

Wildlife Habitat Features: Frequently Asked Questions

The following ‘frequently asked questions’ and their answers address common questions of forest and range practitioners with respect to the Order for identifying Wildlife Habitat Features (WHFs).

1. *When does the WHF Order take effect?*
 2. *Who does the WHF Order apply to?*
 3. *Does the WHF Order apply to a person cutting firewood?*
 4. *Does the Order apply to permits in place before the Order was established?*
 5. *Under what circumstances does the Order apply to industry sectors other than forestry and range (e.g., mineral exploration, independent power projects)?*
 6. *What is a forest or range agreement holder responsible to do under the WHF Order?*
 7. *What does “...damage or render ineffective a wildlife habitat feature” mean?*
 8. *What are the reporting requirements for WHFs?*
 9. *Why is the WHF Order necessary?*
 10. *How was the list of WHFs selected?*
 11. *Why are Marine Sensitive Features not included as WHFs?*
 12. *Why are bat hibernacula and bat maternity roosts included as WHFs?*
 13. *Will there be more WHFs added to the Order in the future?*
 14. *Where do I find location information for known WHFs?*
 15. *GAR s.11(1) authorizes the minister to identify WHFs if satisfied special management is required that is not otherwise provided by FRPA or another enactment. What is meant by “special management”?*
 16. *Does the establishment of a WHF Order meet GAR s. 2(1) tests for potential socio-economic impacts?*
 17. *What if special management practices that may protect a WHF in my cutting area (or range use area) are already provided by another enactment?*
 18. *The Government Actions Regulation states that WHFs “...must be sufficiently specific to enable a person affected by it to identify the wildlife habitat feature in the ordinary course of carrying out forest practices or range practices”. Will the management of WHFs require specialized surveys or inventories in order to identify these features?*
 19. *Is it possible to determine which species of cavity user (small owl, woodpecker or sapsucker) is associated with a particular nest tree (and potential designated WHF)?*
 20. *What is the role of the WHF Guidance document, relative to managing forest and range activities around WHFs?*
 21. *What is the period of protection for a WHF? For how long must a person ensure that forestry or range activities do not damage or render ineffective a WHF?*
 22. *Is there overlap or redundancy between the Wildlife Act and WHF requirements in FRPA when it comes to protecting nests?*
 23. *How do FPPR s. 7 and WLPPR s. 9 notices relate to identification or management of WHFs?*
 24. *How does riparian management under FRPA relate to management of WHFs?*
 25. *Why have fisheries sensitive features been included in this list of WHFs?*
 26. *Don’t legal requirements in the federal Fisheries Act cover Fisheries Sensitive Features (FSFs)?*
 27. *Do FPPR s. 57 and WLPPR s. 45 (which refer to timing of primary forestry activities in relation to protection of fish and fish habitat) offer special management to the Fisheries Sensitive Feature (FSF)?*
 28. *Will WHFs be monitored?*
 29. *Are there opportunities for WHF exemptions?*
-

1. When does the WHF Order take effect?

The WHF Order takes effect once it has been posted on the BC Ministry of Environment website (weblink) and has been published in the BC Gazette.

2. Who does the WHF Order apply to?

The WHF Order applies to *Forest Act* agreement holders:

- a. tree farm licence (private and Crown land)
- b. community forest agreement (private and Crown land)
- c. first nations woodland licence (private and Crown land)
- d. woodlot licence (private and Crown land)
- e. forest licence
- f. timber licence
- g. community salvage licence
- h. licence to cut
- i. free use permit
- j. Christmas tree permit
- k. road permit
- l. timber sale licence
- m. forestry licence to cut

The WHF Order also applies to *Range Act* agreement holders:

- a. grazing licence
- b. grazing permit
- c. hay cutting licence
- d. hay cutting permit

The WHF Order also applies to forest and range practices carried out by the government on provincial Crown land.

3. Does the WHF Order apply to a person cutting firewood?

The WHF Order applies to a person authorized to cut firewood under a free-use permit or other *Forest Act* authorization.

4. Does the Order apply to permits in place before the Order was established?

The Order does not apply to cutting permits, road permits, timber sale licences that do not provide cutting permits, and forestry licences to cut issued by a timber sales manager that were entered into before the Order takes effect. The Order also does not apply to minor tenures entered into before the Order unless the minister specifies otherwise.

The Order applies to all range permits regardless of when they were entered into.

See sections 2(2) and 2(3) of the Government Actions Regulation for details.

5. Under what circumstances does the Order apply to industry sectors other than forestry and range (e.g., mineral exploration, independent power projects)?

The WHF Order applies to all industry sectors whenever authorization under the *Forest Act* is required to cut timber (see Q# 2). The Order applies to persons with legal authority to occupy land who also require authority to cut trees as part of their exploration or development activities (e.g., a *Land Act* authority given to an independent power producer). An occupant licence to cut is then issued under the *Forest Act* and all forest activities must be compliant with FRPA and its regulations, including the requirement to not damage or render ineffective a WHF.

6. What is a forest or range agreement holder responsible to do under the WHF Order?

Forest and range agreement holders are required to take steps to ensure a WHF is not damaged or rendered ineffective. These steps include informing themselves of locations of known WHFs, identifying undocumented WHFs when conducting routine forest or range activities, and taking measures to protect WHFs. Forest agreement holders are also required to report locations of undocumented WHFs that are within or contiguous to a cutblock or road.

Because of previous forest or range activities, some newly reported features may have already sustained some damage or are no longer fully functional. Agreement holders are responsible for ensuring that future forest or range practices do not cause any further damage or render ineffective any newly identified feature.

7. What does “...damage or render ineffective a wildlife habitat feature” mean?

The phrase, to “not damage or render ineffective”, requires consideration of direct and indirect impacts on the feature as a result of an authorized person’s activities, including physical damage, loss of the feature itself, and loss of its biological or ecological function. It may be possible to “render ineffective” a WHF without physically damaging it, for example, by affecting access to it by the species of concern or by locating forest or range activities too close to the feature during a sensitive period (e.g., breeding season). The desired outcome, *after* primary forest activities, is that the feature remains intact with its ecological functions maintained. The WHF Guidance document provides practitioners with information to help them select appropriate site-specific practices in order to minimize any damage to the feature or impairment of its function.

8. What are the reporting requirements for WHFs?

Forest Act agreement holders are required to report to the District Manager on an annual basis new WHFs encountered that are in or contiguous to a cutblock or road. Woodlot licence holders must report new WHFs by May 31st (WLPPR s. 76(3)(d)). All other forest licence and agreement holders must report new WHFs by June 1st (FPPR s. 86(3)(b)). The location of new features is reported online and the information will be made publicly available through the BC government data warehouse (e.g., via iMap).

At this time, there are no reporting requirements for range agreement holders.

For more information on how to report new WHFs, see: (weblink to template and instructions).

9. Why is the WHF Order necessary?

These important habitat features are not adequately or consistently protected by other enactments and therefore require special management. For example, the *Wildlife Act* will protect a nest while it

is occupied but does not protect habitat necessary to maintain the viability and functionality of that nest. In addition, the requirement to protect a WHF is immediate upon identification, which benefits sensitive wildlife species, whereas establishment of a wildlife habitat area under FRPA has a lengthy consultation and approval process.

10. *How was the list of WHFs selected?*

The Government Actions Regulation lists some specific features (e.g., nest of a bald eagle) as potential wildlife habitat features for the minister responsible for the *Wildlife Act* to identify as WHFs, in recognition that these features are known to be not adequately protected by existing provisions. The regulation also provides flexibility for the minister to select “other localized features”.

The “other localized features” identified in the current Order were selected after consultation with government biologists and species experts as well as industry stakeholders across the province. This list includes high priority WHFs often associated with species at risk that can be affected by forest or range activities, and for which there is no other means of consistently providing the special management required to ensure their protection.

For species such as Spotted Owl and Vancouver Island Marmot which have conservation and population recovery efforts (e.g., captive breeding programs), their nests and burrows, respectively, are included in the list of WHFs. Establishing their nests and burrows as WHFs provides a site-specific habitat protection tool to complement the larger scale conservation efforts.

Some important species at risk were considered but excluded (e.g., Marbled Murrelet, Ancient Murrelet) as it was determined that other mechanisms such as wildlife habitat areas more effectively provide habitat protection.

11. *Why are Marine Sensitive Features not included as WHFs?*

The Government Actions Regulation lists marine sensitive features as possible WHFs. However, based on consultation with regional government staff it was concluded that protection of marine sensitive features was adequately provided by other regulations and enactments.

12. *Why are bat hibernacula and bat maternity roosts included as WHFs?*

The arrival of white-nose syndrome fungus into North America from Europe has increased the importance of protecting bat hibernacula and maternity roosts. White-nose syndrome has caused up to 80% mortality rates in hibernacula with cool damp conditions that support rapid growth and spread of this disease. To help protect healthy populations of susceptible bat species and to support recovery of impacted bat populations, it is important to limit disturbance to hibernating bats and to protect a maximum of maternity roosts. WHFs are one tool that can assist in these efforts as hibernacula and maternity roosts are relatively scarce in most landscapes.

13. *Will there be more WHFs added to the Order in the future?*

Additional WHFs may be identified and added to the Order in the future. As with the initial Order, this will require First Nations engagement as well as consultation with forest and range agreement holders, applicable government staff and other stakeholders. Like the current WHFs, new WHFs will also be subject to the “GAR tests” (GAR s. 2(2)) (e.g., the feature requires special management that has not been adequately provided under another regulation or enactment, there is no undue constraint on an agreement holder to exercise the holder’s rights under the agreement, etc.).

14. Where do I find location information for known WHFs?

Locations of known WHFs are stored in the BC government data warehouse and are made publicly available (e.g., through iMap). This database includes historic records and is the repository for new location information. From the warehouse, agreement holders and their professionals are able to access and retrieve WHF data pertinent to their operations. New information is added to the database by forest agreement holders as required in regulation.

(weblink to warehouse)

(weblink to reporting platform)

15. GAR s. 11(1) authorizes the minister to identify WHFs if satisfied special management is required that is not otherwise provided by FRPA or another enactment. What is meant by “special management”?

“Special management” is an action required to conserve or protect a particular resource value. Examples of special management in FRPA include harvest restrictions in riparian management areas to protect water or fish values and the requirement for wildlife tree retention to provide stand level biodiversity in harvest areas. These and other special management tools provide some protection for WHFs.

Other enactments also include tools for special management that may also provide partial protection of habitat features. For example, the *Water Sustainability Act*, *Drinking Water Protection Act*, and the federal *Fisheries Act* may offer some protection to some fisheries sensitive features. Also, the *Wildlife Act* offers some protection to bird nests though for most species, this is restricted to the breeding season.

Where inadequate special management is provided by FRPA or another enactment and a resource value is at risk or of special habitat importance, designating the resource value as a WHF may be required. For example, in addition to protecting water values, the special management within a riparian management area may also protect an Interior Western Screech-Owl nest from damage caused by forest and range activities. However, the protected area is likely inadequate to provide fully functioning Screech-Owl habitat and additional protection is required. Designating an Interior Western Screech-Owl nest as a WHF is one way to provide the extent of special management required to not damage or render ineffective the feature.

Questions the minister will consider to establish if special management is required to protect a certain feature include:

- i) Do FRPA provisions for protection of other values also provide the special management that can be relied on to conserve the value?
- ii) Do other enactments conserve the value?
- iii) Do existing government actions provide the special management for this value?

If the answer is ‘no’, then designation of that feature as a WHF may be appropriate.

16. Does the establishment of a WHF Order meet GAR s. 2(1) tests for potential socio-economic impacts?

Concerns with respect to potential impacts of WHFs are addressed during review and comment and consultation with agreement holders and other stakeholders. Prior to establishing the Order, the minister will consider evidence provided by agreement holders as to how the Order may:

- i) unduly reduce the timber supply;
- ii) impact delivered wood costs; and
- iii) impact agreement holder's ability to exercise rights under the agreement.

With respect to forest agreement holders, it is expected that most impacts from WHFs can be met within stand-level biodiversity requirements in FRPA (i.e., wildlife tree patches, riparian management areas) such that no additional impacts occur.

For forest and range agreement holders, some protection may be provided in existing nearby or adjacent old growth management areas or wildlife habitat areas. For example, an old growth management area adjacent to a Northern Goshawk nest in a proposed cutblock may contribute functioning habitat such that the nest (which is now in a wildlife tree patch) is not rendered ineffective by primary forest activities and no additional timber impact occurs. Or general wildlife measures (e.g., restrictions on placement of livestock attractants) for a nearby wildlife habitat area for Lewis's Woodpecker may contribute to habitat protection for a Lewis's Woodpecker nest found outside the wildlife habitat area (i.e., a WHF).

Because of the uncertainties that prevail in forest management, it is important that the *actual* impact of WHF protection on timber supply and delivered wood costs be monitored. The Ministry of Environment (ENV) has committed to forest agreement holders to work with them to track the impacts associated with the implementation of WHFs. If significant impacts are demonstrated, then the WHF Order may be amended to satisfy the ENV delegated decision-maker that the tests in GAR s. 2 (1) are met.

17. *What if special management practices that may protect a WHF in my cutting area or range use area are already provided by another enactment?*

If special management is already provided under FRPA or another enactment and this management is effective in ensuring forest or range practices do not damage or render ineffective the WHF, then no further protective action is required by the forest or range agreement holder. However, forest agreement holders must still report the WHF.

It is important to remember that special management provided by another means may change over time leaving the habitat feature vulnerable. For example, a fisheries sensitive feature could be protected by a lakeshore management objective in a particular area. However, should a decision be made at a later date that a lakeshore objective is no longer needed and the lakeshore order is cancelled, the fish species and habitat could then be at risk of damage. Therefore, to help ensure that the habitat is protected over the long term, the WHF must still be reported in case the previous designation is later withdrawn.

18. *The Government Actions Regulation states that WHFs "...must be sufficiently specific to enable a person affected by it to identify the wildlife habitat feature in the ordinary course of carrying out forest practices or range practices". Will the management of WHFs require specialized surveys or inventories in order to identify these features?*

Specialized surveys and intensive inventories are not required for managing WHFs. WHFs include only those features that are readily identified during the normal course of forest and range activities (e.g., road and cut block layout, range inspections, wildlife tree patch layout).

To support this intent, each WHF is defined and described in the WHF Order and supporting information. The companion WHF Guidance document provides additional detailed information and photographs that will enable forest and range practitioners to identify most features reliably.

However, because of variables such as time of year, it might not always be possible to readily determine if a suspected feature meets the definition of a WHF (e.g., lack of water in a possible fisheries sensitive feature, a potential bat hibernaculum observed in summer or an unoccupied cavity nest observed outside the breeding window).

Therefore, when there is doubt, the precautionary principle and the following criteria are applied:

- i) Is the wildlife species known to occur in the local or regional area?
- ii) Is the feature in functioning condition and located in suitable habitat?
- iii) Is there evidence of past use?
- iv) Is the feature naturally occurring?

If all of these criteria apply, then it is likely reasonable to assume the feature is a WHF. If greater certainty is required, then a qualified professional can be asked to assess the feature.

Consequently, the authorized person or qualified professional if required, will determine the most appropriate actions and practices to protect the feature from damage or being rendered ineffective. These practices will be based upon professional opinion and the best technical information available. Identification of WHFs in the field, whether to seek additional specialized advice, and determination of how best to protect them (not damage or render ineffective), are all areas of professional reliance and due diligence.

19. *Is it possible to determine which species of cavity user (small owl, woodpecker or sapsucker) is associated with a particular nest tree (and potential designated WHF)?*

The most challenging WHFs to positively link to a particular wildlife species are the six features associated with primary or secondary cavity dwellers (i.e., nests of a Flammulated Owl, Western Screech-Owl, Northern Saw-whet Owl, White-headed Woodpecker, Lewis's Woodpecker, and Williamson's Sapsucker). Though the nest cavity feature persists and requires protection through several years, these species are only present during the breeding season and therefore may not be present during primary forest or range activities. A species inventory and/or input by a qualified professional are not necessarily required. However, the authorized person should consider the criteria in Q#18 and the WHF Guidance document while making their decision.

As well, "species at risk training" for field staff (especially for timber cruising and layout/engineering crews) will help practitioners recognize suspected features or identify applicable wildlife species, preferably in advance of primary forestry activities.

Further detailed and useful information on the identification, habitat requirements and ecology of these six cavity nesting species can be found in the BC Species and Ecosystems Explorer website (<http://www2.gov.bc.ca/gov/content/environment/plants-animals-ecosystems/data-reporting/conservation-data-centre/explore-cdc-data/species-and-ecosystems-explorer>).

20. *What is the role of the WHF Guidance document, relative to managing forest and range activities around WHFs?*

The WHF Guidance document is intended to provide information that may be considered, and voluntarily used by a person when selecting practices to comply with the requirement to not damage or render ineffective a WHF. It has no legal status. Other science-based information may be considered when determining protective measures. It is the responsibility of the forest and range agreement holders and their professionals to research and select best practices to protect any WHFs.

21. *What is the period of protection for a WHF? For how long must a person ensure that forestry or range activities do not damage or render ineffective a WHF?*

A WHF must not be damaged or rendered ineffective for as long as it meets the definition of a WHF. This period of time will vary depending on the type of feature, its biological function, its functioning condition and evidence of past use of that feature. Some features may be relatively short-lived (e.g., a decayed cavity nest tree) whereas other features may persist indefinitely (e.g., hot spring). Consult the WHF Guidance document and other current scientific information for estimates of longevity for encountered WHFs.

22. *Is there overlap or redundancy between the Wildlife Act and WHF requirements in FRPA when it comes to protecting nests?*

The *Wildlife Act* does not provide the required “special management” specific to WHFs that are nests. The *Wildlife Act* (s. 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 protection of any attributes critical to the biological function of a feature, the physical attributes that make a feature functionally effective or enduring, or for protecting habitat around the nests in order to not damage or render them ineffective.

The timing and nature of forest or range practices around a WHF can have a significant impact on the functionality of a WHF. For example, the removal of all forest structure around a tree containing a raptor nest will in most cases render the nest ineffective. There is a high risk of fledgling mortality due to increased exposure to predators 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).

23. *How do FPPR s. 7 and WLPPR s. 9 notices relate to identification or management of WHFs?*

FPPR s. 7 notices and WLPPR s. 9 notices do not affect WHF establishment or management. These notices were established during the transition from the *Forest Practices Code of BC Act* to FRPA to ensure habitat protection for selected species at risk until wildlife habitat areas were established. These notices established the requirement for forest stewardship plans and woodlot licence plans to include results and strategies to ensure protection of the amount, distribution and attributes of habitat for a particular species of wildlife listed in the notice. As such, the notices trigger a planning requirement and do not on their own provide special management.

24. *How does riparian management under FRPA relate to management of WHFs?*

Riparian protections provided through FRPA objectives and practice requirements support protection of a variety of important habitat attributes occurring in riparian areas. If the important riparian habitat attributes are also identified as WHFs, the provisions to protect riparian areas and provisions to protect WHFs may be redundant. However, special management exceeding FRPA provisions for riparian areas is required in certain circumstances, for example, for unclassified streams that provide fish habitat. Results and strategies addressing FPPR objectives in forest stewardship plans (FSPs) or woodlot licence plans can assist protection of WHFs; however, content of these plans can vary (e.g., from default standards) and may not protect WHFs, especially if the WHF is not anticipated during plan development. Also, not all forest agreement holders are required to prepare FSPs and the associated results and strategies, reinforcing the need for WHFs. Establishing WHFs ensures that important features are protected even though in some situations FRPA requirements may provide the required protection.

25. *Why have fisheries sensitive features been included in this list of WHFs?*

Fisheries sensitive features (FSFs) include waterbodies that do not meet the FRPA definition of stream, are not classified as lakes or wetlands, but are occupied at least some time of the year by fish. This includes watercourses with no evidence of scour or mineral alluvial deposits and small unclassified lakes and wetlands. These waterbodies do not require a riparian management area (RMA) under FRPA. However, these FSFs provide refuge habitat for fish fry during periods of high water flows when main stream channels are unsuitable. They also provide important rearing habitat and are connected for at least a portion of the year to classified streams, lakes or wetlands. They often occur just outside of a RMA and therefore require special management.

FSFs also include the littoral zone of a lake which has no special management under FRPA. This is the productive zone along the shore where light is able to penetrate to the bottom of the lake providing good growing conditions for aquatic plants and invertebrates. This zone starts at the shoreline and continues to where the water depth typically reaches 10m. The cover and food sources provided in the littoral zone provide important fish habitat however some forest activities can damage this FSF. For example, log drops into or near the littoral zone during heli-logging can cause direct damage to aquatic plants and animals. Also, log booms can alter natural water currents affecting sediment deposition patterns impacting aquatic plants and invertebrates. Sloughing of bark from both heli-log drops and log booms may smother aquatic plants and invertebrates.

26. *Don't legal requirements in the federal Fisheries Act cover Fisheries Sensitive Features (FSFs)?*

The Province does not rely on federal statutes to manage important habitats. The federal *Fisheries Act* (s. 35(1)) states it is an offense to cause serious harm to fish and excludes reference to protection of fish habitat. Also, the act does not provide criteria to determine when serious harm has occurred or to identify something that would result in serious harm. Including FSFs on the list of WHFs will provide a proactive complement to the federal *Fisheries Act*.

27. *Do FPPR s. 57 and WLPPR s. 45 (which refer to timing of primary forestry activities in relation to protection of fish and fish habitat) offer special management to the Fisheries Sensitive Feature (FSF)?*

FPPR s. 57 and WLPPR s. 45 may deliver the special management required for some FSFs, but only if the waterbody can be classified as fish habitat. FSFs may only meet the definition of fish habitat at certain times of the year; for example, a side channel that is dry during summer months and inundated with water in winter when it is used by wintering or spawning salmonids only meets the definition of fish habitat during winter. If only encountered during the summer dry season the winter habitat will not be protected under FRPA and therefore requires special management. Establishing sites like this as FSFs will ensure such features are protected and can function effectively in future years.

28. *Will WHFs be monitored?*

Compliance and Enforcement staff will assess compliance with FRPA requirements for WHFs during routine inspections of forest and range activities.

Forest and range agreement holders may decide to monitor use of individual WHFs within their tenure. If it is determined that the feature no longer meets the definition of a WHF (e.g., the nest and its supporting structure is no longer occupied by a WHF bird species to hold eggs or offspring,

or is no longer habitually occupied and is no longer capable of holding eggs or offspring of a WHF bird species) the agreement holder no longer has the requirement to not 'damage or render ineffective' the feature.

In addition, effectiveness monitoring may be used in the future to:

- Determine if current forest and range activities are protecting WHFs;
- Identify issues related to implementation of the WHF program; and
- Identify changes to WHF policies and legislation.

29. Are there opportunities for WHF exemptions?

The FPPR, RPPR and WLPPR include provisions that allow a person who is to undertake forest or range activities the opportunity to seek an exemption from the requirement to protect a WHF.

The delegated decision-maker must be satisfied before providing an exemption that compliance with the provision is not practicable given the circumstances or conditions applicable to a particular area in which the WHF occurs. The decision maker may attach conditions to an exemption.

The exemption request must include a rationale describing the nature of the problem and any options that might minimize the impacts to the feature. An exemption request template is provided.

(Weblink to template and instructions)