

# Appendix H

## Compliance

## Monitoring Plan



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# Appendix H. Compliance Monitoring Plan

## 1.0 Introduction

Compliance monitoring for the Aquatic Lands Habitat Conservation Plan is intended to verify and document that Washington DNR is complying with the incidental take permit, habitat conservation plan, and Implementing Agreement. This monitoring not only determines where and when identified conservation strategies are being implemented, it also allows an assessment of how well the Washington State Department of Natural Resources (Washington DNR) is moving toward accomplishing the biological goals and objectives of the habitat conservation plan and if they are being implemented in a timely manner.

The conservation strategies of the habitat conservation plan are primarily based on avoiding and minimizing impacts to covered species. Compliance monitoring takes the form of an environmental audit and focuses on ensuring first, that the authorizing instruments for covered activities (e.g., lease, license) stipulate the measures to be taken to avoid and minimize impacts to covered species and their habitats; and second, that the operating conservation program described in Section 5.2 is being carried out as specified in the habitat conservation plan.

Monitoring methods will consist of yearly audits of both the use authorizations (agreements) signed by Washington DNR and field implementation of the stipulated provisions. Compliance monitoring will assess the proportion of agreements containing habitat conservation plan conservation measures, and the proportion of the stipulated measures implemented within the leasehold<sup>1</sup>.

## 2.0 Compliance monitoring design

### 2.1 Paper audit

The paper audit is designed to assess whether conservation strategies, standards and activity-specific conservation measures are being incorporated into agreements in a manner consistent with the habitat conservation plan, incidental take permit, and Implementing Agreement.

### 2.2 Field audit

The field audit is designed to assess whether conservation strategies, standards and activity-specific conservation measures defined through the paper audit are being implemented on the ground.

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<sup>1</sup> The term leasehold is used throughout this document as a generic term for sites at which Washington DNR has authorized the use of state-owned aquatic land.

## 2.3 Statistical design

Each of the three Aquatics Districts will separately monitor each of the authorized activities to which strategies, standards, and conservation measures can be applied. Authorized activities are defined as all the agreements signed since the habitat conservation plan went into effect for that activity within that district. The purpose of the statistical design is to produce estimates of the rate of compliance for each activity within each district, as well as for the agency as a whole. It is expected that in the early years of the habitat conservation plan the population size for most activities in a district will be equal to the sample size. As monitoring the entire population avoids errors associated with sample estimates, in such instances the entire population will be monitored.

During the first year of compliance monitoring, all agreements covered by the habitat conservation plan will fall into a single category within each population: those that have not yet have been monitored. After the first year there will be multiple categories within each population: agreements that have not yet been monitored; agreements that have been monitored and determined to be in compliance; and agreements that have been monitored and determined to be out of compliance.

### 2.3.1 First year of monitoring

Compliance monitoring will begin the first year after the incidental take permit is signed. Both paper and field audits will take place in that year, although the number of activities that can undergo a field audit will be limited by the necessity of allowing time for the implementation of conservation measures. An implementation deadline will be established for each conservation measure in the authorizing agreement, and the field audit of any given structure will not take place until the applicable implementation deadlines have passed. However, some activities will have implementation deadlines of less than one year and will undergo a field audit the first year.

#### Estimation of sample size

As all agreements undergoing compliance monitoring in the first year will fall into a single category, those that have not yet been monitored, the sample design for compliance monitoring in the first year will be simple random sampling for a finite population.

### 2.3.2 Subsequent years of monitoring

#### Paper audit population and sample size

After the first full year of auditing agreement files, two categories of agreements will be formed within each population: habitat conservation plan-covered agreements signed the previous year and not yet monitored; and agreements previously monitored and determined to be out of compliance. To account for differing variability in the proportion of compliance between the two categories, the sampling design for the paper audit will then change to stratified random sampling with a finite population size. As the stipulations incorporated into the agreements will not change without undergoing a formal change to the document, the third category of agreements, those that have been monitored and found to be in compliance, will not be included in subsequent paper audits without a change in agreement status.

## Field audit population and sample size

After the first year of field audits, three categories of agreements will be monitored for compliance:

1. Agreements covered under the habitat conservation plan that are past the implementation deadlines but have not yet been sampled;
2. Agreements previously monitored and determined to be out of compliance; and
3. Agreements previously monitored and determined to be in compliance. Physical structures can be damaged by storms or normal wear and tear and it is important to ensure that repairs and maintenance by the lessee continue to adhere to the stipulations of the habitat conservation plan.

To account for differing variability in the proportion of compliance between the three categories and a higher proportion of agreements in the third population, the design will be changed to stratified random sampling to identify a finite sampling size.

## 2.4 Monitoring procedure

### 2.4.1 Paper audit

Following the sample selection, the files selected for monitoring will be examined for complete documentation of the applied conservation measures. This is defined through a conservation measure selection report, maintenance letter, memo, or other correspondence that defines the applicable conservation measures. For the agreement to be considered in compliance with the incidental take permit, it must contain the appropriate conservation measures as defined in the Operating Conservation Program (Section 5-2). Implementation of the Operating Conservation Program will also be part of the paper audit, with compliance based on submissions by the lessee documenting accomplishments (e.g., number of derelict structures removed) or progress towards the specified measures (e.g., securing of funds).

Should the audit find that requirements are consistently being misinterpreted, Washington DNR will refer the measure to the Adaptive Management and Monitoring Technical Team for refinement to eliminate the confusion.

### 2.4.2 Field audit

Following the sample selection, onsite visits will be held and the presence or absence of all applicable conservation measures will be recorded. Conservation measures with a quantifiable standard that must be met will be quantified and a determination made if the standard has been met. Any exceeding of standards will also be recorded.

As with the paper audit, requirements that are consistently and similarly misinterpreted will be referred to the Adaptive Management and Monitoring Technical Team for refinement to eliminate confusion.

## 2.5 Monitoring schedules

### 2.5.1 Paper audit

The process of auditing the incorporation of conservation measures into use agreements will begin three months after the close of the reporting period and be completed within an additional three months.

### 2.5.2 Field audit

With careful planning, the field audit can occur throughout the year. Measures that comprise best management practices (e.g., signage, maintaining spill kits) can be monitored at any time, with audits for biological and environmental measures (e.g., light levels, presence of aquatic vegetation) done at specific times of the year. The audit will be completed one month after the close of the reporting period

## 3.0 Reporting

The results of both the paper and field audits will be presented as percent compliant by key measures/strategies, activity and ecoregion and reported on an annual basis with the report completed in March of the following year. The first annual compliance monitoring report will be completed in March of the first full year after the incidental take permit is signed and include only the results of the paper audit. Reports for the next five years will also be completed in March, but will describe:

- The population and sampling sizes used.
- Changes in the sampling or statistical protocol.
- The total percentage of agreements in compliance.
- Percentage of agreements in compliance by key measures/strategies, activity and ecoregion.
- Which conservation measures were found out of compliance.
- Progress and accomplishments in implementing stewardship measures.
- And will outline any suggested improvements in the protocol for the following year.

The cycle and content of the reports can be re-evaluated by NOAA Fisheries, U.S. Fish and Wildlife Service, and Washington DNR at any time.

## 4.0 Non-Compliance

When an authorized user does not comply with the terms, conditions and actions specified in the authorizing agreement, Washington DNR will issue a notice of non-compliance to the responsible party in accordance with the agreement. The notice will identify the area of non-compliance, provide reference to the applicable provisions in the authorization document and identify what is



necessary to correct the non-compliance and the period in which the correction must be completed. Usually the correction period is 30 or 60 days, but Washington DNR will allow a longer correction period if correction is impossible in 30 or 60 days. After the correction period expires, agency staff will conduct another site inspection and verify that the authorized user has resolved the non-compliance. These actions will be documented by Washington DNR as they occur.

If the authorized user does not correct the non-compliance, Washington DNR will pursue all rights and remedies available in law to resolve the issue. Washington DNR can exercise the following options for non-compliance with a land-use authorization agreement:

- Exercise its right of re-entry under the agreement to restore natural resources or the state-owned aquatic lands without terminating the agreement.
- Terminate the agreement and evict the responsible party in accordance with the terms of the agreement and state law. The evicted party would be liable for removal of all improvements and restoration of the property to its pre-agreement condition or, depending on the terms of the agreement, the condition before construction of improvements.
- Sue for damages under additional contract or tort claims, if appropriate in the circumstances.
- Ask local law enforcement to bring misdemeanor charges against the responsible party in some circumstances (RCW 79.02.330).

