



The Pipeline Industry and the Migratory Birds Convention Act



Canadian Pipeline
Environment
Committee

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Piping Plover on nest, G.W. Beyersbergen

THE PIPELINE INDUSTRY AND THE MIGRATORY BIRDS CONVENTION ACT

Many activities carried out by Canadian pipeline companies can affect migratory birds and their habitat. Canada's Migratory Birds Convention Act is legislation dedicated to conserving and protecting migratory birds and bird habitat.

This backgrounder, published by the Canadian Pipeline Environment Committee (CPEC), raises awareness of the Act and suggests ways in which pipeline companies can manage their activities to meet or surpass the legislation. CPEC is a multi-stakeholder group of industry, government and public representatives with an interest in sound environmental management of pipelines in Canada.





BACKGROUND

Migratory Birds Convention Act

The importance of protecting migratory birds was recognized nationally and internationally in 1916 with the signing of the *Migratory Birds Convention*, a treaty signed by the United States and the United Kingdom (on behalf of Canada). This agreement was implemented in Canada in 1917 with the *Migratory Birds Convention Act*. Designed to protect migratory birds and their nests, the Act established the Government of Canada's jurisdiction over coastal and inland bird habitats. The Act was updated and amended in 1994.

Migratory Birds Regulations

Section 5

"No person shall hunt (kill, injure, harass) a migratory bird. . . ."



American Avocet, Kathryn Klein





Migratory Birds Regulations

Section 6:

“...no person shall disturb, destroy or take a nest, egg, nest shelter... of a migratory bird...”

Scope of legislation

When it comes to protecting migratory birds and their habitat, the Act and supporting legislation are broad in coverage. The Act (Section 2) interprets “bird” as including “the sperm, eggs, embryos, tissue cultures and parts of the bird” and covers more than 700 bird species, including waterfowl, shorebirds, songbirds and seabirds. The Convention (Article II) emphasizes various conservation principles, including “to provide for and protect habitat necessary for the conservation of migratory birds.”

The Act applies to all lands and bodies of water in Canada and to the activities of all organizations, industries and individuals.



Black-capped Chickadee,
Photo Courtesy of the Carolina Biological Supply Company





Just as the legislation is broad in scope, so too is the administration process to support it. The Canadian Wildlife Service administers the Act and its regulations. Other agencies (Parks Canada, Royal Canadian Mounted Police) and provincial and territorial governments have migratory bird enforcement responsibilities. Also, Environment Canada has responsibilities to consider migratory birds under the *Canadian Environmental Assessment Act*.

Migratory Birds Regulations

Section 35

“...no person shall deposit or permit to be deposited oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds. . . .”



Piping Plover





Migratory Bird Sanctuary Regulations

Section 3

“No person shall, in a migratory bird sanctuary, . . . disturb, destroy or take the nests of migratory birds, or have in his possession a live migratory bird, or a carcass, skin, nest or egg of a migratory bird. . . .”

Pipeline industry's impacts on migratory birds

Human activities on the landscape are putting increasing pressure on bird populations and their environments. These impacts can stress or harm birds, affect breeding and nesting and reduce habitat and food supplies, changing the diversity and numbers of migratory birds in an area.

Canada's oil and natural gas pipeline industry affects migratory birds and bird habitat mainly through:

- land disturbance (building of roads, clearing of trees and vegetation, excavation for pipelines)
- sensory disturbance (noises, lights and other human activities during pipeline construction and operation)
- emergency incidents (fires, spills, hazardous materials)





How the Act affects the pipeline industry

The Act applies to all stages of the industry's activities: planning, construction, operation and decommissioning and abandonment.

One of the most significant impacts is on the scheduling of field activities to build and operate pipeline facilities. Under the Act, no disturbance to nests or nesting birds is allowed during breeding and nesting periods (generally early April to late August in most parts of Canada).

Because of this long period of breeding and nesting activity, timelines for carrying out pipeline activities are frequently squeezed between late summer and the fall season, when other land use restrictions (agriculture, fisheries) apply. Finding suitable "timing windows" for pipeline activities is further complicated by different breeding and nesting periods for bird species.

Migratory Bird Sanctuary Regulations

Section 10

"No person shall, in a migratory bird sanctuary, carry on any activity that is harmful to migratory birds or the eggs, nests or habitat of migratory birds, except under authority of a permit."



SOME QUESTIONS AND ANSWERS





When should industry consider the Act and its potential impacts?

Throughout the life of pipeline projects, from design and planning through to construction and operation and finally to decommissioning and abandonment.

For new projects, consider the Act and its potential impacts early in the planning process, starting with environmental impact (EA) studies or environmental reviews. To determine required EA information for migratory birds and bird habitat, consult with the Canadian Wildlife Service and provincial and territorial wildlife agencies.

Are there different requirements for bird species?

Yes. In considering bird and bird habitat issues as part of project planning, recognize that different species may have different sensitivities to development activities, and that regulatory requirements may vary.

Generally, rare and endangered species (such as burrowing owls and piping plovers) have more rigorous legislated requirements and may be covered under the *Species at Risk Act*.

To determine requirements that may affect a pipeline operation, consult with the Canadian Wildlife Service or provincial and territorial wildlife agencies.





Should industry only be concerned about bird species identified under the Act?

No. It is important to also consider migratory bird species not protected under the Act but covered under other federal, provincial and territorial legislation. These may include raptors (such as hawks and owls), blackbirds, pelicans, cormorants and upland game birds. Consult with the Canadian Wildlife Service and provincial and territorial wildlife agencies to determine these requirements.

Are breeding and nesting the only periods of concern?

No. The Act and the regulations focus on the breeding and nesting periods, but there are other times of the year that the industry should consider as part of project planning. Some migratory birds (such as woodpeckers and chickadees) overwinter in Canada. Industrial activities that damage bird habitat during these months can have severe consequences for some migratory bird species.

Birds also gather in great numbers during spring and fall migration. Noise or disturbance close to these concentrations may harm birds.

How is the Act enforced?

Typically enforcement is started by a complaint from the public or a violation observed by an enforcement agency. It is at the agency's discretion whether to pursue charges or to handle the issue by other means.





What happens if a pipeline company violates the Act?

First-time offences typically result in the use of education and compliance programs. For example, pipeline companies may be asked to improve due diligence procedures or to educate their employees and contractors on correct bird conservation and protection practices, but each case is considered in light of all the circumstances.

Before deciding whether to prosecute, enforcement agencies often consider the impact of the violation (public concerns, damage to birds and bird habitat) and a pipeline company's circumstances (awareness of the regulations, compliance programs and past efforts to address impacts to migratory birds).

Are there reporting requirements?

The industry is not legally obligated to report impacts to enforcement agencies. But, as part of sound due diligence practices, it is recommended that pipeline companies keep records and notify the agencies when nests or eggs have been disturbed or destroyed.



Killdeer nest, Canadian Wildlife Service Photo





Is habitat protected under the Act?

Yes. The Act provides some limited provisions for protection. For example, the regulations prohibit:

- destruction of active nests during the breeding season (This may also apply year-round to habitat continually used by a bird colony.)
- release of harmful substances in areas frequented by migratory birds

Under Canada's *Migratory Bird Sanctuary Regulations*, all migratory birds in government-recognized bird sanctuaries are under special protection. In these situations, special provisions may apply and companies should consult with wildlife agencies for more information.

Is industry exempt during an emergency?

No. If a fire, spill or another emergency occurs, pipeline companies are expected to comply with the Act. In these incidents, besides carrying out normal emergency response procedures, report bird habitat impacts to enforcement agencies. By acting promptly, industry ensures due diligence and reduces the risk of enforcement actions.





Are any industry exemptions allowed under the Act?

No. The Act does not allow the pipeline industry to disturb or destroy migratory birds and nests under any conditions. In some cases, exemption permits to destroy migratory birds or disturb nests may be granted to landowners (if there is a risk of serious damage to crops or property), to airports (if there is a need to protect aircraft safety) or to scientists (for research purposes).



Eastern Kingbird, Canadian Wildlife Service Photo

A COMPLIANCE GUIDE CHECKLIST





In complying with the Act, the pipeline industry's challenge is to operate in ways that meet its responsibilities to transport oil and natural gas products efficiently and reliably while addressing impacts to the environment, including migratory birds and bird habitat.

Here is a checklist of actions to assist pipeline companies in complying with the Act and its regulations. This list is provided for information purposes only.

Planning

- ___ Determine whether a proposed pipeline activity will affect birds or bird habitat.
- ___ Determine whether these impacts will occur in a government-recognized bird sanctuary or ecologically sensitive area.
- ___ Consult with wildlife agencies early in the planning process.
- ___ If a proposed activity poses potential harm to birds or bird habitat, consider rescheduling the activity.
- ___ If a proposed pipeline route poses environmental risk to migratory birds and bird habitat, consider relocating or rerouting the pipeline.
- ___ When purchasing property, look for land parcels large enough to offset habitat loss from a project's environmental "footprint." Consider purchasing property that allows a buffer zone of trees and vegetation between the operation and migratory birds.



Construction

- Discuss proposed projects with the Canadian Wildlife Service and provincial and territorial wildlife agencies. Low impact activities may be allowable, but consult with the agencies to identify specific guidelines for addressing a project's environmental impacts.

- Create buffer zones of trees and vegetation to reduce potential impacts of pipeline construction on migratory birds. Size the zones to suit the species and their sensitivity to human disturbance. Avoid disturbing nesting sites until after fledgling (when young birds can fly).

- Consider opportunities to narrow right-of-ways to reduce potential impacts on birds and bird habitat.

- As part of environmental procedures, identify specific measures to assist employees in recognizing, protecting and conserving bird habitat.

- Educate staff and contractors on migratory bird issues and correct protocols.

- Schedule field activities, such as clearing, to avoid sensitive migratory bird periods such as breeding, nesting and staging (migration).

- Before the summer nesting period, explore opportunities to clear and mow vegetation near a project to discourage nesting, reducing possible interaction between bird species and construction activities. Before undertaking this work, consult with wildlife agencies and landowners to ensure that the action is appropriate.





- If construction during the nesting period cannot be avoided, commission nesting surveys by qualified experts (wildlife biologists with experience in undertaking bird surveys) and forward the survey results to the Canadian Wildlife Service and provincial and territorial wildlife agencies. Before undertaking this work, consult with wildlife agencies and landowners to ensure that the action is appropriate.
- Develop contingency plans to shut down or alter project activities to address migratory bird issues.

Operation

- As part of environmental procedures, identify specific measures to assist employees in recognizing, protecting and conserving bird habitat.
- Include procedures in a project's emergency response plans to address migratory bird issues (for example, scare techniques to safely discourage birds from an area during spill cleanups).
- Share the results of mitigation efforts with industry and enforcement agencies, and participate in research and monitoring programs that contribute to best practices for bird habitat protection and conservation.



Decommissioning and abandonment

- Before decommissioning or abandoning a facility, consider potential impacts to migratory birds and bird habitat.
- Schedule industry activities so as to avoid sensitive breeding and nesting activities.
- Consider the needs of bird species and bird habitat when planning land reclamation (for example, select native seed mixes or plant vegetation that enhance food supply and nesting cover).



Blue-winged Teal on nest, GW. Beyersbergen



RESOURCES

Canadian Wildlife Service

Part of Environment Canada, handles wildlife matters that are the responsibility of the federal government, including protection and management of migratory birds.

<http://www.cws-scf.ec.gc.ca>

Migratory Birds Convention Act

Passed in 1917 and amended in 1994, provides legislated protection of migratory birds and their nests.

<http://laws.justice.gc.ca/en/M-7.01/index.html>

Migratory Birds Environmental Assessment Guideline

Developed by Environment Canada, provides standardized approach to assessing environmental impacts on migratory birds.

http://www.cws-scf.ec.gc.ca/publications/eval/mig/index_e.cfm

Migratory Birds Regulations

Describes detailed regulations supporting the Migratory Birds Convention Act.

<http://laws.justice.gc.ca/en/M-7.01/C.R.C.-c.1035/>

Migratory Bird Sanctuary Regulations

Describes legislated protection of migratory birds in government-recognized bird sanctuaries.

<http://laws.justice.gc.ca/en/M-7.01/C.R.C.-c.1036/>

Species at Risk Act

Passed in 2002, includes provisions for protecting rare and endangered migratory birds.

http://www.sararegistry.gc.ca/the_act/html



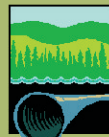
FOR MORE INFORMATION

For more information on the pipeline industry and the *Migratory Birds Convention Act*, contact the Canadian Pipeline Environment Committee (CPEC) care of the Canadian Energy Pipeline Association (www.cepa.com) or the Canadian Association of Petroleum Producers (www.capp.ca). CPEC is a multi-stakeholder group of industry, government and public representatives with an interest in sound environmental management of pipelines in Canada.

This document was prepared by CPEC. It is not intended to be a legal or quasi-legal set of guidelines and does not satisfy all regulatory requirements. It is merely intended to offer the reader general options for consideration with regards to the Migratory Birds Convention Act in the context of a pipeline project. While the information contained within is believed to be reliable at the time of print, CPEC does not guarantee its accuracy. The use of the within information is at the user's sole risk, regardless of any fault or negligence by CPEC.

Cover Photo:

Horned Lark with food, B.D. Cottrille



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