

**National Habitat Compliance Protocol between
Habitat Management Program
and
Conservation and Protection Directorate**

Whereas, Ecosystems and Fisheries Management (EFM) Sector plays 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, EFM Sector is committed to developing and implementing, through their respective Habitat Management Program (HMP) and Conservation and Protection (C&P) Directorate, an integrated habitat compliance program.

Whereas, EFM Sector agrees to a management model for the delivery of the integrated habitat compliance program whereby HMP assumes the lead responsibility for activities and decisions that aim to educate, promote and assist compliance with the habitat protection provisions of the *Fisheries Act*; and C&P assumes the lead responsibility for activities that aim to compel compliance with the *Fisheries Act*.

Therefore, EFM Sector agrees 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 programs and define the scope, principles, roles, responsibilities, accountabilities, governance, reporting requirements and terms in implementing the Habitat Compliance Decision Framework (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 the Habitat Compliance Decision Framework 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 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.

4.0 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.

“Compliance Monitoring” means the regular observation 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 and risk assessment 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 or territorial 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.

5.0 Roles and Responsibilities

The following sections are intended to describe the specific roles and responsibilities (Annex 2) of HMP and C&P for implementing the Habitat Compliance Decision Framework (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. 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 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.
- 5.1.2 C&P shall support the development of strategic habitat compliance plans.
- 5.1.3 HMP and C&P shall consider and integrate habitat compliance priorities and needs into collaborative annual business and work planning exercises.

5.2 Compliance Promotion

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

5.3 Compliance Monitoring of Reviewed Works or Undertakings

- 5.3.1 HMP shall lead in development and delivery of habitat compliance monitoring activities of reviewed works or undertakings.
- 5.3.2 C&P shall support HMP in the development and delivery of habitat compliance monitoring activities of reviewed works or undertakings and shall conduct these activities according to the regional work planning exercises.

5.4 Occurrence Screening

- 5.4.1 HMP shall lead in the determination of *Risk to Fish and Fish Habitat* based on the application of the *Compliance Risk Assessment* in Annex 1 for the purpose of responding to occurrences.
- 5.4.2 C&P shall lead in the assessment of the *Compliance Risk Factors* in the application of the *Compliance Risk Assessment* in Annex 1 for the purpose of responding to occurrences.
- 5.4.3 Information gathering in support of occurrence screening shall be conducted by either C&P or HMP, in the application of the *Compliance Risk Assessment* in Annex 1.

- 5.4.4 HMP shall lead in determining the *Level of Compliance Risk* in the application of the *Compliance Risk Assessment* in Annex 1, based on the assessments of impacts on fish and fish habitat (section 5.4.1) and the compliance factors (section 5.4.2).

5.5 Response to Compliance Issues

- 5.5.1 HMP shall lead in conducting activities aimed at voluntary restoration in response to No Risk, Minor Risk, and Moderate Risk habitat compliance issues in the application of Annex 1.
- 5.5.2 C&P shall lead in conducting activities that aim to compel compliance in response to Moderate Risk and Significant Risk habitat compliance issues in the application of Annex 1.
- 5.5.3 C&P shall lead in the issuance of Inspector's directions, warnings and Ministerial orders.
- 5.5.4 HMP shall support C&P in the development of the content of Inspector's directions, warnings and Ministerial orders as outlined in Regional Operational Protocols.
- 5.5.5 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.
- 5.5.6 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.
- 5.5.7 Recommendations to prosecute will be made collaboratively by the Regional Director of HMP and the Regional Director of C&P.
- 5.5.8 HMP and C&P shall conduct follow-up monitoring to the response to compliance issue consistent with roles set out in 5.5.1 through 5.5.5 and as outlined in Regional Operational Protocols depending on the nature of the required follow-up actions.
- 5.5.9 Where immediate remedial actions are required to conserve and protect fish and fish habitat, C&P is empowered to take the appropriate actions according to established policies and procedures.

5.6 Information Management

- 5.6.1 HMP shall lead in tracking and maintaining information related to compliance promotion, compliance monitoring, occurrences, and

responses to non-compliance through the national Program Activity Tracking for Habitat (PATH) database.

- 5.6.2 C&P shall lead in tracking and maintaining information related to inspections, investigations and prosecutions through the national Departmental Violation System (DVS) database.

6.0 Governance Structure

HMP and C&P shall establish national and regional cross-sector Habitat Compliance Committees, reporting through established national and regional governance structures, 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 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; and
- Annually 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 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.

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 at this level, it will be brought forward to the respective Regional Director of EFM and, if necessary, to the Regional Director General for further discussion and resolution.

8.0 Term

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

The Protocol and Regional Operational Protocols shall be reviewed annually by Regional Habitat Compliance Committees and recommendations for amendments made to the Senior Assistant Deputy Minister of EFM.

This Protocol replaces the 2007 National Habitat Compliance Protocol between the programs; however, it does not nullify any existing Compliance and Enforcement Protocols or Agreements between DFO and other regulatory agencies.

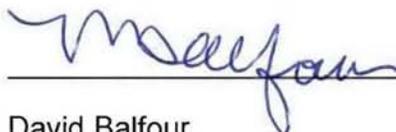
9.0 Signatures

 DEC 16 2010

Steve Burgess
Director General
Ecosystems Management

 OCT 18 2010

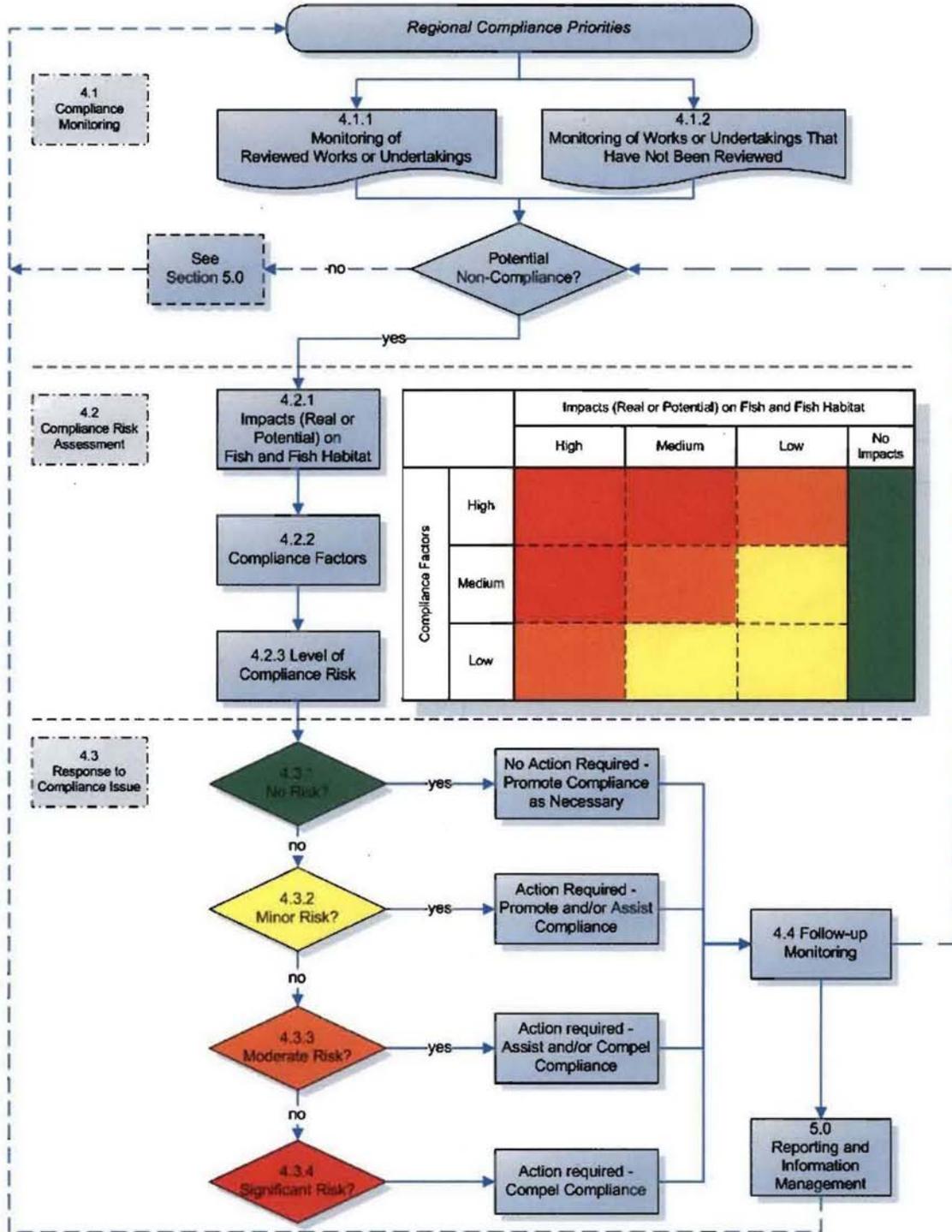
Paul Steele
Director General
Conservation and Protection

 DEC 21 2010

David Balfour
A/Senior Assistant Deputy Minister
Ecosystems and Fisheries Management

Date: DEC 21 2010

Annex 1: Habitat Compliance Decision Framework



Annex 2: Summary of Roles and Responsibilities of Habitat Management Program and Conservation and Protection in Delivery of Habitat Compliance Activities.

Component	Tasks	Lead	Support
5.1 Strategic Planning	<ol style="list-style-type: none"> 1. Identification of habitat compliance promotion, monitoring and management priorities; 2. Integrating habitat compliance priorities into HMP and C&P work plans. 	Habitat Management Program Both	Conservation and Protection
5.2 Compliance Promotion	<ol style="list-style-type: none"> 1. Education, training and raising awareness; 2. Partnering agreements; 3. Incentive and stewardship programs and activities. 	Habitat Management Program Habitat Management Program Habitat Management Program	Conservation and Protection Conservation and Protection Conservation and Protection
5.3 Monitoring of Reviewed Works or Undertakings	<ol style="list-style-type: none"> 1. Work planning; 2. Conducting compliance monitoring activities. 	Habitat Management Program Habitat Management Program	Conservation and Protection Conservation and Protection
5.4 Occurrence Screening	<p>Compliance Risk Assessment:</p> <ol style="list-style-type: none"> 1. Risk to fish and fish habitat; 2. Compliance risk factors; 3. Information gathering in support of occurrence screening; 4. Determine level of compliance risk: No Risk, Minor Risk, Moderate Risk, and Significant Risk. 	Habitat Management Program Conservation and Protection Both Habitat Management Program	
5.5 Response to Compliance Issues	<ol style="list-style-type: none"> 1. Conducting activities aimed at voluntary restoration; 2. Conducting activities aimed to compel compliance; 3. Issuance of 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; 5. Recommendations to prosecute; 6. Follow-up monitoring on compliance issue. 	Habitat Management Program Conservation and Protection Conservation and Protection Conservation and Protection Both Both	Habitat Management Program Habitat Management Program
5.6 Information Management	<ol style="list-style-type: none"> 1. Tracking and maintaining information related to compliance promotion, compliance monitoring, occurrences, and response to non-compliance in Program Activity Tracking for Habitat (PATH) database; 2. Tracking and maintaining information related to inspections, investigations and prosecutions in Departmental Violation System (DVS) database. 	Habitat Management Program Conservation and Protection	