

Description

Migratory forest birds are in decline over much of North America. The law protects migratory bird nests containing eggs or nestlings, and the nests of some bird species that re-use their nest structures, active or not. This policy guides forest planning and forest operations such that migratory bird habitat is conserved by Ntityix's forest management practices, and so disturbance of protected nests is avoided.

Effective Date:

Approved By:

Applies To: Staff and Contractors at all work locations within Ntityix's operating areas.

Replaces Earlier Policy Dated: March 2021

Other Related Policies/Documents: Ntityix Large Tree Retention Policy
Applicable Planning Unit Plan

Reasons for this Policy:

1. To help conserve bird populations.
2. To avoid non-compliance with federal and provincial laws.

Background

Syilx people have a sacred responsibility to care for *tmx^wulax^w* (the land) and *timix^w* (all living things). Since time immemorial, the Syilx people have been self-reliant and well provided for through their own ingenuity and careful and considered use of the land and resources. Wildlife species are relatives of the people and give of themselves to provide traditional foods, goods, and cultural values. Other wildlife is of spiritual significance; and some species are at-risk and in need of assistance. For this reason, Ntityix Resources LP (the Company) wishes to operate such that its activities maintain, support, and potentially enhance *timix^w* within its operating area.

Canada's *Migratory Birds Convention Act* (1916) enacted an agreement with the United States to regulate activities affecting Canada's bird populations that have seasonal habitats in both countries. The 1916 Act sought to protect birds for sustainable harvest. In 1994, to address conservation concerns, the Act was amended to also prohibit harm to birds and their nests.

Under the 1994 Act, the Migratory Bird Regulations prohibited disturbance, destruction or "take" of migratory birds' nests, eggs, nest shelters or duck boxes. The wording of the prohibition applied to any activity whether directed purposefully at the nests or was incidental to an otherwise lawful activity such as forest harvesting — a situation often called "incidental take".

Under Section 5 of the new Regulation, all migratory bird nests remain protected¹ when they contain a live bird or a viable egg (so generally during the nesting period). However, the new regulation has reduced the requirement to protect nest structures that do not contain a live bird or viable egg to just

¹ Unless otherwise authorized a permit.

18 species whose nests are often re-used or used by other migratory birds or other wildlife. Those nest structures remain protected year-round whether they are occupied or not. Although, there is also a new online exemption process which allows an otherwise protected nest to be disturbed or destroyed if it is shown to be abandoned; the notification and exemption process takes one to three years to complete.

Nest structures of the following migratory bird species known or presumed to occur within Ntityix's general operating area that must still be protected year-round include:

1. Pileated Woodpecker
2. Great Blue Heron
3. Black-crowned Night-heron
4. Cattle Egret
5. Great Egret
6. Snowy Egret

Of these species, nests of Pileated Woodpecker and Great Blue Heron are most likely to be encountered.

Additionally, Section 34 of the BC *Wildlife Act* continues to prohibit destruction of a bird, its egg, or a bird's nest when it is occupied by the bird or its egg. In relation to Ntityix's area, the provincial Act also prohibits destruction of eagle, heron, osprey, peregrine falcon, and burrowing owl nests whether occupied or not.

Canada's Species at Risk Act also prohibits the destruction of a residence (e.g. the nest) of species-at-risk, including migratory birds, which are listed as threatened or endangered or, sometimes, as extirpated. For listed migratory birds, the prohibition applies to all lands.

These laws serve to conserve and protect birds and potentially other wildlife. Contraventions are punishable by fines and possible imprisonment. Sound forest practices can help to conserve birds and their habitats, and help Ntityix, its staff and contractors ensure compliance with legal requirements.

Policy Statement

Ntityix Resources LP, its staff and contractors will:

1. Be familiar and seek to comply with federal and provincial laws concerning birds and their nests.
2. Undertake strategies to help maintain and conserve populations of migratory and other birds and to minimize the risk of incidental take.
3. Avoid potentially destructive or disruptive activities in sensitive habitats and during bird nesting periods to reduce the risk of affecting protected birds, nests and eggs.
4. Train staff and contractors to identify protected nests, and implement procedures to follow should active or protected nests be encountered.

Definitions

Conservation Zone – part of a planning unit set aside from most timber harvesting to promote older forest community biodiversity and wildlife habitat protection.

Critical Habitat – the habitat that is necessary for the survival or recovery of a federally-listed wildlife species and that is identified in a recovery strategy or action plan for that species.

COSEWIC - the Committee on the Status of Endangered Wildlife in Canada.

Forest Manager – The Ntityix Forest Manager and lead Registered Professional Forester.

Incidental Take – unintentional destruction or disturbance of birds and their protected nests by otherwise lawful activities (such as legal forestry operations).

Operations – any Company activity resulting in vegetation disturbance or removal.

Nesting Period – The period from egg-laying to when fledglings leave a nest, as described for generalized nesting zones by the Government of Canada.²

MBCA – Canada's *Migratory Birds Convention Act* and regulations.

Planning Unit – Westbank First Nation (WFN) has assembled its forest tenures into contiguous planning units, usually less than 10,000 ha of land, sharing similar ecological attributes and often associated with a sub-drainage of a watershed.

Point Counts – a wildlife inventory technique where a trained observer records all the birds seen and heard from a set location over a set time.

Qualified Registered Professional (QRP) – a registered professional with appropriate training, skills and experience to complete the task at hand.

Red or Blue List – Provincial lists that identify species and ecosystems that may be considered for designation as "Endangered" or "Threatened" in BC.

SARA – Canada's *Species at Risk Act*

Supervisor – Leader of field crew(s) at a worksite.

Wildlife Habitat Area – an area identified by the Province of BC as necessary to meet the habitat requirements of a category of species at risk or regionally important wildlife.

Strategies and Procedures

The Company will adopt a step-down approach to help conserve bird populations and their habitats, and to reduce the risk of incidental take of migratory bird and protected nests by:

- 1) staff awareness and education,
- 2) conservation planning at a landscape (planning unit) level,
- 3) forest operations site planning, and
- 4) adaptive review and response should incidental take occur.

STEP 1: Ensure Staff and Contractors are Aware of Legal Requirements and Strategies

Operations staff and field contractors will be made aware of the legal requirements and Company strategies to protect habitat and avoid incidental take and will be given advice/information on how to implement this policy by:

² See: <https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/general-nesting-periods/nesting-periods.html>

- Annual (late winter) and new staff/contractor review of legal obligations, strategies for compliance, activity scheduling and procedures.
- Considering the likely presence of active or protected nests based on expected operations.
- Continual improvement discussion of past year nest encounters or instances of incidental take, and suggestions for revision of company strategies or procedures.
- Training and fact sheet distribution for summary of legal requirements, company policy and the identification of birds and nests of note or concern.

STEP 2: Plan to Conserve Migratory Birds at a Landscape (Planning Unit) Level

Landscape level conservation planning can help reduce the risk of harm to migratory birds and other wildlife from forest operations by leaving a large and diverse part of the tenured forest area intact and functional as wildlife habitat for all time. At a planning unit level, the Company will:

- Retain a minimum of 30% of each BEC variant ecosystem protected³ within a defined Conservation Zone within each planning unit.
- Retain old forest in large contiguous conservation “blocks”.
- Provide a multi-aged forest with no more than 25% mid seral (~30 to ~80-year-old) area within the planning unit.
- Incorporate federally-identified Critical Habitat for species-at-risk, provincially-identified Wildlife Habitat Areas and conservation lands, and known nest locations for SARA-, COSEWIC-, red-, or blue-listed species, or species of cultural significance into Conservation Zones or other retained areas.
- Retain no-harvest “habitat connectivity” reserves 50 to 100+ meters wide based preferably on one or two primary streams or secondarily on gullies or ridges within each planning unit.
- Seek to adjust its future operating schedules and strategies to avoid vegetation disturbing activities during the bird nesting period whenever feasible, and to pre-identify low-risk of nesting sites (e.g., pure lodgepole pine stands) suitable for situations when the Company must conduct operations during the nesting period.

STEP 3: Forest Operations Site and Activity Planning

Stand complexity, the presence of snags, number of vegetative layers, size and abundance of deciduous trees, and distance to water are important factors affecting the likelihood of birds nesting in a forested area. Some forest birds require shrubby, early-successional habitats created by fire, floods, wind damage, insects and logging. Others require intact mature or older forest with a diversity of large trees, deciduous patches, canopy gaps, standing snags and windfalls. In general, young (early seral ~3 to 30 years old) and mature and older forest (~80+ years old) will contain higher densities of nesting birds than mid seral forest (~30 to 80 years old).⁴

³ Conservation Zones will be reserved from forest harvesting in all but highly unusual circumstances.

⁴ These ages are approximate and may not correspond to other seral classifications. The important factor from a bird nesting perspective is stand condition at the time of the proposed operations. Thirty years is an approximate age of canopy closure in IDF and MS ecosystems. This is often when shrubs start to die out due to canopy closure,

The Company will take a risk avoidance and reduction approach when planning its site-specific forest operations (e.g., a cutting permit, cutblock, treatment area or road segment). Avoiding operations during the bird nesting period or, when avoidance is not feasible, ensuring that vegetation disturbance (i.e., timber harvesting or brush-clearing) is directed away from areas of higher likelihood of bird nesting will reduce the risk of incidental take and will help to conserve bird populations. When planning site-specific forest operations, the Company will:

- Exclude concentrations of dead standing large diameter (especially cavity-bearing) snags, deciduous stands, wet areas, brushy sites, and found protected nests from treatment areas.
- Buffer all streams with reserves and/or management zones of varying widths (generally the larger the stream the greater the reserve/retention area) the minimum being a 20-meter-wide management zone on each side of non-fish bearing streams <1.5 meters wide where 50% of mature trees within the management zone will be reserved from harvest.
- Establish reserve zones of varying widths on all wetlands—those >5 hectares will have a minimum no-harvest reserve of 30 meters, with an additional management zone of 20 meters where no more than 10% of the merchantable trees will be harvested, while the minimum width reserve zone will be 5 meters on wetlands <0.5 hectares in size.
- Retain wildlife tree reserves and dispersed large Douglas-fir and other “Specified Trees”⁵ within the harvested areas.

When scheduling its site-specific forest operations, the Company will:

- Confirm the current nesting period⁶, and
- As a first-choice, schedule harvesting, brushing, thinning, or other vegetation disturbing activities outside the nesting period (i.e., start after August 11 and finish before March 26).

When it is not feasible to schedule forest operations outside the nesting period, the Company will:

- Refer to the *Guiding Principles* section of this policy.
- Schedule its vegetation-disturbing activities to occur as early or as late in the nesting period as practical (e.g., conduct activities in April instead of May, or August instead of July).
- Consider having a QRP (e.g., a RPBio with forest bird habitat experience) review the proposed activity and site to ensure that the site-level planning bullets above are implemented to the greatest extent necessary, and that proposed vegetation disturbing activities are confined to areas with the least likelihood of containing protected nests (e.g., pure lodgepole pine, dense young fir with little understory) and, to consider alternative approaches that may be applicable

decreasing the potential for bird nesting; 80 years is approximately when canopy gaps begin to form, and shrub growth is re-established, increasing the potential for bird nesting (these conditions may occur later in the ESSF).

⁵ Refer to the Large Tree policy and the *Forest and Range Practices Act* Special Tree Protection regulation.

⁶ As established by the Government of Canada for each nesting zone that may occur within the forest tenures:

<https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/general-nesting-periods/nesting-periods.html>

(e.g. use of scare devices pre-nesting to discourage birds from nesting in the area to be disturbed during the nesting period).

- Write and retain a rationale documenting why the operation(s) could not be scheduled to avoid the nesting period and, as applicable, what additional actions were considered and/or implemented to further reduce the risk to birds and of incidental take (e.g., increased retention, stratified timing, pre-nesting disturbance, written procedural advice to contractors, and such).

STEP 4: Procedures to Follow on Discovery of an Active or Otherwise Protected Nest:

- During active operations, Company staff and contractors will stop work; note the species of the bird if able; and report the nest to the site Supervisor.
- The Supervisor will document the location, and if able to without further disturbance, confirm or photograph the species and report the nest to the Forest Manager.
 - Do not flag the actual nest location (flags can attract predators).
 - A 100-meter radius temporary buffer will be applied for stick nests.
 - A 30-meter radius temporary buffer will be applied for all other nests.
 - Operations may resume outside the temporary buffer area.
- If a nest location is suspected but cannot be confirmed—move operations to another area of the worksite at least 100 meters away from the suspected nest location until a QRP assesses the area (e.g., by a search and/or point count) and suggests a response.
- Harvesting, vegetation clearing, or other site disturbing activities may continue within the temporary buffer area after the nesting period has ended or after a QRP confirms the nest is inactive and not otherwise protected.
- Anytime a confirmed or suspected nest is encountered or disturbed, the Forest Manager will document the occurrence, the action taken, and the outcome for later retrieval and review.
- If the species is SARA-, COSEWIC-, red-, or blue-listed, or a species of cultural significance, the Forest Manager will consider reporting it to the Westbank First Nation and the BC Conservation Data Centre.

Guiding Principles:

Ntityix recognizes that forest birds are important to the people, and that some forest birds are less abundant now than in the past. Under Syilx Law, people have a responsibility to the four food chiefs to look after *timix*^w, which includes the people. This is a relationship of reciprocity, where individual plants and animals may give of themselves to look after the people, in exchange for the people caring for *tmx^wulax^w* such that the plants and animals persist forever. To be consistent with Syilx Law, Ntityix will always seek to conserve the populations of forest birds while managing the risk to some individuals.

Ntityix also seeks to be compliant with all other laws that protect migratory birds and protected bird nests. Ntityix believes that taking a step-wise approach to bird habitat conservation from the planning unit down to the activity site-level will help ensure that Ntityix's forest practices assist habitat conservation and do not harm bird populations within WFN's forest tenures.

Ntityix generally seeks to apply biodiversity conservation measures consistent with or greater than that described for high biodiversity management in the former BC Forest Practices Code *Biodiversity Guidebook*. Ntityix believes the guidebook remains as applicable advice for sound forest management.

According to Canada's bird nesting zones, migratory bird nesting within WFN's forest tenures starts March 26 and ends August 11. Most migratory bird species (>40% to 100%) are actively nesting in the area between April 23 and July 27. These federally described nesting periods cover most birds in forested and wetland habitats, but some bird species may nest earlier or later. Ntityix will use the best available information about nesting and the likelihood of nesting, based on known or suspected species.

The least risk approach to avoiding harm and incidental take of birds or nests is to schedule forest operations outside the period when birds are typically nesting. As a first principle, Ntityix will seek to schedule harvesting and other vegetative disturbances to avoid the period March 26 through August 11. The Company plans (and contracts) most of its harvesting operations months to years in advance. Consequently, an immediate pivot of forest operations to occur outside the bird nesting period will be initially difficult and may continue to be difficult due to variations in spring break-up or other unexpected delaying circumstances (such as wet soils) that, to proceed, could cause other substantive environmental harm. As a contingency, the Company will seek to establish several alternative 'low-risk' of nesting sites (e.g., lodgepole pine stands at high elevation with suitable late winter access, or dense, young-mature Douglas-fir on dry sites with minimal deciduous understory) should they be required.

When operations must occur during the nesting period, the Company will also consider other alternative approaches to reduce risk to nesting birds. Examples include harvesting outside the nesting period with logs decked to be hauled during nesting, or sequencing operations to avoid disturbing high value nesting habitats (e.g., a nearby riparian area) while activities in lower value habitats proceed, or (with qualified QRP advice) doing pre-nesting disturbance to reduce the likelihood of nest presence. Physical searches for nests will be discouraged as these can be disruptive to nesting birds, and so may lead to non-compliance. Less intrusive census methods such as auditory point counts, visual activity surveys, remote recordings, and call playbacks will be preferred. Regardless of method, all individuals are always required to comply with the prohibitions of the MBCA, SARA, and the BC *Wildlife Act*.

Useful References

BC Wildlife Act. http://www.bclaws.ca/civix/document/id/consol31/consol31/00_96488_01

Bird Studies Canada. Nesting Calendar Query Tool. <https://www.birdscanada.org/volunteer/pnw/rnest/>

Columbia Mountains Institute. 2017. Avoiding Incidental Take of Bird Nests: From Law to Practice. Workshop Proceedings April 26-27, 2017. Cranbrook, BC.
http://cmiae.org/wp-content/uploads/Proceedings-Incidental-Take-2017_Final.pdf

Council of Forest Industries. 2016. Guidance for Forest Sector Management of Nesting Migratory birds in the Interior. Unpub. Rpt. includes Appendices.

Environment Canada. 2014. Incidental Take of Migratory Birds in Canada: Avoidance Guidelines.

<https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/guidelines.html>

Environment Canada. 2013. Bird Conservation Strategy for Bird Conservation Region 9 Pacific and Yukon Region: Great Basin - *Abridged Version*. <https://www.canada.ca/en/environment-climate-change/services/migratory-bird-conservation/regions-strategies/description-region-9/canada.html>

Migratory Birds Convention Act (1994) <http://laws-lois.justice.gc.ca/PDF/M-7.01.pdf>

Migratory Birds Regulations (2022) http://laws-lois.justice.gc.ca/PDF/C.R.C.,_c._1035.pdf

Pileated Woodpecker Cavity Identification Guide <https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/pileated-woodpecker-cavity-identification-guide.html>

Province of BC. 1995. Forest Practices Code of British Columbia: Biodiversity Guidebook. <https://www.for.gov.bc.ca/hfd/library/documents/bib19715.pdf>

Province of BC. 2014. Develop With Care: Great Blue Heron Fact Sheet. <https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/best-management-practices/develop-with-care/fact-sheet-11-herons.pdf#:~:text=Develop%20with%20Care%20FACT%20SHEET%20Great%20Blue%20Great,to%20the%20same%20nesting%20areas%20year%20after%20year.>