



## ADMINISTRATIVE RULES OF MONTANA



### 36.11.436 SENSITIVE SPECIES

- (1) The department recognizes that certain plant and animal species, both terrestrial and aquatic, are particularly sensitive to human activities in managed forests. Populations of such species are usually small and/or declining. Continued adverse impacts from land management activities may lead to their being federally listed as threatened or endangered. Because sensitive species usually have specific habitat requirements, consideration of their needs is recognized as a useful and prudent fine filter for ensuring the department meets the primary goal of maintaining diverse and healthy forests. Considering sensitive species in management actions helps ensure that decisions will be made appropriate to the fundamental philosophy and that additional federal listings will not be necessary.
  - (a) However, if objective analyses suggest that the underlying ecological forces would produce a distribution of cover types different than those existing, it is appropriate to move toward the historic pattern. Sensitive species considerations for habitat management are not intended to preclude a general move toward historic representation of cover types.
- (2) The department shall manage to generally support populations of sensitive species on state trust lands. The department shall accomplish this by managing for site characteristics generally recognized as important for ensuring their long-term persistence. The department may accept localized adverse impacts, but only within the context of an overall strategy that supports habitat capability for these species.
  - (a) Department staff shall report notable observations of sensitive plant and animal species to the Montana Natural Heritage Program (MNHP) or other appropriate data repository.
  - (b) Sites identified as important on projects with identified sensitive plant species shall be monitored to assess implementation of mitigation measures. On selected department projects with listed sensitive animal species, periodic follow-up surveys would be conducted to assess how well management actions have provided for site conditions needed to support those populations. Deficiencies would be documented and used to guide future management actions and mitigations.
- (3) For sensitive plant species, the department shall protect important sites and/or site characteristics with mitigation measures applied to management activities likely to have substantial long-term impacts. Prior to conducting planned land management activities, the department, at its sole discretion, shall refer to databases maintained by the MNHP, the United States Forest Service (USFS) and/or other appropriate sources for information on occurrence of plant species of special concern. Where information indicates potential for sensitive plant species and their habitat to occur within project areas, field surveys and/or consultation with other qualified professionals

may be required to determine the presence, location, and mitigation measures for sensitive plant species.

- (4) For sensitive animal species, the department shall provide habitat characteristics recognized as suitable for individuals to survive and reproduce in situations where land ownership patterns, underlying biological conditions, and geographical conditions allow for them. The department's contribution toward conservation of wide-ranging animal species that occur in low densities and require large areas to support self-sustaining populations would be supportive of, albeit subsidiary to, the principal role played by federal agencies with larger land holdings.
- (5) For proposed projects, the department shall look for opportunities to provide for habitat needs of sensitive animal species, primarily through managing for the range of historically occurring conditions appropriate to the sites. In blocked ownerships this shall include consideration of such issues as connectivity and corridors. In scattered ownerships, the department shall not necessarily commit to providing all the life-requisites of individual members of sensitive species, particularly if adjacent landowners managed in ways to limit the potential for individuals on state trust lands to be part of functional populations.
- (6) The forest management bureau chief shall maintain a list of sensitive animal and fish species specific to each administrative land office. The department shall develop and modify this list using information and classification systems developed by the USFS, USFWS, MNHP and, for fish species only, the FWP. The department shall use this list at the project level for identifying species appropriate to consider in project analyses at each administrative area office. The department shall base listing by land office on general geographic distribution and habitat affinities of animal species, and would not require site-specific evidence of presence on state trust lands. Additions to, or deletions from this list, of any animal not already categorized as sensitive by USFS region one, or as "fish species of special concern" by FWP, would require written justification. The department would not routinely conduct site-specific surveys for the presence of sensitive animal species.
- (7) BALD EAGLE:
  - (a) the department shall manage for bald eagles consistent with the Montana Bald Eagle Management Guidelines (2010);
  - (b) to guide management, the department may use site-specific management plans by a qualified biologist where applicable;
  - (c) maintenance of habitat for breeding bald eagles, where no site-specific management plans are in place, shall include recognition and delineation of three management zones around each active bald eagle nest, including:
    - (i) nest site area;
    - (ii) primary use area; and
    - (iii) home range;
  - (d) the department shall consider the following when conducting forest management activities within nest site areas:
    - (i) mechanized activities are restricted between February 1 and August 15, unless:
      - (A) the territory is documented as unoccupied during that breeding season;
      - (B) the eagles have fledged;

- (C) nesting has failed;
  - (D) eagles have left the nesting area; or
  - (E) if allowed as specified in a site-specific management plan;
- (ii) helicopter activity for forest management purposes shall not occur within 1,000 feet of an occupied bald eagle nest; however, the department may grant exceptions for other motorized activities such as road repair, maintenance, and planting, if, following site review and documentation, activities are deemed to be:
  - (A) of short duration;
  - (B) outside of critical nesting periods; and
  - (C) of minimal risk to nesting adults or offspring;
- (iii) harvest within 330 feet of an active nest tree is prohibited, and the department shall design timber harvests to maintain the structural and ecological characteristics of the nest site area to include:
  - (A) moderate to well-stocked overstory;
  - (B) large emergent trees;
  - (C) snags;
  - (D) a multi-storied canopy; and
  - (E) vegetative screening from nearby low and high intensity human activity;
- (iv) the department shall protect such areas from firewood cutting and gathering, to the extent practicable;
- (v) the department shall limit additional human activity, both low and high intensity, over which it has control between February 1 and August 15 unless it has been documented by a qualified biologist that:
  - (A) the eagles have fledged;
  - (B) nesting has failed; or
  - (C) the eagles have left the nesting area;
- (vi) the department shall limit permanent development associated with forest management activities;
- (vii) the department shall close existing roads and trails under its control to motorized use between February 1 and August 15, if:
  - (A) vegetative screening from the nest is insufficient to prevent undue disturbance and human use is high; or
  - (B) the eagles' behavioral response suggests it is necessary;
- (e) the department shall include the following considerations when conducting forest management activities within bald eagle primary use areas:

- (i) limit mechanized activities between February 1 and August 15, unless it has been documented by a qualified biologist that:
  - (A) the nest site is unoccupied during that breeding season;
  - (B) the eagles have fledged;
  - (C) nesting has failed;
  - (D) eagles have left the nesting area;
  - (E) it has been demonstrated that eagles show tolerance to the activity; or
  - (F) if allowed as specified in a site-specific management plan;
- (ii) low intensity and high intensity activities may be allowed during this restriction period if ample visual screening, including vegetative cover and/or topography, is present between the affected portion of the primary use area and the active nest tree;
- (iii) the department may grant exceptions for such activities as:
  - (A) road repair;
  - (B) maintenance; and
  - (C) planting if following site review and documentation, activities are deemed to:
    - (I) be of short duration;
    - (II) be outside of critical nesting periods; and
    - (III) present minimal risk to nesting adults or offspring;
- (iv) design timber harvests and salvage to maintain structural and ecological characteristics particularly:
  - (A) moderate or greater stocking in overstory;
  - (B) large emergent trees;
  - (C) multi-storied canopy, if present;
  - (D) snags;
  - (E) potential nest trees;
  - (F) perch trees;
  - (G) roost trees; and
  - (H) vegetative screening from areas of both low and high intensity human activity;
- (v) low intensity human activity may occur, but high intensity human activity, over which the department has control, shall not occur between February 1 and August 15, unless ample visual screening, including vegetative cover and/or topography, is present between the primary use area and nest tree, or it has been documented by a qualified biologist that:
  - (A) the nest site is unoccupied during that breeding season;

- (B) the eagles have fledged;
  - (C) nesting has failed;
  - (D) eagles have left the nesting area;
  - (E) it has been demonstrated that eagles show tolerance to the activity; or
  - (F) otherwise allowed in a site-specific management plan;
- (vi) minimize permanent development associated with forest management activities;
- (vii) minimize construction of new roads, trails, and open access routes;
- (f) the department shall consider the following when conducting forest management activities within the bald eagle home range:
  - (i) design timber harvests to protect, and/or enhance, key habitat components that already exist in close proximity to:
    - (A) lakes;
    - (B) rivers;
    - (C) wetlands;
    - (D) meadows; or
    - (E) known flight paths, such as:
      - (I) large snags;
      - (II) large perch trees;
      - (III) emergent trees; and
      - (IV) roost trees;
  - (ii) design projects involving human activities, both low and high intensity, to minimize disturbance to foraging and roosting eagles, and to avoid conflict in frequently used areas during the nesting season;
  - (iii) minimize construction of new roads, trails, and open access routes.

**(8) BLACK-BACKED WOODPECKER:**

- (a) when developing prescriptions for harvest in areas burned within the last five years in forest patches greater than 40 acres in size, the department will:
  - (i) manage at least ten percent of the burned acreage in an unharvested condition that is broadly representative of the entire burn (i.e., similar habitat types, fire intensity, elevations, stand density, and stand age class prior to burn) to be determined using site-specific information at the project level;
  - (ii) manage such areas in relatively contiguous blocks favoring close proximity to unharvested fire-killed deferred stands on neighboring ownerships considering the habitat needs of black-backed woodpeckers; and
  - (iii) leave standing sub-merchantable burned trees where soil, slope stabilization, and human safety concerns allow.

(9) COMMON LOON:

- (a) for all lakes where common loon nesting pairs exist, the department shall:
  - (i) limit construction of new permanent roads, structures, or permanent developments within a 500-foot radius of the nest site; and
  - (ii) limit mechanized activity within a 500-foot radius of the nest site between April 15 and July 15;
- (b) for lakes which have been recently occupied but for which no currently nesting pair resides, the department shall:
  - (i) survey lakeshores for nesting loons prior to developing plans for lakeshore development, road construction, or timber harvest activities that will occur within 500 feet of the lakeshore;
  - (ii) prior to finalizing plans for any new roads, developments, timber sales, or intensive motorized activity that will occur on or near any lake potentially suitable for use by loons, design appropriate mitigation measures specific to the situation; and
  - (iii) if nesting is not documented, identify sites for proposed projects that would least likely be occupied by nesting loons in the future.

(10) FISHER:

- (a) The department shall assess fisher habitat on projects that contain preferred fisher cover types for lands administered by the department's northwest land office and southwest land office;
- (b) when conducting forest management activities, as consistent with 77-5-301 and 77-5-302, MCA, the department shall:
  - (i) implement retention measures contained in ARM 36.11.425 when managing within preferred fisher cover types associated with riparian and streamside management zones to provide habitat and connectivity;
    - (A) where treatments reduce stand density below moderately stocked levels, the department shall make efforts to provide forest connectivity along the opposite stream bank;
    - (B) the department shall define a minimum of one buffered management zone connecting to other fisher habitat through sites where individual perennial and intermittent stream courses are difficult to define, such as those braided with many channels;
    - (C) the department shall retain large snags, snag recruits, and CWD pursuant to ARM 36.11.409 through 36.11.414, and promote recruitment if existing abundances are below expected levels;
    - (D) following large-scale stand replacement disturbance events in preferred fisher cover types, the department shall give consideration to maintaining an abundance of large snags and CWD within 100 feet of Class 1 streams and 50 feet of Class 2 streams;

- (E) when practicable, the department shall avoid constructing new roads in preferred fisher cover types within 100 feet of Class 1 streams or 50 feet of Class 2 streams, and where feasible, the department shall incorporate use of temporary roads, and obstruct or obliterate unnecessary existing roads;
- (c) the department shall manage for at least one 300-foot-wide forested patch providing connectivity between adjacent third order drainages, preferably in saddles, where landscape conditions allow;
- (d) the department shall consider importance of late-successional riparian and upland forest in meeting the life requisites of fishers.

(11) FLAMMULATED OWL:

- (a) when harvesting timber where greater than 50 contiguous acres of flammulated owl preferred habitat types exist, the department shall:
  - (i) favor seral ponderosa pine on sites where historical fire regimes favor it;
  - (ii) favor older-aged ponderosa pine or, secondarily, Douglas-fir for retention or recruitment on warm, dry slopes;
  - (iii) retain and recruit large-sized snags pursuant to ARM 36.11.404;
  - (iv) open up dense stands on warm, dry slopes towards a basal area of 35 to 80 square feet;
  - (v) promote non-uniform stands and retain occasional dense patches of conifer regeneration and shrubs.

(12) PEREGRINE FALCON:

- (a) the department shall manage for peregrine falcons within a 0.25 mile radius of a known nest site, and develop appropriate silvicultural mitigation measures for the particular situation;
- (b) the department shall limit human activity, both low and high intensity, and mechanized activity typically within a 0.5 mile radius from known nest sites between March 1 and August 1; and
- (c) the department shall determine distances for activity restrictions on a site-specific basis for aerial operations.

(13) PILEATED WOODPECKER:

- (a) the department shall manage stands containing pileated woodpecker preferred habitat in larger, rather than smaller blocks, whenever practicable;
  - (i) where large contiguous tracts of such stands are unavailable, the department shall consider management of smaller stands in close proximity to one another, or close to similar stands on adjacent ownerships;
  - (ii) the department shall consider areas of pileated woodpecker preferred habitat of less than 40 acres, unless they are close to other appropriate stands;
  - (iii) within pileated woodpecker preferred habitat, the department shall manage for snags, snag recruits, and CWD according to ARM 36.11.411, 36.11.413, and 36.11.414,

particularly favoring retention of western larch, ponderosa pine, and black cottonwood, considering amounts that would historically occur on similar sites;

- (A) the department shall consider broken-top snags greater than 20 feet tall priority candidates for retention;
- (iv) where appropriate, the department shall manage to encourage retention of black cottonwood, particularly where it can attain large size.

**Authorizing statute(s):** 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

**Implementing statute(s):** 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

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**History:** NEW, 2003 MAR p. 397, Eff. 3/14/03; AMD, 2020 MAR p. 2239, Eff. 12/12/20.