

***National Habitat Compliance Protocol between
Oceans and Habitat and Fisheries and Aquaculture Management***

Whereas, Oceans and Habitat (O&H) and Fisheries and Aquaculture Management (FAM) Sectors each play a major role in delivery of Fisheries and Oceans Canada's (DFO) responsibilities for promoting, assisting and compelling compliance with the habitat protection provisions 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 development.

Whereas, O&H and FAM Sectors are committed to developing and implementing, through their respective Habitat Management Program (HMP) and Conservation and Protection (C&P) Programs, an integrated habitat compliance program.

Whereas, O&H and FAM Sectors agree to a management model for the delivery of the integrated habitat compliance program whereby HMP has an enhanced role with respect to activities and decisions related to promoting, assisting and compelling compliance with the habitat protection provisions of the *Fisheries Act* and whereby C&P assumes the lead responsibility for activities associated with decisions to prosecute in cases of non-compliance.

Therefore, O&H and FAM Sectors agree to the following National Habitat Compliance Protocol to guide regional implementation of the DFO's integrated habitat compliance program.

1.0 Purpose

The purpose of this Protocol is to facilitate collaboration between the Sectors and define the scope, principles, roles, responsibilities, accountabilities, governance, reporting requirements and terms in implementing a Standardized Habitat Compliance Decision-Making Process (Annex 1) that provides effective protection of fish and fish habitat through joint delivery of an integrated, coherent and adaptive habitat compliance program, informed by risk.

2.0 Principles

Decisions, actions and results in delivery of an integrated habitat compliance program are to be guided by an Integrated Risk Management Model (Annex 2) 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 the habitat protection provisions of the *Fisheries Act* and applies to the full spectrum of habitat compliance activities and decisions (Annex 1) applied in the delivery of DFO's integrated habitat compliance program across all regions.

Regional Operational Protocols developed between HMP and C&P to reflect the operating environment and operational needs unique to each region shall form annexes to this Protocol.

3.0 Definitions

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

"Compliance" means the state of conformity with the law.

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

"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 Habitat 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 the habitat protection provisions of the *Fisheries Act*.

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

“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.

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

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

“Referral” means a request submitted to DFO’s HMP, either directly by a proponent or indirectly by a provincial partner or other agency, to review a proposed work or undertaking which may negatively affect fish or fish habitat and may require a decision under the habitat protection provisions of the *Fisheries Act*.

“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.

4.0 Roles and Responsibilities

The following sections are intended to describe the specific roles and responsibilities of HMP and C&P for implementing the standardized habitat compliance decision-making process (Annex 1). For the purpose of this Protocol accountabilities in decision-making and conducting of habitat compliance activities are captured by the concept of “Lead” and “Support” responsibilities, as outlined in Annex 3. 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.

4.1 Planning of habitat compliance activities

- 4.1.1. HMP shall lead in the identification of habitat compliance priorities through the development of strategic habitat compliance plans to guide work planning and delivery of habitat compliance activities.
- 4.1.2. C&P shall support the development of strategic habitat compliance plans.
- 4.1.3. Both HMP and C&P shall consider and integrate habitat compliance priorities and needs into their annual business and work planning exercises.

4.2 Habitat Compliance Promotion

- 4.2.1. HMP shall lead in the development and delivery of habitat education and technical training initiatives; partnering agreements and covenants; and incentive and stewardship programs and activities designed to achieve compliance with the habitat protection provisions of the *Fisheries Act*.
- 4.2.2. C&P may support HMP in the development of compliance promotion activities and may conduct compliance promotion activities according to the regional work planning exercises.

4.3 Habitat Monitoring

- 4.3.1. HMP shall lead in development and delivery of habitat monitoring activities.
- 4.3.2. C&P will support HMP in the development and delivery of habitat monitoring activities and may conduct these habitat monitoring activities according to the regional work planning exercises.

4.4 Habitat Occurrence Screening

- 4.4.1 HMP shall lead in the determination of risk to fish and fish habitat based on the application of the *Integrated Risk Management Framework* (Annex 2) for the purpose of responding to public complaints and observed incident reports of non-compliance with the habitat protection provisions of the *Fisheries Act*.
- 4.4.2 C&P shall lead in assessing the *Compliance Risk Factors* in the application of the *Integrated Risk Management Framework* (Annex 2) for the purpose of responding to public complaints and observed incident reports of non-compliance with the habitat protection provisions of the *Fisheries Act*.
- 4.4.3 Inspections or information gathering in support of occurrence screening shall be conducted by either C&P or HMP, as situationally appropriate and as outlined in Regional Operational Protocols.

4.5 Response to Habitat-related Non-compliance

- 4.5.1 Both HMP and C&P shall jointly lead in identifying appropriate responses to situations of habitat-related non-compliance in coordination with other regulatory agencies as appropriate.
 - 4.5.1.1 C&P, in collaboration with HMP, shall lead in conducting investigations of habitat cases, laying of charges, preparing court briefs, executing warrants, coordinating with the Department of Justice, providing evidence in court and supporting prosecution process.
 - 4.5.1.2 HMP, in collaboration with C&P, shall lead in conducting activities aimed at voluntary restoration and the issuance of Inspector's directions, warnings and Ministerial orders.
- 4.5.2 The Regional Director General as well as Directors General, HMP and C&P, National Headquarters will be informed of all significant investigations and potential prosecutions at the earliest opportunity.
- 4.5.3 Recommendations to prosecute will be made collaboratively by the Regional Director of HMP and the Regional Director of C&P.
- 4.5.4 HMP 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 4.5.1.1 and 4.5.1.2 and depending on the nature of the required follow-up actions.

- 4.5.5 Where immediate remedial actions are required to conserve and protect fish and fish habitat, C&P and HMP staff in the field are empowered to take the appropriate actions according to established policies and procedures.

4.6 Information Management

- 4.6.1 HMP shall lead in tracking and maintaining information related to monitoring, occurrences, inspections, and responses to non-compliance through the national Program Activity Tracking for Habitat (PATH) database.
- 4.6.2 C&P shall lead in tracking and maintaining information related to habitat investigations and prosecutions through the national Departmental Violation System (DVS) database.

5.0 Governance Structure

HMP and C&P Programs shall establish national and regional cross-sector Habitat Compliance Committees, reporting through established national and regional governance structures for the two Programs, at the managerial level to oversee joint implementation of this Protocol and reporting on results achieved.

The Committee shall meet quarterly, or more frequently as required, to fulfill the purposes of this Protocol, specifically to:

- Provide leadership in the development of clear, consistent, and comprehensive national and regional habitat compliance objectives and priorities and delivery of an integrated habitat compliance management program consistent with Departmental policies;
- Coordinate communications and consultations with other relevant regulatory agencies and cooperative arrangements to advance national and regional habitat compliance objectives and priorities;
- Establish sub-committees and working groups or other mechanisms and allocate resources to carry out specific assignments including the implementation of joint projects and pilots to advance the objectives of this Protocol.
- Annually review and evaluate the implementation of this Protocol and prepare and submit a report on implementation for the Annual Report to Parliament.

6.0 Conflict Resolution

Where conflict arises relative to different opinions in the implementation of the National Protocol or regional operational protocols 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, and at a maximum, within 15 days of the issue being identified.

If satisfactory resolution cannot be achieved, matters will be raised to the Regional Manager, HMP, and Regional Director, C&P. If the issue in question can not be resolved within 14 days at this level, it will be brought forward to the respective Regional Directors of FAM and O&H and, if necessary, to the Regional Director General for further discussion and resolution.

7.0 Term

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

The Protocol shall be evaluated on a regular basis and recommendations for amendments made to the ADMs O&H and FAM.

This Protocol replaces any existing Habitat Compliance Protocol between the Sectors; however, it does not nullify any existing Compliance and Enforcement Protocols or Agreements between DFO and other regulatory agencies.

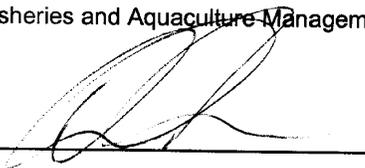
8.0 Signatures

Oceans and Habitat



Sue Kirby, Assistant Deputy Minister

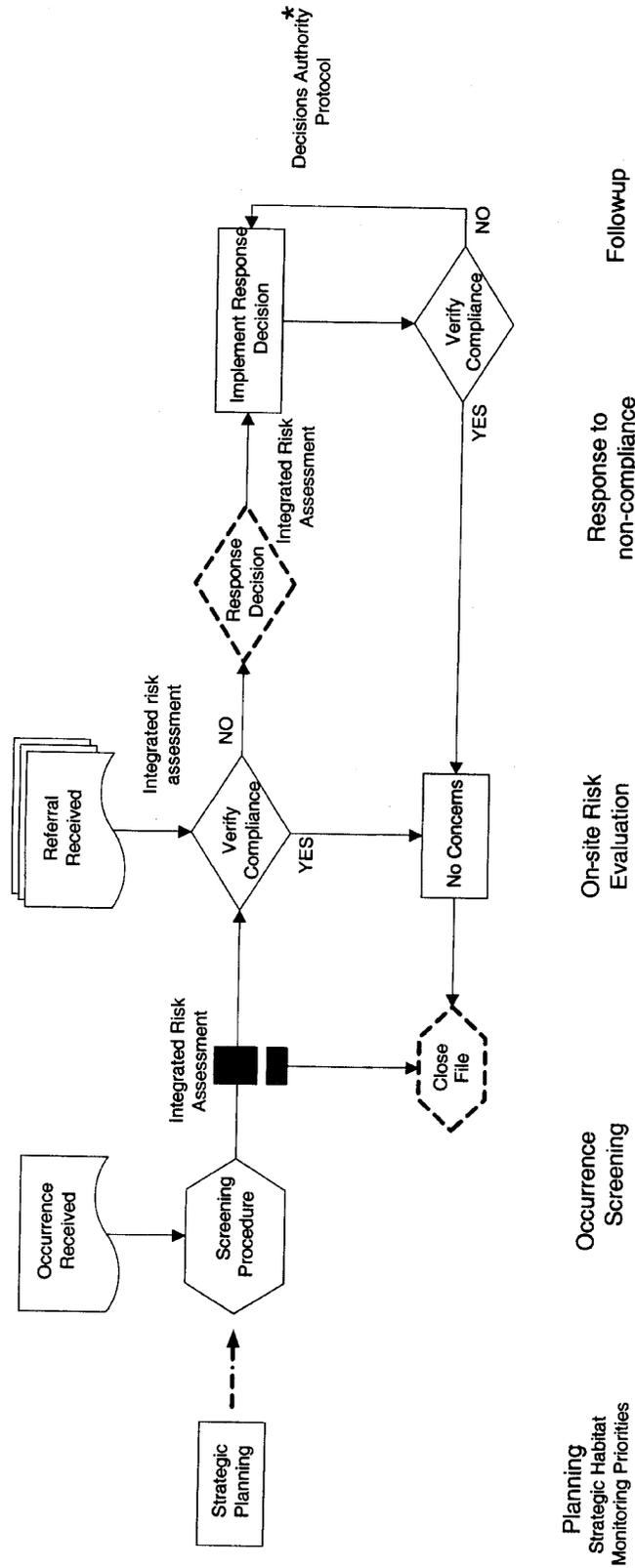
Fisheries and Aquaculture Management



David Bevan, Assistant Deputy Minister

Date: JAN 10, 2007

Annex 1: Standardized Compliance Decision-making Process



* A Decision Authority Protocol will be established to ensure appropriate accountabilities for responding to non-compliance. Decisions to conduct investigation that could lead to prosecution will be made at the Regional Director level.

Annex 2: Integrated Risk Management Framework.

