

Wildlife Habitat Features

Question and Answers

The following Question and Answers (Q&As) are provided as a response to specific enquiries regarding the proposed *Order* for identification and management of Wildlife Habitat Features (WHF), and related information that is being offered for consideration by persons selecting forest practices.

1. *How were the list of WHFs selected?*

Certain WHFs are specifically identified in the Government Actions Regulation (GAR) section 11(1), and require exercise of authority under that regulation in order that they become identified for the purposes of FRPA. The localized features being considered under GAR 11(1)(e) were chosen after consultation with government and industry stakeholders representing all Forest Regions in the province. Under GAR 11(1)(e), the only wildlife habitat features to be identified will be those for species at risk which can be affected by forestry practices, and for which there is no other means of providing special management.

Why were some species at risk not included in the Schedule 1 list of WHFs?

The nests of Ancient Murrelet and Marbled Murrelet were not included as WHFs because:

- in B.C., Ancient Murrelet colonies are located on forested islands offshore from the main islands in the Queen Charlotte Islands/Haida Gwaii archipelago. All known Ancient Murrelet nests have been included within Wildlife Habitat Areas (WHA) established at these island locations.
- the nests and associated nest stands of Marbled Murrelet are more effectively conserved and managed using landscape level habitat management designations. These designations include WHAs, Old Growth Management Areas (OGMA), *Forest Act* (Part 13) areas, and parks and protected areas.

2. *What defines special management?*

Special management, as it pertains to WHFs, means the undertaking of forest practices that would result in an identified feature not being damaged or rendered ineffective.

3. *What if special management practices associated with a WHF are already provided or implemented through another enactment?*

If mechanisms have already been implemented under FRPA regulation or another enactment which are effective in requiring practices to not damage or render ineffective a WHF, then that WHF need not be identified for the purposes of FRPA. For example, other practice requirements, and WHAs or UWRs which are already in place, could protect a WHF which also occurs within the area of practice or designated area. However, if that same WHF occurs outside of WHAs, and is important to conserving the distribution or population status of the species, and there is no other enactment that is effective in requiring the WHF to not be damaged or

rendered ineffective, then the WHF would need to be identified for the purposes of FRPA.

4. *Is there overlap or redundancy between the Wildlife Act and the Forest Planning and Practices Regulation (FPPR sec. 70(2)) concerning protection and management of WHFs?*

The *Wildlife Act* does not provide the “special management” for WHFs that may be identified for the purposes of FRPA under GAR 11. As currently written, the *Wildlife Act* (sec. 34) protects *only* the nests of an eagle, peregrine falcon, gyrfalcon, osprey, heron or burrowing owl, and the nests of all birds when that nest is occupied by a bird or its egg. There are no provisions for any features other than the specified nests.

The *Wildlife Act* does not require the protection of any attributes critical to the biological function of a feature, nor the physical attributes that make a feature effective as a critical habitat or a residence. For example, the timing and nature of forest practices around a feature can have a significant impact on whether or not the feature can continue to be used by wildlife. The removal of all forest structure around a tree containing a raptor nest will in most cases render the nest ineffective. If it is used after the forest cover removal, there is a higher risk of fledgling mortality due to increased exposure to predation and weather, and reduced opportunities to make short learning/exploratory flights to and from the nest (i.e., practicing short hop-flights between tree canopies or structures typically found close to a nest tree)

It is possible that revision of the *Wildlife Act* may result in provisions that would require protection of features and the physical attributes that make them biologically functional. Until that time WHFs must be identified for the purposes of FRPA since there is no other means to ensure that features are not damaged or rendered ineffective (as per FPPR 70(2)). Once the revised *Wildlife Act* is brought into force, government will determine if any parts of the WHF Order will need to be revised or rescinded.

5. *How do Section 7 Notices relate to identification or management of WHFs?*

The Section 7 Notices were only provided for the purposes of triggering and informing the legal effect of the FPPR 7(1) objective. This action was intended to establish the requirement for results and strategies consistent with the objective considering the amount, distribution and attributes of habitat for a particular species of wildlife listed in the Notice. Section 7 Notices trigger a planning process to conserve a specified amount of habitat within a given land base and do not pertain to special management of individual habitat elements such as WHFs. MOE is not aware of any plan content that has been prepared and approved consistent with the FPPR 7(1) objective that speaks in any specific way to not damaging or rendering ineffective any of the WHFs being considered for the proposed order.

Identification of WHFs for the purposes of FRPA does not require the preparation of FSP content, but rather requires selection of forest practices to not damage or render ineffective those features that are located outside of the area of suitable habitat that may be conserved by approved FSP content.

6. *How do Protected Areas, Wildlife Management Areas and Designated Areas under Part 13 of the Forest Act relate to management of WHFs?*

By default these land designations provide protection to WHFs if and where such features occur in these areas. The purpose behind identifying WHFs is to ensure that features critical to species at risk, that occur outside of the above areas, are not subject to being damaged or rendered ineffective. Note that designation as a WHF is only applicable to forestry activities on provincial Crown lands, and does not apply to other resource management sectors.

7. *How does Riparian Area management under FPPR (sec. 8) relate to management of WHFs?*

The FPPR section 8 objective requires a person to prepare plan content consistent with the objective. The objective does not speak to any matter pertaining to not damaging or rendering ineffective a WHF. Plan content is not required to address this matter, but it is acknowledged that effective riparian management *may* deliver some modicum of special management for a WHF that may exist within the area that might be established as a riparian reserve zone in compliance with the content of an approved FSP. Some protection might be delivered by approved FSP content that may require high levels of retention in a riparian management zone, however, the extent of protection of any WHF in a riparian area would only become apparent after application of practices in compliance with FSP content.

The content of a FSP for the FPPR 8 objective is at the agreement holder's discretion and MOFR decision. Government does not know if the content of any approved FSP will deliver any requirement to not damage or render ineffective any WHF that might happen to be found in an area established in approved FSP content as riparian management or reserve zones. The Ministry of Environment is not aware of any approved plan content that has been prepared consistent with the FPPR 8 objective that speaks in any specific way to not damaging or rendering ineffective any of the WHFs being consider for the proposed order. The approved FSP content for many FSPs does not require retention in certain riparian areas – hence there would be no special management of WHFs. Some WHFs *might* by chance be covered by the FSP content if they occur in an area that is highly constrained by that approved FSP content for the FPPR 8 objective, but that is not a certainty and clearly does not address requirements to not damage or render ineffective any WHF that occur outside of riparian management areas.

8. *Does FPPR 57 offer special management to some of the proposed WHFs?*

FPPR 57 *may* deliver the special management required for some WHFs proposed in this Order, but only if they can specifically be classified as fish habitat for the purposes of FPPR 57. Fisheries sensitive zones may, due to their physical location, attributes and biological function, only meet the definition of fish habitat at certain times, for example, when a side channel used by wintering or spawning salmonids is inundated with water. During the dry season, such features may not meet the definition of fish habitat (i.e., they are dewatered and there are no fish present) and as such will not be protected by FPPR 57. However, there is an important need to ensure such features are protected so that they can function effectively during the next seasonal high water. Hence, to cover any potential gap in the legislative protection, it

is critical that provincial forest practices legislation clearly demonstrate competence to not damage or render ineffective such critical features. Application of a WHF will provide this protection.

9. *What is the period of protection for a WHF?*

This question pertains to the period of time that the requirement to not damage or render ineffective persists if it is found that a particular WHF is no longer being used by specific wildlife species. The period of time for which a particular WHF must be not damaged or rendered ineffective will vary dependent on the type of feature, its biological function, and the condition of that feature. For the most part, the period of protection will apply to the WHF **as long as that feature (as defined in the order) is still intact and is capable of providing the physical and ecological functions associated with the feature.** For example, in the case of large stick nests the WHF designation only applies if the stick nest is still intact within the nest tree. Once the nest has become dilapidated or has fallen from the nest tree, then the structure is no longer defined as a WHF.

10. *What are the criteria for exemption from application of Guidance Principles for managing forestry activities around a feature identified as a WHF?*

The guidance principles are only available as information that may be considered by a person who is selecting practices to comply with the requirement to not damage or render ineffective a WHF. As such, there is no exemption (nor any need for exemption) from the guidance principles as this material has no legal status – it is information that the diligent practitioner considers in light of the situations and circumstances faced at a particular WHF site.

11. *Are there opportunities for WHF exemptions?*

The exemption provisions supplied by the FPPR allow a person who is to undertake forest practices the opportunity to seek permission from BC Ministry of Environment (Regional office) to not comply with the requirement in regulation to not damage or render ineffective a WHF (FPPR 70(2)). It must be impracticable to comply with the requirements of the law (FPPR 92(2)). The exemption may be granted for a particular area, with conditions, which may set out other compliance requirements to mitigate the impact of the permitted occurrence of non-compliance for a specific WHF.

12. *What are the reporting and notification requirements for WHFs?*

The location of any WHF identified in or contiguous to a cutblock or road that the tenure holder is aware of, is required to be reported by June 1 of each year (unless this feature was already reported by the tenure holder in the previous reporting period) to the Ministry of Forests and Range District Manager as per FPPR 86 (3)(b).

13. *Do WHFs have to be tracked (monitored) if they are already protected by another mechanism (e.g., UWR or WHA)?*

There is no legal obligation to track or monitor WHFs, but monitoring would provide valuable scientific information and be useful for future management planning in areas with similar WHFs. Monitoring could also be useful in evaluating the effectiveness of forest practices around WHFs.