

FREQUENTLY ASKED QUESTIONS: WILDLIFE AND WILDLIFE HABITAT MANAGEMENT UNDER THE OIL AND GAS ACTIVITIES ACT AND ENVIRONMENTAL PROTECTION AND MANAGEMENT REGULATION

The Environmental Protection and Management Regulation (EPMR) is a key part of the new regulatory framework provided under the Oil and Gas Activities Act (OGAA). Environmental objectives, established by the legislation and by order, must be considered by the Oil and Gas Commission when issuing a permit and help to increase the protective measures used to manage wildlife and wildlife habitat. The following answers are provided to several commonly asked questions about how this new regulatory framework works and is implemented.

WILDLIFE AND WILDLIFE HABITAT

1. What are species categories? Why are species categories important?

- Species categories are established by Order of the Minister of Environment, and include the following types of wildlife:
 - species at risk: wildlife species that are endangered, threatened or vulnerable;
 - regionally important wildlife: wildlife species that are important to a region of British Columbia; and
 - ungulate species: species of ungulates for which an ungulate winter range (UWR) may be established.
- Establishment of species categories is the prerequisite step before being able to legally establish, by Minister's Order, an area of habitat (polygon) for management and conservation of species at risk or regionally important wildlife (wildlife habitat area), or for ungulate species (ungulate winter range).
- Species categories for species at risk and ungulates, which continued species identified under the *Forest and Range Practices Act* at the time that the EPMR came into effect (October 4th 2010), were approved by the Minister of the Environment on July 18, 2011. <http://www.env.gov.bc.ca/wld/ogaa/species.html>

2. What are wildlife habitat areas (WHAs) and ungulate winter ranges (UWRs)?

- Wildlife Habitat Areas are established for either 1) species at risk or 2) regionally important wildlife listed under the Environmental Protection and Management Regulation (EPMR). Ungulate winter ranges may only be established for species identified under the ungulate category.

- Management within UWRs is necessarily focused on retaining attributes necessary for winter survival of the species and may cover very large areas; several UWR designations exceed 100,000 ha. In contrast, WHA designations tend to be focused around more specific habitat features (e.g., nest sites), may include habitats that are used year round or for particular life requisites, and are often less than 100 ha. Once either designation is made, the Oil and Gas Commission (OGC) must consider whether or not an operating area will have a material adverse effect on the ability of the wildlife habitat within the designation to provide for the survival of the wildlife species for which the area designation was established.
- Wildlife habitat areas and UWR orders, which continued those designations made under the *Forest and Range Practices Act* at the time that the EPMR came into effect (October 4th 2010), were approved by the Deputy Minister of Forests, Lands and Natural Resource Operations on August 18th, 2011. <http://www.for.gov.bc.ca/tasb/legsregs/ogaa/>

3. What does approving wildlife habitat areas (WHAs) and ungulate winter ranges (UWRs) require in terms of management under the Oil and Gas Activities Act (OGAA) and the Environmental Protection and Management Regulation (EPMR)?

- Once a WHA or UWR has been legally established by Minister’s Order, it brings into effect “government’s environmental objective” for that area of wildlife habitat. In accordance with section 25 (1) of OGAA, the Oil and Gas Commission (OGC) must consider government’s environmental objectives for wildlife and wildlife habitat (section 6 of the EPMR) when making a determination of whether or not to issue a permit for an oil and gas activity within the approved wildlife habitat area or ungulate winter range. In issuing a permit, the OGC must specify the oil and gas activities the person is permitted to carry out, and may impose any conditions on the permit that the OGC considers necessary [OGAA s. 25 (2)]. Thus in OGAA, effective management of WHAs and UWRs becomes the direct responsibility of the OGC.

Section 6, Wildlife and wildlife habitat: The following objectives with respect to wildlife and wildlife habitat are prescribed for the purposes of the definition of “government’s environmental objectives” in section 1 (2) of the Act:

- a. *that operating areas not be located within any of the following:*
 - i. *a wildlife habitat area, unless an operating area will not have a material adverse effect on the ability of the wildlife habitat within the wildlife habitat area to provide for the survival, within the wildlife habitat area, of the wildlife species for which the wildlife habitat area was established;*

- ii. *an ungulate winter range, unless an operating area will not have a material adverse effect on the ability of the wildlife habitat within the ungulate winter range to provide for the survival, within the ungulate winter range, of the ungulate species for which the ungulate winter range was established.*

4. What are the wildlife habitat area (WHA) and ungulate winter range (UWR) polygon boundaries based on?

- Polygon boundaries are based on the habitat attributes known to support the species for which the designation is made. Telemetry, inventory and other research data, including suitability mapping, supports the delineation of the polygons.

5. Are there opportunities to adjust polygon boundaries that are designated?

- The suite of orders approved on August 18th and posted in the BC Gazette September 22, 2011, are all those designations that were previously made by Government Actions Regulation (GAR) order under the *Forest and Range Practices Act*. Several designations overlap where there are current oil and gas tenures. Where overlap existed at the time that those orders were being developed under GAR, comments were invited on a voluntary basis. Now that these polygons are designated, the opportunity to adjust boundaries must occur through an amendment process.
- Under the Environmental Protection and Management Regulation, new orders and the proposed polygon boundaries will be reviewed by affected tenures during a mandatory consultation period. Boundary adjustments may be made based on improved habitat information, conflicts with specific activities at an operational scale including activities that may already be approved, but have not yet been conducted. Where conflicts exist, efforts are made during the consultation period to maximize the effectiveness of the designation.

6. What is high priority wildlife?

- Section 6 (b) of the Environmental Protection and Management Regulation states that oil and gas activities on an operating area outside of a wildlife habitat area be carried out at a time and in a manner that does not result in physical disturbance to high priority wildlife or their habitat, including disturbance during sensitive seasons and critical life-cycle stages. High priority wildlife would normally include any species listed under one of the species categories (see question 1 above), but may also include other

species at risk or culturally important wildlife. Policy work is ongoing to define high priority wildlife.

INFORMATION AND GUIDANCE

7. Where can advice and guidance be found for designations made under the Environmental Protection and Management Regulation?

- Guidance information, for all species for which a designation may be made, is available through Ministry of Environment and Ministry of Forests, Lands and Natural Resource Operations websites. Species accounts exist for each species listed as a species at risk through the [Identified Wildlife Management Strategy](#) webpage. [Recovery and Management Plans](#) are another source of information. Specific information for [caribou](#) is also maintained by the Ministry of Environment. Approved Orders made under the Government Actions Regulation, which include the management direction provided to the forest sector, are in the following locations: [wildlife habitat areas](#), [ungulate winter ranges](#), [fisheries sensitive watersheds](#), and [community watersheds](#).
- Information is added to these web pages as it becomes available. Additional information, such as research and inventory reports for specific designations, is also available to the Oil and Gas Commission and may be available upon referral or request.

RELATIONSHIP TO THE PROVINCE'S BOREAL CARIBOU STRATEGY

8. How do wildlife habitat areas (WHAs) / ungulate winter ranges (UWR) contribute to BC's management of boreal caribou?

- Based on the best available information, several WHA/UWR polygons, covering over 1.5 million hectares, were established under the *Forest and Range Practices Act* and now the *Oil and Gas Activities Act*. These designations include habitats important for boreal caribou calving, rutting, and winter survival. Conditions for oil and gas activities can now be legally established through permits to reduce the impacts from industrial development (see question 2 and 3). These areas will work in concert with tenure deferral areas (Resource Review Areas), predator and prey management, and habitat restoration and management to help achieve BC's management goals for boreal caribou. Proposals are also being prepared for additional designations.

RELATIONSHIP TO THE FEDERAL SPECIES AT RISK ACT

9. Are wildlife habitat areas (WHAs) / ungulate winter ranges (UWR) linked to the federal *Species at Risk Act* (SARA)?

- WHAs and UWRs are features of provincial legislation (*Oil and Gas Activities Act* and the *Forest and Range Practices Act*) developed by the Province of British Columbia. They are not directly linked to the federal legislation, but they do provide important habitat management and protection for species at risk (and other species such as regionally important wildlife and ungulate species), many of which are also listed under the federal SARA. As such, WHAs and UWRs contribute to British Columbia's response to its habitat management obligations under SARA, and they form elements of BC's own approach to conservation and protection of species at risk in the province.

10. How do the designations relate to critical habitat identified under *Species at Risk Act* (SARA)?

- "Critical habitat" is an element of the federal legislation (SARA), defined under SARA as "habitat that is necessary for the survival or recovery of a listed wildlife species and that is identified as the species' critical habitat in the recovery strategy or in an action plan for the species". SARA is "safety net" legislation, so if "critical habitat" is identified on provincial crown lands, there are no immediate legal implications, but the expectation is that the province will provide "effective protection" of that habitat through its own legislation and policy. WHAs established for a species at risk thus can play an important role in demonstrating "effective protection" of "critical habitat".

HABITAT MANAGEMENT FRAMEWORK UNDER THE OIL AND GAS ACTIVITIES ACT (OGAA) COMPARED WITH THE FOREST AND RANGE PRACTICES ACT (FRPA)

11. What are the differences between wildlife habitat area (WHA) and ungulate winter range (UWR) designations made under the *Forest and Range Practices Act* (FRPA) and the *Oil and Gas Activities Act* (OGAA)?

- WHAs and UWRs that were legally established for FRPA, prior to OGAA's coming into effect (October 4, 2011), have been continued by order to apply under OGAA and the Environmental Protection and Management Regulation, in accordance with procedures under that regulation. The biological needs of the particular species with respect to a particular area of habitat form the common basis for establishment of the specific WHA or UWR (polygon), under both legislations.
- However, WHAs and UWRs apply differently under OGAA as compared with FRPA:
 - OGAA/EPMR: Once a WHA or UWR has been legally established by Minister's Order, it brings into effect "government's environmental objective" for that area of wildlife habitat. In accordance with section 25 (1) of OGAA, the Oil and Gas Commission (OGC) must consider government's environmental objectives when

making a determination of whether or not to issue a permit for an oil and gas activity. In issuing a permit, the OGC must specify the oil and gas activities the person is permitted to carry out, and may impose any conditions on the permit that the OGC considers necessary [OGAA s. 25 (2)]. Thus in OGAA, application of WHAs and UWRs becomes the direct responsibility of the OGC.

- FRPA/GAR: Under FRPA and the Government Actions Regulation (GAR), WHAs and UWRs become the direct responsibility of *Forest Act* and *Range Act* agreement-holders who prepare and submit plans (e.g., Forest Stewardship Plan for forest agreement-holders) and who conduct forest or range practices. FRPA's provisions through which WHAs and UWRs apply to agreement-holders, and which are established by Minister's Order along with the polygons to which they apply, are:
 - general wildlife measures (GWMs) for WHAs and UWRs: As specified in FRPA regulations (e.g., Forest Planning and Practices Regulation), the agreement holder "must comply" with a GWM when conducting forest practices.
 - objectives for WHAs and UWRs: Objectives in FRPA trigger preparation of results or strategies for forest agreement-holders, who must specify these in the content of their Forest Stewardship Plans (FSPs) [FRPA section 5 (1) (b)]. The holder of an FSP or a Woodlot Licence Plan must ensure that the results specified in their plans are achieved and the strategies described are carried out [FRPA s. 21 (1)]. The Forest Planning and Practices Regulation contains the definitions of "result" and "strategy".

OIL AND GAS ACTIVITIES ACT CONSULTATION REQUIREMENTS

12. What are the consultation requirements for species categories, wildlife habitat areas (WHAs) and ungulate winter ranges (UWRs) under the Environmental Protection and Management Regulation (EPMR)?

- Consultation requirements for establishment of species categories and area designations under Oil and Gas Activities Act (OGAA), with respect to oil and gas industry operators, are specified in the EPMR:
 - Species categories:
 - New species categories [EPMR s. 36 (1)]: Before making an Order, the Minister must provide an opportunity for review and comment to organizations that the Minister considers representative of holders of

leases and licences under the *Petroleum and Natural Gas Act* that may be affected by the Order.

- Grandparented (“continued”) species categories [EPMR s. 36 (2)]: The above requirements for review and comment do not apply to species categories that were in effect before this section of the regulation came into force. [The species categories that were already in effect for FRPA are grandparented for purposes of OGAA by Minister’s Order under OGAA / EPMR.]
- Wildlife habitat areas (WHAs) and ungulate winter ranges (UWRs):
 - New WHA and UWR polygons [EPMR s. 37 (1)]: Before making an Order, the Minister must provide notice of the proposed order to representative oil and gas industry organizations and holders of leases or drilling licences under the *Petroleum and Natural Gas Act* that will be affected by the Order, and consult with persons as specified in this section of the EPMR.
 - Grandparented (“continued”) polygons [EPMR s. 37 (2)]: The above requirements for notice and consultation for *new* polygons do not apply to WHAs and UWRs that were in effect before OGAA and the EPMR came into effect, i.e., previously legally continued under s. 180 of the *Forest and Range Practices Act* or established under the Government Actions Regulation (GAR) of FRPA.

13. Has the oil and gas industry had the opportunity to comment on the species category lists?

- The oil and gas industry was involved during the development of Oil and Gas Activities Act (OGAA) and the regulations under OGAA. Representatives of the major industry organizations provided their input and comments during this process.