

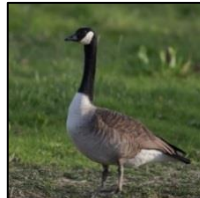


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Canada

Migratory Birds and Vegetation Management



Vegetation Management Conference

Richmond, BC

Chloe Boynton

November 6th, 2018

Outline

- Status of birds in Canada
- CWS and it's role
- Migratory Birds and Laws
- Incidental Take
- Avoidance Guidelines

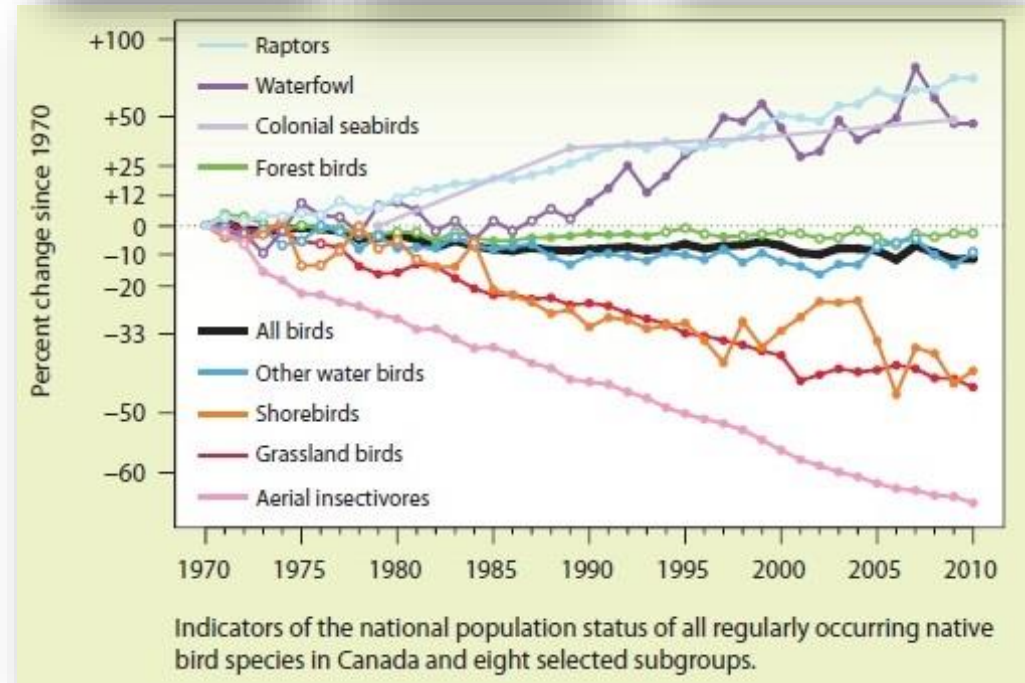


How are birds doing in Canada?

- On average Canadian bird populations have decreased 12% since 1970
- Grassland birds, aerial insectivores, and shorebirds show serious declines.
- Waterfowl, raptors and seabirds have increased.



Bob McKay



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Canadian Wildlife Service

- CWS is a branch of Environment and Climate Change Canada
- Branch responsible for the department's wildlife programs



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Service canadien de la faune



CWS Responsibilities

- CWS manages wildlife matters that are the responsibility of the federal government:
 - Migratory birds
 - Nationally significant habitat
 - Species at risk
 - Wildlife issues of national and international importance
- **Migratory Birds Convention Act, 1994**
 - Protection of migratory birds, their nests, and eggs



Migratory Bird management

- Environment and Climate Change Canada (ECCC) shares responsibility for managing birds with the Province
- BC Ministry of Environment – birds in BC, including several not listed under the MBCA (eg. eagles, hawks, falcons, owls, cormorants, pelicans, ravens, crows, jays, and kingfishers)
- ECCC – birds listed under the MBCA (most everything else)



What are the laws?

Migratory Birds Convention Act, 1994 (MBCA)

- Migratory Bird Regulations (MBR)
- Migratory Bird Sanctuary Regulations (MBSR)

Species at Risk Act (SARA)

Canada Wildlife Act (CWA)

- Wildlife Area Regulations (WAR)

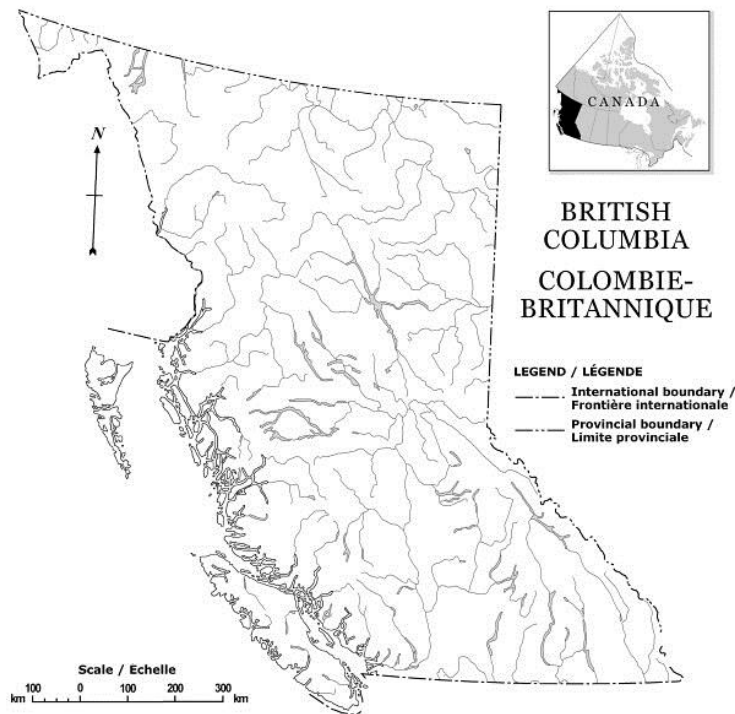
BC Wildlife Act

Impact Assessment Act (coming soon)



Where do these laws apply in B.C.?

MBCA & MBR <i>Everywhere</i>	SARA (Aquatic & Migratory Birds) <i>Everywhere</i>	SARA (all other species) <i>Federal lands only</i>	BC Wildlife Act <i>Everywhere in BC</i>
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Sa Majesté la Reine du chef du Canada, Ressources naturelles Canada.

<http://atlas.gc.ca>

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MBSR, CWA & WAR
Only federal bird sanctuaries & wildlife areas



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How do I find out what is a Migratory Bird or Species At Risk?

The screenshot shows a web browser window with the URL <https://www.canada.ca/en/environment-climate-change/services/migratory-birds-legal-protection>. The page is in English, with a 'Français' link in the top right. The header includes the Government of Canada logo and a search bar. A navigation menu contains links for Jobs, Immigration, Travel, Business, Benefits, Health, Taxes, and More services. The breadcrumb trail reads: Home → Environment and natural resources → Wildlife, plants and species → Migratory birds → Legal protection of migratory birds. The main heading is 'Birds protected under the Migratory Birds Convention Act'. Below it is a list of links: Introduction, Other Jurisdictions, Families included in Article I of the Migratory Birds Convention, and Families not included in Article I of the Migratory Birds Convention. A search box titled 'Search: Birds Protected in Canada' contains a button labeled 'View or search the list'. The 'Introduction' section begins with the text: 'Most species of birds in Canada are protected under the [Migratory Birds Convention Act, 1994](#) (MBCA). The MBCA was passed in 1917, and updated in 1994 and 2005, to implement the Migratory Birds Convention, a treaty signed with the United States in 1916. As a result, the Canadian federal government has the'.



How do I find out what is a Migratory Bird or Species At Risk?

The screenshot shows the Species at Risk Public Registry website. The browser address bar displays http://www.sararegistry.gc.ca/sar/index/default_e.cfm. The page header includes the Government of Canada logo and the text "Species at Risk Public Registry". A navigation menu contains links: "Our Approach", "SARA Components", "Get Involved", "Advanced Search", and "A to Z Species Index". Below the menu, the page title is "A to Z Species Index". A paragraph explains that the Act establishes Schedule 1 as the official list of wildlife species at risk, but notes that prohibitions do not apply to species of special concern. It mentions that the [SARA and You guides](#) can help determine the presence of these species. A "Total: 1028 record(s) found." is displayed. Below this is a "Species Index" table with columns: Common name, Scientific name, Population, Taxon, Range, COSEWIC status, Schedule, and SARA status. The table includes search filters and two example rows: "Acadian Flycatcher" (Empidonax virescens, Birds, Ontario, Endangered, Schedule 1) and "Acadian Redfish" (Sebastes fasciatus, Fishes, Atlantic Ocean, Threatened, No schedule).

Home > A to Z Species Index

A to Z Species Index

The Act establishes Schedule 1 as the official list of wildlife species at risk. However, please note that while Schedule 1 lists species that are extirpated, endangered, threatened and of special concern, the [prohibitions](#) do not apply to species of special concern. The [SARA and You guides](#) can help you determine the presence of these SARA Schedule 1 species in any region of Canada.

Total: 1028 record(s) found.

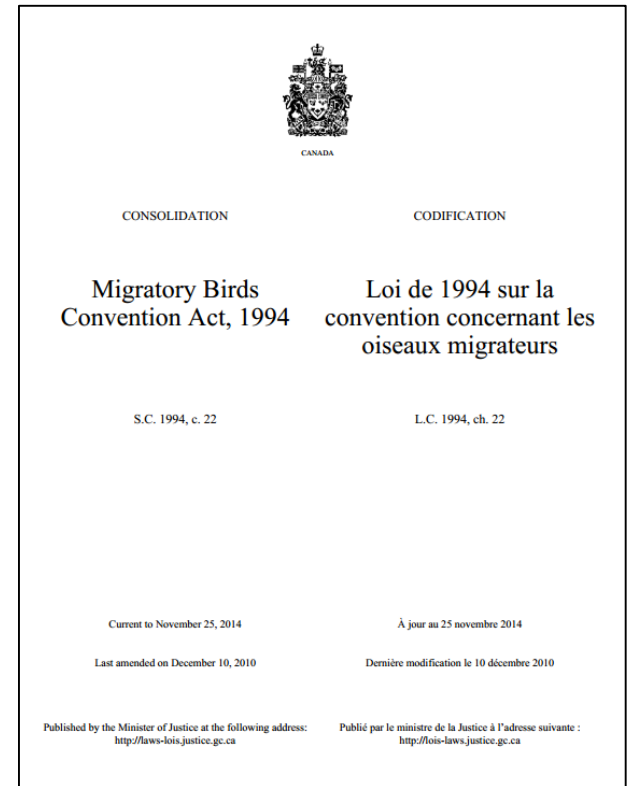
Species Index

Common name *	Scientific name	Population	Taxon	Range	COSEWIC status	Schedule	SARA status
			All v	All v	All v	All v	All v
Filter Again							
* A common name search will search all common names in English and French as well as aliases and former names which are not displayed below.							
Acadian Flycatcher	Empidonax virescens		Birds	Ontario	Endangered	Schedule 1	Endangered
Acadian Redfish	Sebastes fasciatus	Atlantic population	Fishes	Atlantic Ocean	Threatened	No schedule	No Status



Migratory Birds Convention Act, 1994

- ECCC is the federal department responsible for the *Migratory Birds Convention Act, 1994*
- “The purpose of this Act is to implement the Convention by protecting and conserving migratory birds — as populations and individual birds — and their nests.”



MBCA Prohibitions

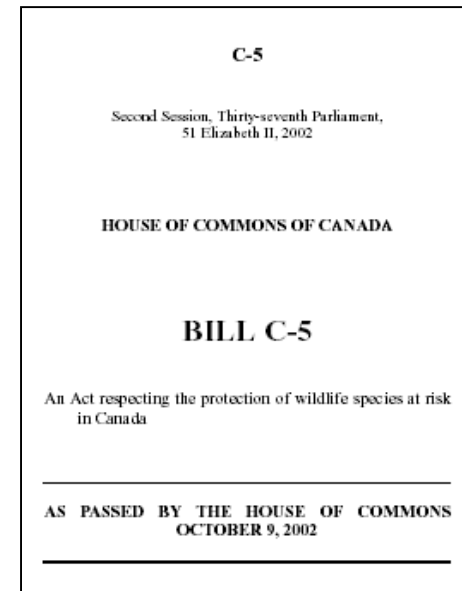
Prohibitions in the MBCA and Migratory Bird Regulations (MBR) are strict liability offenses (intent does not matter)

- **MBCA** – prohibition against the deposit of a harmful substance
- **MBR** – prohibition against hunting
- **MBR** – prohibition against the disturbance or destruction of nests and eggs
- **MBR** – prohibition against the possession of a migratory bird, its nest or egg



Species at Risk Act (SARA) - 2002

- Stop or reverse declines of endangered, threatened or extirpated species'
- Remove threats to species at risk
- Prevent other species from becoming at risk
- Canada and BC work together to conserve species at risk under the **Canada-BC Agreement (bilateral) – 2005**



SARA Prohibitions

- Kill, harm, harass, capture, possess, buy, sell, trade individuals
- Damage or destroy the residence of one or more individuals
- Destroy any part of critical habitat for a listed species



BC Wildlife Act

BC Wildlife Act Section 34:

“A person commits an offence if the person, except as provided by regulation, possesses, takes, injures, molests or destroys:

- (a) a bird or its egg,
- (b) the nest of an eagle, peregrine falcon, gyrfalcon, osprey, heron or burrowing owl, or
- (c) the nest of a bird not referred to in paragraph (b) when the nest is occupied by a bird or its egg”



Examples of MBCA contravention

- Land developer cleared land in Langley for a commercial development which caused disturbance to a robin's nest
\$10,000 payment to Environmental Damages Fund.
- A harvesting contractor destroyed nests in a heron rookery when they were clearing for a logging road. The company unsuccessfully challenged the law on a constitutional basis and received a \$60,000 penalty.
- Deliberate destruction of swans eggs and killing of a swan
\$1,000 fine and seven days in jail.
- Repairs to a breakwater caused destruction of bank swallows nests
\$13,000 penalty.



Incidental Take of Migratory Birds

- ECCC has legal mechanisms in place to manage the intentional or direct take of birds and their eggs/nests
 - Permits: scientific, avicultural, damage or danger, airport, taxidermy, eiderdown
- **Incidental Take:** the inadvertent harming, killing, disturbance or destruction of migratory birds, nests and eggs occurs as a result of human activities not directed at birds/nests/eggs



Incidental Take in Context

Activity that is directed at taking Migratory birds

- *Hunting*
- *Collecting eggs*

NOT Incidental Take

Activity known to create take of Migratory birds while not being the intent of the activity

- *Logging / Haying / Site Clearing (nest/egg destruction)*
- *Fishing (birds caught in gear)*
- *Operating lights on built structures (bird collisions)*

Incidental Take Circumstances

Activity that may at times take Migratory birds but highly unpredictable “accident”

- *Bird colliding with car while driving on city highway in normal conditions*

NOT the focus of Incidental Take

(still a violation of the MBCA but likely to be deemed “*de minimus*” legal action if pursued)



Addressing Incidental Take

- ECCC focuses efforts on providing information so that Canadians can evaluate risk and take measures to avoid or minimize the occurrence and conservation impacts of incidental take:
 1. General Avoidance Guidelines and technical information
 2. Bird Conservation Regions and Strategies
 3. Beneficial Management Practices Guidance

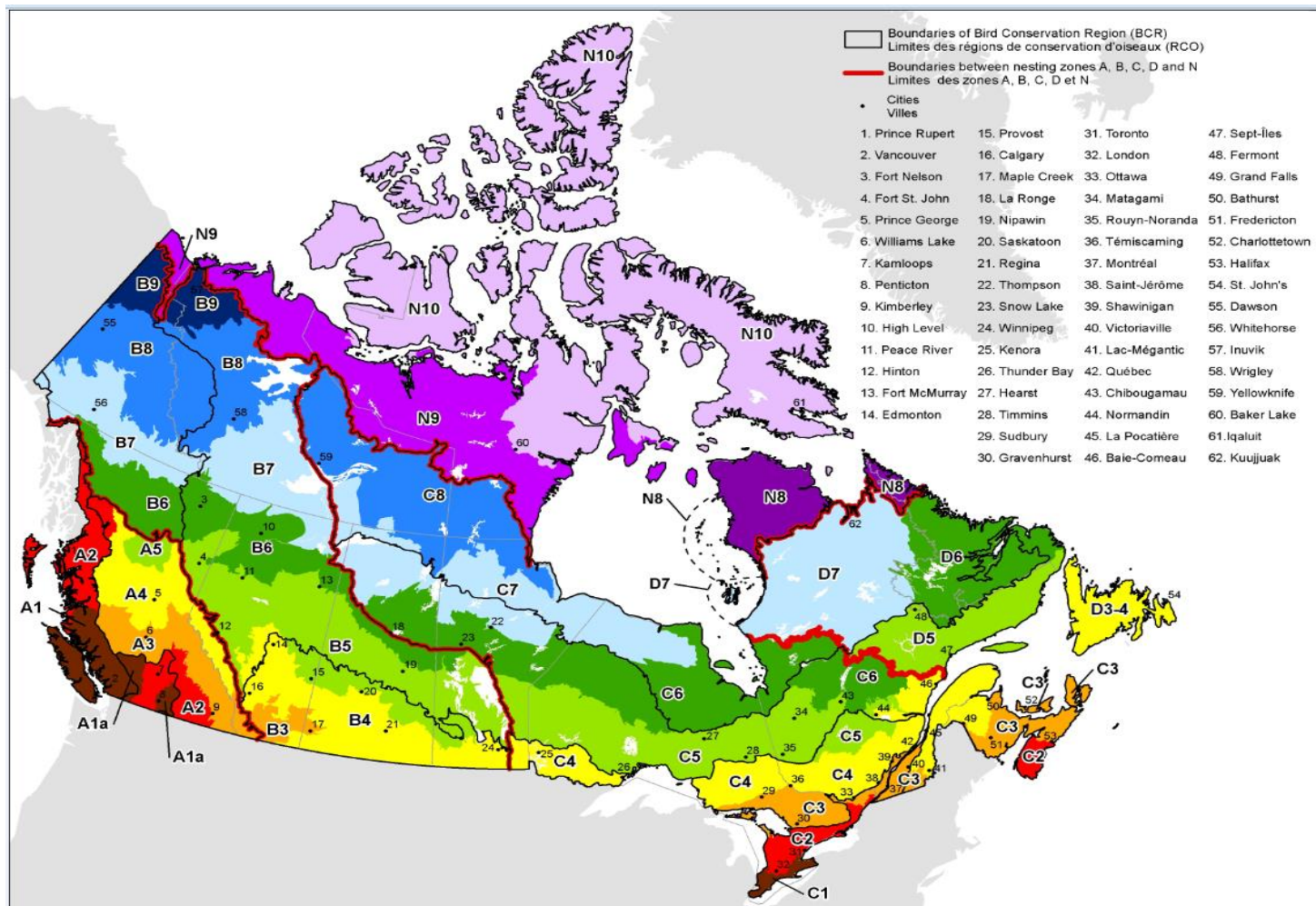


General Avoidance Guidelines

- Provide stakeholders with consistent and practical recommendations on reducing the risk of incidentally destroying/disturbing migratory bird nests and eggs or killing/harming migratory birds
- Provide scientific background information to help implement the advice provided
 - The Key risk **periods** or when take is most probable
 - The Key risk **sites** or where take is most probable
 - The Key risk **factors** or how take is most probable

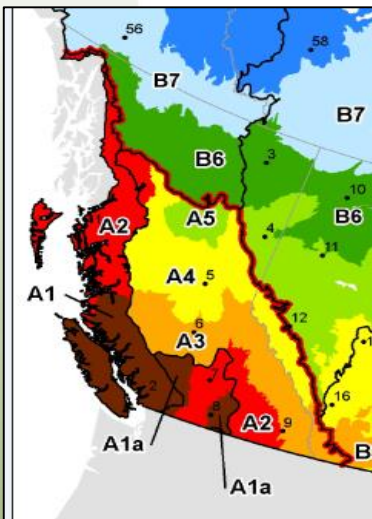


Technical Information: Nesting zones



Technical Information: Nesting calendars

Examples of regional nesting period:



Nesting zone A: Northern Pacific Rainforest (BCR5), Great Basin (BCR9) & Northern Rockies (BCR10)

[Nesting calendars](#)

Zone A ([Map](#))

Regional nesting period

A1

Mid-March – Mid August

A1a & A2

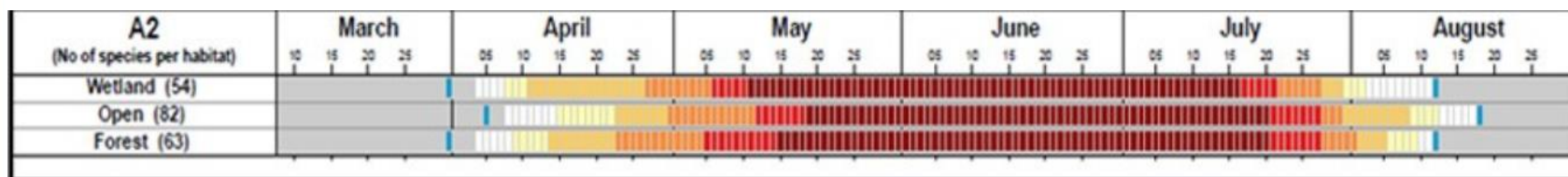
End of March – Mid August

A3 & A4

Mid-April – Mid August

A5

End of April – Mid August



Legend for calendars: Number of species in percentage (Blue markers show extreme dates predicted for some atypical parts of the nesting zone where nesting could be earlier or later)



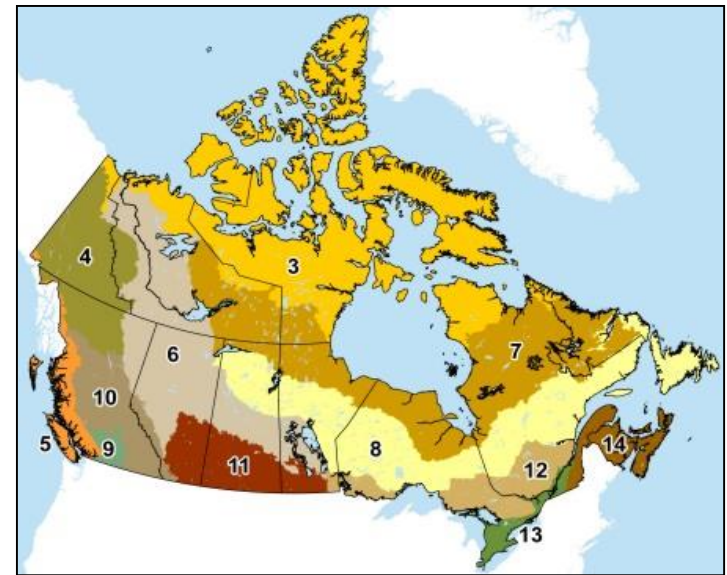
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Bird Conservation Regions (BCR) and Conservation Strategies

- Conservation planning tools which inform conservation priorities and practices
- Nationally-consistent conservation framework



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ECCEC's Participation in BMP Development

- Provide scientific background on migratory birds ecology and management needs
- Help with interpretation of recommended objectives and conservation actions
 - e.g. BCR plans & Migratory Bird Recovery strategies
- Collaboration with industry/sector (Transport Association of Canada, Canadian Electricity Association, National Council for Air and Stream Improvement, Forest Products Association of Canada, Transport Canada, Canadian Coast Guard)
- ECCEC can provide tools to support decisions but cannot endorse particular BMPs as this could constitute officially-induced error.



Risk Communication Tools

Tables – can be used to determine risk level associated with activities
Categorized by:

- knowledge of legal obligations
- biological factors (e.g., likelihood of nesting, habitat), and
- nature of the activities (e.g., intensity and duration)

E.g.

Factor associated with management of incidental take (Full text)	Example of lower risk level	Example of higher risk level
Knowledge of legal obligations	Awareness of and understanding the relevant provisions of laws and regulations pertaining to the protection of birds, nests and eggs. Notably: the Migratory Birds Convention Act, 1994 , the Migratory Birds Regulations and, where applicable, the Species at Risk Act .	Unaware of legal responsibilities towards the protection of birds, nests and eggs.
Risk assessment and planning	Completed a thorough risk assessment in a timeframe suitable to balance project needs with risk of incidental take of migratory birds.	Little to no pre-planning or risk assessment around conservation issues related to migratory birds.



Avoiding Birds & Nests

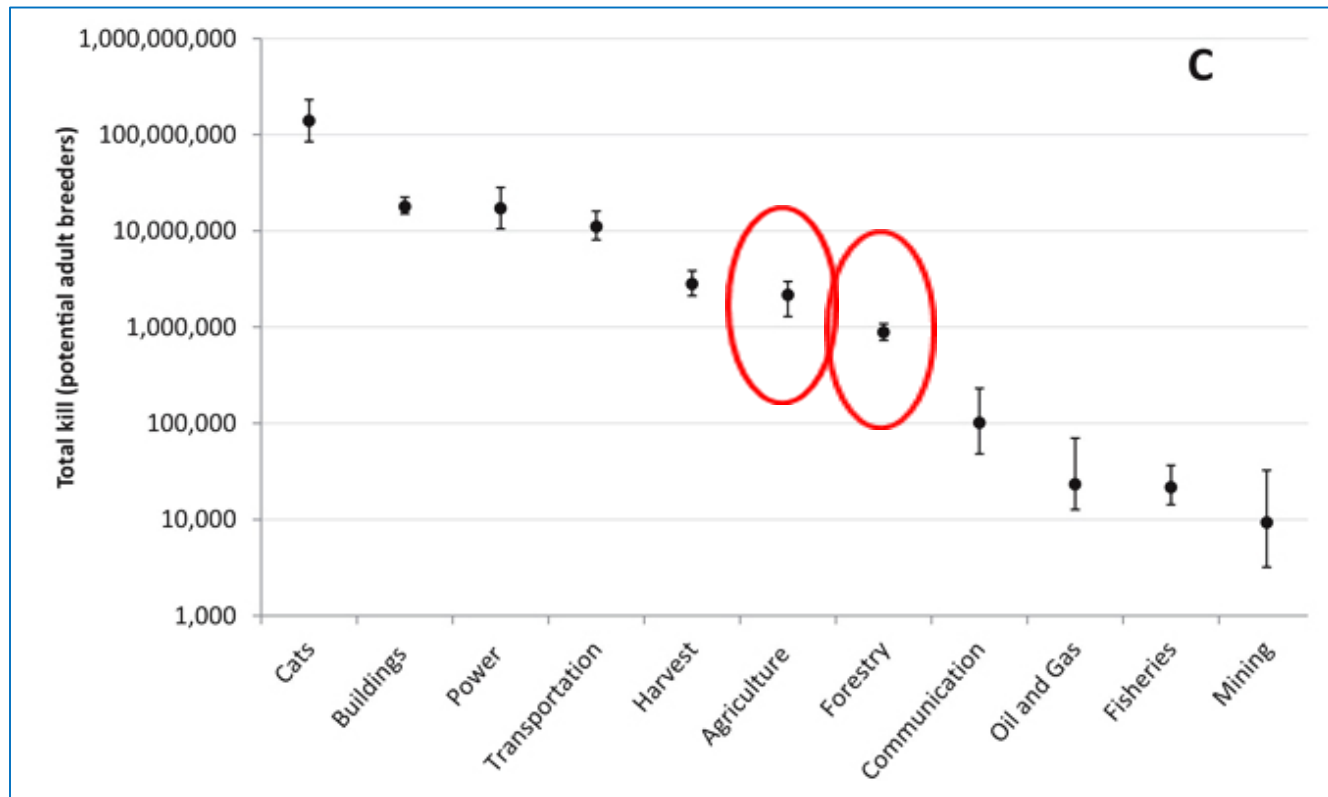
- Consider an area search for evidence of nesting (e.g., presence of birds in breeding habitat through observation of singing birds, alarm calls, distraction displays)
- Point counts may provide a good indication of the presence of songbird nests in an area.
- Active nest searches are generally not recommended because:
 - they have a low probability of locating all nests,
 - and are likely to cause disturbance to nesting birds.
 - In many circumstances, incidental take is likely to still occur during industrial or other activities even when active nest searches are conducted prior to these activities
- Exceptions may include: obvious and easy-to-locate nests without disturbance (e.g. bridge, a few trees in a park, Heron nests).

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What is the magnitude of Incidental Take across various sectors?

- Agricultural mowing: From ~138,000 young/year for Horned Lark to ~941,000/yr for Savannah Sparrow (Tews et al. 2013).
- Forestry: 616,000 to 2.09 million nests/year (Hobson et al. 2013).



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Summary

- Know your legal obligations under MBCA, Migratory Birds Regulations and if applicable, *Species At Risk Act*
- Determine the likelihood of the presence of migratory birds, their nests or eggs when planning activities to be carried out.
- Avoid potentially destructive or disruptive activities at key locations or during key periods (e.g. breeding periods, foraging, migration) to reduce the risk of impacts on migratory birds.
- Consider developing and implementing appropriate preventive and mitigation measures to minimize the risk.
- Consider incorporating migratory bird protection measures and relevant conservation objectives and actions into policies, procedures, plans, and directives.





Questions?

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DISCLAIMER

The guidance provided constitutes advice only. All persons must adhere to all pertinent laws (for example provincial or territorial laws), regulations and permit requirements including but not restricted to the [*Migratory Birds Convention Act, 1994*](#) (MBCA) and the [*Migratory Birds Regulations*](#) (MBR). It is important to note that some species of birds protected under the MBCA have also been listed in Schedule 1 of the [*Species at Risk Act*](#) (SARA). These species receive protection from both the MBCA and SARA.

This advice does not provide an authorization for harming or killing migratory birds or for the disturbance, destruction or taking of nests or eggs under the MBR. It does not provide a guarantee that the activities will avoid contravening the MBR or other laws and regulations. The guidance provided is not intended to be relied on as official advice concerning the legal consequences of any specific activity. It is not a substitute for the MBCA, the MBR, or any other legislation.

