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Policy when Considering Permitting or Authorizing Prohibited Activities in Protected Areas Designated Under the *Canada Wildlife Act* and *Migratory Birds Convention Act, 1994*

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Policy when Considering Permitting or Authorizing Prohibited Activities in Protected Areas Designated Under the *Canada Wildlife Act* and *Migratory Birds Convention Act, 1994*

1.0 CONTEXT

This policy should be read in conjunction with Environment Canada's Protected Areas Strategy as well as other guiding documents related to the management of the Environment Canada protected areas network. Where there is an inconsistency between this policy and the laws and regulations, the law prevails.

2.0 PURPOSE

This policy describes Environment Canada's approach to determining whether an activity may be permitted or authorized within a protected area. For the purpose of this policy, "protected area" means a terrestrial or marine National Wildlife Area (NWA) or Migratory Bird Sanctuary (MBS). For the purposes of this document, "permitted" can mean the issuance of a permit, lease, licence, agreement, or the publishing or posting of notices authorizing otherwise-prohibited activities. Consistent with *A Wildlife Policy for Canada*, "wildlife" is understood to include wild mammals, birds, reptiles, amphibians, fishes, invertebrates, plants, fungi, algae, bacteria and other wild organisms.*

3.0 SCOPE

The policy applies only to NWAs for which the Minister of the Environment has permitting authority under the *Canada Wildlife Act*, and to MBSs for which the Minister of the Environment has permitting authority under the *Migratory Birds Convention Act, 1994*. This policy applies to departmental officials responsible for permit issuance.

4.0 AUTHORITIES

The Minister has the legislative authority to permit activities in NWAs according to the following acts and regulations:

- *Canada Wildlife Act* (section 12(g)) and *Wildlife Area Regulations* (sections 3(2), 4 and 8)
- *Species at Risk Act* (sections 73 and 74)

* Wildlife Ministers' Council of Canada (1990), *A Wildlife Policy for Canada*. Environment Canada, Canadian Wildlife Service. Ottawa K1A 0H3.

The Minister has the legislative authority to permit activities in MBSs according to the following acts and regulations:

- *Migratory Birds Convention Act, 1994*, *Migratory Bird Sanctuary Regulations* (sections 9(1), (2), (3), (4) and 10) and *Migratory Birds Regulations* (sections 4(7) and 6)
- *Species at Risk Act* (sections 73 and 74)

The Minister has the legislative authority to refuse to issue a permit or other authorization or may suspend or cancel a permit or other authorization (*Canada Wildlife Act* (section 18.2), *Wildlife Area Regulations* (section 7), *Migratory Birds Convention Act, 1994* (section 18.22), and the *Migratory Bird Sanctuary Regulations* [section 9(4)]) and include conditions on permits (*Migratory Bird Sanctuary Regulations* [section 9(3)]).

5.0 POLICY STATEMENT

The Minister will review proposed activities on a case-by-case basis. A permit may be issued only if the Minister is of the opinion that the proposed activities:

- 1) will benefit wildlife and their habitat, or
- 2) are not inconsistent with the purpose for which the protected area was established, and
- 3) are consistent with the most recent management plan[†] for the protected area.

In view of the known impacts to wildlife and their habitats associated with commercial and industrial activities, such activities will generally not be permitted within Environment Canada protected areas.

While all activities undertaken or proposed to be undertaken within Environment Canada protected areas are subject to review by the Minister prior to initiation, exceptions to this policy may be made for activities and/or persons engaging in activities related to public safety, health or national security, that are authorized by or under any other Act of Parliament or activities under the *Health of Animals Act* and the *Plant Protection Act* for the health of animals and plants.

The Minister may cancel or suspend a current permit where it is necessary for the conservation of wildlife or wildlife habitat in a protected area. The Minister may also add terms and conditions to permits in order to minimize the impact of an activity on wildlife and wildlife habitat.

Further, activities related to routine maintenance of protected areas, the implementation of management plans and enforcement activities conducted by an officer or employee of Environment Canada would normally not require a permit.

[†] Management plans are being drafted for all NWA and MBS sites that are administered by Environment Canada. Where current management plans are not available, the most recent plan will be used as a reference document. In cases where no management plan exists, other documents that speak to the purpose of establishment will be used.

6.0 CONSIDERATIONS

Issuance of permits for any proposed activity within an Environment Canada protected area will be guided by the following considerations where appropriate:

- **Compliance** with applicable legislation, regulations, policies and agreements for the establishment and/or management of a protected area as well as compliance with all laws and regulations of general application.
- **Obligations** to Aboriginal peoples will be respected and consultation will occur, as appropriate.
- The **purpose** of the protected area, as reflected in the relevant legislation, regulations and management plan.
- The **conservation** of wildlife and habitat shall, where appropriate, be paramount; all other existing and potential activities within a protected area shall be secondary.
- **Species at risk** and their associated critical habitat and residences will be accorded the necessary level of protection in accordance with the *Species at Risk Act* and in view of applicable recovery strategies, action plans and agreements.
- Environment Canada recognizes the role of protected areas in preventing the loss or fragmentation of habitat. The importance of protecting **unfragmented habitats** will be considered when assessing the proposed activity.
- The **cumulative environmental effects** of past, current and future activities within and, where appropriate, adjacent to the protected area must be considered within an appropriate spatial and temporal context.
- A **precautionary approach** will be applied in a manner consistent with the Privy Council Office's *A Framework for the Application of Precaution in Science-based Decision Making about Risk*. The level of risk at a specific site will be determined with the best available information, and appropriate conservation actions will be taken in a proactive manner. This approach recognizes that decisions and actions on conservation measures can and may be taken in the absence of scientific certainty.
- Assessment of any proposed activity will be carried out in conjunction with other applicable **environmental review processes** relevant to the protected area and its surroundings.
- The assessment of potential environmental effects will be informed by the **best available information**. Where gaps in information exist, it is the responsibility of the permit applicant(s) to provide the additional information.

- Issuance of permits will require **consultation with the co-management partner(s)** if the proposed activity is carried out in an NWA or MBS co-managed by Environment Canada and an organization (including land owned by an Aboriginal organization).
- All **alternatives** to the activity that would reduce the impact on the wildlife area, the wildlife species and their habitats have been considered and the best solution has been adopted.

7.0 MITIGATION MEASURES

Where a proposed activity will benefit wildlife and their habitat, or where those activities are not inconsistent with the purpose for which the protected area was established, and are consistent with the most recent management plan for the protected area, mitigation measures will be considered in a descending order of priority according to the mitigation hierarchy (avoid, minimize, offset):

1. avoidance of the proposed activity (the activity does not take place in the protected area);
2. minimize the impact of the activity (conditions included on the permit);
3. habitat compensation (biodiversity offsets).

A mitigation measure will only be applied if it can be demonstrated to mitigate the negative environmental effects resulting from the proposed activity. The demonstration of the effectiveness of a proposed mitigation must be done outside the protected area prior to being implemented within the protected area. There are many considerations for permit issuance and proposed mitigation on its own will not be sufficient to permit an activity.

In the event that an organization or person is issued a permit to carry out an activity and that activity has a negative effect on the wildlife and their habitat within the protected area or compromises the wildlife and habitat objectives for which the protected area was established, habitat compensation (biodiversity offsets) will be recommended.[‡]

8.0 DECISION FRAMEWORK

To support the implementation of this policy, a guideline is set out in Annex A, entitled the Decision Framework for Applying Environment Canada's "Policy when Considering Permitting or Authorizing Prohibited Activities in Protected Areas Designated Under the *Canada Wildlife Act* and *Migratory Birds Convention Act, 1994*." Environment Canada will follow this policy and guideline when making decisions on permitting or authorizing prohibited activities in Environment Canada protected areas. Additional direction may be provided within management plans about the activities that will benefit the wildlife and their habitat within the protected area

[‡] To successfully achieve the "no net loss goal" of habitat functions, it is therefore recommended that a minimum 5:1 ratio of biodiversity offset habitat area to impacted habitat area be used as a general rule. When habitat compensation (biodiversity offsets) are to be used, they will be developed in consideration of any subsequent Environment Canada policy on biodiversity offsets.

or the wildlife and habitat objectives for which the protected area was established, as well as any applicable and related laws, regulations and policies.

ANNEX A:**Decision Framework for Applying Environment Canada's "Policy when Considering Permitting or Authorizing Prohibited Activities in Protected Areas Designated Under the Canada Wildlife Act and Migratory Birds Convention Act, 1994"****INFORMATION REQUIRED**

First and foremost, conditions and criteria found in statutes and regulations pertaining to a particular protected area are a legal requirement and must be met by the permit applicant. The Minister will consider the potential effects of the proposed activity on migratory birds, eggs, nests and, in some cases, their habitats, on any species listed under the *Species at Risk Act* and on critical habitat and residence, and on other wildlife or habitats.

In making decisions authorizing prohibited activities, factors considered by the Minister may include, but are not limited to, the following:

- a) the criteria for which the protected area was established;
- b) the management plan for the protected area;
- c) the nature of the proposed activity;
- d) the location and geographic extent of the proposed activity;
- e) the time of year of the proposed activity;
- f) the duration of the proposed activity;
- g) the potential environmental effects from the activity and the likelihood of the significance of each effect;
- h) the cumulative impacts of the proposed activity;
- i) the potential for the proposed activity to take place outside the protected area;
- j) the frequency of the proposed activity;
- k) other activities currently permitted in the protected area;
- l) the methods and equipment to be used during the proposed activity;
- m) conflicts with existing agreements or permits;
- n) conflicts with the terms of establishment and/or terms of donation in the case of land donated to the federal government by a private interest;
- o) conflicts with encumbrances on title;
- p) the threats to a species at risk, its residence or its critical habitat;
- q) result of monitoring of past similar permitted activities;
- r) prior performance of the applicant with compliance of permits;
- s) other federal permits required or obtained for the proposed activity;
- t) requirement for approval by an Animal Care Committee; and
- u) any other information deemed necessary by the Minister.

The permit applicant must clearly address each relevant factor to the satisfaction of Environment Canada. All necessary information must be submitted in order for the application to be fully considered by the Minister. Incomplete applications will be returned to the applicant and no further action will be taken until the applicant provides the missing information.

PERMITTING DECISION FRAMEWORK

When reviewing applications, separate decision frameworks have been created for consideration of proposed activities within a NWA and a MBS. Questions within the decision frameworks are listed numerically and are described below.

The policy statement guiding all decisions is that “Environment Canada will review activities on a case-by-case basis and permits may be issued only if the Minister is of the opinion that the proposed activities will benefit wildlife and their habitat, or are not inconsistent with the purpose for which the protected area was established, and are consistent with the most recent management plan for the protected area.”

A) National Wildlife Area Decision Framework

The Minister of the Environment may, on application, issue a permit to any person authorizing that person to carry on an activity described in section 3 of the *Wildlife Area Regulations* in any “wildlife area” where that activity will meet one or all of the following purposes and pre-conditions:

Purposes

- The activity is scientific research relating to wildlife or habitat conservation, or
- The activity benefits wildlife and their habitats, or will contribute to wildlife conservation, or
- The activity is not inconsistent with the purpose for which the NWA was established and is consistent with the most recent management plan for the NWA.

Pre-conditions

- Alternatives to the project/activity have been considered, and
- Mitigation measures have been considered and adopted.

Question 1: Will the applicant carry out the proposed activity in a “wildlife area” as defined in the *Wildlife Area Regulations*?

If the proposed activity is not carried out in a wildlife area as defined in the *Wildlife Area Regulations*, no permit is required.

Question 2: Is the proposed activity described in section 3 of the *Wildlife Area Regulations*?

If the proposed activity is not described in section 3 of the *Wildlife Area Regulations*, a permit is not necessary.

Question 3: Is the proposed activity scientific research relating to wildlife or habitat conservation, or will the activity benefit wildlife and their habitats, or will the activity contribute to wildlife conservation; or is the activity not inconsistent with the purpose for which the NWA was established and consistent with the most recent management plan for the wildlife area?

If the proposed activity is not scientific research relating to wildlife or habitat conservation, or will not benefit wildlife and their habitats, or will not contribute to wildlife conservation, or is inconsistent with the purpose for which the wildlife area was established and not consistent with the most recent management plan for the wildlife area, the permit should not be issued. When a permit is issued, conditions will likely be included.

Question 4: Can the effects of the proposed activity/project be mitigated?

If the permit applicant is able to propose measures that would completely mitigate the negative effects of the proposed activity, then a permit may be issued. Otherwise, a permit should not be issued.

Question 5: Does the proponent have sufficient resources to monitor the environmental effects of the proposed activity so that the monitoring scheme is technically and scientifically sound: sample size and intensity will be sufficient to address Type I and Type II error[§]?

A permit may be issued if there are sufficient resources provided by the proponent to monitor and evaluate the environmental effects of the proposed activity in a manner that is scientifically sound. This step is included as a way to ensure that Environment Canada can maintain due diligence in ensuring that any proposed activity taking place within a wildlife area is being carried out in the manner described in the permit. A monitoring scheme must be scientifically sound: enough samples must be collected in a way that reduces the probability especially of a Type II error to <0.30 . If resources are not available to ensure that monitoring cannot take place in a way that is scientifically sound, a permit will be denied.

Question 6: Will the monitoring of environmental effects in and of itself result in damage to wildlife or their habitats?

Monitoring requires a human presence, traffic, trapping and travel. The intensity and scale of these effects may be sizeable, especially considering the need to reduce the probability in particular of a Type II error to <0.30 . If the proposed monitoring scheme itself will result in damage to wildlife or their habitats, a permit will not be issued.

[§] These are measures of statistical error. Type I error (false positive) is understood to be the error of mistakenly observing a difference when in truth there is none. Type II error (false negative) is failing to observe a difference when in truth there is one; i.e. a real change in conditions has occurred but it has not been detected. In conservation biology and impact assessment the cost of making a Type II error can be significant: failing to observe an effect when there is indeed an effect can result in irreversible harm to the species or ecosystem. A study to detect whether or not a change has occurred in truth (thus avoiding Type II error) can take considerable resources in order to obtain the statistical power necessary to detect a change in conditions given the tremendous amount of variance (“noise” in the data) present in ecological systems.

B) Migratory Bird Sanctuary Decision Framework

The Minister may, on application, issue a permit to any person authorizing that person to carry on an activity described in section 3 or section 10 of the *Migratory Bird Sanctuary Regulations* in any “migratory bird sanctuary” where that activity will meet one or all of the following purposes and pre-conditions:

Purposes

- The activity is not harmful to migratory birds, their eggs, nests or habitats, or
- The activity is not inconsistent with the purpose and criteria used for which the MBS was established and is consistent with the most recent management plan for the MBS.

Pre-conditions

- Alternatives to the project/activity have been considered, and
- Mitigation measures have been considered and adopted.

Question 1: Will the applicant carry out the proposed activity in a “migratory bird sanctuary” as defined in the *Migratory Bird Sanctuary Regulations*?

If the proposed activity is not located within the scheduled boundary of an Environment Canada Migratory Bird Sanctuary (MBS), then no permit is required.

Question 2: Is the MBS located on land that is under the administration and control of the federal government?

If the MBS is on private land or on provincial, territorial or Aboriginal land, Environment Canada cannot issue a permit for activities related to habitat disturbance, although the *Migratory Birds Regulations* and the *Migratory Bird Sanctuary Regulations* still apply and Environment Canada can issue permits in respect of birds, eggs and nests. If the MBS is federally owned, Environment Canada has the authority to grant a permit. Where an MBS comprises First Nations land where there is a wildlife management board or equivalent body, the proponent must contact the relevant management board to obtain access in addition to obtaining a permit from Environment Canada

Question 3: Is the proposed activity described in section 3 or in section 10 of the *Migratory Bird Sanctuary Regulations*?

If the proposed activity is not described in section 3 or section 10 of the *Migratory Bird Sanctuary Regulations*, a permit is not necessary.

Question 4: Will the proposed activity harm migratory birds, their eggs, nests and their habitat; or is the activity not inconsistent with the purpose for which the protected area was established, and consistent with the most recent management plan for the protected area?

If the proposed activity will harm migratory birds, their eggs, nests or habitat, or is inconsistent with the purpose for which the protected area was established or not consistent with the management plan of the protected area, the permit will be denied.

Question 5: Can the effects of the proposed activity/project be demonstrably mitigated?

If the permit applicant is able to provide measures that would mitigate the negative effects of the proposed activity, then a permit may be issued. Otherwise, a permit should not be issued.

Question 6: Does the proponent have sufficient resources to ensure monitoring of the environmental effects of the proposed project/activity so that the monitoring scheme is technically and scientifically sound: sample size and intensity will be sufficient to address Type I and Type II error^{**}?

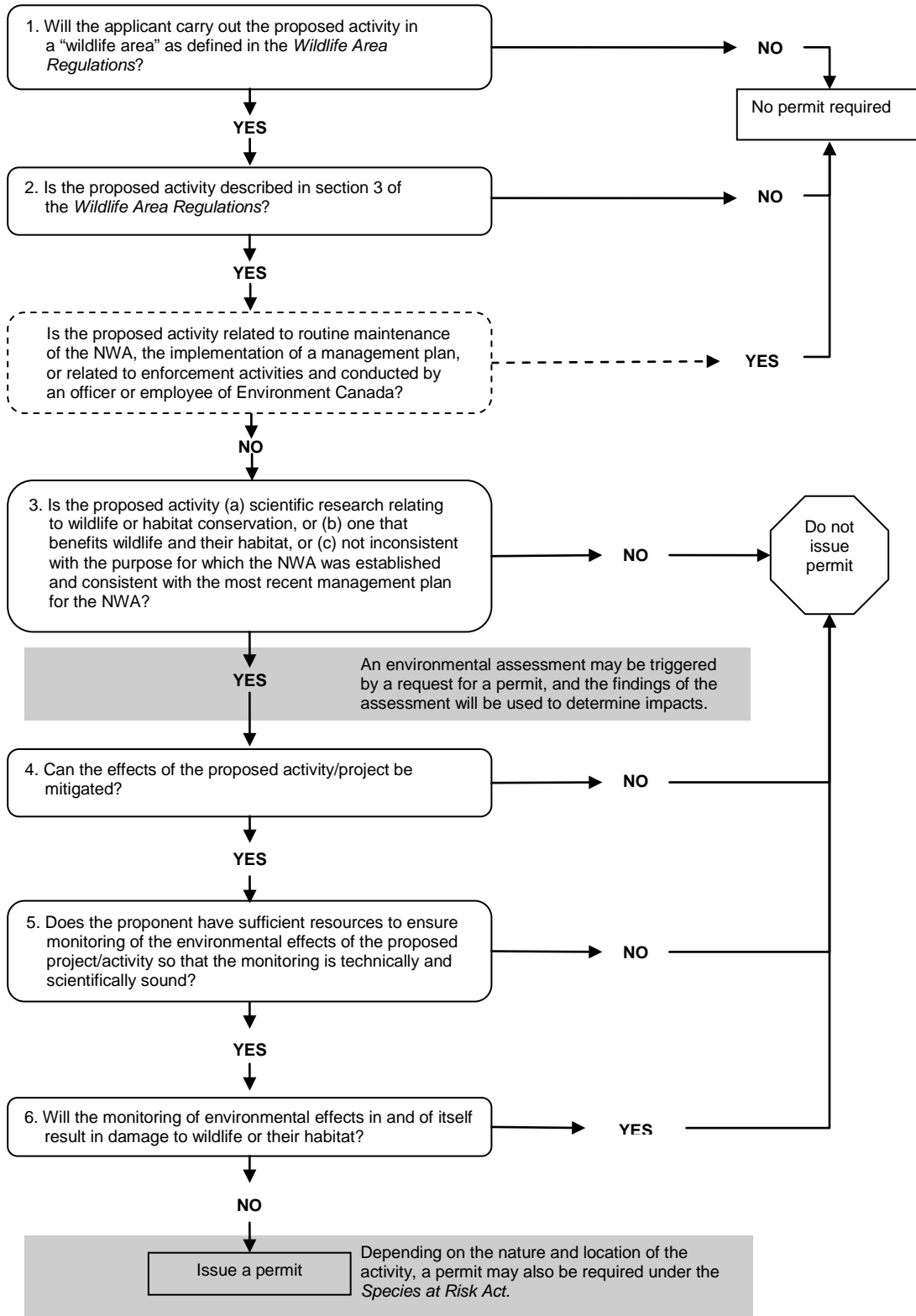
A permit may be issued if there are sufficient resources provided by the proponent to monitor and evaluate the environmental effects of the proposed activity in a manner that is scientifically sound. This step is included as a way to ensure that Environment Canada can maintain due diligence in ensuring that any proposed activity taking place within a wildlife area is being carried out in the manner described in the permit. A monitoring scheme must be scientifically sound: enough samples must be collected in a way that reduces the probability especially of a Type II error to <0.30 . If resources are not available to ensure that monitoring cannot take place in a way that is scientifically sound, a permit will be denied.

Question 7: Will the monitoring of environmental effects in and of itself harm migratory birds or the eggs, nests or habitat of migratory birds?

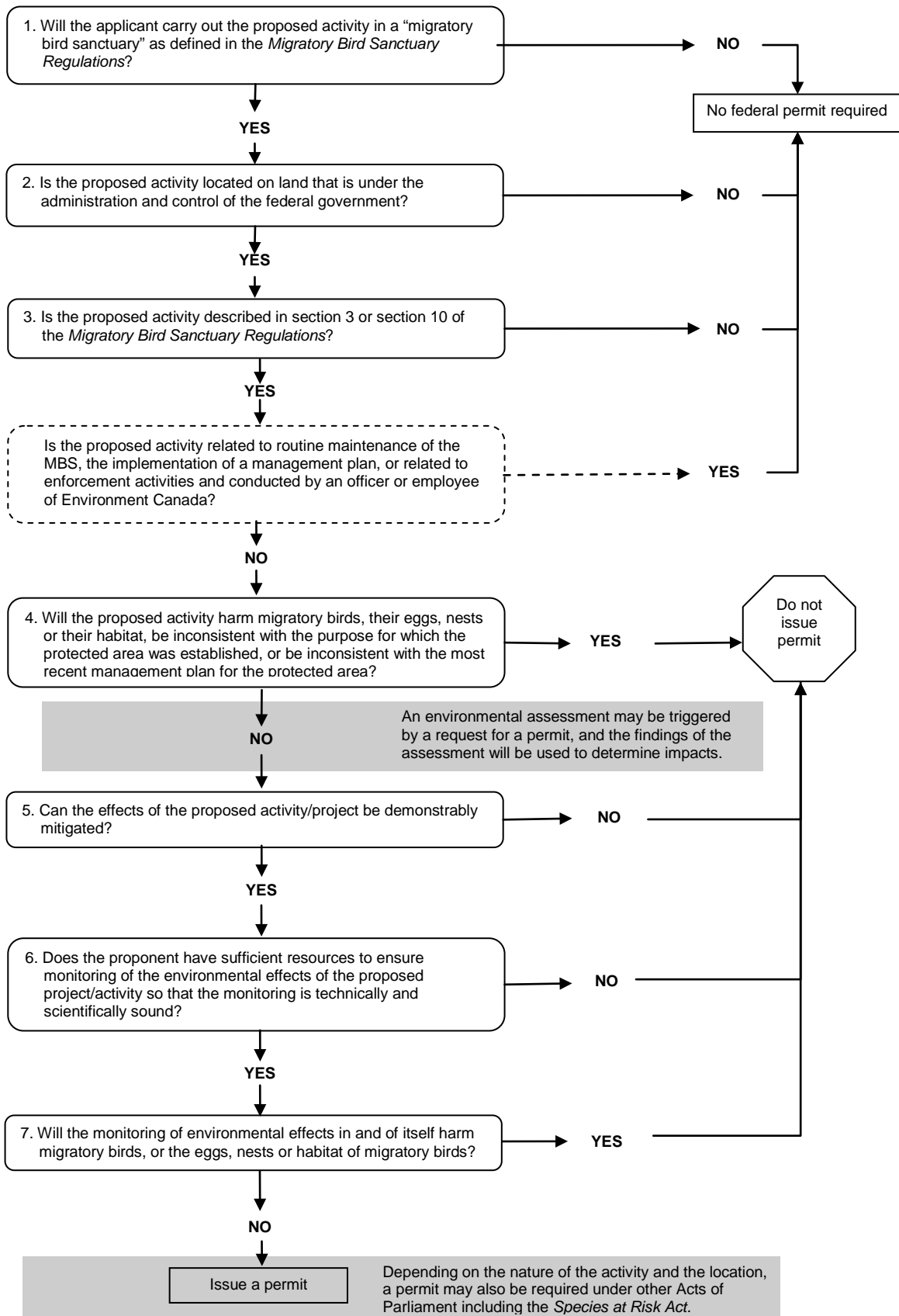
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Decision-Making Framework for National Wildlife Area Permit Issuance



Decision-Making Framework for Migratory Bird Sanctuary Permit Issuance



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Additional information can be obtained at:

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