DFO NATIONAL COMPLIANCE FRAMEWORK

INTRODUCTION AND PURPOSE

The Department of Fisheries and Oceans has approved a **new framework for its national compliance program**. This national compliance framework signals a reorientation of the Department's approach to compliance issues across the range of nine regulatory programs for which it has compliance responsibilities. These include: fisheries (domestic, aboriginal, recreational, international); aquaculture management; the Canadian Shellfish Sanitation Program; fish habitat management; oceans management; Species at Risk; and, marine safety and security.

The **purpose** of this document is to set out the new framework to engage program clients (resource users and other stakeholders) in a dialogue with Conservation and Protection and other officials involved in compliance activities, on how to jointly achieve program outcomes through improved compliance and shared stewardship. These outcomes are in the interests of both industry and other resource users, and the Government of Canada.
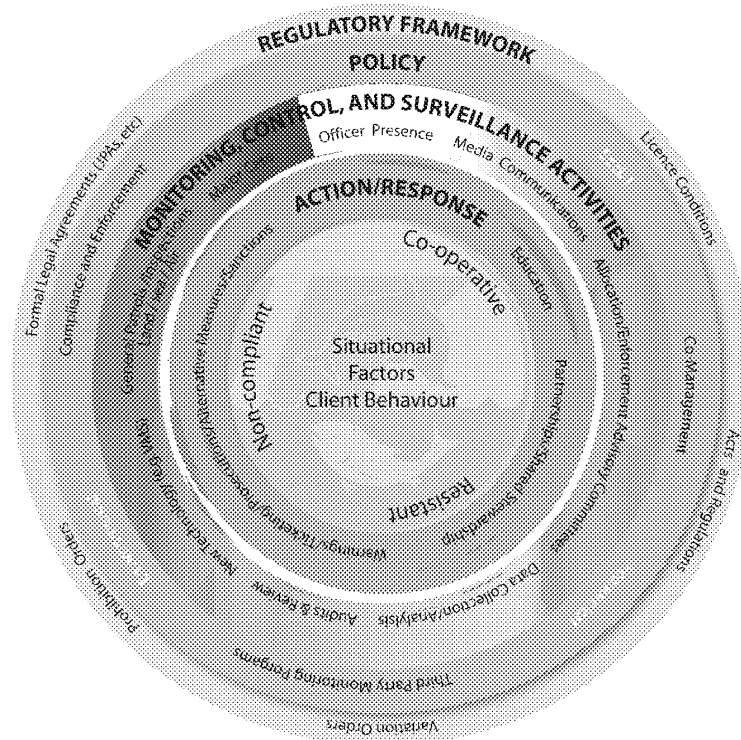
The redirection in DFO compliance policy has resulted from an in-depth and comprehensive review of compliance issues across the Department paralleling related review and modernization initiatives including Fisheries Management Renewal and Habitat Compliance Modernization. As a result of the review, the Department developed, and subsequently approved in January 2006, a **new model** for its national compliance programs, reflecting a modern understanding of the factors that influence compliant behavior and a more integrated and strategic use of available tools to address non-compliance.

This document builds on the new compliance model to provide a comprehensive **National Compliance Framework** which integrates cross-sectoral compliance issues and needs, while enhancing the capacity to tailor compliance strategies to particular program and situational requirements. The compliance framework has three main components:

- rationale and purpose
- policy principles
- support pillars

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DFO NATIONAL COMPLIANCE MODEL

The overall **Goal** of the new DFO National Compliance Model is to influence client behavior through a variety of means such that an acceptable level of compliance is achieved.

The **Model** reflects the complex dynamics associated with influencing the behavior of regulated communities towards compliance. It is composed of four "rings" representing the Regulatory Framework (grey); the Policy Framework (blue); Monitoring and Control and Surveillance (MCS) Activities (multi-coloured); and, Action/Response Activities (green). The latter two rings taken together constitute a comprehensive range of compliance "tools" available to Conservation and Protection officials and others involved in compliance activities. The centre represents client behavior (co-operative, non-compliant, resistant) subject to influence by targeted compliance strategies comprised of a combination of activities drawn from the available "toolbox".

The Model is a **dynamic in time and composition** allowing for strategic responses to particular and specific non-compliance issues through the alignment of the inner rings. It differs from more traditional approaches which understand compliance measures in terms

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of a linear continuum with "soft", persuasive activities such as awareness, education and compliance promotion on one end, and "hard", enforcement-type activities (prosecution, penalties) imposing or compelling compliance on the other.

The **Regulatory Framework** includes the Acts and Regulations governing the nine regulatory programs as well as fishing licence conditions, variation orders, prohibition orders and formal legal arrangements such as Joint Partnerships Agreements (JPAs). Changes to the legal framework will occur with any legislative amendment or formal regulatory change. It should be noted that planned amendments to the Fisheries Act arising as a result of Fisheries Modernization should not require change to this compliance policy framework as this policy framework reflects the broad policy parameters underlying proposed legislative and regulatory amendments.

The Policy "ring" captures environmental and situational factors (ecological, social and economic) and the policies which guide compliance and enforcement activities. It also includes policy initiatives such as co-management and third party monitoring programs.

The **Monitoring, Control and Surveillance and Action/Response** "rings" comprise a wide array of activities that can be used to maintain an on-going assessment of the level of compliance on the part of clients. These activities include four categories: departmental MCS programs (e.g. routine and, sea and air patrols); new technologies (vessel monitoring systems, remote camera monitoring); third party monitoring (at-sea and dockside monitoring); and, inter-agency partnerships with DOJ, RCMP, CCRA and provincial and municipal agencies.

The other two elements in the compliance strategy toolkit are **Major Case Management/Investigations** and **Education/Shared Stewardship**. Major Case Management/Investigations includes formal intelligent gathering and analysis, retroactive offense detection and investigation and recruitment of specialized investigative skills. Education and Shared Stewardship activities include informal and formal educational activities with clients and stakeholders, and co-management and partnership arrangements including the assurance of compliance considerations in Integrated Fisheries Management Plans (IFMPs), promoting client funding and participation in compliance, and stakeholder engagement and participation in the delivery of compliance functions, e.g. compliance advisory committees. (A more complete list of MCS and other compliance tools is included as Appendix 1).

These four layers of the national compliance model provide the elements required to deal with the full range of situational factors and client behavior. They are incorporated in the **National Compliance Framework** as follows:

- the regulatory/legal framework reflects the fundamental rationale and purpose of the compliance framework;

- compliance and enforcement policies and arrangements are guided by the compliance framework's policy principles; and,

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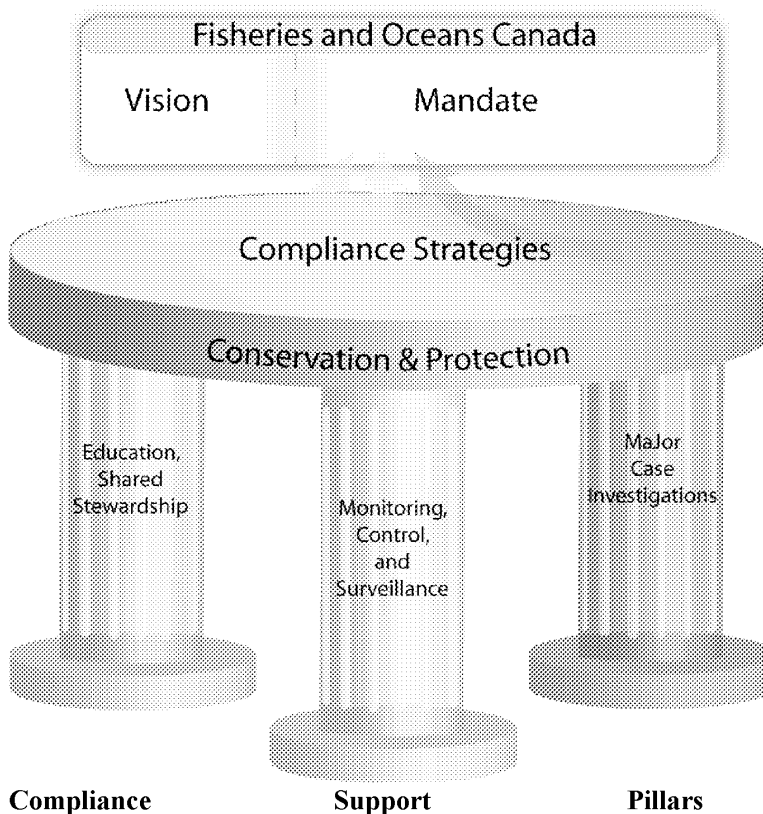\Compliance Framework\

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- the MCS and Action/Response activities of the model comprise the framework's strategic support for specific compliance strategies in programs and Regions.

THE NATIONAL COMPLIANCE FRAMEWORK

The new National Compliance Framework has three components to guide and support departmental and program compliance strategies. The first component is its rationale and purpose, based on DFO's mandate and vision. The second component is a set of guiding principles, and the third is a toolkit of supports for compliance strategies. The Framework can be represented in the following form:

DFO STRATEGIC OUTCOMES

Safe, Accessible Waterways- Sustainable Fisheries and Aquaculture- Healthy, Productive Aquatic Ecosystems

Fisheries and Oceans Canada

Vision   Mandate

Compliance Strategies

Conservation & Protection

Education, Shared Stewardship

Monitoring, Control, and Surveillance

Major Case Investigations

Compliance   Support   Pillars

Editorial Note: 1. Add a base to this figure called "Policy Principles".
2. Move the DFO Vision/Mandate figure to the bottom (i.e. below the "policy principles disk) and add ''Rationale and Purpose" 3. Replace the top box with "Strategic Outcomes".

Rationale and Purpose

The rationale for a **National Compliance Framework** is to better serve the vision of DFO, which is to ensure the sustainable development and safe use of Canadian waters and its mandate to develop and implement policies and programs in support of Canada's interests in oceans and fresh waters. More specifically, achieving the Department's three **Strategic Outcomes** requires an appropriate and effective compliance program. Without an appropriate and effective compliance program consistent in approach with the resource management regime, these outcomes will not be achieved.

The purpose of this framework is to re-orient the departmental compliance program, integrating cross-sectoral compliance issues and needs into a comprehensive DFO compliance regime and response, ensuring innovation and optimal use of available resources.

Policy Principles

The new Compliance Framework is centered on **eight key principles** which will govern the way in which the work of Conservation and Protection and others involved in compliance activities across the Department will be conducted. These policy principles carry forward the key findings of the 2005 review and the concepts of the new compliance model, notably in their emphasis on problem-solving based on risk management and priority setting, integrated use of compliance tools, and shared stewardship arrangements and partnerships with program clients.

- **Avoidance of non-compliance (preventative rather than reactive)**

Compliance strategies will focus on influencing client behavior via proactive and prevention-based activities with the objective of improving voluntary compliance and avoiding non-compliance. The emphasis will be on promoting voluntary compliance rather than imposing compliance, on a collaborative rather than adversarial approach.

- **Shared stewardship/ Partnerships (collaborative rather than adversarial)**

Compliance strategies and activities will involve building new working relationships on the part of compliance officials with resource users and stakeholders based on the principle of shared stewardship of the resource. The emphasis will be on the increased involvement of client/stakeholders in program planning, shared decision-making through compliance advisory committees, and in some cases, program delivery.

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- **Problem-solving Approach (pragmatic, flexible rather than routine)**

Compliance strategies will be determined by the nature and circumstances of the compliance issue rather than on more narrow approaches relying on more routine activities. Compliance tools will be used strategically and in varying combinations based on an in-depth, evidence-based analysis of the problem. Emphasis will be placed on identifying patterns of non-compliance in order to tailor the response to the problem rather than allowing the "tools" to drive the response. This represents a fundamental shift in approach to the management of regulatory programs for resource management and environmental protection.

- **Innovative (rather than conventional)**

Compliance programs will adapt and utilize the most up-to-date monitoring, control and surveillance, investigative and information technology as possible to improve compliance information gathering and analysis and overall cost-efficiency and effectiveness of the program.

- **Integrated (rather than program/sector-driven)**

Sector-based priorities for the national compliance program will be determined in consultation with program sector partners (fisheries management and aquaculture, habitat management etc.) based on analysis and assessment of the risk of non-compliance to the resource. Compliance issues and responses will be considered in development of the management regime measures with clients e.g. Integrated Fisheries Management Plans (IFMPs). The compliance program will also be integrated with the activities of other government departments and agencies involved in intelligence gathering, surveillance and law enforcement (e.g. RCMP, CCRA) and provincial and municipal agencies.

- **Risk-based (rather than incident-driven)**

Overall priorities for the national compliance program will be determined through an assessment of the risk to the resource by non-compliance. This will include a consideration of the likelihood of occurrence and impact on the resource. Non-compliance behavior that cannot be avoided through collaborative approaches will be managed and enforcement action taken as required.

- **Balanced (rather than single- focused)**

DFO's response to compliance issues will reflect a greater emphasis amongst the three major program components: Education/Shared Stewardship, Monitoring, Control and Surveillance, and Major Case Management/Investigation. An increased emphasis on Education and Shared Stewardship and Major Case Investigation/Management than previously will be required this balance to be achieved.

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- **More Cost-efficient/effective**

Compliance programs will be planned and delivered with due regard to keeping compliance costs down for industry/program clients and for the government while ensuring an acceptable level of compliance

Compliance Support Pillars

These eight compliance policy principles provide an orientation for the wide variety of specific tools available, subject to resources, to apply in the interests of compliance. This toolbox of supports can be organized broadly within three pillars. As set out in the compliance framework diagram above, these strategic support pillars are:

- **Education and Shares Stewardship**
  o Informal education
  o Formal education
  o Co-management, partnerships

- **Monitoring Control and Surveillance**
  o Departmental MCS programs
  o New technologies
  o Their party monitoring activities
  o Interagency partnerships

- **Major Case Management/Investigations**
  o Formal intelligence gathering and analysis
  o Offence detection and investigations
  o Training and recruitment of specialized skills

Compliance programs and initiatives are the operational component of the National Compliance Framework, providing the means to deliver on the Department's vision and mandate, within guiding policy principles. A compliance framework is too brief a statement to provide a more detailed description of relevant compliance-related programming and initiatives, but a summary of specific examples within each compliance support pillar is provided in Appendix 1

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USING THE NATIONAL COMPLIANCE FRAMEWORK

DFO's compliance review and modeling have outlined the dynamic complexity of achieving effective compliance with the Department's legal and regulatory requirements. This National Compliance Framework is intended to connect the new compliance model directly to the purpose, policy principles and support tools of today's compliance environment.

Purposefully, the Framework does not set out a single national compliance strategy. Rather, it constructs a departmental compliance regime which provides a set of consistent compliance policy principles and organizes compliance tools around three support pillars. This approach integrates cross-sectoral compliance issues and needs, while retaining flexibility to draw on supports as circumstances require and resources allow.

This National Compliance Framework is itself, therefore, another tool added to compliance toolkit, Effective compliance strategies require a number of things, including a clear and coherent compliance framework. Program managers can use the Framework as a key point of reference when addressing the operational issues which also impact on outcomes and effectiveness, such as linkages to program planning and budgeting and organizational and management structure.

Finally, Officers are encouraged to draw on the Framework in exchanges with clients and stakeholders, where the issue of perceived arbitrariness often arises. Reference to the National Compliance Framework, or to its specific policy principles or support pillars, and to its web-availability, these situations can add credibility and legitimacy to departmental positions.

Draft December 4, 2006
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DFO NATIONAL COMPLIANCE FRAMEWORK
STRATGIC SUPPORT PILLARS

EDUCATION/ SHARED STEWARDSHIP

Informal education

- Informal interaction with clients and stakeholders at wharves, on general patrols and at community events

Formal education

- Presentations to client/stakeholder groups
- Formal promotional campaigns

Co-management/ Partnerships

MONITORING, CONTROL AND SURVEILLANCE ACTIVITIES

Departmental MCS programs include**:**

- Routine land, sea and air patrols/inspections, surveillance and stakeouts
- Audits of third party service providers (contractors and designated entities such as DMCs, guardians)
- General plant/buyer inspections

New technologies including:

- VMS
- E-logs
- IVR
- remote monitoring (e.g. camera surveillance of closed areas)

Third Party monitoring activities include:

- At-sea and dockside observers
- MSOC
- PAL (contracted air surveillance)

Inter-agency partnerships include:

- DOJ (regulatory initiatives, prosecutions)
- RCMP, CCRA
- Provincial, municipal agencies

MAJOR CASE MANAGEMENT/ INVESTIGATIONS include:

- **Formal intelligence gathering and analysis**
  - Interagency intelligence networking
  - Interagency resource exchange

- **Retroactive offence detection and investigation**

  - Alignment of interdepartmental and intergovernmental data collection processes/systems

- **Training and recruitment of specialized skills.**

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