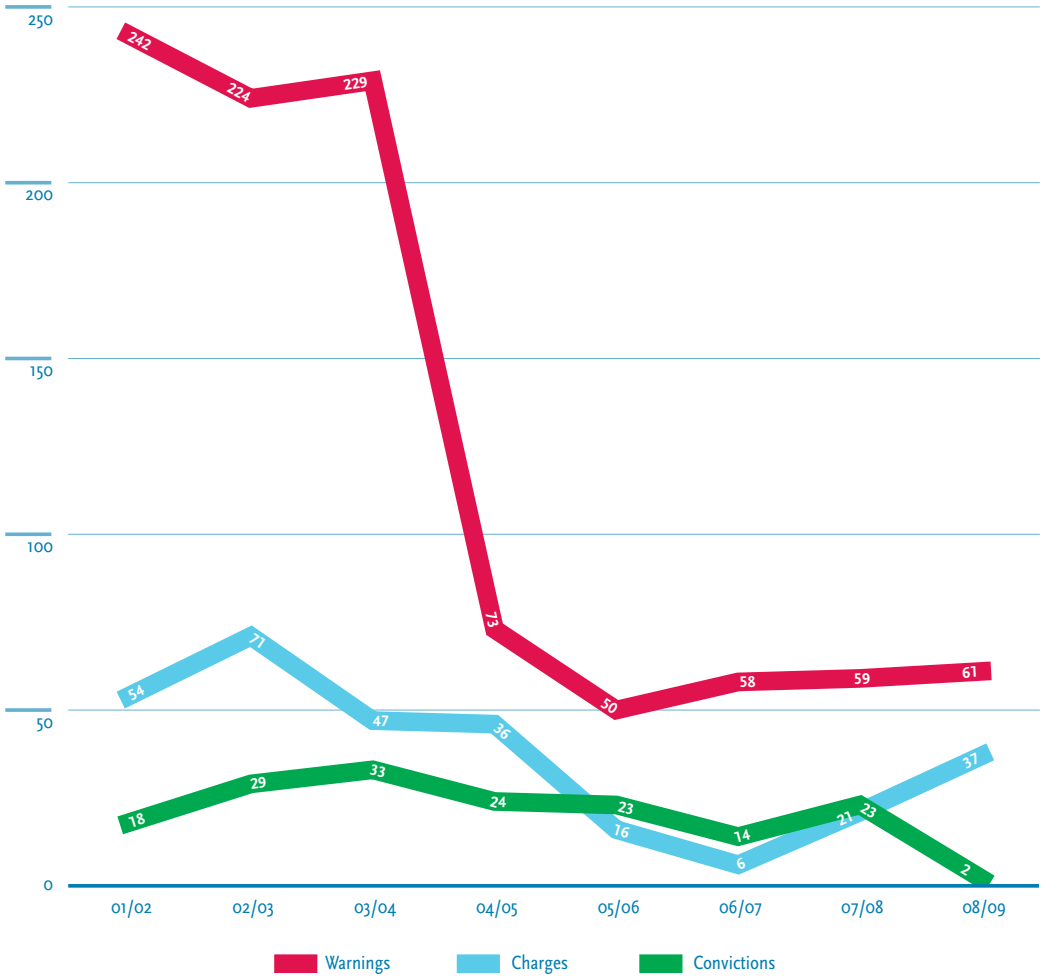
» Environment Canada had limited information on the nature and extent of *Fisheries Act* compliance issues (para. 1.123).

» The weaknesses in Environment Canada's quality assurance and control practices limit its ability to demonstrate that actions were being taken in accordance with the Compliance and Enforcement Policy (para. 1.125).

While both departments agreed with the CESD's findings and recommendations, it remains to be seen how successful the efforts to improve its enforcement and compliance will be.

Source: Office of the Auditor General of Canada, 2009 Spring Report of the Commissioner of the Environment and Sustainable Development, Chapter 1 - Protecting Fish Habitat, online *http://www.oag-bvg.gc.ca/internet/English/parl_cesd_200905_01_e_32511.html#hd3a*

FIGURE 5 | *FISHERIES ACT* WARNINGS, CHARGES, CONVICTIONS BY DFO, 2001-09 (FISCAL YEARS)

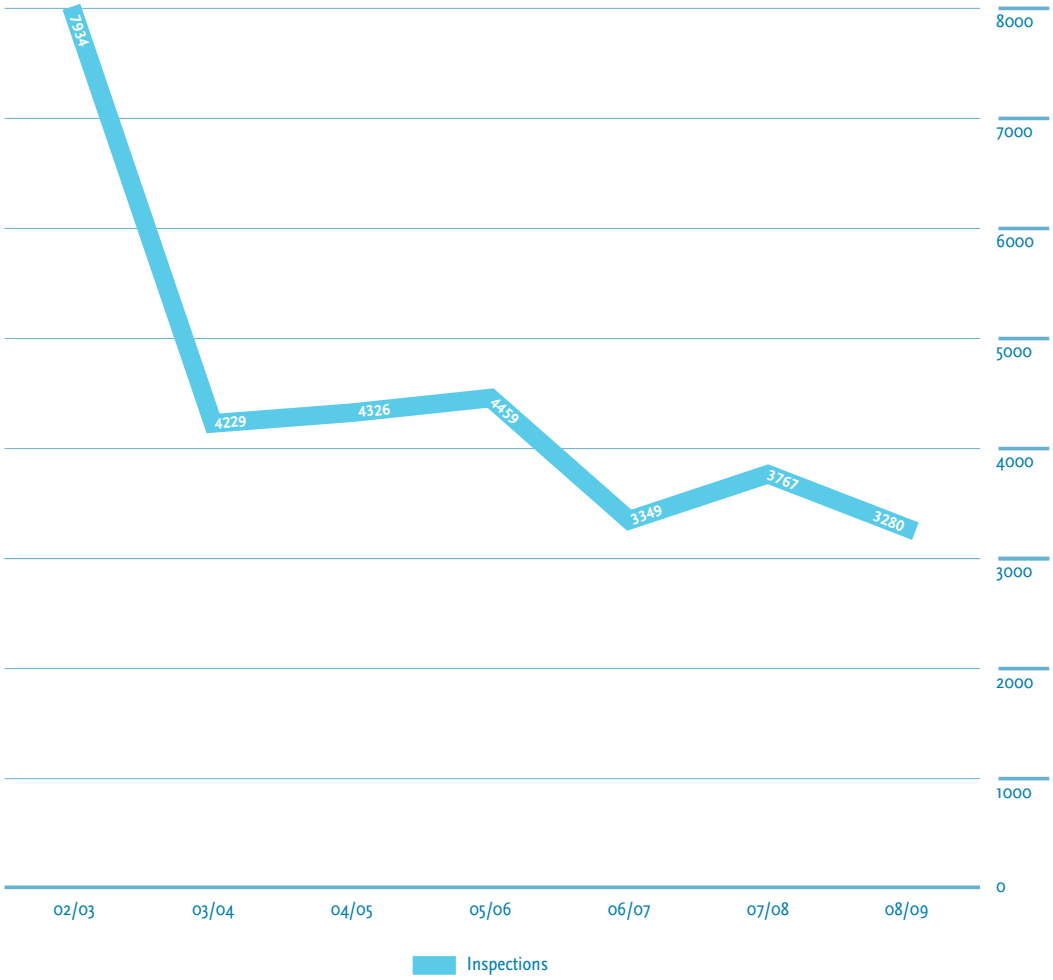


Significant decrease in DFO enforcement activities

VI | *FISHERIES ACT* PENALTIES AND FINES REMAIN LOW

Beyond the low absolute number of prosecutions and convictions, Ecojustice is concerned about the low level of fines imposed against those convicted of *Fisheries Act* violations. Noting that the *Environmental Enforcement Act* doesn't apply to the *Fisheries Act*, there have been no recent increases in the sanctions for violations of its provisions. While the maximum penalty under *Fisheries Act* section 40(1) for summary convictions and for indictable offences is $1,000,000 and/or three years in jail per occurrence, the fines assessed by the courts for convictions that Environment Canada have achieved are significantly less.

FIGURE 6 | *FISHERIES ACT* INSPECTIONS BY ENVIRONMENT CANADA, 2002-09 (FISCAL YEARS)



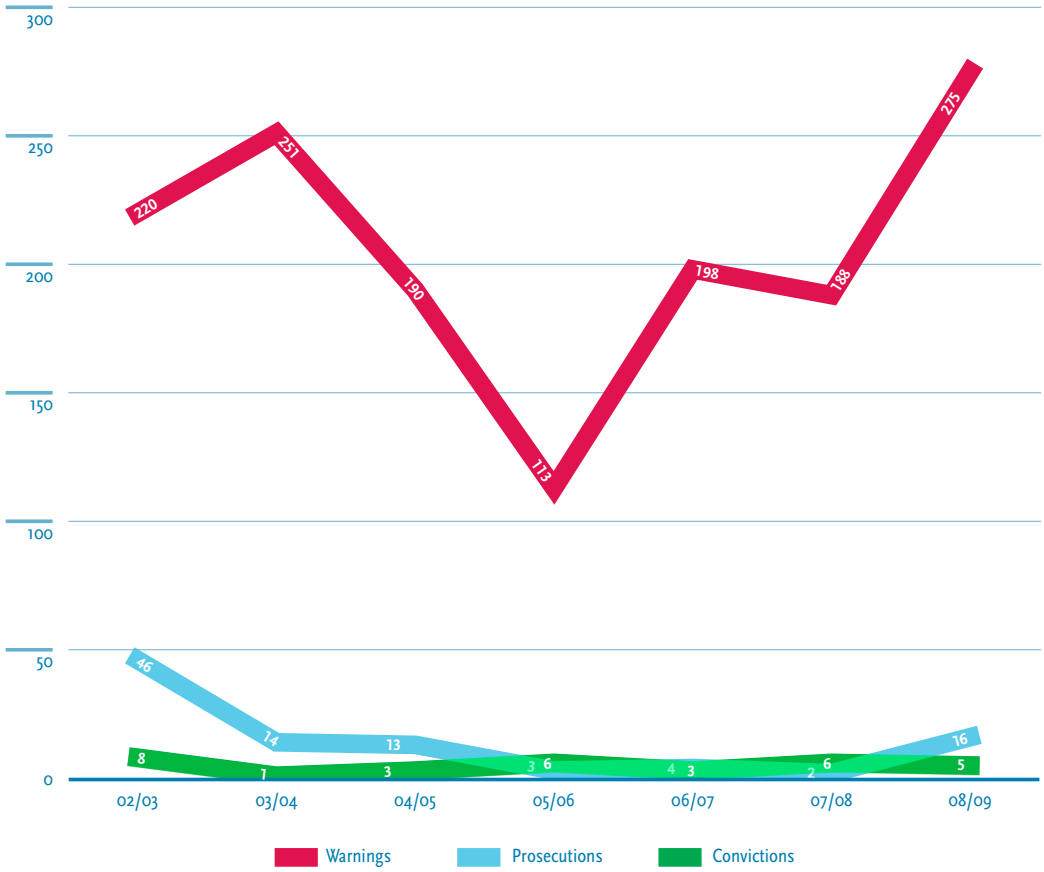
Significant downward trend in Environment Canada's Inspections

Based on the six convictions reported in Environment Canada's Enforcement Notifications[1] in 2008-09, the average fine was $16,000. More recently, in 2010-11, there were nine convictions reported in the Enforcement Notifications.

The average was skewed by one fine of $200,000 against Suncor Energy Inc. for a release of effluent from sedimentation ponds during a road construction in northern Alberta. Remove this one large fine from consideration and the average fine climbs to $39,219. Thus, on the positive side, Ecojustice notes an increase in the average fines achieved by Environment Canada in 2009-10 under the *Fisheries Act*.

1 Environment Canada (2011), *Enforcement Notifications,* online: http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=8F711F37-1

FIGURE 7 | WRITTEN WARNINGS, PROSECUTIONS AND CONVICTIONS, 2002-09



Very low number of prosecutions and convictions by Environment Canada

However, Ecojustice believes that both of these average fine sizes are relatively small in absolute terms.

VII | SUMMARY OF KEY *FISHERIES ACT* ENFORCEMENT TRENDS

The available enforcement information under the *Fisheries Act* paints only a basic statistical portrait of the enforcement measures taken over the past decade.

While prosecutions are just one end of the spectrum of enforcement tools to protect fish habitat, they are the ultimate deterrent, without which the range of regulator actions becomes less effective. For this reason, Ecojustice is concerned about the relatively low number of *Fisheries Act* charges and the low number of convictions. Combined with low average fines assessed, Ecojustice questions the effectiveness of *Fisheries Act* enforcement, particularly as a deterrent to large corporations.

chapter 4

ENFORCEMENT OF THE *SPECIES AT RISK ACT* FROM 2005–2009

The purpose of the *Species at Risk Act* (SARA) is to prevent wildlife species from being extirpated or becoming extinct and to provide for the recovery of wildlife species that are extirpated, endangered, or threatened as a result of human activity.[1] SARA contains 19 regulations and came into force in 2003.

1 *Species at Risk Act*, RSC 2002, c 29, s 6.

1 | SARA ENFORCEMENT INFORMATION

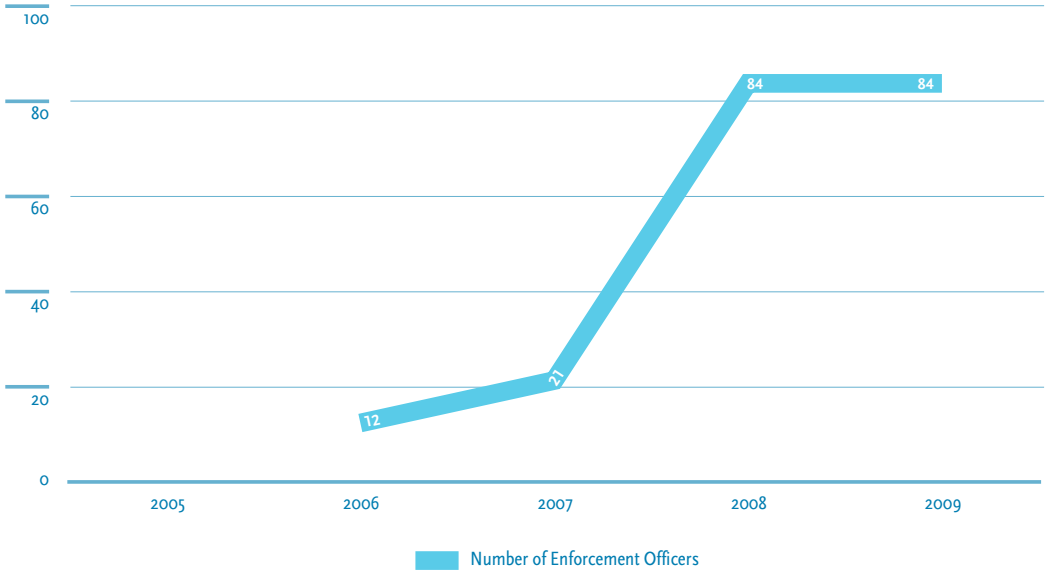
Pursuant to the statutory reporting obligations under section 126 of SARA, annual reports on enforcement and compliance from 2003-09 have been published on Environment Canada's website.[2]

2 Species at Risk Public Registry (2008), *SARA Annual Reports*, online: http://www.sararegistry.gc.ca/approach/act/sara_annual_e.cfm

The SARA annual report, like the *WildAnimal and Plant Protection and Regulation of International and Interprovincial Trade Act* report, is based on the calendar year as opposed to the government's fiscal year (April–March). This creates an additional complication when comparing enforcement data between various federal environmental laws.

In general, the SARA annual reports are easy to read. However, all statistics

FIGURE 8 | NUMBER OF ENFORCEMENT OFFICERS 2005-09



Significant increase in the numbers of enforcement officers

are buried within the text rather than presented in a summary table or any machine-processable format. This renders quick and/or detailed analysis difficult.

The annual report details the enforcement priorities for each year. Priorities for 2009, the most recent year where data is available, were:[1]

- meeting the legal obligation to investigate under section 93 of SARA;
- commercial activities, i.e., by catch of SARA-listed species;
- critical habitat on federal lands

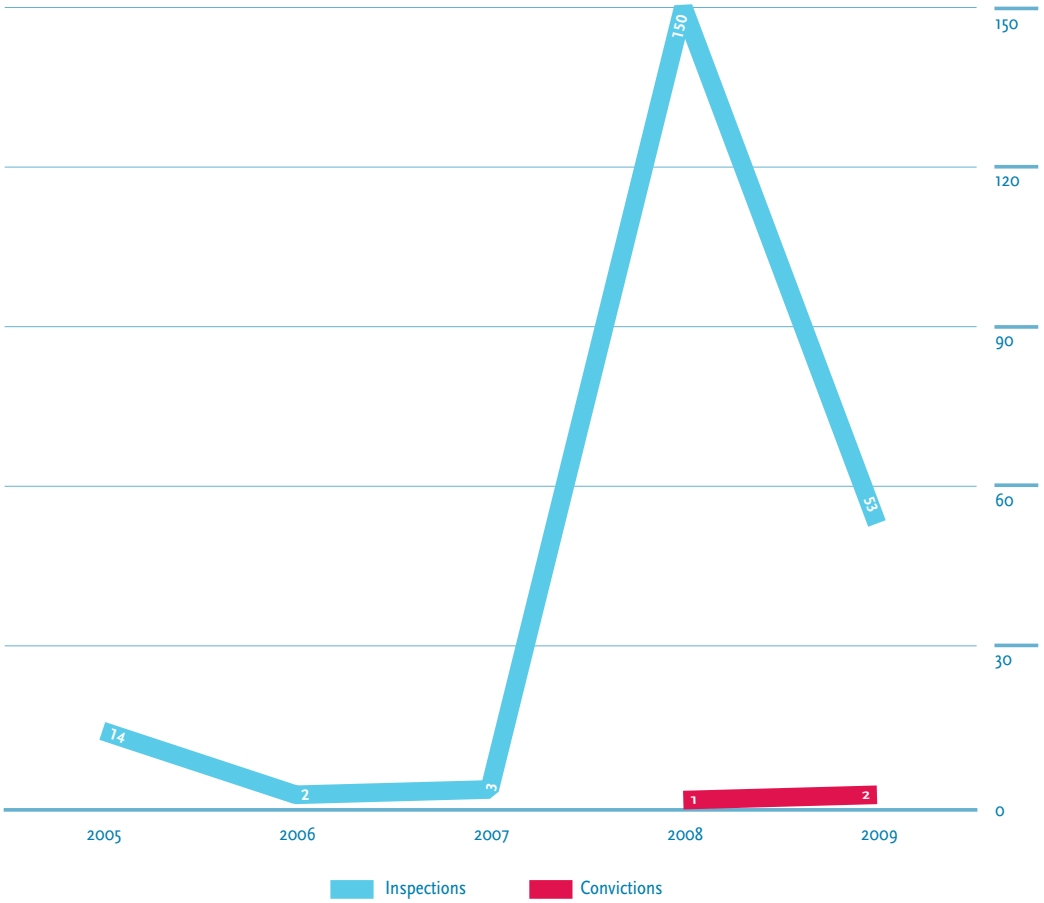
The Species at Risk Public Registry contains non-enforcement information developed under SARA, including species assessments and recovery strategies. Unlike the CEPA and *Fisheries Act* registries, the SARA registry does not host Enforcement Notifications. Most of the enforcement data on the SARA registry is limited to the information in the annual reports.

When the 2009 annual report is compared to the relevant Enforcement Notifications on Environment Canada's website, there are differences in the number of reported convictions.

Whereas the annual report identifies two convictions, the Enforcement Notifications summary identifies three convictions.

1 Environment Canada, *Species at Risk Act, Annual Report for 2009* (Ottawa: Minister of the Environment, 2010), online: Species at Risk Public Registry http://registrelep-sararegistry.gc.ca/default.asp?lang=En&n=96A6B027-1&offset=3&toc=show#_36

FIGURE 9 | NUMBER OF INSPECTIONS AND CONVICTIONS 2005-09



Low number of inspections and convictions

While this difference is not significant in absolute terms, it is indicative of a trend towards inconsistent information being published.

II | SIGNIFICANT INCREASE IN *SARA* ENFORCEMENT OFFICERS

The number of *SARA* enforcement officers increased to 84 (in 2008) from 12 (in 2006) as detailed in Figure 8.

III | RISE AND FALL OF *SARA* INSPECTIONS

While the number of inspections increased dramatically in 2008, commensurate with the increase in enforcement officers, the number of inspections decreased almost as dramatically in 2009—falling from 150 to 50.

The number of inspections conducted per calendar year varied wildly from 2007 to 2009, as is indicated in Figure 9.

The reasons for this variation may be a result of identification of priority inspections because, after 2007, inspections were conducted on a more proactive basis, while between 2005-07 they appear to have been solely complaint-driven. The variance may also be due to some very complex and resource-intensive investigations in a particular year.

IV | PENALTIES AND FINES UNDER *SARA*: ONLY TWO CONVICTIONS SO FAR

Under section 97 of *SARA*, the maximum fines permitted are $300,000 for corporations found guilty on summary conviction and $1,000,000 on an indictable offence. Individuals face a maximum fine of $50,000 if found guilty on summary conviction (and/or up to one year in jail) and $250,000 on an indictable offence (and/or up to five years in jail).

In the three years, between March 2008 and March 2011, there were six convictions published to Environment Canada's Enforcement Notifications website, primarily for damaging habitat or capturing listed species.[1] The average fine was $6,125. However, in two of the cases where jail sentences were handed down, one sentence was for nine months and the other a four-month conditional sentence.

The small number of convictions secured under *SARA* may reflect the law's infancy and an adjustment to *SARA* enforcement. The implementation of *SARA* has required significant changes in the way that Environment Canada engages in wildlife management. This is apparent from the following analysis of the *Canada Wildlife Act*, which was the primary federal wildlife protection law prior to *SARA*. However, it is fair to say that public expectations will be high concerning the strict enforcement of *SARA* and the disclosure of comprehensive information pertaining to the same.

1 Environment Canada (2011), *Enforcement Notifications*, online: *http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=8F711F37-1*

photo: Wayne Lynch

chapter 5

ENFORCEMENT OF THE *CANADA WILDLIFE ACT* FROM 2005–2009

The purpose of the *Canada Wildlife Act* (CWA) is the conservation of wildlife species and their habitat for their protection and for research purposes.[1] The Act establishes prohibitions in relation to activities that could harm species or habitats, unless a permit is granted, to the exclusion of activities like hiking and bird watching.[2] Regulations under the CWA include the *Wildlife Area Regulations*, which establishes general hunting, fishing and other prohibitions with regard to conduct in protected areas; and four other regulations regarding the administration, management and control of certain lands. *The Wildlife Enforcement Directorate at Environment Canada carries out CWA enforcement activities.*

1 | CWA ENFORCEMENT INFORMATION

The CWA does not impose general reporting obligations on the minister responsible for its administration, although it does grant courts the discretion[3] to order offenders to publish facts relating to their convictions. Based on informal correspondence with Environment Canada officials, there are no known cases of the courts issuing such an order.

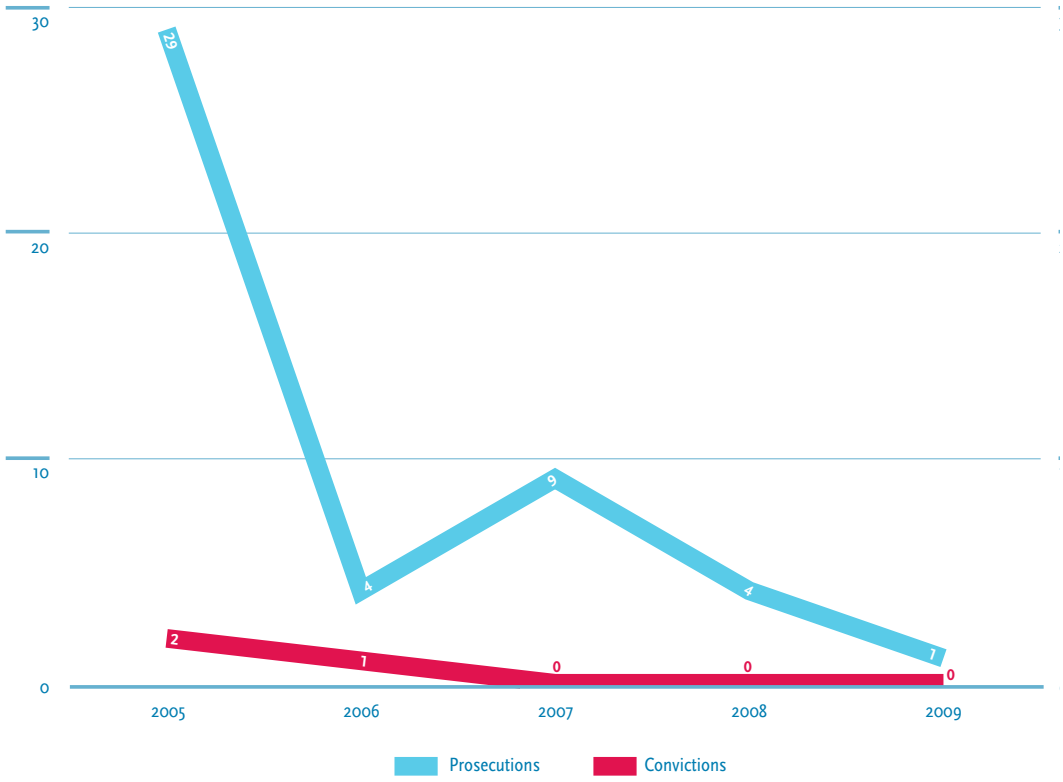
Although the Wildlife Enforcement section of Environment Canada's website has a direct link to its Enforcement Notifications website, there are no Enforcement Notifications pursuant to the CWA.

1 *Canada Wildlife Act*, RSC 1985, c W-9.

2 Environment Canada (2010), *Canada Wildlife Act*, online: http://www.ec.gc.ca/alef-ewe/default.asp?lang=en&n=E8EA5606-1

3 *CWA* s 16(c).

FIGURE 12 | NUMBER OF PROSECUTIONS AND CONVICTIONS 2005-09



Declining enforcement under the CWA

Therefore, the federal government currently provides no CWA enforcement information to Canadians on a proactive basis.

Despite the lack of publicly available statistics, government officials did respond to our request for enforcement statistics under the CWA (see Appendix B). This information is contained in the non-public NEMISIS database. We requested information regarding the number of charges laid, prosecutions and convictions under the CWA for 2005 through 2009. The multiple clearances required before the NEMISIS information was released resulted in a one-month delay between the date of our request and the release of the information. Both this delay and the time-consuming engagement of federal government resources could have been avoided if such non-sensitive information were readily available online through Environment Canada.

II | ENFORCEMENT DECLINING UNDER *CWA*

The enforcement statistics obtained from NEMISIS under the CWA raise concerns about an absence of enforcement. The results distinguished "inspections statistics" from "investigations statistics,"

although neither provided any information regarding the total number of inspections or investigations. In relation to inspections, no prosecutions or tickets were recorded for 2009. Under investigations, no charges, prosecutions/tickets or convictions were recorded for 2008. In 2009, there was one charge, one prosecution/ticket, and no conviction recorded.

Enforcement levels for the CWA have dropped noticeably since 2005. As detailed in Appendix 2 & Figure 12, 11 prosecutions/tickets were recorded under "inspections statistics" in 2005, while the average for 2006-09 is 1.5 per year. Nineteen charges were recorded under "investigations statistics" in 2005, while the average for 2006-09 is 3.5 per year. In 2005, 18 prosecutions/tickets were recorded, while the average for 2006-09 is three per year. From 2005-09, there were 33 charges and three convictions, but there have been no convictions since 2006.

After a follow-up request seeking clarification regarding these numbers, an Environment Canada official explained that there was a reduction in workforce between 2005 and 2009, and that 2008-09 had been a transition period for training new enforcement officers. Ecojustice suspects that scarce wildlife enforcement resources were diverted from CWA matters towards *Species at Risk Act* enforcement issues. Regardless of these circumstances, the public has the right to know that CWA enforcement has been reduced in recent years.

chapter 6

ENFORCEMENT OF THE *WILD ANIMAL AND PLANT PROTECTION REGULATION OF INTERNATIONAL AND INTERPROVINCIAL TRADE ACT* FROM 2005-09

The purpose of the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* (WAPPRIITA) is to protect certain species of animals and plants, and to regulate international and interprovincial trade in animals and plants.[1] WAPPRIITA is administered by Environment Canada. The Act prohibits the import, export and interprovincial transport of specified plant and animal species, alive or dead, its parts or any derived products, "unless the specimens are accompanied by the appropriate documents," such as licenses and permits.[2] In particular, the Act applies to the 30,000 species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) control list; foreign species whose capture, possession and export are prohibited or regulated by laws in their country of origin; Canadian species whose capture, possession and transportation are regulated by provincial or territorial laws; and species whose introduction into Canadian ecosystems could endanger Canadian species. There is only one regulation that has been created under the WAPPRIITA, the Wild Animal and Plant Trade Regulations.

1 | WAPPRIITA ENFORCEMENT INFORMATION

Section 28 of WAPPRIITA requires the production of an annual report, which can be found on Environment Canada's website, where the most recent report is from 2009.[3]

1 *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act,* RSC 1992, c 52, s 4.

2 Environment Canada (2010), *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act,* online: http://www.ec.gc.ca/alef-ewe/default.asp?lang=en&n=65FDC5E7-1

3 Environment Canada (2010), *Environment Canada Publications,* online: http://www.ec.gc.ca/nature/default.asp?lang=En&n=132ADBFC-1&parent=CDBEC7E7-0ACF-452E-B8E0-7AE620D8AD50

As with *SARA* annual reports, the *WAPPRIITA* annual reports are based on the calendar year, creating unnecessary confusion and difficulty when comparing it with other laws' annual reports based on the government's fiscal calendar. Ultimately this leads to a lack of transparency and reduces the analytic capacity of civil society as regards to *WAPPRIITA* enforcement.

The *WAPPRIITA* annual reports provide an overview of general enforcement activities, but do not include the tabular enforcement data found in the *CEPA* and *Fisheries Act* annual reports. The information concerning compliance activities tends to be included in the text instead of in a summary table. By including the information in the text, details regarding specific incidents are given; however, not all incidents are covered. For example, in the *WAPPRIITA* 2009 annual report, reference is made to a multiplicity of prosecutions: "Most of the major cases, some of which were precedent setting, led to prosecutions resulting in convictions."[1] However, details are provided for only two such convictions, and are limited in scope.

II | *WAPPRIITA* ENFORCEMENT: SUPERIOR REPORTING OF INSPECTIONS AND INVESTIGATIONS

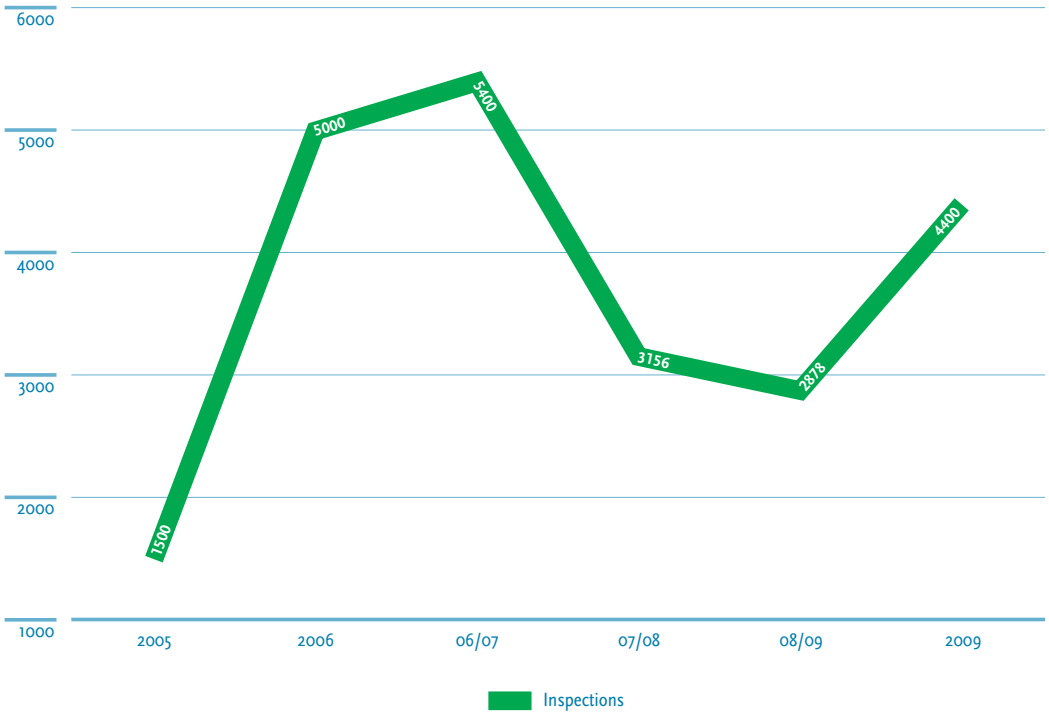
In 2006, Environment Canada began collecting comprehensive inspection statistics regarding specific matters listed in the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*—i.e., commercial activities, live species, aquatic species, tropical wood, ivories, medicinal products, invasive species and live herptiles (See Appendix 1). The *WAPPRIITA* annual reports indicate the total number of inspections undertaken between Jan. 1 and Dec. 31 of each year—5,400 for 2006-07, 3,156 for 2007-08 and 4,400 for 2009.[2]

The annual report also provides details on investigations into poaching or trafficking incidents involving international or interprovincial movement of wildlife, under the provisions of the applicable federal, provincial/territorial, or foreign legislation. The 2007 and 2008 reports clearly indicate the facts, the alleged violation, the action taken and the result of the investigative action. Certain useful details are missing, such as case titles and names of all companies inspected and/or charged. Still, these reports are arguably more complete and clear than the information found in other annual reports. It is unfortunate that data before 2005 is unavailable.

1 Environment Canada (2009), *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act - Annual Report for 2009,* at p 9, online: http://publications.gc.ca/collections/collection_2010/ec/CW70-5-2009-eng.pdf

2 See *2007, 2008* and *2009 WAPPRIITA Annual Reports,* online: http://www.ec.gc.ca/cites/default.asp?lang=En&n=18F4A0BC-1

FIGURE 10 | NUMBER OF INSPECTIONS 2005-09



Variable numbers of WAPPRIITA *inspections*

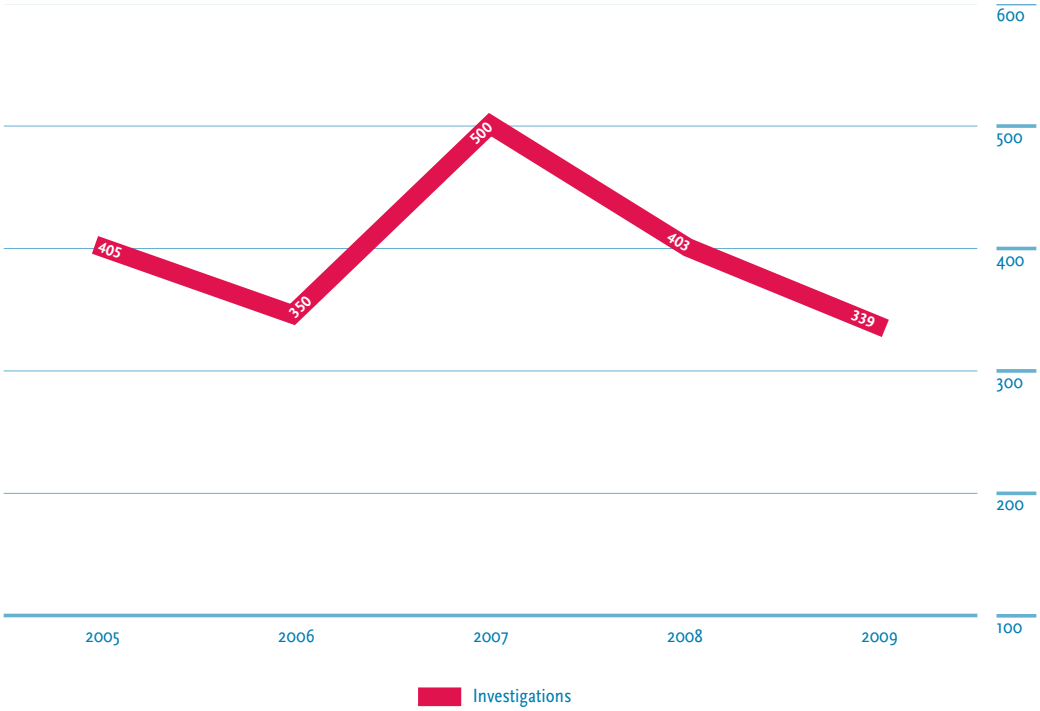
As noted in the 2009 *WAPPRIITA* annual report, the means of monitoring compliance include verifying permits, auditing importers' and exporters' declarations, conducting inspections at ports of entry, conducting routine or spot inspections of wildlife businesses, sharing information with border officials and other national and international agencies, gathering intelligence and following up on information from the public.[1]

Figure 10 details how the number of inspections conducted annually has decreased significantly since 2006 from a high of 5,400 in fiscal year 2006-07 to a low of 2,878 in fiscal year 2008-09. Of note, the data for 2006-07 and 2009 may be influenced by the changes in reporting methodologies as in these years the reports switched from reporting in calendar years to fiscal years (and vice versa).

Figure 11 [see following page] charts the number of investigations per calendar year, indicating a general downward trend in the number of investigations since 2007.

1 Environment Canada (2010), *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act, Annual Report for 2009* (Ottawa: Minister of the Environment, 2010) at 7, online: *http://www.ec.gc.ca/Publications/9E70649D-6CB0-47B2-A6DB-529BD96AFA7F/COM1163_WAPPRIITA_2009_e_web.pdf*

FIGURE 11 | NUMBER OF INVESTIGATIONS 2005-09



Downward trend in the number of investigations

III | *WAPPRIITA* PENALTIES AND FINES

The maximum penalties associated with *WAPPRIITA*, as detailed in section 22, are $50,000 for summary offences for corporations and $25,000 for individuals. Indictable offences are $300,000 for corporations and $150,000 for individuals (penalties are doubled for subsequent offences).

Unfortunately, complete information regarding the convictions obtained each year under *WAPPRIITA* is not available in the annual reports. Instead, the Enforcement Notifications website must be relied upon.

In the three-year period between March 2008 and March 2011, there were 13 reported convictions. The court assigned an average fine of $6,928 per conviction. The largest fine was $100,000 for illegally importing an orchid species into Canada, of which $95,000 was dedicated to projects refining genomic or other DNA research methods. In addition to fines, one individual received a six-month conditional sentence for unlawfully importing reptiles. Without access to *WAPPRIITA* conviction statistics beyond 2008, assessment of long-term enforcement trends is difficult. However, it is certain that the average fine amount is low and there have been few convictions over the past three years.

photo: tuchodi (http://www.flickr.com/people/tuchodi/)

chapter 7

ENFORCEMENT OF THE *CANADA SHIPPING ACT*

The environmental protection-related objectives of the *Canada Shipping Act*

(CSA) are to protect the marine environment from damage due to navigation and shipping activities; to develop a regulatory scheme that encourages viable, effective and economical marine transportation and commerce; and to establish an effective inspection and enforcement program.[1]

The relevant environmental protection regulations under the CSA include the *Pollutant Discharge Reporting Regulations*, *Regulations for the Prevention of Pollution from Ships and for Dangerous Chemicals* and the *Response Organizations and Oil Handling Facilities Regulations*.

These regulations, combined with the *Arctic Waters Pollution Prevention Act*[2] and international conventions and standards established by the International Maritime Organization, establish the framework for Transport Canada's comprehensive enforcement regime related to marine safety, pollution prevention, oil-spill preparedness, and response.

1 *Canada Shipping Act*, RSC 2001, c 26, s 6. Transport Canada, which administers the *CSA*, works with other Departments such as the Department of Fisheries and Oceans and Environment Canada to reduce the impact on the environment of marine pollution incidents in Canadian waters, and since 2004 it "has been the lead regulatory governance agency for preparing for and responding to all ship-source oil pollution spills."

2 RSC, 1985, c A-12.

1 | NON-DISCLOSURE OF *CSA* ENFORCEMENT INFORMATION

The *CSA* has no general reporting obligation for prosecutions or other enforcement activities, nor is there any obligation to produce an annual report. Section 193(b) does grant courts the discretion to order offenders to publish the facts relating to their convictions, but government officials informed us that there are no known cases of the courts actually issuing such an order.

All *CSA* enforcement information, such as that regarding oil spills, is recorded in the classified NEMISIS database, but is not made available to the public. Compounding the lack of annual reporting, a review of Transport Canada's websites does not reveal any information about enforcement activities related to the *CSA*. Further, although there is a self-reporting obligation on the part of vessel owners pursuant to at least two *CSA* regulations, no information regarding self-reported oil spills is made available online.[1]

Ecojustice concludes that *CSA*-related information on NEMISIS ought to be made publicly accessible. The absence of any enforcement reporting obligation leaves Canadians with limited knowledge, if any at all, of ship-based water pollution. The only way for Canadians to learn more about the enforcement of oil-spill rules under the *CSA* is to file an access to information request to obtain NEMISIS data. This is clearly non-transparent and runs counter to the philosophy of open government.

1 The *Pollutant Discharge Reporting Regulations, 1995* require ship's masters to report any discharge of a harmful substance or pollutant, or the probability that such a discharge will occur. The *Vessel Traffic Services Zones Regulations* also require ships to report the presence of any pollutant in the water. See also Transport Canada (2010), *Reporting of Pollution*, online: *http://www.tc.gc.ca/eng/marinesafety/oep-environment-reporting-2074.htm*

chapter 8

ENFORCEMENT OF THE *MIGRATORY BIRDS CONVENTION ACT*

The purpose of the *Migratory Birds Convention Act* (MBCA) is to protect and conserve migratory birds, as populations and as individual birds, and their nests.[1] The enforcement of this law is supported by two regulations: the Migratory Bird Sanctuary Regulations and the Migratory Birds Regulations.[2]

The Wildlife Enforcement Division of Environment Canada administers the mbca in co-operation with provincial and territorial governments. Enforcement of this law and its regulations is the responsibility of the Canadian Wildlife Service, the Royal Canadian Mounted Police and provincial/territorial law enforcement authorities.

1 *Migratory Birds Convention Act*, RSC 1994, c 22.

2 Environment Canada (2011), *The Migratory Birds Convention Act*, online: http://www.ec.gc.ca/nature/default.asp?lang=En&n=7CEBB77D-1

1 | MBCA ENFORCEMENT INFORMATION

Like the *Canada Wildlife Act* and *Canada Shipping Act*, the MBCA contains no general of specific reporting obligations when it comes to enforcement activities. As with the two previous laws, there is a provision—section 16(1)(c)—that grants courts the discretion to order offenders to publish the facts relating to the commission of an offence.

Two requests were sent to Environment Canada, first by phone and then email, seeking basic enforcement data from NEMISIS (inspections, investigations, charges laid, prosecutions and convictions) under the MBCA. These requests did not receive a response. The only identified source of online information regarding convictions achieved under the MBCA is Environment Canada's Enforcement Notifications website.

This information is difficult to access because it combines information from different laws.

In addition, it is unclear whether the list of convictions in the Enforcement Notifications website under this Act is comprehensive.

A 2006 Factual Record by the Commission for Environmental Cooperation[1] indicates a lack of enforcement by Canada Wildlife Services of section 6(a) of the *Migratory Birds Regulations*, which makes it an offence to disturb, destroy, or take a nest of migratory birds without a permit.[2]

Guidance on enforcement of this Act is provided in the *Compliance and Enforcement Policy for Wildlife Legislation*. Section 8 of the guide, "Responses to Violations," specifies that:

> Prosecution may be recommended when:
>
> - there is or has been serious damage to a Canadian ecosystem or species;
> - the actions of the accused are or have been detrimental to the survival of the species or the management of the site involved;
> - the accused knowingly committed an offence or provided false or misleading information, pretending to comply with an Act; or
> - the accused obstructed an officer in carrying out duties or responsibilities under legislation.[3]

However, the guide states that this may not detract from an officer's discretion in deciding whether or not to lay charges as such decisions should be made on a case-by-case basis.

II | *MBCA* PENALTIES AND FINES

As the Enforcement Notification tables detailed in Appendix 1 indicate, there were five *MBCA* convictions in 2009, nine in 2010 and four in 2011 (to March 31). The highest penalties assessed by a court under any Canadian environmental law were imposed under the *MBCA*, with the October 2010 judgment against Syncrude Canada Ltd. The sum of the penalties amounted to $3,000,000, including a $300,000 fine under *MBCA*, $500,000 fine under Alberta's *Environmental Protection Act* and $2.2-million for environmental projects. On May 25, 2009, CN Rail received a $400,000 penalty for a release of heavy fuel oil ($50,000 fine and $350,000 for projects in the Squamish River Watershed). Not including the Syncrude fine, the average fine under the *MBCA* was $19,303 across 2009, 2010 and 2011. Including Syncrude, the average fine under the *MBCA* was $35,814 over the same period. While successful prosecutions yielding large fines and penalties do serve as a deterrent, the average *MBCA* conviction has typically resulted in a relatively small fine. This is especially true given that the enforcement policy suggests that prosecution is to be used for the most serious violations.

1 Commission for Environmental Cooperation (2006), *Factual Record: Ontario Logging Submissions*, online: http://www.cec.org/Storage/75/6907_CCE_21_english.pdf

2 *Migratory Birds Regulations*, CRC, c 1035, s 6(a).

3 Environment Canada (2011), *Compliance and Enforcement Policy for Wildlife Legislation*, online: http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=39897788-1&printfullpage=true&nodash=1

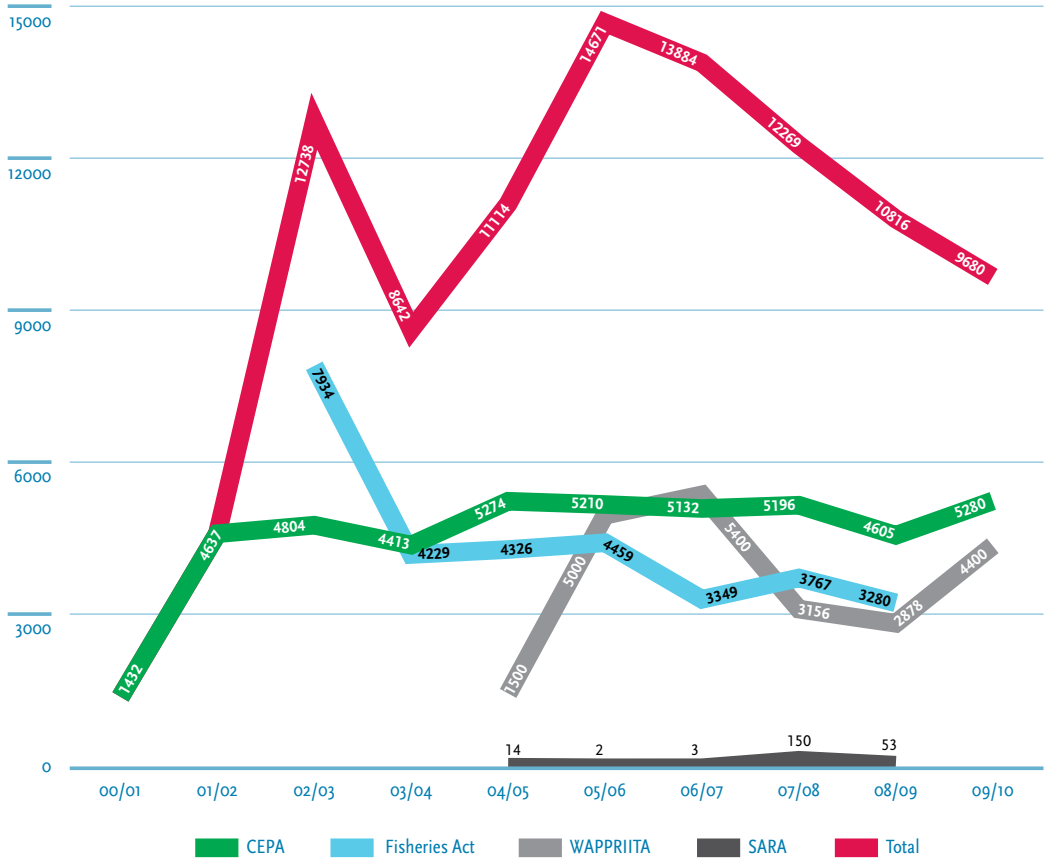
AN OVERALL PERSPECTIVE ON FEDERAL ENFORCEMENT DATA

Having analyzed the available enforcement information for each of these laws, we conclude by combining data in similar categories of enforcement activity.

Figure 12 combines all available data on inspections for the *Canadian Environmental Protection Act*, *Fisheries Act*, *Species at Risk Act* and *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*.

Notably, there is a yearly decline in the number of inspections conducted after 2005-06.

FIGURE 12 | COMPILATION OF INSPECTIONS CONDUCTED 2000-10 (FISCAL YEARS)



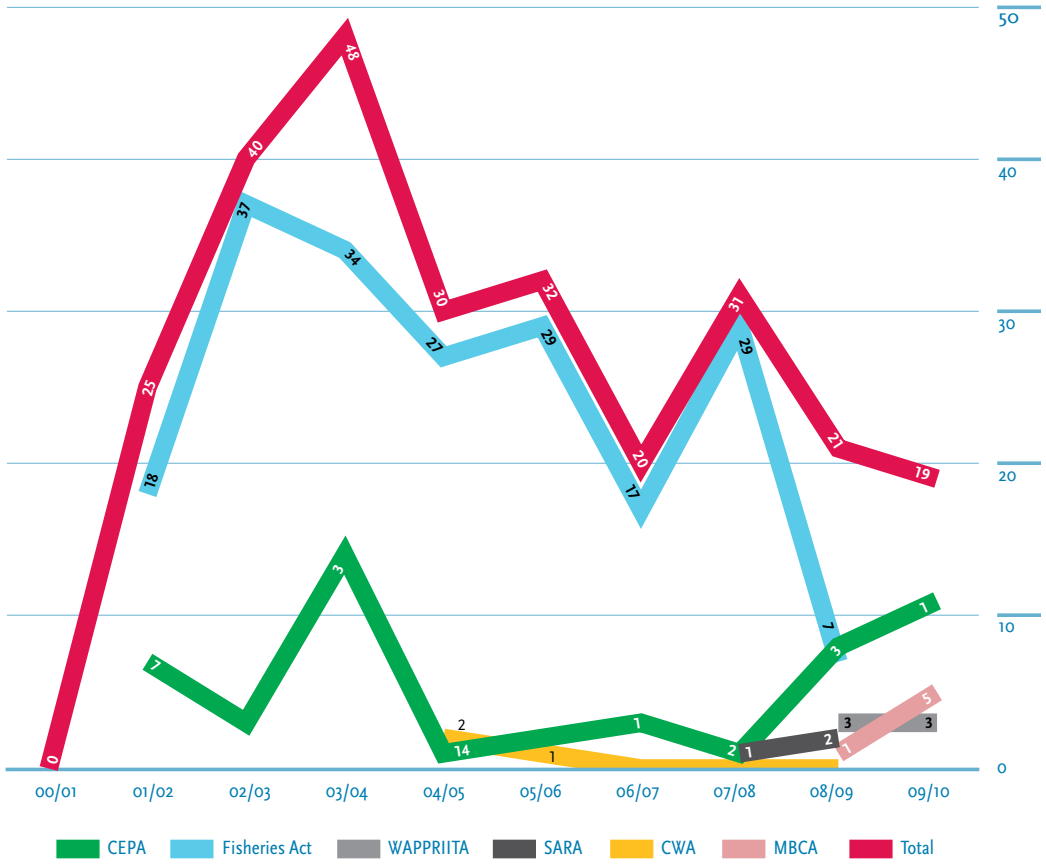
Significant overall decrease of inspections after 2005-06

Ironically, this decline occurred at the same time that the government significantly increased the number of inspectors dedicated to *CEPA* and *SARA*. The trend provides cynical observers with room to question the Conservative government's supposed objective of improved environmental enforcement and deterrence of potential violators.

The number of successful convictions under environmental legislation has also decreased significantly as shown in Figure 13. Successful convictions under environmental legislation act as a deterrent to individuals and corporations, particularly when these convictions are published, as is already done on the Environment Canada website.

Cynical observers may see in this drop in convictions a reduced deterrent effect. However, successful convictions are not the last word in enforcement effectiveness, and compliance with legislation is not solely achieved through a prosecution-based approach.

FIGURE 13 | COMPILATION OF CONVICTIONS 2000-10 (FISCAL YEARS)



Significant decrease in convictions since 2003-04

part three

CONCLUSION: KEY FINDINGS & RECOMMENDATIONS

Ensuring effective public access to environmental enforcement and compliance data is a vital means for citizens to verify the federal government's commitment to environmental protection.

While the government is responsible for the enforcement of many environmental protection measures, the limited publicly available information leads Ecojustice to conclude that it is not sufficiently "cracking down" on polluters in a number of respects.

At present, the serious deficiencies in enforcement and compliance data, and the fragmented approach to delivering such data, leave significant room for improvement and for lessons to be learned from the U.S. approach to online enforcement and compliance information management.

The main conclusions from enforcement information disclosure relate to both structure/format and substance weaknesses.

1 | CONCLUSIONS AND RECOMMENDATIONS REGARDING STRUCTURE AND FORMAT OF PUBLICLY AVAILABLE ENVIRONMENTAL ENFORCEMENT INFORMATION

Ecojustice concludes that:

» Environmental enforcement and compliance information must be disclosed publicly in a more transparent, comprehensive and web-accessible manner. The U.S. Environmental Protection Agency's *Enforcement and Compliance History Online* database offers an excellent model of what information can and cannot be made available to the public on a government-run database.

Recommendation:
The Government of Canada, led by Environment Canada, should establish and seek funding to maintain a comprehensive online environmental enforcement and compliance database for all federal environmental laws and regulations. The database should be updated regularly (monthly) and should enable geographic and facility-based data analysis.

» Enforcement data are often gathered using inconsistent methods and methodologies that preclude comparison, and often appears in inaccessible formats. Certain annual reports (*Species at Risk Act* and *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*) are based on the calendar year, while others (*Canadian Environmental Protection Act*, *Fisheries Act*) are based on the government's fiscal year (April – March), creating unnecessary complications when comparing enforcement data under different laws. Data are not made available in machine-readable formats such as [.txt], [.csv], [.doc], [.xls], [KML], [ESRI], [SHAPE], etc., which would allow users to analyze and combine them.

Recommendation:
Work towards releasing enforcement information across all Government of Canada departments in a consistent manner using multiple user-friendly formats.

» Laws that do require annual reporting (e.g. *Canada Shipping Act, Canada Wildlife Act*, and *Migratory Birds Convention Act*) only make enforcement data available through the Enforcement Notification website, which contains very limited and incomplete information.

Recommendation:
Fulfill the promise of open government and proactive disclosure policies by releasing the enforcement and compliance information for these particular laws that are stored in the restricted NEMISIS database.

» The annual reporting obligations to the public regarding environmental enforcement under various laws are still not being met in a timely manner.

» There are serious inconsistencies between the data provided in annual reports and the Enforcement Notifications from the same year.

Recommendation:
Ensure that sufficient resources are available for departments, particularly Environment Canada, to do the necessary reporting and associated quality control.

II | CONCLUSIONS AND RECOMMENDATIONS REGARDING CONTENT OF PUBLICLY AVAILABLE ENVIRONMENTAL ENFORCEMENT INFORMATION

In terms of enforcement and compliance information content, Ecojustice concludes that there are significant gaps in the data that is made public:

» Information regarding overall compliance rates, e.g., the number of regulated entities divided by the number of violations, are not provided under any statute or regulation, with the exception of the *Metal Mining Effluent Regulations* under the *Fisheries Act*. The failure by the federal government to disclose compliance levels is unacceptable, and must be addressed.

» The enforcement activities data in annual reports (such as inspections and investigations) lack context and are only useful to track trends because they are not normalized. That is, the number of annual inspections is not presented in relation to the numbers of total facilities, which would demonstrate the percentage of regulated facilities that are inspected each year, and the percentage of regulated facilities that were found non-compliant.

» Very limited supplemental information is provided for each conviction in the annual reports, particularly as regards the identification of the offenders (often a municipality or company), the exact location of the incident/violation, and the exact nature of the violation (i.e., specific substances, quantities, etc.).

» In general, there is no detailed information regarding cases that did not result in a conviction—mere inspections or investigations—or regarding charges that did not result in prosecution. The Government of Canada does not provide conviction-rate statistics, which are provided by the U.S. Environmental Protection Agency.

» Although administrative monetary penalties (AMPs) have only recently emerged as an enforcement tool, data concerning their use (number of AMPs by law/regulation, amounts imposed, etc.) would be most useful in future disclosures.

Recommendation:
Departments within the federal government, including but not limited to Environment Canada, Fisheries and Oceans Canada and Transport Canada, should proactively and comprehensively release all non-confidential information regarding enforcement actions, including but not limited to: inspections, investigations, warnings, orders, prosecutions, convictions, penalties/fines, and number of facilities, as well as compliance information concerning regulated entities.

If this is not achieved through a comprehensive online database for the whole of the federal government, then it should at a minimum be released on department websites and as part of annual reporting under specific laws.

III | FINDINGS REGARDING THE ENFORCEMENT OF FEDERAL ENVIRONMENTAL LAWS FROM 2000-10

Although the annual reports, Enforcement Notifications and news releases provide a fragmented, incomplete picture of enforcement (and no picture at all of compliance and facility performance), our analysis has uncovered some key findings.

First, there are very few successful prosecutions under federal environmental legislation in Canada. In particular, under the *Canadian Environmental Protection Act*, the total number of convictions (approximately 20 of each per year) is still extremely small in relation to the number of inspections, warnings, and investigations. The same critique may be levelled as regards *Fisheries Act* prosecutions and convictions.

Although we recognize that prosecutions are only one component of Environment Canada's enforcement arsenal, its threat remains a major factor in ensuring compliance. Since the threat of a successful prosecution is crucial to the deterrent effect, these low absolute numbers give rise to concern regarding the overall effectiveness of the CEPA enforcement regime. Ecojustice believes that the available data raises serious doubts about whether prosecution has been employed as an effective deterrent when just 23 convictions have been obtained over three past years, with an average fine of $10,524 per conviction.

Second, the important increases in CEPA enforcement officers, which began in 2004-05, have only led to a slight increase in inspections from 2000-10. More importantly, neither of the increases in officers or inspections has been matched with a corresponding increase in investigations, written warnings, prosecutions or convictions. Over 10 years, the federal government has added more officers and completed more inspections, yet the numbers of investigations and prosecutions have failed to reach levels achieved earlier in the decade. Warnings remain the most frequently used enforcement tool. It is highly doubtful that this is a result of the full compliance achieved by industry and other regulated entities.

Finally, it appears that there has been a relatively consistent decline in these enforcement activities (warnings, orders, etc.) since 2005-06—the year the Conservative government came to power—despite an increase in the number of inspector personnel dedicated to specific statutes, particularly under CEPA.

Canadians should be concerned by these findings.

Ecojustice exhorts the Commissioner of the Environment and Sustainable Development to continue its evaluations of whether or not Environment Canada, Fisheries Canada, and Transport Canada are adequately enforcing their respective laws.

appendices

APPENDIX 1 | ENFORCEMENT NOTIFICATION INFORMATION, RE. FINES AND PENALTIES

Canadian Environmental Protection Act

Date	Act	Regulation	Fine for Court	Fine for EDF	Total Fine	Project Contribution
14-Jan-08	CEPA	Ozone Depleting Substances Regulations	—	$5,000	$5,000	—
07-May-08	CEPA	Export Import Hazardous Waste and Hazardous Recyclable Material Regulations	—	$10,000	$10,000	—
27-Jun-08	CEPA	Export Import Hazardous Waste and Hazardous Recyclable Material Regulations	$2,500	$15,000	$17,500	—
02-Oct-08	CEPA	Export Import Hazardous Waste and Hazardous Recyclable Material Regulations	—	$7,000	$7,000	—
05-Feb-09	CEPA	Export Import Hazardous Waste and Hazardous Recyclable Material Regulations	—	—	—	$5,000
17-Mar-09	CEPA	Ocean Dumping Regulations	$2,000	$8,000	$10,000	—
04-Aug-09	CEPA	Tetrachloroethylene Regulations	$1,900	$5,000	$6,900	—
22-Sep-09	CEPA	Ozone Depleting Substances Regulations	—	$50,000	$50,000	—
15-Oct-09	CEPA	—	—	$20,000	$20,000	—
20-Oct-09	CEPA	—	$1,000	$14,000	$15,000	—
21-Oct-09	CEPA	Vehicle, Engine and Equipment Emissions Provisions	$3,500	—	$3,500	—
02-Mar-10	CEPA	Export Import Hazardous Waste and Hazardous Recyclable Material Regulations	—	$15,000	$15,000	—
02-Mar-10	CEPA	Tetrachloroethylene Regulations	$500	$4,500	$5,000	—
17-May-10	CEPA	Tetrachloroethylene Regulations	$500	$4,500	$5,000	—
21-Jul-10	CEPA	Ocean Dumping Regulations	$500	$2,000	$2,500	—
26-Jul-10	CEPA	Tetrachloroethylene Regulations	$500	$9,500	$10,000	—
09-Aug-10	CEPA	Tetrachloroethylene Regulations	$700	$950	$1,650	—
06-Oct-10	CEPA	Tetrachloroethylene Regulations	$500	$4,500	$5,000	—
01-Nov-10	CEPA	Tetrachloroethylene Regulations	$500	$5,500	$6,000	—
31-Jan-11	CEPA	Export Import Hazardous Waste and Hazardous Recyclable Material Regulations	$500	$9,500	$10,000	—
31-Jan-11	CEPA	Export Import Hazardous Waste and Hazardous Recyclable Material Regulations	$18,000	$2,000	$20,000	—
24-Feb-11	CEPA	—	$850	$7,650	$8,500	—
07-Mar-11	CEPA	Ozone Depleting Substances Regulations	—	$4,500	$4,500	—
18-Mar-11	CEPA	Export Import Hazardous Waste and Hazardous Recyclable Material Regulations	$4,000	$5,000	$9,000	

Fisheries Act

Date	Act	Fine for Court	Fine for EDF	Total Fine	Project Contribution
16-Jan-08	Fisheries Act	$4,000	$6,000	$10,000	
13-Jun-08	Fisheries Act	$3,000	$17,000	$20,000	
27-Aug-08	Fisheries Act	$2,000	$18,000	$20,000	
03-Sep-08	Fisheries Act	$2,000	$7,000	$9,000	
06-Oct-08	Fisheries Act	$15,000	—	$15,000	$75,000
13-Feb-09	Fisheries Act	$7,000	—	$7,000	$30,000
18-Feb-09	Fisheries Act	$10,000	$15,000	$25,000	
07-May-09	Fisheries Act	$500	$3,500	$4,000	
25-May-09	Fisheries Act	$50,000	—	$50,000	$350,000
02-Jun-09	Fisheries Act	$3,000	$5,000	$8,000	
22-Jul-09	Fisheries Act	$1,000	$3,000	$4,000	
19-Oct-09	Fisheries Act	$100	$3,400	$3,500	
22-Jan-10	Fisheries Act	$21,600	$10,000	$31,600	
11-Feb-10	Fisheries Act	$15,000	—	$15,000	
03-May-10	Fisheries Act	$3,750	—	$3,750	$71,250
30-Jun-10	Fisheries Act	$5,000	$45,000	$50,000	
05-Aug-10	Fisheries Act	$5,000	$50,000	$55,000	
27-Sep-10	Fisheries Act	$40,000	$50,000	$90,000	
16-Nov-10	Fisheries Act	$2,000	$28,000	$30,000	
22-Dec-10	Fisheries Act	$20,000	$180,000	$200,000	
11-Jan-11	Fisheries Act	$20,000	—	$20,000	
02-Mar-11	Fisheries Act	$10,000	$50,000	$60,000	
14-Mar-11	Fisheries Act	$5,000	—	$5,000	$70,000.00

Migratory Birds Convention Act

Date	Act	Fine for Court	Fine for EDF	Total Fine	Project Contribution
13-Feb-09	Migratory Birds Convention Act	—	$12,500	$12,500	—
25-May-09	Migratory Birds Convention Act	$50,000	—	$50,000	$400,000
28-May-09	Migratory Birds Convention Act	—	—	8mo conditional sentence	—
11-Aug-09	Migratory Birds Convention Act	$16,000	—	$6,000	—
20-Oct-09	Migratory Birds Convention Act	$35,000	—	$35,000	—
09-Mar-10	Migratory Birds Convention Act	$6,000	—	$6,000	—
01-Jun-10	Migratory Birds Convention Act	$3,200	$5,000	$8,200	—
10-Jun-10	Migratory Birds Convention Act	$1,880	—	$1,880	—
07-Jul-10	Migratory Birds Convention Act	$1,000	—	$1,000	$5,000
12-Oct-10	Migratory Birds Convention Act	$6,000	—	$6,000	—
22-Oct-10	Migratory Birds Convention Act	$300,000	—	$300,000	$2,200,000
04-Nov-10	Migratory Birds Convention Act	$3,750	—	$3,750	—
16-Nov-10	Migratory Birds Convention Act	$10,000	$25,000	$35,000	—
19-Nov-10	Migratory Birds Convention Act	—	$125,000	$125,000	—
11-Jan-11	Migratory Birds Convention Act	—	$1,000	$1,000	—
04-Mar-11	Migratory Birds Convention Act	$4,600	—	$4,600	—
08-Mar-11	Migratory Birds Convention Act	$1,860	—	$1,860	—
22-Mar-11	Migratory Birds Convention Act	$1,050	—	$1,050	—

Species At Risk Act

Date	Act	Fine for Court	Fine for EDF	Total Fine	Project Contribution
10-Sep-08	Species at Risk Act	$10,000	—	$10,000	—
16-Feb-09	Species at Risk Act	—	—	$-	$6,000
11-May-09	Species at Risk Act	$4,000	—	$4,000	—
05-Aug-09	Species at Risk Act	—	$10,000	$10,000 and 9 mo in jail	—
10-Jun-10	Species at Risk Act	—		4mo conditional	—
13-Oct-10	Species at Risk Act	$500	—	$500	—

Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act

Date	Act	Fine for Court	Fine for EDF	Total Fine	Project Contribution
20-Mar-08	WAPPRIITA	$1,000	$24,000	$25,000	—
29-Apr-08	WAPPRIITA	$6,135	—	$6,135	—
30-Sep-08	WAPPRIITA	$2,500	$1,500	$4,000	—
10-Dec-09	WAPPRIITA	$18,000	—	$18,000	—
23-Mar-10	WAPPRIITA	$2,500	—	$2,500	—
19-Apr-10	WAPPRIITA	$1,000	—	$1,000	$9,000
20-Apr-10	WAPPRIITA	$2,250	—	$2,250	—
14-Jul-10	WAPPRIITA	—	—	stayed	—
27-Jul-10	WAPPRIITA	$750	—	$750	—
03-Aug-10	WAPPRIITA	—	—	6mo conditional	—
30-Sep-10	WAPPRIITA	$3,000	—	$3,000	—
12-Nov-10	WAPPRIITA	$7,500	—	$7,500	—
06-Dec-10	WAPPRIITA	$5,000	—	$5,000	$95,000
09-Dec-10	WAPPRIITA	$8,000	—	$8,000	—

APPENDIX 2 | EXCERPTS OF ENVIRONMENT CANADA'S RESPONSE TO INFORMATION REQUEST ON ENFORCEMENT OF THE *CANADA WILDLIFE ACT*

[...]

The following table represents Inspections statistics regarding enforcement under the Canada Wildlife Act. As per your request, these results specifically highlight by: the number of prosecutions, per year for the last 5 years (2005 to 2009). Tickets via the Inspections not otherwise tabulated with the Investigations statistics.

Year	Number of Prosecutions/Tickets
2005	11
2006	1
2007	1
2008	4
2009	0
TOTAL	17

The following table represents Investigations statistics regarding enforcement under the Canada Wildlife Act. As per your request, these results specifically highlight by: the number of charges laid under the Act, the number of prosecutions, and the number of convictions, per year for the last 5 years (2005 to 2009).

Year	Number of Charges	Number of Prosecutions/ Tickets	Number of Convictions
2005	19	18	2
2006	3	3	1
2007	10	8	0
2008	0	0	0
2009	1	1	0
TOTAL	33	30	3

1 | *CANADIAN ENVIRONMENTAL PROTECTION ACT* STATISTICS FROM 2007-2008 FISCAL YEAR

Table 20
Summary of inspections, investigations and enforcement measures in 2007-2008

* These numbers include activities related to enforceable provisions of the Act.

EPCO = Environmental Protection Compliance Order.

EPAM = Environmental Protection Alternative Measure.

Explanatory Notes

- Number of inspections—The number of regulatees who were inspected for compliance where inspections were completed during the fiscal year.
- Number of investigations—The number of investigations started in the fiscal year. The total number of investigations in the number of investigation files started in the fiscal year. An investigation file may include activities relating to another law or to more than one regulation. Therefore, the total number of investigations shown does not add up to the total number of investigation by regulation.
- All enforcement measures (except for prosecutions and EPAMs) are tabulated at the section level of a regulation. For example, if the outcome of an inspection is the issuance of a written warning that relates to the alleged violations of three sections of a given regulation, the number of written warnings is three.
- Number of prosecutions—The number of regulatees who were prosecuted, regardless of the number of regulations involved.
- Number of EPAMs—The number of regulatees who signed EPAMs, regardless of the number of regulations involved.

CEPA Tool
Regulations
2-Butoxy-ethanol
Asbestos Mines and Mills Release
Benzene in Gasoline
Chlor-Alkali Mercury Release
Chloro- biphenyls
Contaminated Fuel
Disposal at Sea
Environmental Emergency
Export and Import of Hazardous Waste and Hazardous Recyclable Material
Export Control List Notification
Export of Substances under the Rotterdam Convention
Federal Halocarbon, 2003
Federal Mobile PCB Treatment and Destruction
Federal Registration of Storage Tank Systems for Petroleum Products and Allied Petroleum Products on Federal Lands or Aboriginal Lands
Fuels Information, No. 1
Gasoline
Gasoline and Gasoline Blend Dispensing Flow Rate
Inter-provincial Movement of Hazardous Waste
New Substances Notification (Chemicals and Polymers)
New Substances Notification (Organisms)
Off-Road Compression-Ignition Engine Emission
Off-Road Small Spark-Ignition Engine Emission
On-Road Vehicle and Engine Emission
Ozone-depleting Substances, 1998
PCB Waste Export, 1996
Phosphorus Concentration
Prohibition of Certain Toxic Substances, 2005
Pulp and Paper Mill Defoamer and Wood Chip
Pulp and Paper Mill Effluent Chlorinated Dioxins and Furans
Secondary Lead Smelter Release
Solvent Degreasing
Storage of PCB Material
Sulphur in Diesel Fuel
Sulphur in Gasoline
Tetrachloro-ethylene (Use in Dry Cleaning and Reporting Require-ments)
Vinyl Chloride Release, 1992
Other Tools
CEPA 1999—Section(s)*
Glycol Guidelines
Section 46 Notices—Greenhouse Gases
Section 56 Notices—P2 Plants
National Pollutant Release inventory
TOTAL

Additional Statistics

There were 66 referrals to another federal government department, or to a provincial or municipal government.

Of the 43 investigation files started in 2007-2008, 8 ended in 2007-2008 and 35 are ongoing. Of the 80 investigations files initiated before 2007-2008 (not included in the table), 37 were completed in 2007-2008 and 43 are ongoing.

	Inspections			Investi-gations	Enforcement Measures									
	Off-site	On-Site	Total		Tickets*	Written Directives*	Written Warnings	Injunctions	Ministerial Orders	EPCOs	EPAMs	Prosecutions	Charges	Convictions
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	95	61	156	-	-	-	5	-	-	-	-	-	-	-
	1	1	2	-	-	-	-	-	-	-	-	-	-	-
	20	40	60	1	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	21	42	63	1	-	-	3	-	-	-	-	-	-	-
	27	73	100	1	-	-	140	-	-	-	-	-	-	-
	134	582	716	14	-	-	151	-	-	7	-	2	16	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	416	299	715	4	-	2	550	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	19	19	-	-	-	-	-	-	-	-	-	-	-
	130	18	148	-	-	-	5	-	-	-	-	-	-	-
	14	15	29	-	-	-	2	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	18	56	74	-	2	4	-	-	-	-	-	-	-	-
	4	46	50	1	-	-	-	-	-	-	-	-	-	-
	1	21	22	1	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	2	-	2	-	-	-	-	-	-	-	-	-	-	-
	45	32	77	2	-	-	2	-	-	-	-	-	-	-
	1	1	2	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	33	14	47	-	-	-	-	-	-	-	-	-	-	-
	97	15	112	-	-	-	-	-	-	-	-	-	-	-
	-	5	5	-	-	-	2	-	-	-	-	-	-	-
	21	11	32	-	-	-	3	-	-	-	-	-	-	-
	178	90	268	-	-	-	42	-	-	-	-	-	-	-
	174	108	282	-	-	-	20	-	-	-	-	-	-	-
	34	61	95	-	-	-	2	-	-	-	-	-	-	-
	719	511	1,230	12	-	-	485	-	-	162	-	-	-	-
	8	-	8	-	-	-	-	-	-	-	-	1	1	-
	271	360	631	19	-	-	44	-	-	5	-	2	5	1
	3	1	4	-	-	-	-	-	-	-	-	-	-	-
	35	-	35	-	-	-	-	-	-	-	-	-	-	-
	10	14	24	-	-	-	4	-	-	-	-	-	-	-
	162	26	188	1	-	-	96	-	-	-	-	-	-	-
	2,674	2,522	5,196	43	-	4	1,560	-	-	174	-	5	22	1

II | *FISHERIES ACT* TABLE FROM FISCAL YEAR 2007-2008, FROM "ANNUAL REPORT TO PARLIAMENT ON THE ADMINISTRATION AND ENFORCEMENT OF THE FISH HABITAT PROTECTION AND POLLUTION PREVENTION PROVISIONS OF THE *FISHERIES ACT*."[1]

"Since 1978, EC [Environment Canada] has been responsible, for the enforcement of the pollution prevention provisions of the Fisheries Act - namely section 34 and sections 36 to 42. These sections of the Act deal with the deposit of deleterious substances into waters frequented by fish. In addition, a 1985 Memorandum of Understanding between the Department of Fisheries and Oceans and Environment Canada outlines the departments' respective responsibilities in the administration and enforcement of the pollution prevention provisions, and outlines several mechanisms to facilitate information sharing and cooperation."

1 Fisheries and Oceans Canada (2010), Working Near Water: What you need to do, online: *http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/measuring-mesures/reports-rapports/ann07/page09_e.asp*.

4.1.2 Summary of Enforcement Activities

Table 9 summarizes the number of occurrences, inspections and investigations carried out under the Fisheries Act during 2007-2008 by EC.

The following explanations should be noted with respect to the table:

- An **occurrence** is any event where there is a possible violation of the environmental and wildlife legislation administered, in whole or in part, by EC. An occurrence can generate an inspection or an investigation. Occurrences are tabulated based on Reported Date, for all categories except Spill/Release. An occurrence file may include one or more regulations, therefore it is possible that the data at the regulation level, may not add to the total at the legislation level.
- An **inspection** is an activity that involves verification of compliance with the environmental or wildlife legislation administered, in whole or in part, by EC. Only closed files using the end date are tabulated.

  The number of inspections relates to the number of regulatees inspected for compliance under each of the applicable regulations.
- An **investigation** is the gathering and analyzing, from a variety of sources, of evidence and information relevant to a suspected violation where there are reasonable grounds to believe that an offence has been, is being or is about to be committed with regards to the environmental or wildlife legislation administered, in whole or in part, by EC. Investigations are tabulated by number of investigations files, based on Start Date of the investigation. An investigation file may include activities relating also to another piece of legislation and may include one or more regulations. Therefore, the total number of investigations shown by regulation may not add to the total at the legislation level.

Table 9: EC Enforcement Activities and Measures Carried Out under Fisheries Act, Fiscal Year 2007-2008

NATIONAL	Inspections			Investi-gations	Enforcement measures				
	Off-site	On-site	Total		Prosecutions	Charges	Convictions	Written Directives	Written Warnings
General Prohibition	813	597	1,410	29	2	2	6	30	84
Alice Arm Tailings Deposit	0	0	0	0	0	0	0	0	0
Chlor-Alkali Mercury Liquid Effluent and Guide-lines	3	1	4	0	0	0	0	0	0
Meat and Poultry Products Plant Liquid Effluent and Guidelines	45	18	63	0	0	0	0	0	0
Petroleum Refinery Liquid Effluent and Guidelines	127	4	131	0	0	0	0	0	0
Port Alberni Pulp and Paper Effluent	1	0	1	0	0	0	0	0	0
Potato Processing Plant Liquid Effluent and Guidelines	80	10	90	1	0	0	0	0	0
Pulp and Paper Effluent	1,319	82	1,401	4	0	0	0	4	69
Guidelines for Effluent Quality and Wastewater Treatment at Federal Establishments	0	0	0	0	0	0	0	0	0
Metal Mining Effluent	588	79	667	5	0	0	0	5	35
TOTAL	2,976	791	3,767	39	2	2	6	39	188

Additional statistics:
There were 78 referrals to another federal/provincial or municipal government or department.

Table 10: Investigation Breakdown, Fiscal Year 2007-2008

Investigation Breakdown	# of Investigations
Investigation Started and Ended in FY 2007-2008	7
investigation Started in FY 2007-2008 and still on-going at end of FY 2007-2008	30
Investigation Started before FY 2007-2008 and ended in FY 2007-2008	28
Investigation Started before FY 2007-2008 and still ongoing at end of FY 2007-2008	44

Explanatory notes: The statistics are tabulated as follows:

- The measures such as Inspection Tickets, Written Warnings, Written Directions, Injunctions, Ministerial Orders and Environmental Protection Compliance Orders are tabulated at the section level of a regulation. Example, if the outcome of an inspection is the issuance of a written warning that relates to three sections of a given regulation, the number of written warnings is three.
- Prosecutions: The number of prosecutions is represented by the number of regulatees that were prosecuted by charged date regardless of the number of regulations involved (including Tickets).
- Environmental Protection Alternative Measures (EPAMs): The number of EPAMs is represented by the number of regulatees whom signed EPAMs by the charged date regardless of the number of regulations involved.
- Charges: The number of charges (excluding tickets) is tabulated at the section level of the regulation by charge date, by regulatee.
- Counts: The number of counts (excluding tickets) is tabulated at the section level of the regulation, by offence date relating to the regulatee's charge.
- Convictions: The number of convictions (excluding tickets) is represented by the number of counts where the regulatee was found guilty or pleaded guilty.
- Investigation Tickets: It is tabulated at the section level of the regulation by charge date, by regulatee.

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