

PACIFIC REGION HABITAT COMPLIANCE PROTOCOL

Between

Oceans, Habitat and Enhancement Branch
and
Conservation and Protection
Fisheries and Oceans Canada
Pacific Region

Annex to
National Habitat Compliance Protocol
between
Oceans and Habitat
and
Fisheries and Aquaculture Management

June 11, 2007

DEFINITIONS

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

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.

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.

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.

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.

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

1. INTRODUCTION

Habitat Compliance Modernization (HCM) was introduced in 2005 as the 6th element of Fisheries and Oceans Canada's (DFO) Environmental Process Modernization Plan (EPMP).

HCM provides for policy, program and organizational changes aimed at clarifying the roles, responsibilities, and accountabilities of the Habitat Management Program (HMP) of the Oceans, Habitat and Enhancement Branch, and Conservation and Protection (C&P) of the Fisheries and Aquaculture Management Branch in habitat compliance activities and decisions.

In January 2007, a *National Habitat Compliance Protocol between Oceans and Habitat and Fisheries and Aquaculture Management* (National Protocol) was signed off by the responsible Assistant Deputy Ministers, to facilitate collaboration between the sectors and define aspects of the joint delivery of an integrated, coherent and adaptive habitat compliance program, informed by risk.

2. PURPOSE

The purpose of the *Pacific Region Habitat Compliance Protocol* (Regional Protocol) is to provide a consistent approach for planning, decision-making, and delivery of a habitat compliance program within the Pacific Region.

This Regional Protocol is annexed to and supports the National Protocol to facilitate collaboration between the Sectors and defines the scope, principal roles and responsibilities, accountabilities, governance, reporting requirements and terms for undertaking habitat compliance activities.

DFO Pacific Region has a Regional Headquarters located in Vancouver, B.C. and Area program delivery in five geographical Areas: South Coast, Lower Fraser, North Coast, BC Interior, and Yukon and Transboundary. Each Area within Pacific Region will develop an approach, consistent with this Regional Protocol, which describes clear operational roles and responsibilities between C&P and HMP for delivering the HCM program in that Area.

3. TERM

This Regional Protocol will be in effect for two years from the approval date and will be reviewed annually by the Pacific Region Habitat Compliance Committee (see Section 4.7)

4. ROLES AND RESPONSIBILITIES

A summary of the roles and responsibilities of HMP and C&P in delivery of habitat compliance activities consistent with the National Protocol is included in Table 1.

4.1. Planning of Habitat Compliance Activities

HMP, in collaboration with C&P, shall lead the identification of habitat compliance priorities through the development of strategic habitat compliance plans to guide work planning and delivery of habitat compliance activities.

HMP and C&P will jointly develop Regional Operational Plans on an annual basis to identify Area and Regional compliance priorities and to facilitate the development of work plans for compliance management activities.

Annual Regional Operational Plans may be revised by agreement of Regional Director of HMP and Director of C&P to reflect any change in priorities in a given year.

4.2. Habitat Compliance Promotion

HMP shall lead in the development and delivery of habitat education, technical training initiatives, partnering agreements, and stewardship programs.

C&P will opportunistically provide support in the development and delivery of habitat compliance promotion activities such as incorporating habitat protection messages in outreach programs and consultative processes.

4.3. Habitat Compliance Monitoring

HMP, will collaborate with C&P, and will take the lead role in designing, organizing and conducting habitat compliance monitoring activities on high, medium and low risk activities as deemed necessary.

C&P, in a supportive role, will collaborate with HMP to conduct habitat compliance monitoring on high and medium risk activities and on an opportunistic basis on low risk activities.

HMP shall lead, with the support of C&P, in conducting and documenting annual Area post-season reviews of compliance monitoring efforts, including site specific monitoring work plans.

4.4. Occurrence Screening

Occurrence reports are received by DFO Pacific Region through a number of methods including: observed incidents and direct reports from partner agencies, organizations and the public; complaints through Observe Record Report (ORR); and through DFO compliance monitoring activities.

Area HMP and Area C&P staff shall assess the risk factors associated with the occurrence.

Area HMP will lead in assessing the risk to fish and fish habitat taking into consideration the scale of impact in conjunction with the sensitivity of the habitat impacted.

Area C&P will lead in the assessment of the compliance situational risk factors which would include, but are not limited to, the known history of the parties involved, likelihood to re-offend, application of other relevant legislation, any precedent a DFO response will establish, and any attempt to conceal information.

Area HMP and Area C&P staff will collaborate on who will conduct site inspections and collect additional information.

Area HMP and Area C&P staff will discuss the appropriate response to an occurrence, taking into account occurrence circumstances and any site related health and safety concerns.

4.5 Responding to Habitat-Related Non-Compliance

Area HMP and Area C&P shall collaborate and agree on the most appropriate response to situations of non-compliance by assessing the situational and fish and fish habitat risk factors associated with the incident (Section 4.4). Area HMP staff may lead in education, training and voluntary restoration with support from Area C&P staff. Area C&P and Area HMP will collaborate on the issuance of warnings, Inspectors directions and Ministerial Orders.

Area C&P will lead in conducting investigations, preparing court briefs, executing warrants, laying charges, contacting other enforcement agencies, contacting Department of Justice, coordinating any assistance from HMP staff in the collection of evidence, providing evidence in court, and any other support that would be needed for the prosecution.

Recommendations to prosecute will follow the Department of Justice charge approval process.

4.6 Information Management

HMP has lead responsibility for tracking and maintaining any information related to habitat monitoring, occurrences, inspections, and responses to non-compliance through the national Program Activity Tracking for Habitat (PATH) database system.

C&P has lead responsibility for tracking and maintaining information related to habitat investigations and prosecutions through the national Departmental Violation System (DVS) database.

4.7 Governance

A Regional Habitat Compliance Committee (RHCC) shall be established to oversee the joint implementation of this Regional Protocol and to report on the results achieved.

This committee will be co-chaired by the Regional Director Oceans, Habitat and Enhancement and the Director Conservation and Protection. Membership will include the Regional Manager, Habitat Protection and Sustainable Development, a senior Conservation and Protection officer and the Habitat Monitoring Team Leader.

The committee shall meet quarterly or as frequently as required to fulfill the following objectives;

- a Preparation of a Terms of Reference that describes the role of the RHCC and decision making process.
- b Development of regional habitat compliance objectives and priorities and the delivery of an integrated regional habitat compliance program consistent with Departmental policies.

- c Coordinate communications and consultations with other regulatory agencies and other cooperative arrangements to advance regional habitat compliance objectives and priorities.
- d Establish sub-committees and working groups as necessary to allocate resources to carry out specific assignments including joint projects and pilots to advance the objectives of the National Protocol and this Regional Protocol.
- e Annually review and evaluate the implementation of this Regional Protocol and prepare any reports that are required for the Departmental Annual Report to Parliament.
- f Review and approve any proposed amendments to this Regional Protocol to ensure consistency with the National Protocol.

5. AMENDMENT

This Regional Protocol may be amended to:

- a) Be consistent with any amendments to the National Protocol ; or
- b) at any time by agreement of the Regional Director, OHEB and Director of C&P following discussion and approval of the Pacific Region Habitat Compliance Committee (see Section 4.7).
- c) Any amendment pursuant to 5 (b) must be consistent with the National Protocol.

6. APPROVAL

This Regional Protocol is endorsed by the Regional Director, Oceans Habitat and Enhancement Branch, and Director, Conservation and Protection and approved by the Regional Director General.

We concur

R. Reid
Regional Director
Oceans, Habitat and Enhancement
Pacific Region

R. Nelson
A/Director
Conservation and Protection
Pacific Region

I approve

P. Sprout
Regional Director General
Pacific Region

**TABLE 1:
 Summary of Roles and Responsibilities of HMP and C&P in Delivery of Habitat Compliance Activities in Pacific Region**

Component (a)	Tasks	Lead	Support
4.1 Planning of Habitat Compliance Activities	1. Identification of habitat compliance promotion, monitoring and management priorities: 2. Integrating habitat compliance priorities into HMP and C&P work plans.	HMP Each	C&P
4.2 Habitat Compliance Promotion	1. Education, training and awareness. 2. Partnering 3. Supporting incentive and stewardship programs and activities 4. Follow-up 5. Data entry	HMP HMP HMP HMP HMP	C&P C&P C&P C&P C&P
4.3 Habitat Monitoring	1. Planning (Integrated Risk Assessment) 2. Conducting monitoring activities	HMP HMP	C&P C&P
4.4 Occurrence screening	1. Receipt of occurrence 2. Screening (Integrated Risk Assessment) a. Assessing risk to fish and fish habitat b. Assessing compliance risk factors c. Inspections and Information gathering in support of occurrence screening	Both HMP C&P Situational (b)	C&P HMP
4.5 Responding to habitat-related non-compliance	1. Identifying appropriate response to non-compliance (Integrated Risk Assessment) 1.1 Investigations and enforcement 1.2 Non-enforcement activities 2. Recommendations to prosecute 3. Follow-up on compliance measure	Both C&P HMP Both Situational (c)	HMP C&P
4.6 Information Management	1. Tracking and maintaining information related to monitoring, occurrences, inspections and response to non-compliance in PATH 2. Tracking and maintaining information related to investigations and prosecutions in DVS	HMP C&P	

(a) Numbers consistent with National Protocol and this Regional Protocol

(b) Health and safety considerations are accounted for in deciding the lead.

(c) Lead sector continues to lead Follow-up consistent with 4.5.1.1 and 4.5.1.2 of National Protocol, depending on the nature of the follow-up.