



MECTS # 2010-045-00175
EKME # 2196564
FILE / FICHER #

To: Claire Dansereau
Pour:

Date: DEC 21 2010

Object:
Objet:

**APPROVAL OF THE REVISED
NATIONAL HABITAT COMPLIANCE PROTOCOL**

From / De: Paul Steele, DG, Conservation & Protection
Steve Burgess, DG, Ecosystems Management

DA DEC 15 2010
Steve Burgess DEC 15 2010

Via: *David Barbour* David Barbour, Sr ADM, Ecosystems & Fisheries Management

Your Signature
Votre signature

Information

For Comments
Observations

Material for the Minister
Documents pour le Ministre

Remarks:
Remarques:

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DEC 15 2010

Associate Assistant Deputy Minister/
Sous-ministre adjoint principal
Ecosystems and Fisheries Management/
Écosystèmes et gestion des pêches



JAN 14 2011

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Your file Votre référence

MEMORANDUM FOR THE DEPUTY MINISTER

Our file Notre référence

**APPROVAL OF THE REVISED
NATIONAL HABITAT COMPLIANCE PROTOCOL**

(Signature Required)

SUMMARY

- In January 2007, the Assistant Deputy Ministers of Oceans, Habitat and Species at Risk Sector and Fisheries and Aquaculture Management Sector signed the *National Habitat Compliance Protocol* to clarify the roles, responsibilities and accountabilities of Habitat Management Program and Conservation and Protection Directorate in the delivery of an integrated fish habitat compliance program.
- As the National Protocol had a fixed term of two years, it expired in 2009. After a review by both programs, only two main changes to the protocol are being proposed as outlined in **(TAB 1)**.
- In May 2009, Fisheries and Oceans Canada (the Department) and Environment Canada were the subjects of an audit conducted by the Office of the Commissioner of the Environment and Sustainable Development. In response to the recommendations, the Department committed to fully implement the Habitat Compliance Decision Framework, which also forms as Annex 1 to the revised National Protocol **(TAB 2)**.
- The intent of the 2007 protocol was to integrate the habitat compliance activities that were jointly managed by two sectors. The revised protocol clarifies roles and responsibilities of both programs by ensuring that a lead is identified for all activities. While it is difficult to predict, it is expected that under the revised protocol fishery officers will be asked to respond to fewer low risk occurrences related to fish habitat impacts. The main focus of their efforts will be on high risk occurrences, where an enforcement action is deemed necessary.
- The integration of the habitat compliance activities will be further improved by the departmental reorganization now that the two programs are in the same sector.
- I recommend, that you approve the attached *National Habitat Compliance Protocol* **(TAB 2)**, and you sign the attached memorandum to the Regional Directors General **(TAB 3)**. A communications plan **(TAB 4)**, an implementation strategy **(TAB 5)**, and speaking points **(TAB 6)** are included for information.

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Background

- In 2004, the Cabinet Expenditure Review Committee (the Committee) approved a plan to transfer some responsibilities for habitat compliance monitoring and enforcement from Conservation and Protection to the Habitat Management Program (Habitat). Subsequently, thirty-five fishery officer positions were eliminated and an equal number of positions were created in Habitat to support these new responsibilities.
- In response to the Committee's decisions, the Department launched the Habitat Compliance Modernization initiative as the sixth element of the Environmental Process Modernization Plan. Its purpose is to provide better protection of fish habitat through implementation of a strategic, integrated and risk-based approach in the delivery of the department's responsibilities for habitat compliance.
- In March 2006, the Departmental Management Committee reviewed progress on the implementation of this initiative and directed Oceans, Habitat and Species at Risk Sector and Fisheries and Aquaculture Management Sector (the Sectors) to develop a *National Habitat Compliance Protocol* to clarify the roles and responsibilities of Habitat Management Program and Conservation and Protection in the delivery of this compliance program.
- In January 2007, the Assistant Deputy Ministers of the Sectors signed the National Protocol and the regions were requested to develop regional operational protocols that later formed the annexes to the National Protocol.
- In 2008, the Audit and Evaluation Directorate conducted an internal audit of the Conservation and Protection Directorate and they made a recommendation to the Assistant Deputy Ministers of the Sectors to revise the National Protocol to make a clear distinction between administrative and law enforcement functions, to facilitate a common collaborative approach, and to mitigate the potential health and safety risk to habitat officials.
- One year later, the Department and Environment Canada were the subjects of an audit conducted by the Office of the Commissioner of the Environment and Sustainable Development. The recommendations stated the Department should accelerate the implementation of its Habitat Compliance Decision Framework to ensure that there is an adequate risk-based approach to monitoring projects and to provide assurance that proponents are complying with the *Fisheries Act*. The Department committed to fully implement this decision framework and to begin to report annually on results of monitoring activities by March 2010.

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Analysis / DFO Comment

- Conservation and Protection and Habitat Management Program conducted a thorough analysis of the 2007 National Protocol and proposed amendments to the roles and responsibilities. The revised National Protocol, with two key changes, has been reviewed by the Senior Habitat Management Committee and the Conservation and Protection National Directors' Committee; both committees approved the attached version. (TAB 2)
- The first change, in section 5.4 of the revised protocol on Occurrence Screening, establishes a lead in the compliance risk assessment of cases of potential non-compliance, where historically there was no lead identified for this occurrence screening function. Both programs will continue to collaborate to determine the risks to fish and fish habitat and the compliance risk factors related to occurrences, consistent with the Habitat Compliance Decision Framework; however, Habitat will make the final determination as to which risk category applies to the occurrence, and what type of action is required.
- The second change, in section 5.5 of the revised protocol on Responding to Compliance Issues, will assign the lead role to Conservation and Protection for the issuance of Inspector's directions, warnings and Ministerial Orders. Habitat agrees to continue to support Conservation and Protection in the development of the contents of such documents.
- Due to this second change, Habitat will no longer require employees to be designated as Inspectors; however, they will require Fishery Guardian designations with limited powers to carry out their duties. Habitat will continue to lead on low risk monitoring and occurrence response, and continue to promote and assist compliance through education and voluntary action. In all high risk cases, however, where enforcement action is required to compel compliance, Conservation and Protection will take a clear lead role, with support from Habitat.
- With the exception of these changes, the remaining amendments are administrative in nature. Examples include incorporation of the Habitat Compliance Decision Framework, which replaces the previous annexes to the National Protocol, and a change to the fixed term to five years instead of a two-year term.

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- To support the two-year transition strategy and implementation of the revised protocol, the Habitat Management Program and Conservation and Protection are currently working to revise the contents of the Habitat Compliance Decision Framework course and the Habitat Inspections and Investigations course. The latter course is required for staff to receive their Guardian and Inspector designations and identification cards, which makes this training a priority for Conservation and Protection to deliver as soon as possible. Over the course of this first year, both the Habitat Management Program and Conservation and Protection will collaborate to revise the course contents and ensure that the appropriate overlap of legal and policy guidance is given in each course.
- The revised protocol will not change the way in which referrals are managed by Habitat under the habitat protection provision of the *Fisheries Act* or environmental assessments completed under the *Canadian Environmental Assessment Act*.
- Given recent questions the Minister has been asked about the department's habitat compliance program, speaking points are attached for future reference (**TAB 6**).
- As a follow-up to your request at the briefing on October 5, 2010, you will find attached a summary table of the revised roles and responsibilities (**TAB 1**) and an implementation strategy (**TAB 5**).

Recommendations / Next Steps

- It is recommended that you approve:
 - the revised *National Habitat Compliance Protocol* (**TAB 2**) and the communications plan (**TAB 4**); and

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- the attached Memorandum to the Regional Directors General (**TAB 3**) to explain the transition strategy and to request that the regions provide the revised Regional Habitat Compliance Protocols to the Senior Assistant Deputy Minister of Ecosystems and Fisheries Management by February 28, 2011.



JAN 14 2011

David Balfour
Senior Assistant Deputy Minister
Ecosystems and Fisheries Management

Attachments (6)

TAB 1 – Summary Table of Revised Roles & Responsibilities

TAB 2 – National Habitat Compliance Protocol

TAB 3 – Deputy Minister Memorandum to Regional Directors General

TAB 4 – Communications Plan

TAB 5 – Implementation Strategy

TAB 6 – Speaking Points

 J. Shepherd / C. Ziai / P. Lemieux / C. Stoneman /  P. Steele / S. Burgess / ms

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