

ORDER – WILDLIFE HABITAT AREAS
WHAs 4-181 to 4-202
Williamson’s Sapsucker – Rocky Mountain Resource District

This order is given under the authority of sections 9(2) and 10(1) of the *Government Actions Regulation* (B.C. Reg. 582/2004) (GAR).

1. The Regional Executive Director (RED) of Kootenay Boundary Region of the Ministry of Forests, Lands and Natural Resource Operations (FLNRO), being satisfied that:

- i. the following area contains habitat that is necessary to meet the habitat requirements for Williamson’s sapsucker (*Sphyrapicus thyroideus nataliae*);

orders that:

- a) the areas shown in the maps set out in the attached Appendix 1 (as WHAs 4-181 to 4-202) and contained in the wildlife habitat area (WHA) spatial layer stored in the Geographic Warehouse (WHSE_WILDLIFE_MANAGEMENT.WCP_WILDLIFE_HABITAT_AREA_POLY) are established as wildlife habitat areas WHAs 4-181 to 4-202 for Williamson’s sapsucker. The centre point of the line on the attached Appendix 1 is what establishes the WHA boundary; and
- b) if there is a discrepancy between the areas shown in the map set out in the attached Appendix 1 and the WHA spatial layer stored in the Geographic Warehouse (WHSE_WILDLIFE_MANAGEMENT.WCP_WILDLIFE_HABITAT_AREA_POLY), the areas as detailed in the WHA spatial layer will take precedent; and
- c) pursuant to section 7(3) of the *Forest Planning and Practices Regulation* the person(s) required to prepare a forest stewardship plan are hereby exempted from the obligation to prepare results or strategies in relation to the objective set out in section 7(1) of the *Forest Planning and Practices Regulation*. Williamson’s Sapsucker was not included in the Notice given under Section 7(2) of the *Forest Planning and Practices Regulation (FPPR)* and Section 9(3) of the *Woodlot Licence Planning and Practices Regulation (WLPPR)* for the Rocky Mountain Natural Resource District (DRM).

2. The Regional Executive Director (RED) of Kootenay Boundary Region of the Ministry of Forests, Lands and Natural Resource Operations (FLNRO), being satisfied that:

- i. the general wildlife measures (GWMs) described below are necessary to protect or conserve Williamson’s sapsucker and the habitat of Williamson’s sapsucker; and
- ii. GAR or another enactment does not otherwise provide for that protection or conservation;

orders that:

- a) the GWMs #1-5 outlined in Schedule 1 are established for WHAs 4-181 to 4-202; and
- b) the GWMs #1-5 outlined in Schedule 1 are applied to the area specified as WHAs 4-181 to 4-202 in those GWMs.

Definitions

Words and expressions not defined in this order have the meaning given to them in the *Forest and Range Practices Act (FRPA)* and the regulations made under it, unless context indicates otherwise.

Schedule 1 – General Wildlife Measures (GWMs):

Definitions:

Mechanized silviculture treatments: Any silviculture treatments using motorized machinery or equipment including, but not restricted to, brush saws, chain saws and excavators.

Access

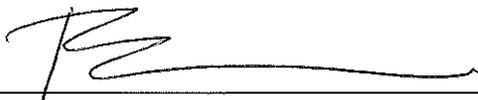
1. Do not construct roads or trails.

Harvesting and Silviculture

2. Do not conduct timber harvesting or salvage.
3. Do not perform mechanized silviculture treatments between March 1st and July 15th.

Pesticides

4. Do not use pesticides, except for the application of herbicides to control invasive plants or noxious weeds.
5. GWM 4 does not apply to application of *Bacillus thuringiensis* for the purposes of controlling western spruce budworm outbreaks.



Approved this 4th day of March, 2014

Paul Rasmussen, A/Regional Executive Director, Kootenay Boundary Region

Approved in principle this 5th day of November, 2013

Tony Wideski, former Regional Executive Director, Kootenay Boundary Region
Ministry of Forests, Lands and Natural Resource Operations

Appendix 1:

The following information is provided as background information and support to the order establishing WHAs 4-181 to 4-202. This appendix is not part of the order.

1. **Activities to which the order does not apply:** Section 2(2) of the *Government Actions Regulation* states:

An order under any of sections 5 to 15 does not apply in respect of

(a) any of the following entered into before the order takes effect:

(i) a cutting permit;

(ii) a road permit;

(iii) a timber sale licence that does not provide for cutting permits;

(iv) a forestry licence to cut issued by a timber sales manager under section 47.6 (3) of the *Forest Act*;

(v) subject to subsection (3), a minor tenure,

(b) a declared area,

(c) areas described in section 196 (1) of the Act, and

(d) areas referred to in section 110 of the *Forest Planning and Practices Regulation*.

2. Authority to consider an exemption from these GWMs is provided in section 92(1) of the *Forest Planning and Practices Regulation*, section 79(1) of the *Woodlot Licenses Planning and Practices Regulation* and section 36(3) of the *Range Planning and Practices Regulation*. An exemption may be provided if the Minister's delegate is satisfied that the intent of the GWM will be achieved or that compliance with the provision is not practicable, given the circumstances or conditions applicable to a particular area.

An exemption application should be submitted to the Minister's delegate (MoFLNRO Regional Director of Resource Management) for the Region that the WHA is located with a rationale describing the nature of the problem and options to integrate WHA conservation with proposed forest and/or range practices. This submission will assist in timely consideration of the matter, and will inform the conditions, if any, of the exemption that may be granted prior to commencement of activities. Upon receipt of a complete exemption application, a determination will normally be made within 14 days of arrival. Incomplete packages will be returned to the proponent for re-submission.

GAR Rationale – Approval of WHAs 4-181 to 4-202
Williamson’s sapsucker (*Sphyrapicus thyroideus*)

In approving these 22 wildlife habitat areas (WHAs 4-181 to 4-202) each of the tests under the *Government Actions Regulation (GAR)* was considered.

Government Actions Regulation: Policy and Procedures (Revised Oct 17, 2008) contains a summary of legal requirements and supporting advice and suggestions to assist those preparing Orders and Rationales under the *Government Actions Regulation* of the *Forest and Range Practices Act (FRPA)*.

GAR 2 – Limitations on Actions

(1)(a) The order is consistent with established objectives.

Having considered all available information pertaining to this order, I find that there are no elements of this order that would be inconsistent with established objectives applicable to forest and range practices and planning within the Rocky Mountain Natural Resource District. They are consistent with the existing policies and directives for the Kootenay Boundary Land Use Plan (KBLUP).

(1)(b) The order would not unduly reduce the supply of timber from British Columbia's forests.

The WHAs established by this order encompass 1017.8 ha in the Rocky Mountain Resource District. It is anticipated that these WHAs will have an estimated impact of 500.9 ha to immature THLB, and 304.6 ha to mature THLB of the timber harvesting land base (THLB).

Review and Comment/Consultation Summary: Attempts were made to minimize THLB impacts of these WHA proposals while maximizing habitat protection and conservation gains. Seed tree cut areas and other partial cuts, leave tree patches (WTPs), mountain pine beetle attacked areas, burned and salvaged areas and other existing harvesting constraints were overlapped (e.g., OGMAs, UWRs, riparian areas, etc...). Stakeholder input was incorporated and/or negotiated. One popular recreation area was overlapped (McGinty Lake) to maintain visual quality. One WHA boundary (4-189) was revised for salvage harvest.

Natural Resource Impacts - Forestry: There is no risk of exceeding the IWMS policy 1% mature THLB district budget to account for these WHAs, and in line with government IWMS policy, timber impact calculations have been completed for these 22 WHAs. As such, I find this order to be consistent with government’s timber supply impact policy that pertains to establishment of WHAs. This order will not unduly reduce the supply of timber from British Columbia's forests.

(1)(c)(i) The benefits to the public derived from the order would outweigh any material adverse impact of the order on the delivered wood costs of a holder of any agreement under the Forest Act that would be affected by the order.

The information I have considered, including comments from affected *Forest Act* agreement holders, does not indicate that this order would create a material adverse impact on delivered wood costs.

Two of the four *Forest Act* agreement holders with overlapping tenures did not raise concerns or issues with respect to the delivered wood costs associated with the WHAs established by this order.

Review and Comment / Consultation Summary: The WHA polygons have been developed with specific involvement of the affected licensees. Numerous changes have been made to address operational issues.

In addition to considering the potential for this order to have a material adverse impact on delivered wood costs, I have considered the public benefits that would be derived from this order. Canada and British Columbia are signatories to the 1996 Accord for the Protection of Species at Risk that commits the federal government, provinces and territories to establish complementary legislation and programs to protect Canada's species at risk. In BC, British Columbians support the protection and/or recovery of species at risk that only or mainly occur within British Columbia¹.

Note: For the purpose of *GAR 2(1)(c)(i)&(ii) - Benefits to the Public*

- **Provincial / Federal Conservation Status:** BC list – red; COSEWIC ranking – Endangered, 2005
- **Conservation Framework Highest Score is 1/ Goal 3:** Priority score 1, maintain the diversity of native species and ecosystems.
- **GAR Implementation Plan: Provincial Score: 7; Regional Score: 9** (based on a qualitative assessment of regional resource development pressures, government commitments, and regional capacity or expertise)

WISA occur in the Kootenay Boundary Region and are found in mature and old growth larch ecosystems; their high suitability habitat is being degraded and fragmented, hence their populations are decreasing.

(1)(c)(ii) The benefits to the public derived from the order would outweigh any undue constraint on the ability of a holder of an agreement under the Forest Act or the Range Act that would be affected by the order to exercise the holder's rights under the agreement.

The information I have considered, including comments from affected *Forest Act* and *Range Act* agreement holders, does not indicate that this order would constrain the ability of a holder of an agreement under the *Forest Act* or the *Range Act* to exercise the holder's rights under the agreement. Of the four *Forest Act* agreement holders who provided comments, only one indicated any undue constraint to exercise their rights with the establishment of the WHAs by this order.

Six of the fourteen *Range Act* agreement holders did not indicate any undue constraint to exercise their rights with the establishment of the WHAs by this order. The remaining eight *Range Act* agreement holders did not provide comments. No range specific general wildlife measures are established by these orders.

In addition to considering the potential for this order to unduly constrain the ability of an agreement holder to exercise their rights, I have considered the public benefits that would be derived from this order (see GAR 1(c)(i) above). Considering the information available to me, I find the public benefit of this order to be compelling relative to the lack of an indication of undue constraint on the ability of an agreement holder to exercise the holder's rights under the agreement.

GAR 3 – Consultations and Reviews

(1)(a) An opportunity for review and comment was provided to the holders of agreements under the Forest Act or the Range Act that would potentially be affected by the order.

(1)(b) Consultation was carried out with holders on whom the order may have a material adverse effect.

Review and Comment / Consultation Summary:

Email contacts, letter mail contacts, telephone calls and voice messages, plus limited public meetings with affected parties were conducted between 2011 and 2012. Affected parties comments resulted in revised GWMs, modifications to boundaries and revision of one WHA boundary in 2014 for salvage.

¹ Harshaw, H.W. (2008). *British Columbia Species at Risk Public Opinion Survey 2008: Final technical report*. Vancouver, BC: University of British Columbia Collaborative for Advance Landscape Planning

Resource Sector Affected Agreement Holder:

Changed from ‘Opposes Proposal’ to ‘No Outstanding Concerns’: In the last moments prior to submission of this WISA WHA package to Headquarters, a NRFL holder with an approved salvage cutting permit, contacted government regarding the overlap of their block with portions of proposed WHA 4-189. **Government Position:** The decision was made to revise this WHA’s boundary and include in package.

All comments received by MoFLNRO during review/comment or consultation were made available for my consideration.

Due diligence was exercised to ensure that:

- a) any holder of an agreement under the *Forest Act* or *Range Act* that would potentially be affected by this order was given an opportunity to review and comment on the proposed order;
- b) consultation was carried out with any holder on whom the order may have a material adverse effect.

GAR 9 - General Wildlife Measures

(2)(a) The general wildlife measures are necessary to protect or conserve the species at risk.

General Wildlife Measures: In the five final GWMs, three modified measures (that deviate from the species account) are being proposed. The phrase “where practicable” was removed from #1 (road and trail construction); #3 restricting mechanized silviculture treatments was added and then a time frame was also inserted into #3; and an exception was added to #4 to allow some herbicides.

I am satisfied that the general wildlife measures established by this order are necessary to protect or conserve the species at risk. The measures are consistent with current standards, are supported by the current best available science, and have been made available to agreement holders for review and comment.

(2)(b) The regulations under the Forest and Range Practices Act or another enactment do not otherwise provide for that protection or conservation.

While other regulations or enactments may deliver some of the special management required for the protection or conservation of the candidate WHA, these restrictions are not specific to Williamson’s sapsucker and there is no certainty that the mechanism will provide ongoing protection to the species. The general wildlife measures established by this order are necessary and I am satisfied that the regulations under the *Forest and Range Practices Act* or another enactment do not otherwise provide for protection or conservation of the areas and species addressed by this order.

The Williamson’s Sapsucker is provincially red-listed and is listed as ‘Endangered’ by COSEWIC. The provincial Conservation Framework lists Williamson’s Sapsucker (ssp *nataliae*) as a high priority “1” for CF goal 3 (Maintain the diversity of native species and ecosystems). WISA occur in the Kootenay Boundary Region and are found in mature and old growth larch ecosystems; their high suitability habitat is being degraded and fragmented, hence their populations are decreasing.

GAR 10 – Wildlife Habitat Areas

(1) The wildlife habitat area is necessary to meet the habitat requirements of a category of species at risk.

I am satisfied that the WHAs approved by this order contain habitat that is necessary to meet the habitat requirements of Williamson's sapsucker. Suitability of these WHAs has been confirmed through extensive research, including nest search and call back surveys (see Appendix 3 of Summary/Endorsement Form).

The candidate WHAs were selected based on data collected between 2008 and 2011 during call playback and nest search surveys conducted by Ted Antifeau, Penny Ohanjanian, Peter Davidson, Les Gyug and their crews. The Identified Wildlife Management Strategy species account for Williamson's Sapsucker describes the goal of the candidate WHAs is to maintain known breeding sites. The WHAs were established around known active nest sites, especially where high suitability habitat containing large diameter western larch and ponderosa pine exist. Candidate WHAs range in size from 30 to 80 ha depending on the extent of remaining high suitability habitat occurring within the estimated home range. Three WHA proposals are larger than the recommended 50 ha as they accommodate 2 nesting pairs each: 4-183 is 69.4 ha, 4-190 is 65.8 ha, 4-193 is 85.4 ha.

(2) The wildlife habitat area requires special management that has not otherwise been provided for under this regulation or another enactment

I am satisfied that the objectives approved by this order provide special management that has not otherwise been provided for under this regulation or another enactment. The objectives are consistent with current standards and supported by the current best available science.



Approved this 4th day of March, 2014

Paul Rasmussen, A/Regional Executive Director, Kootenay Boundary Region

Approved in principle this 5th day of November, 2013

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