


MINISTRY OF ENVIRONMENT
COMPLIANCE AND ENFORCEMENT POLICY AND PROCEDURE



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Staff Affected: All ministry staff engaged in compliance and/or enforcement activities.

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Definitions

For the purposes of this policy:

Administrative sanction - suspension, restriction or cancellation of ministry authorizations, including approvals, licences or permits.

Advisory - a document notifying a party that they are not in compliance with a specific regulatory requirement and that requests the non-compliance be corrected.

Charge Approval - the decision process where Crown Counsel reviews all the information and evidence submitted to them by way of a Report to Crown Counsel in order to determine if charges (can be proved and meet the public interest standard) are approved for prosecution.

Compliance - conformity with regulatory requirements established by government to protect the environment, human health and safety.

Compliance Tool - an action taken on the part of the ministry to resolve non-compliance and includes advisories, warnings, orders, administrative sanctions, tickets and formal charges.

Crown Counsel - a prosecutor employed by, or on contract to, the Criminal Justice Branch of the Ministry of Attorney General or the Federal Department of Justice.

Due Diligence - taking all reasonable precautions to prevent or avoid a non-compliant incident from occurring. This standard requires that a person take all the care which a reasonable person might have been expected to take in all the circumstances or, in other words, be in no way negligent.

Enforcement tool (administrative) - one response in the array of tools that may be used to achieve compliance; it includes advisories, orders and administrative sanctions. Decisions are based on a *balance of probability* that the non-compliance occurred and the rules of “natural justice” are applied during the decision making process.

Enforcement tool (prosecutorial) - one response in the array of tools that may be used to achieve compliance; it includes warnings, violation tickets and formal charges. Decisions are based on having *reasonable grounds* to believe that the non-compliance occurred and the test of *beyond a reasonable doubt* is used by the Courts to adjudicate an outcome.

Formal Charges - laying of charges by way of a “Form 2 Information” in front of a Justice of the Peace.

Inspections - activities undertaken to verify compliance with a regulatory requirement.

Investigations - activities involved in the gathering of information and evidence relevant to a suspected non-compliance where the purpose is to build a case for possible enforcement response.

Investigation Review Process - process for ensuring cross-divisional review of all investigations that require ongoing technical support from a program area and/or are sensitive in nature. The process includes pre and post investigations reviews conducted by an Investigation Review Team or a Regional Management Compliance Team.

Investigation Review Team - includes the Field Supervisor from the Conservation Officer Service and the Section Head from the affected program area(s) (Environmental Stewardship, Parks and Protected Areas, Environmental Protection and/or Water Stewardship Divisions), all from the geographic location in which the non-compliance occurred.

Note:

- For matters relating to the *Integrated Pest Management Act*, the Senior Pesticide Officer is the program area representative on the IRT.
- For matters relating to contaminated sites and land remediation under the *Environmental Management Act*, the Senior Contaminated Sites Officer, Brownfields & Remediation Assurance (Surrey) is the program area representative on the IRT.
- For matters relating to Industry Product Stewardship under the *Recycling Regulation*, the Section Head, Industry Product Stewardship/Community Waste Reduction Section (Victoria), is the program area representative on the IRT.

Investigative Team – the Conservation Officer and program staff assigned by the Investigation Review Team or Regional Management Compliance Team to conduct an investigation.

IRP Tracking Log - spreadsheet used to record and monitor investigations subject to the Investigation Review Process.

Non-Compliance - failure by a regulated party to meet regulatory requirements.

Non-Compliance Decision Matrix - a risk-based tool that guides a response to non-compliance, considering the environmental, human health and safety impacts and the regulated party's likelihood of achieving compliance.

Order - a written, legal instrument issued by designated ministry officials which may be used to address non-compliance.

Program Areas - the Environmental Stewardship, Parks and Protected Areas, Environmental Protection and Water Stewardship Divisions.

Program Staff - staff in the Environmental Stewardship, Parks and Protected Areas, Environmental Protection and Water Stewardship Divisions.

Reasonable Grounds - a set of facts or circumstances that leads one to come to a conclusion beyond that of mere suspicion.

Regional Management Compliance Team - includes the Operations Manager from the Conservation Officer Service and the Regional Manager from the affected program area(s) (Environmental Stewardship/Parks and Protected Areas, Environmental Protection and/or Water Stewardship Divisions), all from the geographic location in which the non-compliance occurred.

Note:

- For matters relating to contaminated sites and land remediation under the *Environmental Management Act*, the Manager, Brownfields & Remediation Assurance (Surrey) is the program area representative on the RMCT.
- For matters relating to Industry Product Stewardship under the *Recycling Regulation*, the Manager, Community Waste Reduction Section (Victoria), is the program area representative on the RMCT.

Regulatory Requirements - obligation, demand or prohibition placed by legislation or regulation on an individual, entity or activity. This includes authorizations, permits or other requirements derived from a legislative or regulatory authority.

Report to Crown Counsel - a formal document submitted to Crown Counsel containing all the information and evidence necessary for Crown Counsel to make an informed decision on whether a charge meets the Criminal Justice Branch charging standard.

Sensitive investigation - involves an aboriginal person asserting aboriginal rights, or a government agency (e.g., municipal, regional, provincial, federal, Crown Corporation), or an employee of a government agency acting in the course of his/her normal duties.

Ticket - a charging document which may be used instead of “formal charges”. Generally a ticket responds to minor offences and prescribes a monetary penalty to be paid.

Warning - a document that notifies a party that they are not in compliance with a specific regulatory requirement and warns of escalating response should non-compliance continue.

Abbreviations

C&E Policy – Compliance and Enforcement Policy and Procedure

COORS – Conservation Officer Online Reporting System

COs – Conservation Officers

COS – Conservation Officer Service

CPPB – Compliance Policy and Planning Branch

EP – Environmental Protection

ES – Environmental Stewardship

IRP – Investigation Review Process

IRT – Investigation Review Team

PPA – Parks and Protected Areas

NCF – Non-Compliance Form

RMCT – Regional Management Compliance Team

WS – Water Stewardship

Introduction

Ensuring compliance with its regulatory requirements is one of the Ministry of Environment's (the ministry) principal objectives. This is achieved through the use of a variety of compliance tools, giving consideration to using the most appropriate tool necessary to obtain compliance, and when required, to promote general deterrence.

The purpose of the *Compliance and Enforcement Policy and Procedure (C&E Policy)* is to guide ministry staff in selecting appropriate tools to respond to instances of non-compliance. This document outlines common requirements and procedures for all staff to ensure that cross-divisional collaboration, risk-based assessment of non-compliance, and management review of more complex investigations occur when necessary. Together, these measures further the ministry's aim of providing greater consistency, increased clarity and predictability regarding the consequences of non-compliance, as well as assurance that ministry resources are directed to the highest priorities. The balanced and principled use of compliance and enforcement tools demonstrates the ministry's commitment to building public confidence through accountable and transparent policies.

The *C&E Policy* is divided into nine chapters. Chapters 1 through 3 provide important information for understanding the compliance and enforcement function in the Ministry of Environment. Chapter 4 presents the Non-Compliance Decision Matrix, while Chapters 5-8 focus on procedures:

- Chapter 5 is directed at field staff and explains the process to be followed when responding to non-compliance;
- Chapter 6 is directed at Conservation Officers and explains the process to be followed when responding to non-compliance;
- Chapter 7 provides guidance for Section Heads and COS Field Supervisors in conducting investigation reviews as part of an Investigation Review Team; and
- Chapter 8 provides similar guidance to Regional Managers in conducting reviews as part of a Regional Management Compliance Team.

Finally, Chapter 9 sets out the responsibilities for administration and oversight of the *C&E Policy*.

While the *C&E Policy* provides guidance on how ministry staff assess non-compliance and respond using a variety of enforcement tools, the Compliance Management Framework outlines the ministry's broader perspectives on overall compliance management within the ministry. This includes establishing regulatory requirements that are clear, practical and enforceable, as well as promoting compliance in ways that achieve high rates of voluntary compliance.

Chapter 1: Enforcement Context

Purpose

1. Emphasize the ministry's commitment to achieving compliance.
 2. Explain the application and scope of the *Compliance and Enforcement Policy and Procedure*.
-

Introduction

Ministry of Environment staff have responsibility or authority under more than 30 statutes and their accompanying regulations. The type and extent of staff involvement in ensuring compliance with these requirements varies with each position and its job responsibilities. Program staff in the Environmental Stewardship (ES), Parks and Protected Areas (PPA), Environmental Protection (EP) and Water Stewardship (WS) divisions of the ministry, as well as Conservation Officers (COs), are responsible for dealing with non-compliance.

Program staff are generally responsible for conducting inspections which may lead to an administrative enforcement response such as the issuance of an advisory, order or administrative sanction. The Conservation Officer Service (COS), as the ministry's enforcement program, conducts investigations which may lead to a prosecutorial response. In many cases, collaboration between the COS and the program area is necessary to determine the most appropriate response to non-compliance. In these cases, program staff provide information on the regulatory history or technical expertise on the environmental impact; Conservation Officers provide investigative expertise such as evidence collection through search and seizure and procurement of witness statements. The ministry's enforcement program is also comprised of Park Rangers who conduct investigations within parks and protected areas which may lead to a prosecutorial response.

The ministry may also enter into agreements with other government agencies to conduct compliance and enforcement activities on its behalf.

1.0 Social Regulatory Approach

Regulatory requirements administered by the ministry are dealt with in the context of a social regulatory approach as opposed to the command and control approach reflected in the *Criminal Code*. This distinction is important for the development of ministry compliance and enforcement policies as a social regulatory approach allows the program areas and the areas responsible for investigations to be consultative in determining the most appropriate response to non-compliance.

1.1 Ministry Position on Enforcement

The ministry's compliance goal is to ensure compliance with its regulatory requirements. This is achieved through the use of a variety of compliance tools, giving consideration to using the most appropriate tool necessary to obtain compliance, and when required, to promote general deterrence. Prosecution is an essential compliance tool to be applied vigorously when necessary, but reserved for those situations where

alternative compliance efforts are unable to achieve the desired outcomes or it has been otherwise determined that a prosecution response is appropriate.

Accordingly, formal charges may be recommended where the circumstances such as the severity of actual or potential impact to the environment, human health or safety, the factual circumstances of the alleged offence or the compliance history of the offender are such that other compliance tools would likely be ineffective and prosecution may provide the most effective way to achieve compliance, or there is a need for general deterrence that would result from a court hearing.

Additionally, the integrity and effectiveness of the regulatory regime established to protect the environment, human health and safety is highly dependent on compliance with administrative requirements such as the provision of data or licensing information. Failure to comply with such regulatory requirements, even in the absence of environmental damage, may threaten the regulatory regime and staff will consider appropriate responses, including the recommendation of formal charges.

Ultimately the decision of whether a file should be investigated, and whether it should be forwarded to Crown Counsel for consideration of formal prosecution, rests with the law enforcement arms of the ministry. The Investigation Review Process of this policy ensures that the best information available within the ministry will inform the COS decision on whether any given file needs to be investigated and which compliance tool is most appropriate. When a file is forwarded to the Criminal Justice Branch, the ultimate decision to lay a charge is the responsibility of Crown Counsel. This policy ensures that the best information available within the ministry will be provided to Crown Counsel to inform their decision.

1.2 Application of the Compliance and Enforcement Policy and Procedure

The provisions of the *C&E Policy* apply to:

- All incidents of non-compliance with ministry statutes, regulations and authorizations.
- All staff in the COS.
- All staff in the ES, PPA, EP and WS Divisions who play a role in ensuring compliance.
- Staff of other government agencies who conduct compliance and/or enforcement activities on behalf of the Ministry of Environment.

The *C&E Policy* is not a complete statement of policies and procedures relating to compliance and enforcement within the Ministry of Environment. In using this policy, staff need to consult division-specific business rules, where applicable, that guide other aspects of compliance management.

1.2.1 Independence of Statutory Decision Makers

Nothing in the *C&E Policy* restricts the discretion and autonomy exercised by ministry Statutory Decision Makers.

Chapter 2: Inspections and Investigations

Purpose

1. Ensure a common understanding of the terms inspection and investigation.
 2. Provide information with respect to the roles and responsibilities of staff authorized to conduct inspections and investigations.
-

Introduction

Inspections and investigations are two important functions used to support the ministry's compliance management activities on the ground. The purpose of an inspection is to verify compliance with the ministry's regulatory requirements. The purpose of an investigation is to gather evidence to support court proceedings in cases of suspected non-compliance. Only designated staff may conduct these activities; however, not all staff who are authorized to conduct inspections are also authorized to conduct investigations. This chapter clarifies the differences between these two activities, as well as explaining how to transition between them when necessary.

2.0 Inspections

Inspections are one type of compliance verification activity used to assess conformity with regulatory requirements. They are generally done on a risk-based priority and are undertaken by program staff and Conservation Officers.

Inspections are typically conducted at regulated sites and facilities or at various other locations such as at the roadside. Inspections include reviewing monitoring data or other materials supplied by the regulated party. They are both scheduled (based on the compliance planning process) and unscheduled, operation-specific or sector based. Unscheduled or additional inspections may also occur in response to information or complaints which come to the attention of the ministry.

Inspections may also be used to determine sectoral compliance rates, or to assess risks and gain technical understanding of new operations, equipment or processes associated with regulated activities. Compliance promotion in the form of information exchange and education is often achieved through conducting inspections. In some circumstances, activities associated with inspections may serve to identify the need for an investigation of non-compliance with regulatory requirements.

2.0.1 Staff Authorized to Conduct Inspections

Designated program staff and Conservation Officers are authorized by legislation to conduct inspections. While conducting inspections, staff are authorized pursuant to specific legislation to undertake certain activities such as entering upon land, as well as examining records, works and materials. The particular legislation should be reviewed with respect to the extent of the authority conferred.

2.0.2 Transition from Inspection to Investigation

A transition from inspection to investigation may take place when non-compliance is detected during an inspection and the purpose shifts from verifying compliance and the potential impacts upon the environment, human health and safety to collecting information and evidence that may be required to support potential prosecutorial action. Generally this transition brings with it certain legal consequences with respect to the continued conduct of the investigation. When an inspection is being conducted by staff who are not authorized to conduct an investigation, it is generally appropriate for staff to request the services of an investigator.

2.1 Investigations

Investigations involve a systematic process of collecting evidence and information relevant to a suspected non-compliance for the purposes of enforcement.

The need for an investigation may arise as a result of:

- non-compliance detected through compliance verification activities (monitoring, auditing or inspecting);
- information gathered from sources or informants;
- public reports of suspected offences; or
- referrals from other agencies.

Investigative activities include:

- gathering physical evidence and ensuring its continuity and integrity;
- taking statements and interviewing witnesses;
- conducting surveillance;
- obtaining and executing search warrants; and
- preparing briefs for Crown Counsel or a Statutory Decision Maker authorized to impose administrative sanctions.

2.1.1 Staff Authorized to Conduct Investigations

Designated ministry staff, primarily Conservation Officers and Park Rangers, are authorized to conduct investigations. While conducting investigations, these staff are authorized to conduct specific activities such as executing search warrants and performing search and seizures. Program staff often contribute technical expertise in support of an investigation.

Chapter 3: Tools for Addressing Non-Compliance

Purpose

1. Ensure a common understanding of the purpose and use of compliance tools available to ministry staff.
 2. Specify the criteria that should be considered when selecting the most appropriate compliance tool.
-

Introduction

There are a range of compliance tools available to ministry staff when addressing non-compliance. To select the most appropriate response for individual incidents of non-compliance, it is important that staff understand the purpose of and authority for each of these tools. This chapter describes each compliance tool, including its purpose and the circumstances in which it may be used.

3.0 Advisory

An advisory notifies the non-compliant party *in writing* that they are not in compliance with a specific regulatory requirement and often recommends a course of action that is expected to achieve compliance. An advisory may:

- include an exchange of information on best management practices or technical solutions. Staff may also attend at the site/facility/development to provide additional insight into the regulatory requirements;
- reference where additional information and educational materials can be sourced; and
- include *requests* for a description of the cause of the non-compliance, measures being considered to prevent further non-compliance and a remedial action plan.

3.1 Warning

Similar to an advisory, a warning notifies the non-compliant party *in writing* that they are not in compliance with a specific regulatory requirement; however, the warning differs from an advisory in that it **warns** of the possibility of an escalating response should non-compliance continue. Warnings are generally used when it is determined that an exchange of information alone would not be sufficient in achieving compliance.

A warning may:

- require a description of the cause of the non-compliance, measures being considered to prevent further non-compliance and a remedial action plan;
- require an inspection prior to issuing the warning letter in order to gather sufficient information regarding the non-compliance (a follow-up inspection may also be undertaken in order to verify compliance); and
- request written confirmation from the client that compliance has been achieved.

When issuing a warning, staff are expected to have sufficient information to satisfy themselves that a non-compliance occurred.

3.2 Order

An order is a written, legal instrument (e.g. Dangerous Wildlife Protection Order, Eviction Order, Forest and Range Stop Work Order, Engineer's Order, Pollution Prevention Order, etc) issued by designated ministry officials. An order is issued according to statutorily prescribed criteria and may:

- create a new legal requirement to undertake specific, time bound actions or cease specific actions; and
- outline the consequences for failing to comply with the requirements.

An inspection may be required prior to issuing the order in order to gather sufficient information; subsequent inspections may be required to confirm compliance with an order. An order and an investigation may be undertaken concurrently, or may be used as a result of either action.

3.3 Administrative Sanction

As authorized by various statutes, Statutory Decision Makers have the authority to impose remedial or punitive administrative sanctions. These can include revocation or suspension of ministry issued permits, licences and other administrative instruments which authorize activities such as commercial operations within Parks, guide outfitting and pesticide use. An administrative sanction may be issued when:

- in the opinion of the Statutory Decision Maker, the authorized party has undertaken activities contravening the conditions of the authorization.

The sanction can vary from removing certain allowed activities to total suspension or revocation of the permit depending on the level of actual or potential impact to the environment, human health or safety.

3.4 Ticket

Prosecutions by way of a Ticket Information are a summary means of dealing effectively and quickly with the most minor offences. Prosecution by way of a ticket may be initiated by designated ministry staff. In deciding whether to issue a ticket, authorized ministry officials must determine that the:

- contravention is an offence and is ticketable under provisions such as the *Violation Ticket Administration and Fines Regulation*, the *Contraventions Act* (Federal), and the *British Columbia Sport Fishing Regulations*; and
- issuance of a ticket is the most appropriate enforcement option for the situation.

The same standard of proof is required for the issuance of violation tickets as is required for formal charges through the courts. If a ticket is disputed, the Crown is required to prove the offence at trial. The offender who chooses not to contest a ticket is deemed to have pleaded guilty to the offence and is subject to the specified penalty. Tickets may be issued when:

- there has been non-compliance with a regulatory requirement;
- an advisory or warning is not appropriate;
- the evidence supports a reasonable likelihood of conviction;
- the public interest requires legal proceedings, but not a public hearing;
- the set fine is adequate for the offence; and
- there is no substantial damage to the environment, human health or safety.

3.5 Formal Charges (Form 2 Information)

These are legal proceedings in court that are initiated by alleging that a person(s) (including a corporation) has committed an offence(s). The offender is compelled to attend court to address the charges by way of an appearance notice or summons. Formal charges may be recommended by ministry staff, but are initiated by Crown Counsel in the exercise of their discretion.

A recommendation to the Criminal Justice Branch of a formal charge is appropriate where in the opinion of the investigator there is sufficient evidence to prove the commission of the alleged offence, and one or more of the following apply:

- other methods of enforcement have in the past proven ineffective or there is reason to believe that other enforcement methods will not be effective;
- the potential accused is a repeat offender;
- the action of the offender was wilful, or fell significantly below the standard of due diligence;
- there is more than minimal damage to the environment or human health, or there was substantial potential for damage to the environment or human health;
- the lives or safety of persons were endangered, or there was substantial potential for the lives or safety of persons to be endangered;
- there is a significant non-compliance with regulatory requirements; or
- the public interest in the maintenance of environmental values requires a prosecution.

Chapter 4: Non-Compliance Decision Matrix

Purpose

1. Ensure consistency and fairness in the assessment and resolution of non-compliance.
 2. Reinforce the ministry's commitment to compliance by ensuring the most appropriate measures are used to achieve compliance - taking into consideration the facts specific to the situation, as well as the need for general deterrence.
-

Introduction

This chapter presents the Non-Compliance Decision Matrix along with guidelines for its application. The Matrix is a risk-based tool for assessing the variability and severity of factors influencing the selection of compliance tools. These factors include:

- escalating levels of environmental, human health or safety impacts (actual or potential); and
- a diminishing likelihood of achieving compliance.

The Non-Compliance Decision Matrix is a guidance tool; it is to be used with discretion by staff when considering the context and specifics of individual cases of non-compliance.

4.0 Application

4.0.1 Factors for Consideration in Applying the Non-Compliance Decision Matrix

In responding to regulatory non-compliance, it is necessary to examine the available information to determine the full extent of the non-compliance and any related regulatory history. The following factors provide guidance in developing an appropriate response.

a) Effectiveness in achieving the desired result

While each fact pattern will be different in relation to non-compliance, the most important factor in determining an appropriate response is the effectiveness of the tool in achieving compliance as quickly as possible with no recurrence.

Factors to be considered include:

- any related history of non-compliance;
- the person's willingness to co-operate with officials;
- evidence of corrective action already taken; and
- the existence of enforcement actions taken under federal or other provincial statutes.

b) Nature of the non-compliance

This includes consideration of:

- the seriousness of the actual or potential impact to the environment, human health or safety;
- the level of care exercised by the person;
- whether the non-compliance was deliberate;
- whether monetary gain resulted from the commission of the non-compliance;
- whether this is a repeated occurrence;
- whether there are attempts to conceal information or otherwise subvert the regulatory requirements; and
- whether there is a need for general deterrence.

c) Consistency in enforcement

Ministry compliance efforts should attempt to achieve consistency in response to non-compliance. Accordingly, where feasible, staff may consider how similar situations have been addressed – recognizing that each case of non-compliance will have different circumstances which may suggest a different response.

4.0.2 Promotion of General Deterrence

The Non-Compliance Decision Matrix is designed to assist staff in assessing individual cases of non-compliance. Where staff encounter non-compliances which, in isolation, do not warrant an investigation, but the cumulative or collective impact of these non-compliances may require a response by the ministry, staff are to raise these situations with the Investigation Review Team. This team, in conjunction with the Regional Management Compliance Team, is responsible for identifying emerging trends in non-compliance and developing a systematic and coordinated response in order to promote general deterrence.

4.0.3 Independence of Statutory Decision Makers

The Non-Compliance Decision Matrix is a guidance tool; it is in no way to impair the professional judgment, discretion and autonomy exercised by ministry Statutory Decision Makers.

4.1 Non-Compliance Decision Matrix

The ministry's principal objective is to ensure compliance with its regulatory requirements. This is achieved through the use of a variety of compliance tools, giving consideration to using the most appropriate tool necessary to obtain compliance, and when required, to promote general deterrence. This matrix is a guide; accordingly, it does not fetter Statutory Decision Makers in the exercise of their statutory powers.

		ESCALATING ENVIRONMENTAL, HUMAN HEALTH OR SAFETY IMPACTS (ACTUAL OR POTENTIAL)				
		LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	LEVEL 5
DIMINISHING LIKELIHOOD OF COMPLIANCE (COMPLIANCE HISTORY/WILLINGNESS AND CAPACITY TO COMPLY)	CATEGORY A (HIGH)	ADVISORY	ADVISORY - WARNING	WARNING - ORDER - ADMINISTRATIVE SANCTION	ORDER - ADMINISTRATIVE SANCTION - INVESTIGATION	INVESTIGATION
	CATEGORY B	ADVISORY - WARNING	WARNING	ADMINISTRATIVE SANCTION - INVESTIGATION		
	CATEGORY C	WARNING	WARNING - ORDER			
	CATEGORY D	WARNING - ORDER - ADMINISTRATIVE SANCTION	ADMINISTRATIVE SANCTION - INVESTIGATION			
	CATEGORY E (LOW)	ORDER - ADMINISTRATIVE SANCTION - INVESTIGATION				

Note: Depending on the facts of a case, investigations may culminate in the issuance of a ticket or recommendation of formal charges.

Levels of Escalating Environmental, Human Health or Safety Impacts

(Actual or Potential)

LEVEL 1

- Non-compliance that does not result or is unlikely to result in any environmental, human health or safety impact; or
- Minor administrative non-compliance.

LEVEL 2

- Non-compliance resulting in a minor, temporary impact to the environment or minor, temporary threat to human health or safety; or
- Significant administrative non-compliance.

LEVEL 3

- Non-compliance resulting in a moderate, temporary impact to the environment or moderate, temporary threat to human health or safety.

LEVEL 4

- Non-compliance resulting in a significant impact to the environment or significant threat to human health or safety (may be temporary or permanent).

LEVEL 5

- Known or likely human health impact that is severe in effect, i.e. resulting in hospitalization and/or long term human health consequences.

Categories of Likelihood of Compliance

(Compliance History/Willingness and Capacity to Comply)

CATEGORY A - Indications of future and ongoing compliance are very high

- No previous occurrences of non-compliance;
- Good demonstrated awareness of and/or capacity to meet regulatory requirement; and/or
- Offender has a reasonable and cooperative attitude.

CATEGORY B - Indications of future and ongoing compliance are uncertain

- Few previous occurrences of non-compliance; and/or
- Questionable awareness of and/or capacity to meet regulatory requirement.

CATEGORY C - Indications of future and ongoing compliance are unlikely

- Numerous previous occurrences of non-compliance; and/or
- Little or no awareness of and/or capacity to meet regulatory requirement.

CATEGORY D - No indication of future and ongoing compliance

- Wilful violation of ministry regulatory requirement; and/or
- Little or no demonstrated willingness or capacity to meet regulatory requirement.

CATEGORY E - No indication of future and ongoing compliance

- Hindering or obstructing a ministry official;
- Refusing to furnish required information; and/or
- Intentionally including false or misleading information in any required document.

Chapter 5: Responding to Regulatory Non-Compliance Program Staff

Purpose

1. Ensure consistency and fairness in the assessment and resolution of non-compliance.
 2. Provide guidance to program staff in determining when they must engage in cross-divisional consultation and the Investigation Review Process.
-

Introduction

This chapter outlines the procedure for program staff to follow when they become aware of an incident of regulatory non-compliance. The procedure sets out common steps and decision points that guide staff into one of four “compliance streams”, as illustrated in the flow chart on page 23. There are four key steps for staff in determining which stream to follow:

- Assess the non-compliance using **the Non-Compliance Decision Matrix**;
- **Consult the COS**, if required;
- Determine if an investigation is warranted (if it is sensitive in nature or requires ongoing program support the investigation is subject to **the Investigation Review Process (IRP)**); and
- **Take alternative steps** to address the non-compliance, if an investigation is not warranted.

These steps underscore the importance of cross-divisional collaboration - at both the field and management levels - in determining the most appropriate compliance measure for certain cases of non-compliance. Use of the procedure by all ministry staff helps to ensure that consultation occurs when required, and that non-compliance is addressed in a consistent and effective manner across the ministry.

5.0 Application

5.0.1 General Application

Responding to non-compliance is often a complex and iterative process. This procedure outlines the steps to be taken in a “textbook” situation. However, depending on the circumstances of the case, some additional steps may be required and/or some steps may occur in a slightly different order. For example, to resolve some instances of non-compliance, staff may need to consult with a variety of partners both within and external to the ministry (e.g., other divisions, Department of Fisheries and Oceans, Ministry of Forests and Range). Program staff may also consult other ministry staff (e.g., Conservation Officer, Park Ranger, Director, Section Head, Regional Manager) for advice at any time during the process. Similarly, staff may begin to fill out the Non-Compliance Form (NCF) earlier than noted in the procedure. What is important is that staff do, in fact, perform the key steps outlined in the procedure.

5.0.2 Exigent/Urgent Circumstances

This policy is not intended to impair the discretion of ministry staff to take immediate investigative action when necessary. In situations where the delay necessary to obtain a review by the IRT would likely result in danger to the environment, human health or safety, or the loss or destruction of evidence, ministry staff may request the involvement of an appropriate ministry investigator, or commence the investigation immediately if they are qualified to do so.

5.0.3 Use of the Non-Compliance Decision Matrix

Irrespective of whether an investigation is subject to the IRP, ministry staff are still expected to use the Non-Compliance Decision Matrix to guide their assessment of the regulatory non-compliance. If staff need additional guidance or advice on addressing an issue of non-compliance, they may choose to refer the matter through the Investigation Review Team (IRT) even if it is not subject to the IRP.

5.0.4 Use of More than One Tool at a Time

In some circumstances, it is appropriate to consider multiple approaches to non-compliance. For example, a Pollution Prevention Order, issued to address the immediacy of a situation, may be followed by an investigation and the recommendation of formal charges, as appropriate. In another example, an administrative sanction may be levied following a prosecution. The particular legislation should be reviewed with respect to the proposed multiple approaches.

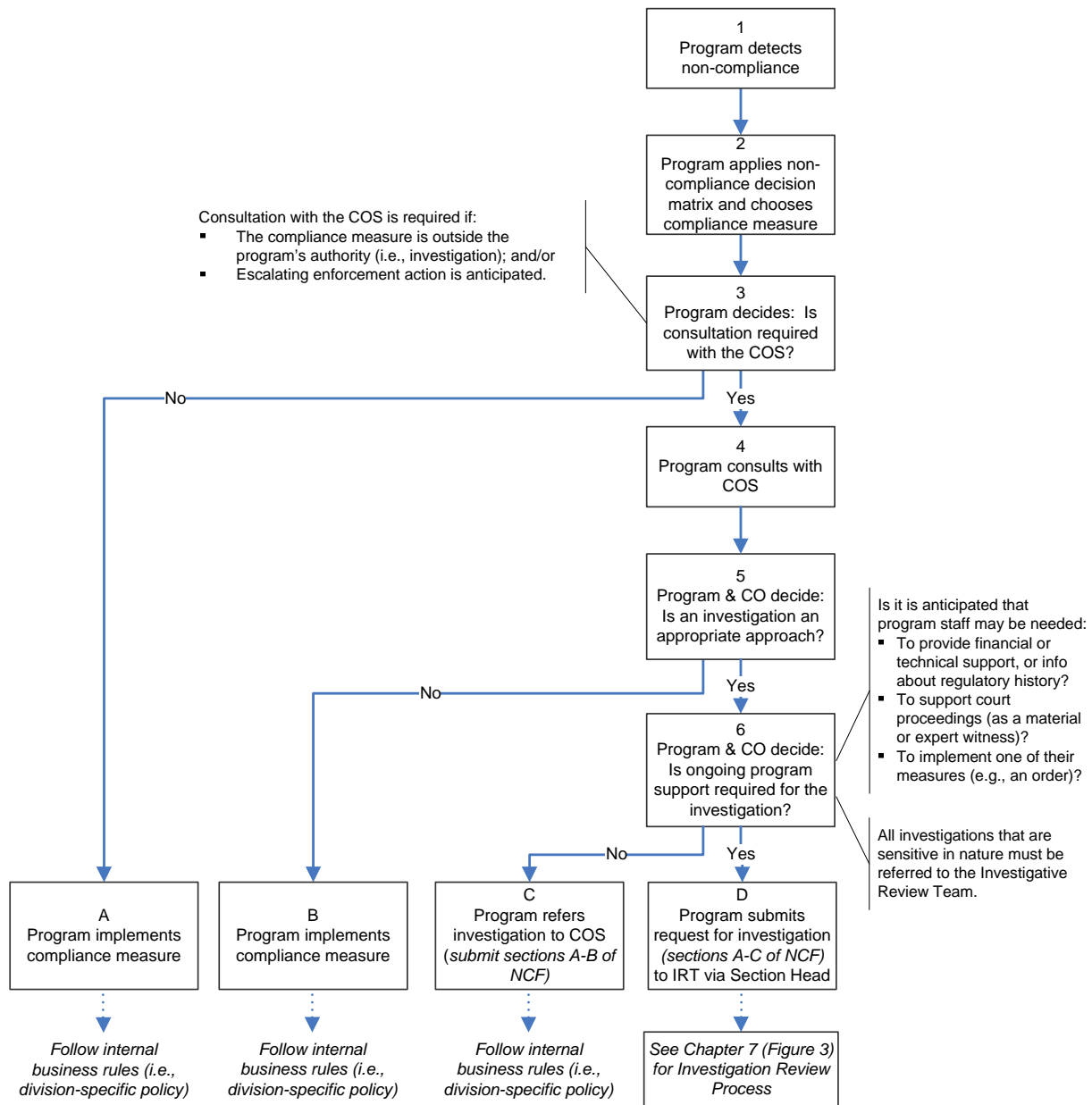
5.0.5 Communications with a Regulated Party during an Investigation

During the investigative process it is important to ensure that communications between program staff and the regulated party do not compromise the investigation. Ongoing communication with the regulated party is often necessary to mitigate environmental, human health or safety impacts, or seek solutions to rectify ongoing non-compliance. Therefore, program staff responsible for ongoing administration related to the regulated party under investigation are to ensure that there is dialogue with the investigating officer regarding roles and responsibilities prior to engaging in discussions with the regulated party.

5.0.6 Involvement of the Commercial Environmental Investigations Unit (CEIU)

The CEIU is a unit of the COS that deals with complex commercial or industrial environmental investigations. Program staff do not refer investigations directly to the CEIU; the decision to engage the CEIU is made internally by COS Operations Managers in consultation with the CEIU Manager. This decision to refer investigations to the CEIU is based on the severity and complexity of the non-compliance coupled with the availability of resources.

**Figure 1: Process for responding to incidents of non-compliance
Program Areas**



Compliance Stream A

Compliance measure is within program's authority (e.g., advisory, warning, administrative sanction, order) & no consultation with the COS is required.

Compliance Stream B

Consultation determines that an investigation is not warranted; therefore, the non-compliance is addressed by the program.

Compliance Stream C

Consultation determines that investigation (possibly resulting in a ticket or formal charges) is the most appropriate approach, but ongoing program support is not required. (**Priority is given to investigation referrals that link to provincial or regional compliance strategies.*)

Compliance Stream D

Consultation determines that investigation is the most appropriate approach and ongoing program support is required. (**Priority is given to investigation referrals that link to provincial or regional compliance strategies.*)

See pages 24-26 for a detailed explanation of each of these steps

5.1 Procedure

The steps described below correspond with the numbered steps in Figure 1 on page 23.

1. Program staff may detect the non-compliance in the course of their work, or it may be reported to them by a member of the public or another regulatory agency.
2. Program staff will use the Non-Compliance Decision Matrix to assess the non-compliance and select a compliance measure. (See Chapter 4 for guidance in using the matrix.)
3. Irrespective of the compliance measure chosen, program staff will determine if consultation with the Conservation Officer Service (COS) is required. Consultation is required if:
 - the compliance measure selected from the matrix is outside the program's authority (i.e., investigation); and/or
 - it is anticipated that escalating enforcement action may be required in the future.

If consultation is not required ⇔ Compliance Stream A

- Program staff will implement the most appropriate tool for achieving compliance, following division-specific policy. Measures may include issuance of an advisory, warning, order, administrative sanction and/or referral to another agency. (See Chapter 3 for further information about these measures.)
- Program staff will follow division-specific reporting requirements to record the response to non-compliance. Some divisions may choose to use the Non-Compliance Form for this purpose.
- If an order is issued, program staff will send a copy to the COS Operations Manager. This is necessary for informational purposes and because the order creates a new legal requirement. As such, subsequent action may be required by the COS to enforce it.

As Parks staff are responsible for the enforcement of compliance with the orders that they issue, these orders do not need to be forwarded to COS. Park Rangers will send copies of orders to the PPA Safety, Compliance & Enforcement Officer in Victoria.

- End of process -

4. ***If consultation is required***, program staff will contact a Field Conservation Officer (CO) within the specific geographic area in which the non-compliance occurred and provide background relating to the non-compliance. (If unsure who the appropriate Field CO is, contact the COS Field Supervisor in the geographic area in which the non-compliance occurred).

⊕ If consultation cannot be done immediately, program staff must contact a Field CO within five business days of detecting the non-compliance to establish:

- A process and timeline for consultation; or
 - A mutually-agreeable date for beginning discussions about the process and timelines for consultation.
-

Consultation can take any form (e.g., phone call, e-mail, in-person meeting), but the objectives should always be to:

- Obtain clarity on the facts to ensure that both program staff and the CO have the same understanding of the non-compliance.
 - Discuss the likelihood of achieving compliance and the degree of environmental impact, and come to an agreement on where the non-compliance fits on the Non-Compliance Decision Matrix.
 - Review the compliance history (i.e., what has been done up to this point and what is the next step?). Due diligence and officially-induced error should form part of this discussion.
5. Program staff and the CO will decide whether an investigation is the most appropriate approach to address the non-compliance. If consensus cannot be reached, the matter must be raised to the program Section Head and COS Field Supervisor for resolution.

***If consultation determines that an investigation is not warranted* ⇒ Compliance Stream B**

- Program staff will implement the most appropriate tool for achieving compliance, following division-specific policy. Measures may include issuance of an advisory, warning, order, administrative sanction and/or referral to another agency. (See Chapter 3 for further information about these measures.)
- Program staff will follow division-specific reporting requirements to record the response to non-compliance. Some divisions may choose to use the Non-Compliance Form for this purpose.
- If an order is issued, program staff will send a copy to the COS Operations Manager. This is necessary for informational purposes and because the order creates a new legal requirement. As such, subsequent action by the COS might be required to enforce it.

As Parks staff are responsible for the enforcement of compliance with the orders that they issue, these orders do not need to be forwarded to COS. Park Rangers will send copies of orders to the PPA Safety, Compliance & Enforcement Officer in Victoria.

- End of process -

6. ***If consultation determines that an investigation is warranted***, program staff will determine (in consultation with the CO) if:
- a) Ongoing program support is required for the investigation. This would apply if it is anticipated that program staff may be needed:
- to contribute financial or human resources;
 - to implement a program-specific compliance measure (e.g., an order); and/or
 - to support court proceedings (i.e., through material or expert witness testimony).

Essentially, the test here is to determine whether it is anticipated that the investigation needs a cross-divisional, collaborative approach to be successfully completed.

or

- b) The investigation is sensitive in nature. A sensitive investigation is one that involves an aboriginal person asserting aboriginal rights, or a government agency (e.g., municipal, regional, provincial, federal, Crown Corporation), or an employee of a government agency acting in the course of his/her normal duties.

If consultation determines that an investigation is warranted, but the investigation is neither sensitive in nature nor requires ongoing program support ⇒ Compliance Stream C

- Program staff will refer the investigation to the COS by completing sections A and B of the NCF and forwarding it to the COS Field Supervisor in the geographical location in which the non-compliance occurred.
- The COS will conduct the investigation in accordance with internal business rules.

- End of process -

If consultation determines that an investigation is warranted and the investigation is sensitive in nature and/or it requires ongoing program support ⇒ Compliance Stream D

- Program staff will refer the investigation to the IRT by completing sections A-C of the NCF.
- Program staff will forward the completed sections of the form to the Section Head.

- Continue to Chapter 7 for guidance about the IRP -

5.2 Frequently Asked Questions

5.2.1 Why do the flow charts only show Conservation Officers conducting investigations? I am in a program area and I conduct investigations too.

These two terms - inspections and investigations - are often confused. Investigations involve a systematic process of collecting evidence and information relevant to a suspected non-compliance for the purposes of building a case for possible court prosecution. Consequently, only designated staff, primarily COs and Park Rangers, are authorized to conduct investigations.

This means that what some staff refer to as investigations are actually inspections. Inspections are a type of verification activity used to assess compliance with regulatory requirements (e.g., site and facility visits, field checks). They are generally done on a risk-based priority and may be undertaken by program staff or COs. An inspection may lead to an administrative enforcement response such as the issuance of an advisory, order or administrative sanction, or it may lead to an investigation (at which point the services of an investigator should be requested). Inspections themselves are not subject to the IRP.

See Chapter 2 for more information about the differences between inspections and investigations.

5.2.2 What do I do if I encounter a non-compliance that requires immediate investigation?

Take immediate action! This policy is not intended to impair the ability of ministry staff to take immediate investigative action when necessary. In situations where the delay necessary to obtain a review by the IRT would likely result in damage to the environment, or risk to human health or safety, or the loss or destruction of evidence, ministry staff may request the involvement of an appropriate ministry investigator, or commence the investigation immediately if they are qualified to do so. If not, try to document as much information as possible (observe, record and report) and contact a CO as quickly as possible.

5.2.3 What if I have been made aware of a suspected non-compliance, but I cannot get to the location in order to verify if it is serious, i.e. how it might scan out on the Non-Compliance Decision Matrix? Do I need to fill out any forms to request a CO to check on the matter?

You don't need to fill out any forms, but it is helpful to provide the CO with as much information as possible so that they can prioritize its importance against other competing demands. If available, it is helpful to provide photos, a sense of the reliability of the information provided, any history at the site, etc. At this stage, the COS will simply be providing you an "eyes and ears" service to verify the information you have. After receiving feedback from COS, you will be required to complete the Non-Compliance Form if you wish to request an investigation.

Some divisions have established business rules around dealing with public reports of suspected non-compliance. For example, the Water Stewardship Division has developed a formal protocol with the COS for the routing of and response to public reports of violations of the *Water Act* and *Water Regulation*.

5.2.4 What if I have confirmed a non-compliance and through discussions, the CO and I agree that program support is not required, but that the CO needs to investigate as it is likely a ticketable offence?

You would refer the investigation to the COS, filling out sections A-B of the Non-Compliance Form. Refer to Stream C in Figure 1: Process for responding to incidents of non-compliance, Program Areas, pg 23.

5.2.5 What if it isn't clear who "detected" the non-compliance (as noted in step 1 of the procedure)? In that case, who is responsible for completing the Non-Compliance Form to initiate the IRP?

In general, the person who holds the majority of information about the case is the person who should assume the role of "initiator" and take responsibility for completing the Non-Compliance Form. Of course, this may not be clear in all cases and the unique circumstances of each case will need to be considered in making this determination.

Uncertainty about "ownership" of a non-compliance should never delay or prevent the submission of a request for investigation. The requirements for the Non-Compliance Form have been kept to the barest minimum possible. Any incidents of non-compliance that are determined to be subject to the IRP should be significant enough to justify your time spent on completing the form.

5.2.6 How do tickets fit into this process?

Under the revised policy, tickets will no longer require “pre-approval.” Using Figure 2: Process for responding to incidents of non-compliance COS on page 31 tickets will be dealt with in one of three ways:

Compliance Stream A

A CO may issue a ticket without consulting the program area in cases where the CO determines that:

- no information regarding regulatory history and/or environmental impact is required from the program area; or
- there is a relevant compliance strategy already in place (i.e., program areas have provided specific written guidance on dealing with these non-compliances).

Compliance Stream C

Following initial consultation with the program area and agreement that an investigation is warranted, but that **ongoing program support is not needed** - a CO may proceed with an investigation and issue a ticket, or possibly proceed to Crown with charges, pursue alternative measures, or take no further action.

Compliance Stream D

Following initial consultation with the program area and agreement that an investigation is warranted, and agreement that **ongoing program support is needed** - the investigation would be subject to the IRP. If at the post-investigation review, the investigative team recommends a ticket as the most appropriate compliance measure, and the IRT/RMCT supports this recommendation, then a ticket would be issued.

Refer to Figure 2 on page 31 for more information about the compliance streams.

5.2.7 Is a warning an administrative or prosecutorial enforcement response?

The issuance of a warning is a prosecutorial enforcement response. In order to issue a warning, staff need to satisfy themselves, beyond a reasonable doubt, that a non-compliance occurred. In some instances, this information may be readily apparent through the inspection process; in other instances, a significant amount of work may have to be undertaken, such as through the investigation process, in order to determine, beyond a reasonable doubt, that the non-compliance occurred. If the test of “beyond a reasonable doubt” is not met, but based on the “balance of probability”, the non-compliance occurred, staff may choose to issue an advisory to the non-compliant party.

5.2.8 What about dealing with non-compliances that aren’t subject to the IRP? Why doesn’t the *C&E Policy* provide procedures for dealing with those?

Incidents that fall into compliance streams A, B or C are subject to division-specific business rules, rather than the cross-divisional business rules of the IRP. This means that field staff should follow existing division-specific procedures for issuing advisories, warnings, orders or administrative sanctions. If common procedures do not exist, it is the responsibility of the division or region to develop them. While the *C&E Policy*, and the IRP specifically, was put in place as a mechanism to ensure cross-divisional collaboration on certain investigations, staff are encouraged to work collaboratively across divisions to deal proactively with non-compliances whether they are subject to the IRP or not.

Chapter 6: Responding to Regulatory Non-Compliance Conservation Officer Service

Purpose

1. Ensure consistency and fairness in the assessment and resolution of non-compliance.
 2. Provide guidance to Conservation Officers in determining when they must engage in cross-divisional consultation and the Investigation Review Process.
-

Introduction

This chapter outlines the procedure for Conservation Officers (COs) to follow when they become aware of an incident of regulatory non-compliance. The procedure sets out common steps and decision points that guide COs into one of four “compliance streams”, as illustrated in the flow chart on page 31. There are four key steps for COs in determining which stream to follow:

- Assess the non-compliance using **the Non-Compliance Decision Matrix**;
- **Consult program staff**, if required;
- Determine if an investigation is warranted (if it is sensitive in nature or requires ongoing program support the investigation is subject to **the Investigation Review Process (IRP)**); and
- **Take alternative steps** to address the non-compliance, if an investigation is not warranted.

These steps underscore the importance of cross-divisional collaboration - at both the field and management levels - in determining the most appropriate compliance measure for certain cases of non-compliance. Use of the procedure by all ministry staff helps to ensure that consultation occurs when required, and that non-compliance is addressed in a consistent and effective manner across the ministry.

6.0 Application

6.0.1 General Application

Responding to non-compliance is often a complex and iterative process. This procedure outlines the steps to be taken in a “textbook” situation. However, depending on the circumstances of the case, some additional steps may be required and/or some steps may occur in a slightly different order. For example, COs may need to consult with partners external to the ministry (e.g., Department of Fisheries and Oceans, Ministry of Forests and Range) to determine who will take the investigative lead. COs may also consult program staff at any time during the process. Similarly, COs may begin to fill out the Non-Compliance Form (NCF) earlier than noted in the procedure. What is key is that COs do, in fact, perform these key steps.

6.0.2 Exigent/Urgent Circumstances

This policy is not intended to impair the discretion of ministry staff to take immediate investigative action when necessary. In situations where the delay necessary to obtain a review by the IRT would likely result in damage to the environment, or risk to human health or safety, or the loss or destruction of evidence, COs may commence the investigation immediately.

6.0.3 Use of the Non-Compliance Decision Matrix

Irrespective of whether an investigation is subject to the IRP, ministry staff are still expected to use the Non-Compliance Decision Matrix to guide their assessment of the regulatory non-compliance. If COs need additional guidance or advice on addressing an issue of non-compliance, they may choose to refer the matter through the Investigation Review Team (IRT) even if it is not subject to the IRP.

6.0.4 Communications with the Program Area during an Investigation

Where an alternative approach to proceeding with charges is being considered during the course of an investigation, the investigating officer and program staff must discuss the options and reach consensus regarding proceeding with an alternative approach prior to discussing the alternative approach with the regulated party under investigation.

6.0.5 Involvement of the Commercial Environmental Investigations Unit (CEIU)

Program staff do not refer investigations directly to the CEIU; the decision to engage the CEIU is made internally by COS Operations Managers.

6.1 Procedure

The steps described below correspond with the numbered steps in Figure 2 on page 31.

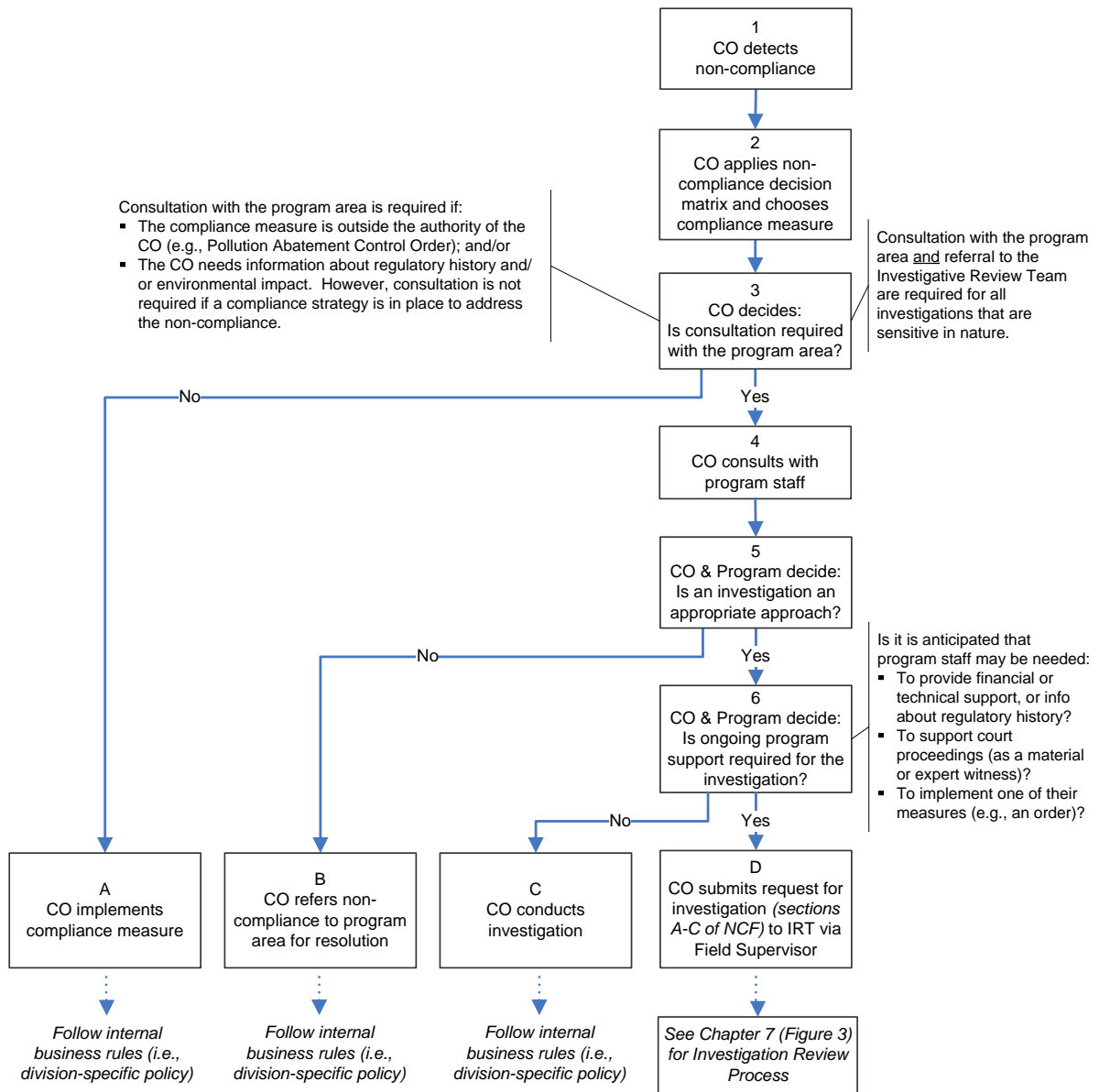
1. COs may detect the non-compliance in the course of their work, or it may be reported to them by a member of the public or another regulatory agency.
2. The CO will use the Non-Compliance Decision Matrix to assess the non-compliance and select a compliance measure. (See Chapter 4 for guidance in using the matrix.)
3. Irrespective of the compliance measure chosen, the CO will determine if consultation with the program area is required. Consultation is required if:
 - the compliance measure selected from the matrix is outside the CO's authority (e.g., Pollution Abatement Order); and/or
 - the CO needs history about the regulated party and/or technical expertise about the environmental, human health and/or safety impacts of the non-compliance. However, consultation is not required if a compliance strategy is in place to address the non-compliance.

Regulatory history means there is a substantial likelihood that there is an ongoing relationship between the person/business and the ministry related to permit/license/regulatory administration or a compliance inspection regime.

Environmental impacts requiring consultation would include situations where environmental values (e.g. fish, wildlife, habitat) are unknown or have not been pre-determined, and/or where an expert witness would be required to confirm environmental impacts.

Essentially, the test here is to determine whether it's anticipated that the investigation needs a cross-divisional, collaborative approach to be successfully completed.

**Figure 2: Process for responding to incidents of non-compliance
Conservation Officer Service**



Compliance Stream A
Compliance measure is within COS's authority (e.g., warning, investigation [resulting in ticket or formal charges]) and no consultation is required.

Compliance Stream B
Compliance measure is not within COS's authority (e.g., directive, administrative sanction); therefore, referral to program area is required.

Compliance Stream C
Consultation determines that investigation (possibly resulting in ticket or formal charges) is the most appropriate approach, but ongoing program support is not required.

Compliance Stream D
Consultation determines that investigation is the most appropriate approach and ongoing program support is required.

See pages 30-33 for a detailed explanation of each of these steps

Consultation with the program area and referral to the Investigation Review Team (IRT) is required for all investigations that are sensitive in nature. (Referrals to the IRT are made following the procedure for Compliance Stream D.) A sensitive investigation is one that involves an aboriginal person asserting aboriginal rights, or a government agency (e.g., municipal, regional, provincial, federal, Crown Corporation), or an employee of a government agency acting in the course of his/her normal duties.

***If consultation is not required* ⇒ Compliance Stream A**

- The CO will enter an occurrence in COORS.
- The CO will implement the most appropriate tool for achieving compliance, following internal business rules. Responses may include issuing a warning or conducting an investigation. (See Chapter 3 for further information about these measures.)

- End of process -

4. ***If consultation is required***, the CO will contact program staff in the appropriate program role and geographic area and provide background relating to the non-compliance. (If unsure who the appropriate staff member is, contact the Section Head in the geographic area in which the non-compliance occurred).

🕒 **If consultation cannot be done immediately, the CO must contact program staff within five business days of detecting the non-compliance to establish:**

- **A process and timeline for consultation; or**
 - **A mutually-agreeable date for beginning discussions about the process and timelines for consultation.**
-

Consultation can take any form (e.g., phone call, e-mail, in-person meeting), but the objectives should always be to:

- Obtain clarity on the facts to ensure that both the CO and program staff have the same understanding of the non-compliance.
 - Discuss the likelihood of achieving compliance and the degree of environmental impact, and come to an agreement on where the non-compliance fits on the Non-Compliance Decision Matrix.
 - Review the compliance history (i.e., what has been done up to this point and what is the next step?). Due diligence and officially-induced error should form part of this discussion.
5. The CO and program staff will decide whether an investigation is the most appropriate approach to address the non-compliance. If consensus cannot be reached, the matter must be raised to the COS Field Supervisor and program Section Head for resolution.

If consultation determines that an investigation is not warranted ⇨ Compliance Stream B

- The CO will refer the non-compliance to the program area by forwarding an occurrence report to the Section Head.
- Program staff will implement the most appropriate tool for achieving compliance, following division-specific policy. Measures may include issuance of an advisory, warning, order, administrative sanction and/or referral to another agency. (See Chapter 3 for further information about these measures.)

- End of process -

6. ***If consultation determines that an investigation is warranted***, the CO will determine (in consultation with program staff) if ongoing program support is required to support the investigation. This would apply if it is anticipated that program staff may be needed:
- to provide financial or human resources;
 - to implement a program-specific compliance measure (e.g., an order); and/or
 - to support court proceedings (i.e., through material or expert witness testimony).

If consultation determines that an investigation is warranted, but the investigation is neither sensitive in nature nor requires ongoing program support ⇨ Compliance Stream C

The CO will conduct the investigation, and record the result in COORS, in accordance with internal business rules.

- End of process -

If consultation determines that an investigation is warranted and the investigation is sensitive in nature and/or it requires ongoing program support ⇨ Compliance Stream D

- The CO will refer the investigation to the IRT by completing sections A-C of the Non-Compliance Form.
- The CO will forward the completed sections of the form to the COS Field Supervisor.

- Continue to Chapter 7 for guidance about the IRP -

6.2 Frequently Asked Questions

6.2.1 What do I do if I encounter a non-compliance that requires immediate investigation?

Take immediate action! This policy is not intended to impair the ability of ministry staff to take immediate investigative action when necessary. In situations where the delay necessary to obtain a review by the IRT would likely result in damage to the environment, or risk to human health or safety, or the loss or destruction of evidence, COs may commence the investigation immediately.

6.2.2 What if we don't think consultation is necessary at the start of an investigation, but find out mid-way that it is?

Always begin the consultation process when you first identify the need for it, even if this is mid-way through an investigation. Return to step 4 in Figure 2 and follow the process from that point.

6.2.3 What if it isn't clear who "detected" the non-compliance (as noted in step 1)? In that case, who is responsible for completing the Non-Compliance Form to initiate the IRP?

In general, the person who holds the majority of information about the case is the person who should assume the role of "initiator" and take responsibility for completing the Non-Compliance Form. Of course, this may not be clear in all cases and the unique circumstances of each case will need to be considered in making this determination.

Uncertainty about "ownership" of a non-compliance should never delay or prevent the submission of a request for investigation. The requirements for the Non-Compliance Form have been kept to the barest minimum possible. Any incidents of non-compliance that are determined to be subject to the IRP should be significant enough to justify your time spent on completing the form.

6.2.4 How do tickets fit into this process?

Under the revised policy, tickets will no longer require "pre-approval." Using Figure 2: Process for responding to incidents of non-compliance COS on page 31 tickets will be dealt with in one of three ways:

Compliance Stream A

A CO may issue a ticket without consulting the program area in cases where the CO determines that:

- no information regarding regulatory history and/or environmental impact is required from the program area; or
- there is a relevant compliance strategy already in place (i.e., program areas have provided specific written guidance on dealing with these non-compliances).

Compliance Stream C

Following initial consultation with the program area and agreement that an investigation is warranted, but that **ongoing program support is not needed** - a CO may proceed with an investigation and issue a ticket, or possibly proceed to Crown with charges, pursue alternative measures, or take no further action.

Compliance Stream D

Following initial consultation with the program area and agreement that an investigation is warranted, and agreement that **ongoing program support is needed** - the investigation would be subject to the IRP. If at the post-investigation review, the investigative team recommends a ticket as the most appropriate compliance measure, and the IRT/RMCT supports this recommendation, then a ticket would be issued.

Refer to Figure 2 on page 31 for more information about the compliance streams.

6.2.5 Do we need to consult with the program area in all cases where the ministry has a regulatory relationship with the person/business?

No, consultation is not required in every case, just those where there is a substantial likelihood of an ongoing regulatory relationship. For example:

- An owner operator of a dam.
- A person who holds a *Water Act* Section 9 approval for a significant development that would likely have required a professional report.
- Some water licence holders.
- A heliski company that holds a Park Use Permit, Crown Lands Recreation tenure, and is currently under an *Environmental Management Act* Pollution Prevention Order. The heliski operator may have had non-compliances associated with one or more of these sets of requirements.
- *Environmental Management Act* authorizations – these are many and varied. Schedules 1 and 2 of the *Waste Discharge Regulation* set out which activities are regulated under specific types of authorizations, including permits, approvals, regulations, and codes of practice. It is likely that there is an ongoing relationship with the regulated party for at least the first two of these types of authorizations. Those entities regulated by either of the remaining two types of authorizations (regulations and codes of practice) may have an ongoing relationship with EP, at least in the context of there being some past compliance assessment. In addition to these general principles, any party presently under pollution prevention, pollution abatement or information orders may be considered to have an ongoing relationship with EP.

Chapter 7: Investigation Review Process

Investigation Review Teams

Purpose

1. Provide guidance to program area Section Heads and COS Field Supervisors in conducting pre and post investigation reviews as part of an Investigation Review Team.
 2. Ensure a common understanding by ministry staff of the process for and objectives of the Investigative Review Process.
-

Introduction

The Investigation Review Process (IRP) provides cross-divisional review of all investigations that require ongoing support from a program area and/or are sensitive in nature. (See Compliance Stream D, page 23 and 31.) These investigations are typically the most complex, resource-intensive and high-profile investigations undertaken by the ministry. Management review, in the form of the IRP, is needed to ensure that consultation between the COS and program area(s) occurs and that the investigations are in keeping with the ministry's priorities, as well as human and financial resource capacity.

This chapter outlines the procedure for investigation reviews conducted by an Investigation Review Team (IRT). The IRT is comprised of the Field Supervisor from the COS and the Section Head from the affected program area(s) (ES/PPA, EP and/or WS division), all from the same geographic area in which the non-compliance occurred. All incidents of non-compliance that fall into Compliance Stream D must be submitted to the IRT for a pre investigation review. If the IRT supports the investigation, it will also conduct a post investigation review to ensure that the investigative team selected the most appropriate compliance approach. (See page 38 for the objectives of the pre and post investigation reviews and the role of the IRT in these reviews.)

The IRT refers requests for investigation to the Regional Management Compliance Team (RMCT) in cases where it cannot reach consensus, it is unable to resource the investigation and/or the investigation is sensitive in nature. Chapter 8 outlines the process for investigation reviews conducted by the RMCT.

7.0 Application

7.0.1 Exigent/Urgent Circumstances

This policy is not intended to impair the discretion of ministry staff to take immediate investigative action when necessary. In situations where the delay necessary to obtain a review by the IRT would likely result in damage to the environment, or risk to human health or safety, or the loss or destruction of evidence, ministry staff may request the involvement of an appropriate ministry investigator, or commence the investigation immediately if they are qualified to do so.

7.0.2 Independence of Statutory Decision Makers

Nothing in this policy restricts the discretion and autonomy exercised by ministry Statutory Decision Makers. The IRT and RMCT provide a collaborative cross-divisional review of investigations. As a result of those deliberations, the IRT or RMCT may recommend that an order or administrative sanction is an appropriate response to the non-compliance. This recommendation is not binding on

the Statutory Decision Maker. In accordance with the principles of administrative fairness, it may be necessary to refer the adjudication of an administrative sanction to a Statutory Decision Maker who was not involved in the IRT/RMCT deliberations.

7.0.3 Special or Covert Operations

“Special” or “covert” investigations are undertaken by the COS when traditional investigative techniques have failed, or are unlikely to succeed (e.g., trafficking in wildlife), or the urgency of the situation is such that immediate use of this investigative technique is necessary. Due to the sensitive nature of these types of investigations and the risk to officer safety if the offender discovered the true identity of the officer, the dissemination of information regarding these investigations is closely guarded and not discussed outside of the COS. However, the principles within the *C&E Policy* regarding whether an investigation is required are applied when decisions regarding conducting a “special or covert” investigation are made.

7.0.4 Alternative Compliance Measures

It is recognized that during the course of an investigation, alternative measures to prosecutorial action may be identified as suitable means to achieving compliance. Therefore, in assessing the results of an investigation, the Non-Compliance Decision Matrix continues to provide guidance in considering the full range of compliance tools. Staff are encouraged to consider alternative measures and may seek guidance from the IRT where those measures involve considerable ministry oversight, i.e. extensive remediation or mitigation plans.

OBJECTIVES OF THE IRP

INVESTIGATION REVIEW PROCESS

Regulatory requirements administered by the ministry are dealt with in the context of a social regulatory scheme as opposed to the command and control scheme reflected in the Criminal Code. This distinction is important because a social regulatory scheme allows the program areas and the area responsible for enforcement to be consultative in determining the most appropriate response to non-compliance.

Accordingly, the purpose of the Investigation Review Process (IRP) is to ensure that cross-divisional collaboration occurs for all investigations in which the COS requires ongoing support from a program area to provide knowledge about the alleged offender's regulatory history and/or the extent of the environmental, human health or safety impact.

PRE INVESTIGATION REVIEW

To ensure that:

- Staff in the program areas responsible for protecting environmental values and enforcement officers in the Conservation Officer Service consult when determining the need for an investigation.
- Decisions to undertake investigations subject to the IRP are guided by consideration of the priorities of the ministry, as well as the ministry's human and financial resource capacity.

POST INVESTIGATION REVIEW

To ensure that the most appropriate compliance approach is selected at the conclusion of an investigation to ensure:

- A high likelihood of ongoing compliance;
- Remediation/mitigation approaches are implemented (where appropriate);
- Public interest is satisfied; and
- General and specific deterrence objectives are met.

ROLE OF INVESTIGATION REVIEW TEAM (IRT)

To review staff decisions to investigate to ensure:

- There has been careful and thorough consideration of the compliance history and complete disclosure of the regulator's previous contact with the regulated party;
- The alleged offence falls within the scope of the ministry's responsibilities or whether it should be referred to another agency such as the RCMP or Department of Fisheries and Oceans;
- Consistency with priorities established by ministry divisions; and
- Adequate resources (financial and human) are available and assigned to undertake the investigation (i.e., estimation of person hours required, as well as legal sampling and analysis costs).

ROLE OF INVESTIGATION REVIEW TEAM (IRT)

To review the investigative findings and recommendation(s) to ensure that the investigative team considered:

- The full suite of compliance alternatives and selected an appropriate approach to achieving compliance; and
- The need to achieve general deterrence, if that is concluded to be necessary.

In addition to these considerations, the Regional Management Compliance Team (RMCT) is responsible for conducting pre and post investigation reviews if:

- *Members of the IRT cannot reach consensus about the need for an investigation or the most appropriate approach;*
- *The IRT cannot resource the investigation; and/or*
- *The investigation is sensitive in nature (i.e., it involves an aboriginal person asserting aboriginal rights, or a government agency (e.g., municipal, regional, provincial, federal, Crown Corporation), or an employee of a government agency acting in the course of his/her normal duties).*

7.1 Procedure

The steps described below correspond with the numbered steps in Figure 3 on page 40.

1. **See Compliance Stream D, page 23 and 31:** Request for investigation referred to the IRT by program staff or CO.
2. **If the program Section Head received the request for investigation,** the Section Head will convene the IRT by contacting the COS Field Supervisor in the geographic region in which the non-compliance occurred.

If the COS Field Supervisor received the request for investigation, the COS Field Supervisor will convene the IRT by contacting the applicable program Section Head(s) in the geographic region in which the non-compliance occurred.

The IRT will conduct a pre investigation review to consider the request for investigation. The IRT will consider whether:

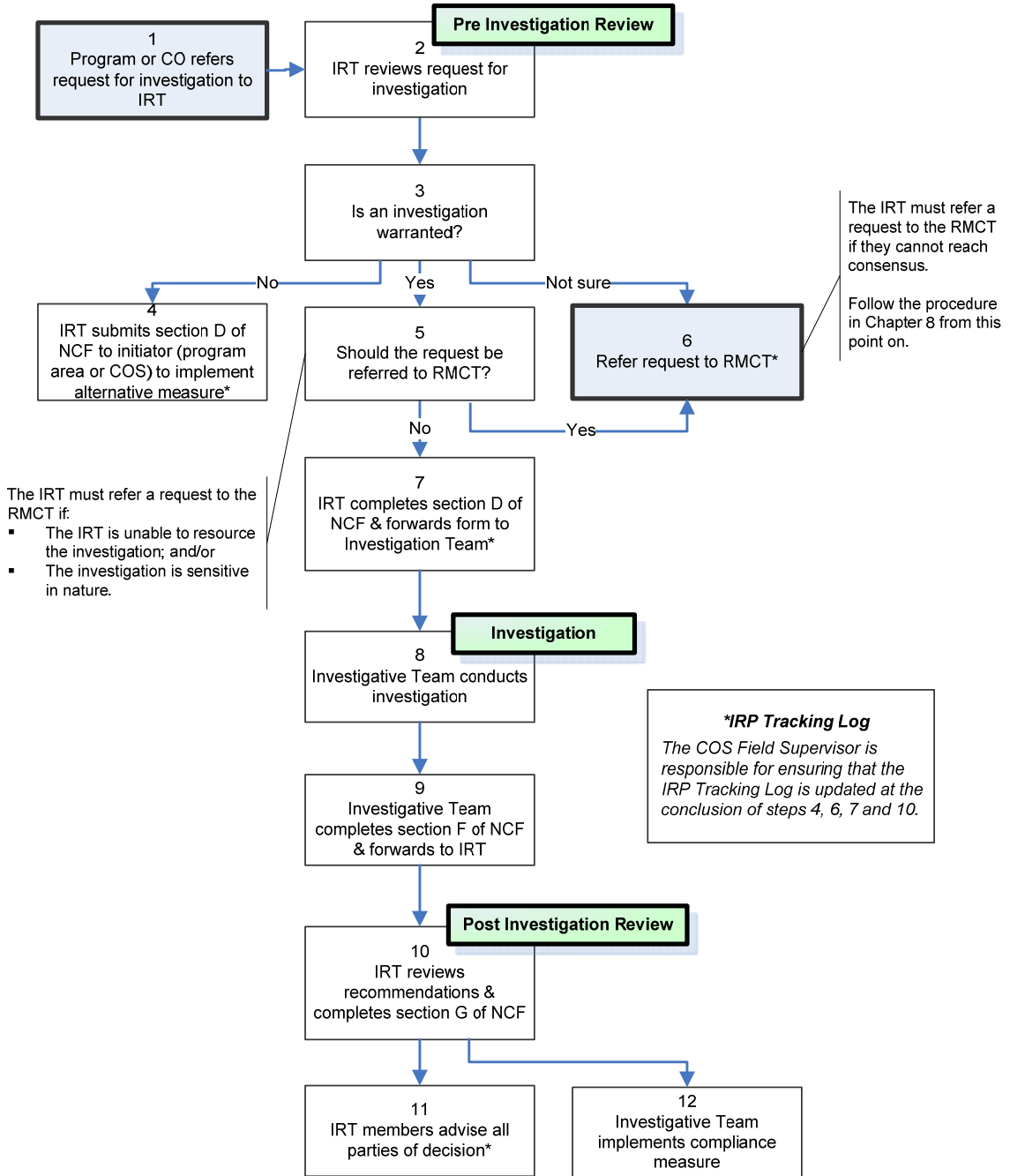
- There has been careful and thorough consideration of the compliance history and complete disclosure of the regulator's previous contact with the regulated party;
- The alleged offence falls within the scope of the ministry's responsibilities or whether it should be referred to another agency such as the RCMP or DFO;
- Consistency with priorities established by ministry divisions; and
- Adequate resources (financial and human) are available and assigned to undertake the investigation (i.e., estimation of person hours required, as well as legal sampling and analysis costs).

⌚ The IRT must conduct a pre investigation review and make a decision within 15 working days of receiving the NCF.

The pre investigation review **must** be held verbally (i.e., conference call or in-person), and key team members should be invited to participate. The reason for holding this review verbally rather than electronically is two-fold:

- To ensure that members of the IRT have a clear understanding and thorough discussion of the case.
 - To reduce the risk of written information that is either inaccurate or speculative from being disclosed in a court proceeding and/or under the provisions of the *Freedom of Information and Protection of Privacy Act*, and thereby damaging the outcome of the court case.
3. The IRT will decide whether an investigation is the most appropriate approach to address the non-compliance.
If the IRT cannot reach consensus on whether an investigation is warranted, the COS Field Supervisor will complete section D of the Non-Compliance Form (NCF) - checking the box for referral to RMCT - and forward the form to the COS Operations Manager.

Figure 3: Investigation Review Process
Reviews conducted by the Investigation Review Team



See pages 39-42 for a detailed explanation of each of these steps

4. ***If the IRT decides that an investigation is not warranted***, the COS Field Supervisor will complete section D of the NCF and return the form to the initiator to implement an alternative compliance measure. Depending on the circumstances of the case and the chosen measure, either program staff or the COS will implement the measure. Measures may include issuance of an advisory, warning, order, administrative sanction or referral to another agency. (See Chapter 3 for further information about these measures.)

The COS Field Supervisor will ensure that the IRP Tracking Log is updated. Each member of the IRT will advise relevant parties within their division of the IRT's decision and rationale for not supporting the request for investigation.

5. ***If the IRT decides that an investigation is warranted***, the IRT will consider whether the request should be referred to the RMCT. The IRT must refer the request to the RMCT if:
 - The IRT is unable to resource the investigation; and/or
 - The investigation is sensitive in nature (i.e., it involves an aboriginal person asserting aboriginal rights, or a government agency (e.g., municipal, regional, provincial, federal, Crown Corporation), or an employee of a government agency acting in the course of his/her normal duties).
6. ***If the IRT must refer the request to the RMCT***, the COS Field Supervisor will complete section D of the NCF (checking the box for referral to RMCT) and forward the form to the COS Operations Manager. The COS Field Supervisor will update the IRP Tracking Log.

Go to Chapter 8 and from this point on, follow the procedure outlined on page 46.

7. ***If the IRT does not need to refer the request to the RMCT***, the COS Field Supervisor will:
 - Complete section D of the NCF, indicating the IRT's support for the investigation and the resources assigned by the IRT for the investigation;
 - Forward the form to the lead investigator (COS);
 - Update the IRP Tracking Log.

Each member of the IRT will advise relevant parties within their division of the IRT's decision to support the request for investigation.

8. The Investigative Team will conduct the investigation.
9. The lead investigator (COS) will consult with program staff on the investigative team to formulate the recommended compliance measure(s).

The lead investigator will complete section F of the NCF, outlining the findings of the investigation and the team's recommended response, and the investigator will forward the form to the COS Field Supervisor.

10. The COS Field Supervisor will arrange the post investigation review with the members of the IRT. These reviews **must** be held verbally (i.e., conference call or in-person), and key team members should be invited to participate.

The IRT will review the investigative team's recommended compliance measure. Rather than reviewing details of the procedural aspects of the investigation (e.g., how evidence was collected or how much sampling was done), the IRT should focus on whether the investigative team considered:

- The full suite of compliance alternatives and selected an appropriate approach to achieving compliance; and
- The need to achieve general deterrence, if that is concluded to be necessary.

The COS Field Supervisor will complete section G of the NCF to document the IRT's decision. The COS Field Supervisor will ensure that the IRP Tracking Log is updated.

If the IRT cannot reach consensus as to the most appropriate compliance measure, the COS Field Supervisor (on behalf of the IRT) will refer the matter to the RMCT.

⊕ The IRT must conduct a post investigation review and make a decision as to whether to support the investigative team's recommendation(s) within 15 working days of receiving the form.

11. The IRT members will notify all relevant parties within their division of the final outcome, including those who initiated the investigation if they were not part of the investigative team.

⊕ The IRT must communicate the outcome to all relevant parties within their division within five working days of completing the post investigation review.

12. The investigative team will implement the compliance measure.
Where the decision is to proceed with the recommendation of charges to Crown Counsel, the investigating field officer will update the investigative team and IRT members electronically as the case moves through the various stages of prosecution.

7.2 Frequently Asked Questions

7.2.1 What is the reason for the post investigation review? Is the ministry trying to reduce the number of cases forwarded to Crown Counsel?

Absolutely not. The role of the IRT/RMCT at a post investigation review is to ensure that the investigative team considered the full suite of compliance measures and selected the most appropriate approach for achieving compliance. The IRT/RMCT will always support a prosecution response for those cases where alternative compliance efforts are not appropriate or will not achieve the desired outcome.

What is important to recognize is that although prosecution is the most serious enforcement action that can be taken, it is not always feasible or the most effective in bringing about compliance. Each case must be assessed on its own merits to determine the most appropriate and effective response.

7.2.2 What is a “sensitive” investigation? Why are these cases automatically subject to the IRP?

Sensitive investigations involve “an aboriginal person asserting aboriginal rights, or a government agency (e.g., municipal, regional, provincial, federal, Crown Corporation), or an employee of a government agency acting in the course of his/her normal duties”. Any investigations that meet these criteria, regardless of whether they require cross-divisional collaboration, are subject to the IRP and review by the RMCT.

Sensitive investigations are subject to the IRP because there are often additional considerations or processes that the ministry must apply in such cases. For example, when dealing with an aboriginal person asserting aboriginal rights, the ministry may need to contact the Ministry of Attorney General to determine the merits in proceeding with an investigation. In the case of other government agencies, it may not be in the public interest (and public support may not exist) for one level of government to sanction another level of government.

Note: The definition of sensitive cases is not intended to be exhaustive and may not cover all investigations that are sensitive in nature (e.g., cases involving high-profile members of the community such as MLAs). If staff undertake an investigation that they feel is sensitive (but is not covered by this definition), they should nevertheless complete a NCF and forward it to their Section Head (program area) or Field Supervisor (COS) for submission to the RMCT.

Chapter 8: Investigation Review Process

Regional Management Compliance Teams

Purpose

1. Provide guidance to Regional Managers in conducting pre and post investigation reviews as part of a Regional Management Compliance Team.
 2. Ensure a common understanding by ministry staff of the process for and objectives of the IRP.
-

Introduction

This chapter outlines the procedure for investigation reviews conducted by Regional Management Compliance Teams (RMCTs). While all requests for investigation are initially submitted to an Investigation Review Team (IRT), the IRT must refer requests for investigation to the RMCT in cases where it cannot reach consensus, it is unable to resource the investigation and/or the investigation is sensitive in nature.

The RMCT conducts pre and post investigation reviews in the same manner as the IRT. The main difference is that the cases reviewed by the RMCT are exceptional in their complexity, sensitivity and/or resource requirements and, therefore, require review by senior management. Since they are exceptions, such investigations are also fewer in number.

The RMCT is comprised of the COS Operations Manager from the COS and the Regional Manager from the affected program area(s) (ES/PPA, EP and/or WS division), all from the same geographic area in which the non-compliance occurred.

8.0 Application

Same as for reviews conducted by the IRT. See Chapter 7, pages 36-37.

8.1 Procedure

The steps described below correspond with Figure 4 on page 46.

1. **See step 6, Chapter 7, page 40:** Request for investigation referred to the RMCT by the IRT.
2. The COS Operations Manager will convene the RMCT by contacting the Regional Manager(s) of the relevant divisions in the geographic region in which the non-compliance occurred.

The RMCT will conduct a pre investigation review to consider the request for investigation. The RMCT will consider whether:

- There has been careful and thorough consideration of the compliance history and complete disclosure of the regulator's previous contact with the regulated party;
- The alleged offence falls within the scope of the ministry's responsibilities or whether it should be referred to another agency such as the RCMP or Department of Fisheries and Oceans;
- Consistency with priorities established by ministry divisions; and

- Adequate resources (financial and human) are available and assigned to undertake the investigation (i.e., estimation of person hours required, as well as legal sampling and analysis costs).

⌚ **RMCT must conduct a pre investigation review and make a decision within 15 working days of receiving the form.**

The pre investigation review **must** be held verbally (i.e., conference call or in-person), and key team members should be invited to participate.

The reason for holding this review verbally rather than electronically is two-fold:

- To ensure that members of the RMCT have a clear understanding and thorough discussion of the case.
- To reduce the risk of written information that is either inaccurate or speculative from being disclosed in a court proceeding and/or under the provisions of the *Freedom of Information and Protection of Privacy Act*, and thereby damaging the outcome of the court case.

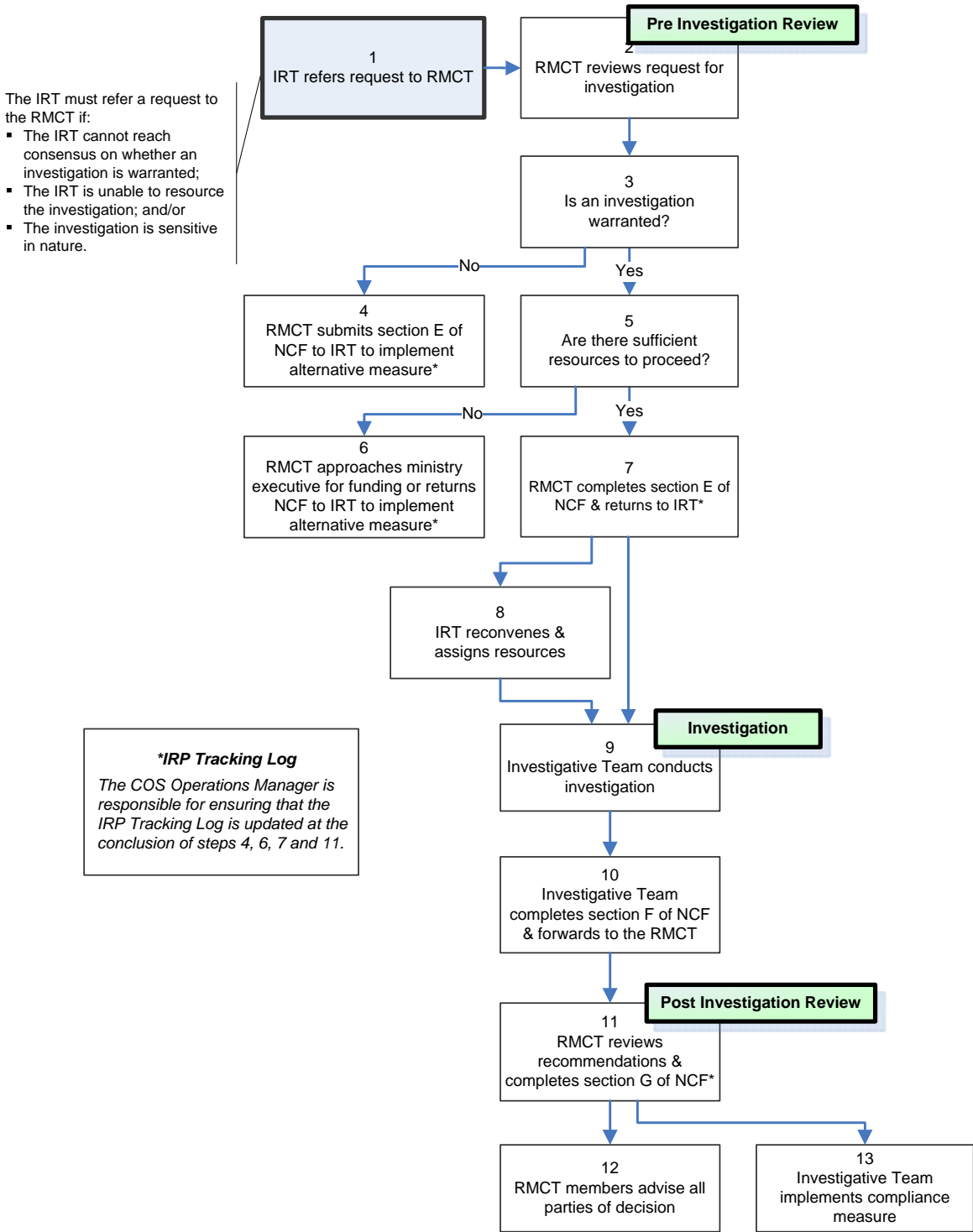
3. The RMCT will decide whether the investigation is warranted. If the RMCT cannot reach consensus as to whether an investigation is warranted, the COS Operations Manager (on behalf of the RMCT) will refer the matter to the Chief Conservation Officer. The Chief CO, after consultation with the relevant Regional Operations Director(s), will decide which measure to implement.
4. ***If the RMCT decides that an investigation is not warranted***, the COS Operations Manager will complete section E of the Non-Compliance Form (NCF) and return it to the IRT through the COS Field Supervisor. The RMCT may direct the IRT to undertake a specific compliance measure or it may request that the IRT determine which measure is most appropriate.

The COS Field Supervisor will update the IRP Tracking Log.

5. ***If the RMCT decides that an investigation is warranted***, the RMCT will determine if there are sufficient resources to proceed.
6. ***If there are not sufficient resources to proceed with the investigation***, the RMCT may approach ministry executive to request exceptional resources or it may return the case to the IRT to implement alternative measures. The COS Field Supervisor will update IRP Tracking Log.

Each member of the RMCT is responsible for advising relevant parties within their division of the decision and rationale on whether or not to support the request for investigation.

Figure 4: Investigation Review Process
Reviews conducted by the Regional Management Compliance Team



See pages 44-48 for explanation of each of these steps

7. ***If there are sufficient resources to proceed with the investigation***, the COS Operations Manager will complete section E of the NCF indicating the RMCT's support of the investigation. The COS Operations Manager may also indicate the RMCT's assignment of resources, or the RMCT may return the form to the COS Field Supervisor for the purpose of having the IRT assign the investigative resources. The COS Field Supervisor will update the IRP Tracking Log.

Each member of the RMCT will advise relevant parties within their division of the RMCT's decision to support the request for investigation.

8. If needed, the COS Field Supervisor reconvenes the IRT to assign resources and forwards the form to the lead investigator (COS).

⌚ IRT must assign resources within five days of receiving the form.

9. The Investigative Team will conduct the investigation.
10. The lead investigator (COS) will consult with program staff on the investigative team to formulate the recommended compliance measure(s). The lead investigator will complete section F of the NCF, outlining the findings of the investigation and the recommended response.

The lead investigator will forward the form to the COS Operations Manager.

11. The COS Operations Manager will arrange the post investigation review with the members of the RMCT. These reviews ***must*** be held verbally (i.e., conference call or in-person), and key team members should be invited to participate.

The RMCT will review the investigative team's recommended compliance measure. Rather than reviewing details of the procedural aspects of the investigation (e.g., how evidence was collected or how much sampling was done), the RMCT should focus on whether the investigative team considered:

- The full suite of compliance alternatives and selected an appropriate approach to achieving compliance; and
- The need to achieve general deterrence, if that is concluded to be necessary.

The COS Operations Manager will complete section G of the NCF to document the RMCT's decision. The COS Field Supervisor will update the IRP Tracking Log.

If the RMCT cannot reach consensus as to the most appropriate compliance measure, the COS Operations Manager (on behalf of the RMCT) will refer the matter to the Chief Conservation Officer. The Chief CO, after consultation with the relevant Regional Operations Director(s), will decide which measure to implement.

⌚ RMCT must conduct a post investigation review and make a decision as to whether to support the team's recommendation within 15 working days of receiving the form from the investigative team.

12. The RMCT members will notify all relevant parties within their division of the final outcome.

⌚ RMCT must communicate the outcome to all relevant parties within their division within five working days of completing the post investigation review.

13. The investigative team will implement the compliance measure.

Where the decision is to proceed with the recommendation of charges to Crown Counsel, the investigating field officer will update the investigative team and RMCT members electronically as the case moves through the various stages of prosecution.

8.2 Frequently Asked Questions

8.2.1 What is a “sensitive” investigation? Why are these cases automatically subject to the IRP?

Sensitive investigations involve “an aboriginal person asserting aboriginal rights, or a government agency (e.g., municipal, regional, provincial, federal, Crown Corporation), or an employee of a government agency acting in the course of his/her normal duties”. Any investigations that meet these criteria, regardless of whether they require cross-divisional collaboration, are subject to the IRP and review by the RMCT.

Sensitive investigations are subject to the IRP because there are often additional considerations or processes that the ministry must apply in such cases. For example, when dealing with an aboriginal person asserting aboriginal rights, the ministry may need to contact the Ministry of Attorney General to determine the merits of proceeding with an investigation. In the case of other government agencies, it may not be in the public interest (and public support may not exist) for one level of government to sanction another level of government.

Note: The definition of sensitive cases is not intended to be exhaustive and may not cover all investigations that are sensitive in nature (e.g., cases involving high-profile members of the community such as MLAs). If staff undertake an investigation that they feel is sensitive (but is not covered by this definition), they should nevertheless complete a NCF and forward it to their Section Head (program area) or Field Supervisor (COS) for submission to the RMCT.

8.2.2 What is expected of RMCT members when extraordinary resources are required (step 6) to fund an investigation?

If members of the RMCT agree that an investigation is warranted but are unable to resource it through their existing operating budgets, they may decide to request the additional funds from ministry executive. This should be done by first submitting the request to the Regional Operations Committee, which would then present the request to ministry executive.

8.2.3 What if members of the RMCT disagree about how to proceed on any aspect of a case?

See step 11. If members cannot reach consensus, the COS Operations Manager (on behalf of the RMCT) will refer the matter to the Chief Conservation Officer. The Chief CO, after consultation with the relevant Regional Operations Director(s), will decide how to proceed.

Chapter 9: Administration and Monitoring of the C&E Policy

Purpose

1. Ensure that the *C&E Policy* is implemented as intended.
2. Ensure continuous improvement of the *C&E Policy*.

Introduction

The effectiveness of the *C&E Policy* relies, in part, on ongoing monitoring to ensure that the policy is being implemented as intended and that any potential enhancements are identified and addressed in a timely manner. Consistent oversight helps to ensure that the policy timelines are being achieved, consultation is occurring as required and all investigations subject to the IRP are, in fact, referred to the IRT. Similarly, there are tasks associated with the ongoing administration of the *C&E Policy* - such as training and staff support - that are also essential to its effective implementation.

The purpose of this chapter is to outline high-level accountabilities for the performance monitoring and administration functions for the *C&E Policy*.

9.0 Application

This section applies to all divisions and regions within the ministry. Specific requirements relating to the format, frequency and reporting of performance data are outlined in a separate performance management framework.

9.1 Responsibility Matrix – Administration of the Non-Compliance Form and IRP Tracking Log

	TASK	RESPONSIBILITY
Completion of Non-Compliance Form	<ul style="list-style-type: none"> • Completion of Sections A-C (<i>Record of Non-Compliance, Purpose of Form & Request for Pre-Investigation Review</i>) 	Initiator (may be either program area or COS, depending on case)
	<ul style="list-style-type: none"> • Completion of Section D (<i>Pre-Investigation Review by the IRT</i>) 	COS Field Supervisor on behalf of the IRT
	<ul style="list-style-type: none"> • Completion of Section E - if referred to the RMCT (<i>Pre-Investigation Review by the RMCT</i>) 	COS Operations Manager on behalf of the RMCT
	<ul style="list-style-type: none"> • Completion of Section F (<i>Investigation Findings and Recommendations</i>) 	Lead Investigator (COS) on behalf of Investigative Team
	<ul style="list-style-type: none"> • Completion of Section G (<i>Post-Investigation Review by the IRT or RMCT</i>) 	COS Field Supervisor or COS Operations Manager on behalf of the IRT or RMCT

	TASK	RESPONSIBILITY
Storage of completed forms	<ul style="list-style-type: none"> Retention of hard-copy Non-Compliance Forms 	COS admin
Completion of IRP Tracking Log	<ul style="list-style-type: none"> Ensuring regular updates to the IRP Tracking Log 	COS Field Supervisor
Maintenance of form and IRP Tracking Log	<ul style="list-style-type: none"> Revisions to Non-Compliance Form Revisions to IRP Tracking Log Periodic maintenance/organization of files 	CPPB

9.2 Responsibility Matrix - Administration of the C&E Policy

	TASK	RESPONSIBILITY
Training	<ul style="list-style-type: none"> Development and ongoing maintenance of training materials Ad-hoc training initiatives, as required 	CPPB
	<ul style="list-style-type: none"> Training of all new employees on the <i>C&E Policy</i> 	Section Heads (program areas) & Field Supervisors (COS)
	<ul style="list-style-type: none"> Refresher training for staff on the <i>C&E Policy</i> 	
Staff support	<ul style="list-style-type: none"> Ongoing support/advice for field staff about the policy 	Section Heads (program areas) & Field Supervisors (COS)
	<ul style="list-style-type: none"> Ongoing support/advice for Section Heads or COS Field Supervisors about the policy 	Regional Managers
	<ul style="list-style-type: none"> Ongoing support/advice for Regional Managers about the policy 	CPPB
Policy materials	<ul style="list-style-type: none"> Revisions to <i>C&E Policy</i> Updates to and maintenance of website, FAQs, and other policy-related materials 	CPPB

9.3 Responsibility Matrix - Performance Monitoring of the C&E Policy

	TASK	RESPONSIBILITY
Timelines	<ul style="list-style-type: none"> Ongoing monitoring of IRP Tracking Log to ensure that timelines are being achieved and if not, that appropriate action is taken 	COS Operations Managers
	<ul style="list-style-type: none"> Provincial oversight of IRP Tracking Log (i.e., is it active and being regularly updated?) 	CPPB
Prosecution outcomes	<ul style="list-style-type: none"> Annual review of tickets and formal charges to ensure that all applicable investigations are being referred to IRT as envisioned under the <i>C&E Policy</i> 	RMCT, in consultation with COS Operations Managers
Performance measures	<ul style="list-style-type: none"> Development and administration of performance management framework 	CPPB
	<ul style="list-style-type: none"> Ongoing collection and reporting of output and outcome data 	CPPB/Regions/Divisions (per requirements of framework)
	<ul style="list-style-type: none"> Annual review of data and staff feedback 	CPPB, along with RMCT