

2011-2013 British Columbia Aquaculture Compliance Protocol
between
Aquaculture Management Directorate
and
Conservation and Protection Directorate

Whereas, Fisheries and Aquaculture Management (FM), Pacific Region, play the lead role in delivery of Fisheries and Oceans Canada's (DFO) responsibilities for aquaculture management and work with Conservation and Protection Directorate (C&P) in promoting, assisting and compelling compliance with *Pacific Aquaculture Regulations* made pursuant to section 43 of the *Fisheries Act*.

Whereas, delivery of these responsibilities is achieved through a range of activities founded on powers and authorities of the *Fisheries Act* and guided by related operational policies, and applied in a manner that contributes to goals and principles of Sustainable Fisheries and Aquaculture.

Whereas, FM is committed to developing and regionally implementing, through their Aquaculture Management Directorate (AMD) and Conservation and Protection Directorate (C&P), an integrated aquaculture compliance program.

Whereas, AMD and C&P agree to a management model for the delivery of the integrated aquaculture compliance program whereby AMD assumes the lead responsibility for activities and decisions related to audits, effectiveness and benthic monitoring, and whereby C&P assumes the lead responsibility for enforcement activities that aim to compel compliance with the *Fisheries Act* and for decisions to prosecute in cases of non-compliance.

Therefore, AMD and C&P agree to the following *British Columbia Aquaculture Compliance Protocol* to guide implementation of the department's integrated aquaculture compliance program.

1.0 Purpose

The purpose of this Protocol is to facilitate collaboration between the programs and to define the scope, principles, roles, responsibilities, accountabilities, governance, reporting requirements and terms in implementing an aquaculture compliance decision-making process that provides proper management and control of fisheries and the conservation and protection of fish through delivery of an integrated, coherent and adaptive aquaculture compliance program, informed by risk.

2.0 Principles

Decisions, actions and results in delivery of an integrated aquaculture compliance program are to be guided by an Integrated Compliance Risk Assessment as well as by the following principles:

- Mutual respect, collaboration, and shared responsibility;
- Flexibility, practicality, and innovation; and
- Transparency and open communication.

3.0 Scope of Application

This Protocol is limited to the administration and enforcement of federal aquaculture regulations made pursuant to the *Fisheries Act* and applies to the full spectrum of aquaculture compliance activities and decisions applied in the delivery of the department's integrated aquaculture compliance program.

Regional Operational Directives developed by AMD and C&P to reflect the operating environment and operational needs unique to each type of aquaculture may form annexes to this Protocol.

4.0 Definitions

The following definitions are used for interpretation purposes in applying this Protocol:

“Audit” means the collection and the evaluation of biological (e.g., fish disease profiles, benthic sampling) and other data to measure performance based on standards and guidelines and to verify compliance with the legislation.

“Compensation” means the replacement of natural habitat, increase in the productivity of existing habitat or maintenance of fish production by artificial means in circumstances dictated by social and economic conditions, where mitigation techniques and other measures are not adequate to maintain habitats for Canada's fisheries resource.

“Compliance” means the state of conformity with the law.

“Compliance Monitoring” means the regular observation, surveillance and recording of specific parameters and/or indices to determine the level of compliance with statutory requirements and associated mitigation, and/or compensation measures.

“Compliance Promotion” means the dissemination of information, technical expertise and advice to parties impacted or affected by the habitat protection and pollution prevention provisions of the *Fisheries Act*.

“Effectiveness Monitoring” means the routine or detailed recording of specific parameters and/or indices to determine the effectiveness of compensation and mitigation measures in achieving no net loss of fish habitat and fish productivity.

“Enforcement” means to compel observance of the law.

“Inspection” means the carrying out of a detailed systematic field examination based on the premise that an activity, or certain work or undertaking is subject to regulatory requirements.

“Integrated Aquaculture Compliance Program” means a coordinated effort towards risk-based program priority-setting and effective deployment of personnel and allocation of resources to promote, assist and compel compliance with federal aquaculture regulations made pursuant to section 43 of the *Fisheries Act*.

“Investigation” means the systematic gathering of evidence of a suspected violation, conducted when there are reasonable grounds to believe that an offence has occurred, or is being committed.

“Lead” means the party accountable for decisions taken either individually or in collaboration between the parties.

“Mitigation” means actions taken during the planning, design, construction and operation of works and undertakings to alleviate potential adverse effects on the productive capacity of fish habitat.

“Occurrence” means an observed or reported incident which is a potential violation of a statute or regulation.

“Occurrence Screening” means the initial information gathering and risk assessment of occurrence management used to inform a response decision.

“Stewardship” means the care, supervision or management of something, especially the care and responsible management of something entrusted to one's care.

“Support” means the party accountable for ensuring that adequate information, subject matter expertise and input are applied to decisions taken either individually or in collaboration between the parties.

“Violation” means the act or instance of failing to comply with provisions of a statute or regulation.

5.0 Roles and Responsibilities

The following sections are intended to describe the specific roles and responsibilities of AMD and C&P for implementing the aquaculture compliance decision-making process. For the purpose of this Protocol accountabilities in decision-making and conducting of aquaculture compliance activities are captured by the concept of “Lead” and “Support” responsibilities. The *Lead* is accountable for activities and decisions taken either individually or in collaboration between the parties. The *Support* is accountable for ensuring that adequate information, subject matter expertise and input is applied to activities and decisions.

5.1 Strategic Planning

- 5.1.1. AMD shall lead in the identification of aquaculture compliance priorities through the development of strategic aquaculture compliance plans to guide work planning and delivery of aquaculture compliance activities.
- 5.1.2 C&P shall support the development of strategic aquaculture compliance plans.
- 5.1.3 AMD and C&P shall integrate aquaculture compliance priorities and needs into their annual business and work planning exercises.

5.2 Compliance Promotion

- 5.2.1 AMD shall lead in activities designed to promote stewardship and compliance with federal aquaculture regulations and the development and delivery of technical training initiatives and partnering agreements.
- 5.2.2 C&P shall support AMD in the development of compliance promotion activities and shall conduct compliance promotion activities according to the regional work planning exercises.

5.3 Compliance Monitoring

- 5.3.1 C&P, in collaboration with AMD, shall lead in the delivery of compliance monitoring for conditions of aquaculture licences and may conduct these monitoring activities according to the regional work planning exercises.

5.4 Audits & Effectiveness Monitoring

- 5.4.1 AMD shall lead in the development and delivery of aquaculture audits and effectiveness monitoring for fish health, benthic / environmental monitoring, and mitigation monitoring activities.
- 5.4.2 C&P shall support AMD in the development and delivery of aquaculture audits and effectiveness monitoring activities.

5.5 Occurrence Screening

- 5.5.1 AMD shall lead in the determination the impacts related to aquaculture activities for the purpose of responding to public complaints and observed incident reports of non-compliance with federal aquaculture regulations.
- 5.5.2 C&P shall lead in assessing the compliance risk factors for the purpose of responding to public complaints and observed incident reports of non-compliance with federal aquaculture regulation.

- 5.5.3 Information gathering in support of occurrence screening shall be conducted by C&P or AMD.
- 5.5.4 AMD shall lead in determining the level of compliance risk in the application of a compliance risk assessment, based on the assessments of impacts related to aquaculture activities (section 5.5.1) and the compliance factors (section 5.5.2).

5.6 Response to Non-compliance

- 5.6.1 C&P and AMD shall collaborate on the decision in determining the appropriate response to the aquaculture compliance issue in coordination with other regulatory agencies as appropriate.
 - 5.6.1.1 AMD shall lead in conducting activities aimed at voluntary restoration.
 - 5.6.1.2 C&P shall lead in conducting activities that aim to compel compliance and the issuance of Inspector's directions, warnings and Ministerial orders.
 - 5.6.1.3 AMD shall support C&P in the development of the contents of Inspector's directions, warnings and Ministerial orders.
 - 5.6.1.4 C&P, in collaboration with AMD, shall lead in conducting investigations of aquaculture cases, laying of charges, preparing court briefs, executing warrants, coordinating with the Department of Justice, providing evidence in court and supporting prosecution process.
- 5.6.2 The Area Chief, C&P and the Regional Managers of Aquaculture Resource Management and Aquaculture Environmental Operations will collaborate on determination of the appropriate response to significant compliance issues.
- 5.6.3 The Regional Director General as well as Directors General of AMD and C&P, National Headquarters will be informed of all significant occurrences and significant investigations.
- 5.6.4 Recommendations to prosecute will be made by C&P.
- 5.6.5 AMD and C&P will lead or support the follow-up of the response to non-compliance consistent with the lead or support roles set out in 5.6.1.1 to 5.6.1.4 and depending on the nature of the required follow-up actions.
- 5.6.6 Where immediate remedial actions are required to conserve and protect fish and fish habitat, C&P and AMD staff are empowered to take the appropriate actions according to established policies and procedures.

5.7 Information Management and Reporting

- 5.7.1 AMD shall lead in tracking and receiving licence applications and the issuance of licences with prescribed conditions for each licence holder.
- 5.7.2 AMD shall lead in tracking and maintaining information related to audits, effectiveness monitoring, and compliance monitoring including fish health, sea lice, benthic monitoring, containment, escapements, incidental catch, predators, company reports and notifications through the national Aquaculture Regulatory Information Management System (ARIMS) database.
- 5.7.3 C&P shall lead in tracking and maintaining information related to occurrences, inspections, investigations and prosecutions through the national Departmental Violation System (DVS) database.
- 5.7.4 AMD, in collaboration with C&P, shall develop methods to efficiently share key information.

5.8 Training & Designations

- 5.8.1 C&P shall lead in the coordination of legal training for AMD staff requiring designations as Fishery Guardians and Habitat Inspectors under the *Fisheries Act*.
- 5.8.2 AMD shall lead in the development and delivery of monitoring and bio-security training for C&P staff to carry out their duties in compliance monitoring.

6.0 Governance Structure

AMD and C&P shall report through the established Aquaculture Implementation Governance Committee, at the Director level, to oversee integrated implementation of this Protocol and reporting on results achieved.

The Committee shall meet annually, or as required, to:

- Provide leadership in the development of clear, consistent, and comprehensive regional aquaculture compliance objectives and priorities and delivery of an integrated aquaculture compliance management program consistent with Departmental policies;
- Coordinate communications and consultations with other relevant regulatory agencies and cooperative arrangements to advance regional aquaculture compliance objectives and priorities;
- Establish sub-committees and working groups or other mechanisms and allocate resources to carry out specific assignments to achieve the objectives of this Protocol.

- Review and evaluate the implementation of this Protocol and prepare and submit a report on implementation for the Annual Report to Parliament.

7.0 Conflict Resolution

Where conflict arises relative to different opinions in the implementation of the Protocol or regional operational guidelines within the scope of relevant authorities or appropriate management practices, it is agreed that differences are to be resolved as quickly and efficiently as possible at the management level appropriate to risk and by those involved directly in discussions and decisions.

If satisfactory resolution cannot be achieved, matters will be raised to the Regional Director of FM and, if necessary, to the Regional Director General for further discussion and resolution.

Where complaints are received on the activities or conduct of staff, the Director of C&P and AMD will be informed of the issue raised.

8.0 Term

This Protocol comes into effect when signed by all parties for a fixed period of two years from the date of signing.

The Protocol shall be evaluated on an annual basis and recommendations for amendments made to the Regional Director General.

This Protocol does not nullify any existing Compliance and Enforcement Protocols or Agreements between DFO and other regulatory agencies.

9.0 Signatures

Randy Nelson, Director
Conservation and Protection Directorate

Andrew Thomson, Director
Aquaculture Management Directorate

Susan Farlinger, Regional Director General
Aquaculture Management Directorate

Date: _____

Annex 1: Summary of Roles and Responsibilities in Delivery of Aquaculture Compliance Activities

Component	Tasks	Lead	Support
5.1 Strategic Planning	<ol style="list-style-type: none"> 1. Identification of compliance promotion, monitoring and management priorities: 2. Integrating compliance priorities into work plans. 	AMD Both	C&P
5.2 Industry Engagement & Compliance Promotion	<ol style="list-style-type: none"> 1. Education, training and awareness. 2. Partnering 3. Supporting incentive and stewardship programs and activities 4. Follow-up 	AMD	C&P
5.3 Compliance Monitoring	<ol style="list-style-type: none"> 1. Conducting compliance monitoring activities 	C&P	AMD
5.4 Audits & Effectiveness Monitoring	<ol style="list-style-type: none"> 1. Conducting aquaculture audits and effectiveness monitoring activities for fish health, benthic / environmental monitoring, and mitigation monitoring. 	AMD	C&P
5.5 Occurrence Screening	<ol style="list-style-type: none"> 1. Integrated Compliance Risk Assessment <ol style="list-style-type: none"> 1. Risk to fish production, fish habitat and environmental impacts 2. Compliance risk factors 3. Information gathering in support of occurrence screening 4. Determination of level of compliance risk 	AMD C&P Both AMD	
5.6 Responding to Non-compliance	<ol style="list-style-type: none"> 1. Determine appropriate response to non-compliance (Integrated Compliance Risk Assessment) <ol style="list-style-type: none"> 1. Activities aimed at voluntary restoration; 2. Activities aimed to compel compliance; 3. Inspector's directions, warnings and Ministerial orders. 4. Conducting investigations, laying of charges, preparing court briefs, executing warrants, coordinating with the Department of Justice, providing evidence in court and supporting prosecution process. 2. Collaborate on the determination of the appropriate response to significant compliance issues 4. Recommendations to prosecute 5. Follow-up monitoring on compliance issue 	Both AMD C&P C&P C&P Both C&P Both	AMD AMD
5.7 Information Management & Reporting	<ol style="list-style-type: none"> 1. Tracking and receiving licence applications and the issuance of licences with prescribed conditions for licence holders. 2. Tracking and maintaining information related to audits, effectiveness monitoring and compliance monitoring including fish health, sea lice, benthic monitoring, containment, escapements, incidental catch, predators, company reports and notifications through in ARIMS. 3. Tracking and maintaining information related to occurrences, inspections, investigations and prosecutions in DVS. 4. Development of methods to efficiently share key information. 	AMD AMD C&P AMD	C&P
5.8 Training & Designations	<ol style="list-style-type: none"> 1. Coordinate the delivery of legal training for AMD staff requiring designations as Fishery Guardians and Habitat Inspectors under the <i>Fisheries Act</i>. 	C&P	

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	2. Development and delivery of monitoring and bio-security training for C&P staff to carry out their duties in compliance monitoring.	AMD	
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