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**Re: Environmental Assessment of Forest Development Plan-Y06, Planning Area 2, Operating Unit 3.**

Dear Robin,

Thank you for involving Environment Canada – Canadian Wildlife Service (CWS) in this *Yukon Environmental Assessment Act* screening. CWS has reviewed the above proposal for seven cut blocks in planning area 2, operating unit 3 in the Haines Junction district and we have the following comments.

CWS strongly supports multi-shareholder regional landscape and conservation planning (regional planning). Regional planning is the most appropriate, and effective method for addressing international commitments for the conservation of migratory birds and biodiversity. Regional planning is an important component in the identification and management of cumulative impacts.

Canada (represented by Great Britain) and the United States of America (US) signed a treaty in 1916 to “protect birds that traverse parts of Canada and the US in the course of their annual migration”; the treaty is referred to as the *Migratory Bird Convention* (MBC). In 1999 a protocol was signed between Canada and the US to amend the 1916 Convention and bring in stronger references to conservation. The *Migratory Bird Convention Act* (MBCA) and the *Migratory Bird Regulations* (MBR) were established to implement Canada’s obligations under the Convention.

Section 6(a) of the MBR prohibits the disturbance, destruction or taking of a nest of a migratory bird (as defined by the MBC). This includes the incidental take of migratory bird nests through destruction during forestry activities, construction, haying etc. However there is currently no legislative ability for the Government of Canada to issue a permit to allow for the incidental take of migratory bird nests. This is being addressed

through the introduction of Bill C-15 which was passed by Parliament in December, 2004 and is waiting ascension through the federal Senate. Bill C-15 lays the legislative foundation for development of a system to allow for the legal disturbance, or destruction of migratory bird nests through incidental take. In light of this legal uncertainty, the best method for proponents to address their responsibilities under the MBCA and MBR is to ensure that they practice due diligence. It remains the proponent's responsibility to meet the requirements of the MBRs. Should a project or activity associated with it result in the contravention of the MBRs, prosecution under the Migratory Birds Convention Act may be initiated.

CWS-Yukon region is a proponent of proper land and resource use, and conservation planning as being the most effective means to currently meet Canada's commitments under the *Migratory Birds Convention* and the *International Convention on Biological Diversity*. As a participant in this environmental assessment review, CWS will assess and provide comments on the project proposal as it relates to potential environmental impacts to migratory bird populations. CWS cannot, however, provide a written opinion that this project will not result in contravention of the *Migratory Birds Regulations* (MBR). A favorable decision under this environmental assessment review does not exempt the proponent from the MBR.

The CWS views burned, or insect damaged forests as intact and functioning forest ecosystems. It is known that the assemblage of bird species is altered after a natural disturbance to a forest; these forests do however continue to exist as functional ecosystems supporting varied populations of migratory birds. We are of the opinion that in order to meet conservation goals of migratory birds and biodiversity, disturbed forests should be managed in a manner consistent with any other forest ecosystem.

A general comment about the current review is that the application was confusing in regards to which operating unit, and which cutting blocks were currently under review. The planning area # 2 map at the beginning of Appendix A already had cutblocks laid out in all seven operating units. It was our understanding from reviewing the supplied materials that operating unit # 3 was being proposed for harvest as an interim measure until the Integrated Landscape Planning was completed; and that subsequent areas for harvest would be identified through that regional planning process. In spite of the confusion, CWS must make clear that we have reviewed the current YEAA screening of operating unit # 3 in the light of an "interim measure" to create a timber supply in the Haines Junction area while the regional planning process is completed; our comments reflect that perception.

We are concerned that there is the potential for the seven operating units within planning area 2 to be developed and assessed as discrete units, and not in relation with each other, and with other planning areas in the region. Again, we view the current review as an interim measure only; and request that subsequent harvest area developments and review are conducted in accordance with proper, completed regional planning that incorporates the full range of landscape and regional values.

The July 25, 2001 *Final Resource Report* for Planning Area 2 referenced in the current screening does not contain any references to the conservation of migratory birds, or their use of habitat in the planning area. Section 5.5 of the report, Wildlife and Fish, refers only to moose and bears. CWS sees this as a deficiency in the Resource Report. This deficiency is reflected in section 3.1 of the Development Plan for Area 2.

CWS strongly supports the maintenance of riparian corridors as an important component, (though not the only component), of proper conservation planning for the maintenance of sustainable populations (conservation) of migratory birds, and the conservation of biological diversity. The section titled “Connectivity” does not identify the proposed width of the riparian buffer (wildlife corridor); please identify the proposed size of the riparian buffer.

Under the heading “Connectivity” it is stated that “Two blocks in the proposed development of OU#3 encroach on this corridor, but are also within existing anthropogenic development, so negative impact on wildlife movement is not anticipated”. CWS strongly disagrees with this statement. The basic premise of Cumulative Impact Assessment is incorporating the environmental impacts anticipated from the proposed development with environmental impacts already existing or reasonably expected to exist in the future. Therefore the existing anthropogenic development must be considered in addition to the anticipated impacts from the cutblocks. We request that the two blocks in question not be allowed to intrude into the proposed riparian buffer. We would however, be willing to grant an exception to this request, if it is demonstrated that the residents of the dwellings in question have requested the blocks to be situated as proposed as a means of fire protection.

The section under “Fire” states that “...the maintenance of required access routes into harvest areas will also provide opportunities for fighting a fire...” CWS agrees that the maintenance of existing access routes would provide an advantage to the suppression of any future forest fires in the area. However we do not support the upgrading and extension of the current access based on the need for fire suppression capabilities. Neither do we support the creation of new three season access routes prior to the development of an access plan through the regional planning process. We request that harvest plans be developed utilizing existing road access, and that new three season access not be developed prior to the completion of the Integrated Landscape Plan.

Section 4.0 “Harvesting Section” notes that all blocks, with the exception of Block B, are below 10 ha in area. We request that within Block B, and all blocks greater than 10 ha in area, that 10% of the overstory is maintained. These should be large merchantable trees, though they can be trees that are not commercially desirable.

The section “Harvest Scheduling and Season” states that “Site conditions do not restrict harvesting to winter only. It is possible to harvest during dry summer conditions”. As stated previously, the CWS views disturbed forests as functional ecosystems that support, and provide important habitat functions to a varied assemblage of migratory birds. With regards to the legal uncertainty surrounding a proponents responsibilities under the

MBCA, and MBR it is critical that proponents are able to exhibit that they have met due diligence with regards to the incidental take of migratory birds or their nests. Though not limited to the following; some of the considerations in forestry planning that CWS views as key to the maintenance of sustainable populations of migratory birds are:

- Scheduling of activities to avoid the breeding season;
- Conducting pre-clearing surveys for migratory bird use;
- Identification of priority species;
- Protection of key habitats.

With the exception of Red and White-winged Crossbills; the expected breeding season for the majority of migratory birds in the region is May 1 to July 31. The destruction of migratory bird nests may eliminate the success of a whole cohort of migratory birds. CWS requests that no planned harvesting be allowed to occur during the period of May 1 to July 31 in order to allow for the successful breeding of migratory birds in the planning area.

We would also like to request that Section 3.3.6.5 of the Timber Harvest Planning and Operating Guidelines (Nest Sites) be incorporated into the harvest planning for the operating unit. Section 3.3.6.5 describes measures to avoid the harvesting and disturbance of nest sites such as those of hawks and owls. This section of the THPOG states:

1. Avoid harvesting and disturbing nest sites such as those of hawks and owls.
2. Leave a patch of trees 100m or more in diameter to conceal the nest and provide perching sites.
3. Operating windows may be necessary to reduce disturbance effects on birds of prey during nesting period.

We would also like to note that Great-horned Owls begin to nest in March. Again, as with migratory birds it is important to conduct pre-clearing surveys to identify use of the area by nesting hawks and owls.

If you have any questions, or comments please contact me at 867.393.7935, or at [scott.herron@ec.gc.ca](mailto:scott.herron@ec.gc.ca).

Sincerely yours,

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