Ministry of Forests

Ministry of Environment

WORKING TO MAKE A DIFFERENCE

MEMO

DATE: April 17, 2023

TO: Wildlife Dangerous Tree Assessors
FROM: Wildlife Dangerous Tree Committee of BC

TOPIC: Migratory Birds Regulations and Nest Tree Protection

The following guidance supports Wildlife Dangerous Tree (WLDT) Assessors when being asked to assess trees that have been found to have a nest used by migratory birds in accordance with the Migratory Birds Regulations (effective July 2022).

Background

The objective of the Migratory Birds Regulations is the conservation of migratory birds, including their eggs and nests, in Canada. The *Migratory Birds Regulations, 2022 (MBR 2022)*, provide protection to migratory bird nests when they are considered to have a high conservation value for migratory birds.

- The nests of all migratory bird species are protected when they contain a live bird or a viable egg (i.e., during the nesting period). The MBR prohibits the damage, destruction, removal or disturbance of the nests of all migratory birds when there is a live bird or viable egg, or if the nest was built by a species that is listed in Schedule 1. For information about nesting periods: https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/general-nesting-periods/nesting-periods.html

- The nests of 18 species (listed in Schedule 1 of the regulations), whose nests are known to be reused in subsequent years by any migratory birds, continue to have year-round nest protection, unless they have been shown to be abandoned. In order to be considered abandoned to permit alteration of the nest site:

    - the Minister of Environment & Climate Change Canada must be notified, via an online registration system (the Abandoned Nest Registry), that the nest does not contain a live bird or viable egg; and

    - confirmation the nest has remained unused by any migratory birds during the designated wait time for that species (requires monitoring during this wait time).

WARNING: you can commit an offense and be charged even if you accidentally contravene the regulations. Therefore, due diligence is required of all stakeholders to ensure nests are not destroyed (purposefully or unknowingly). If you are unsure about a nest, then seek the advice of an appropriately qualified professional.

- In BC, there are 2 Schedule 1 listed wildlife tree dependent migratory birds whose nests are protected year-round by the MBR.
    - Great Blue Heron nests are protected for 24 months after reported unoccupied (heron nests are already protected under BC's Wildlife Act), and

    - Pileated Woodpecker nests are protected for 36 months after reported unoccupied.

- Stakeholders may only damage, destroy, disturb, or remove these protected nests if:
    - Environment and Climate Change Canada has received a notification through the electronic Abandoned Nest Registry regarding the potentially abandoned nest; and
    - the nest remains unoccupied by any migratory bird for the period of time designated in Schedule 1 (12, 24 or 36 months, depending on the species). To determine occupancy, nests need to be observed by an appropriately qualified professional during a period when they could reasonably be expected to be occupied by breeding birds. For general information about nesting periods: https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/general-nesting-periods.html
- If a protected nest site has become a hazard, then there is a provision for the proponent to apply for a permit from Environment and Climate Change Canada to relocate or destroy the nest. However, these permits to relocate or destroy a nest when it contains a live bird or egg, or, for species listed on Schedule 1 of the MBR 2022, before the designated waiting period has ended may only be available in certain limited situations and when due diligence can be demonstrated.

Pileated Woodpecker Nest Tree Protection

The nest trees used by the pileated woodpecker have been Federally designated for extra protection measures (3 years of protection after reporting that the nest site is unoccupied by ANY migratory species) and on any land (public or private). These protection measures recognize the intrinsic value of the Pileated Woodpecker as a keystone species – meaning, Pileated Woodpeckers provide critical and intrinsic habitat value to many species of birds and mammals that rely on this species for their own nesting/denning and overwintering survival.

It is important to note that Pileated Woodpeckers may use nesting cavities as roosting sites in the non-breeding season so, in most cases, it will not be possible to determine the difference between roosting and nesting cavities outside of the breeding season.

In special circumstances there may be a need to manage tree hazards associated with a Pileated Woodpecker nest tree to protect human life and property. However, the mitigation strategies will need to be approved prior to their implementation. The decision and guidance for prescribing an acceptable mitigation strategy will be decided upon on a case-by-case basis when a proponent is requesting a permit to relocate or destroy a nest site. It is also imperative that proponents understand the necessity to establish appropriate buffers (set-backs) for the added protection of nest sites. These set-back buffer distances will be decided upon on a case-by-case basis and are dependent upon several factors (e.g., species tolerance, previous exposure experience by the species, level of disturbance and landscape context). For more information, please visit the MBR 2022 website.

WARNING: If a Pileate Woodpecker nesting cavity is removed without the above conditions being met, and no federal permit is in place, then it is a contravention of the MBR 2022. Pleading ignorance about these protection requirements is not an acceptable defense in cases of a contravention of the MBR 2022.

For further information about the MBR 2002 (protection, abandoned nest registry, permits, set-backs, etc) , visit: https://www.canada.ca/en/environment-climate-change/services/migratory-bird-permits/faq-migratory-birds-regulations-2022.html

How to Identify the Pileated Woodpecker cavities:

Source: https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/pileated-woodpecker-cavity-identification-guide.html

Cavity type descriptions

Nest cavities

Pileated Woodpeckers nest in mature mixed or coniferous forests or in younger forests with numerous large, dead trees. In BC, nesting occurs between March and August. Pileated Woodpeckers typically use large (typically > 40 cm DBH solid trees, with heart rot for nesting. Nesting trees normally contain only one entrance hole. It is rare to find a tree with more than one nest cavity, but when several nest cavities are encountered, entrance holes are typically over 1 m apart. Nearby trees may also contain dummy cavities, as woodpeckers in some locations excavated an average of 1.2 cavities per pair each year.

Nest cavities have an internal diameter of about 20 cm and are up to 75 cm deep. Entrances can be circular or slightly oval (tear drop shaped), with a vertical diameter around 12 cm and a horizontal diameter around 9 cm. Entrances have smooth edges and surfaces. Nesting cavities may appear dark from the outside because they lead to a hollow chamber (see Figure 1).

Roost cavities

Pileated woodpeckers use their nest cavities for roosting, especially during the breeding season, or they can excavate new holes for roosting. Pileated woodpeckers sleep or roost in cavities at night. They can be seen leaving roosts after sunrise and returning to roosts about 1 h before sunset until shortly after sunset. Compared with nesting trees, trees that are only used for roosting are often hollow and may have numerous entrance holes (2 to 10+). This gives pileated woodpeckers several exits for evading predators. Nest cavities may become cavities that are only used for roosting as a tree ages, and more holes may be added to these trees over time. Entrance holes to roost cavities are excavated in all seasons. Roost cavities average about 28 cm in internal diameter and 4.3 m in length. Roost cavity entrance holes may be less than 1 m apart. Entrance holes are usually oval and about 7.5 to 10 cm wide by 10 to 12.5 cm high (see Figure 2).

Feeding cavities

Pileated woodpeckers mostly forage from large diameter (at least 25 cm dbh, preferably > 40 cm dbh), decaying trees and woody debris. It can also be found on living trees with decayed heart. Feeding cavities differ from nest and roost cavities in three key ways: (1) they are more irregular in shape (instead of symmetrical), (2) they have rough edges and surfaces, and (3) they only extend 5 to 20 cm into a tree and then stop (they do not lead to large chambers suitable for roosting or nesting). Because feeding cavities do not lead to large chambers, they typically appear lighter in colour than nest or roost cavities (see Figure 3).

Summary of key differences among cavity types

Characteristics	Cavity type: nesting	Cavity type: roosting	Cavity type: feeding
Number of holes	1 (or more)	> 1	> 1
Edge texture	smooth	smooth	rough
Hole shape	round or teardrop	oval	irregular
Hole size	~12 cm high ~9 cm wide	10 – 12.5 cm high 7.5 – 10 cm wide	variable
Cavity depth	0.75 m	4.3 m	0.05 to 0.2 m
Tree type	solid, with heart rot	hollow	live or dead, decaying

Example images

Figure 1. Pileated woodpecker nesting cavities

Figure 2. Pileated woodpecker roosting cavities

Figure 3. Pileated woodpecker feeding cavities.