Caroline Ladanowski
Director, Wildlife Management and Regulatory Affairs
Environment and Climate Change Canada
351 Saint-Joseph Blvd
Gatineau, QC

January 9, 2026

Subject: Electricity sector's challenges with the Migratory Birds Regulations

Dear Ms. Ladanowski,

We are writing in response to your request for early engagement on a possible path forward for the continued evolution of the Migratory Birds Regulations, 2022 (MBR). We are pleased to present some preliminary considerations to help inform your work on Regulatory Packages 1 and 2, and we look forward to continued engagement with the Department.

The electricity sector is committed to the responsible stewardship of the environment, including the protection of migratory birds and their habitats. Electricity companies employ an array of techniques to protect migratory birds and their nests. This includes the development of avian protection plans, specialized training for field staff in nest identification, the deployment of nest deterrent systems, modifications to existing infrastructure, and the development of a national Bird Beneficial Management Practices Guide for Utilities. These practices are baked into the daily work of our line workers and environmental coordinators, reflecting a deeply sophisticated and ingrained culture of responsibility and continuous improvement in how we operate and maintain critical electricity infrastructure.

As Canada pursues its ambitious goal of becoming an energy superpower, the electricity sector is building the affordable, reliable and clean power that will grow the economy and enable emissions reductions through greater electrification. Canada is entering a period of unprecedented growth in electricity demand. Currently, Canada's electricity use is 600 TW/h per year and is projected to grow to 1200 TW/h annually by 2050. Meeting this demand will require building, operating and maintaining more electrical infrastructure over the next two decades than ever before. To succeed, our sector needs a regulatory environment that is efficient, predictable and supports beneficial outcomes for wildlife and their habitats.

Feedback on the Continued Evolution of the MBR Presentation

We are supportive of the Department's stated objectives for Regulatory Package 1 to provide regulatory certainty for high-importance activities that are low risk to migratory bird conservation. We are also supportive in principle of the objective of Regulatory Package 2 to implement a risk-based, streamlined regulatory regime to address incidental take while ensuring conservation

objectives are achieved. We believe that a risk-based approach to regulation can effectively deliver conservation outcomes while allowing for the efficient operation, maintenance and building of critical electricity infrastructure.

Below are comments on the questions posed in the *Continued Evolution of the MBR* deck presented to Electricity Canada on September 8, 2025.

Question 1: Situations in which migratory birds and/or their nests and eggs must be managed when undertaking activities related to public safety, health or national security (emergency or non-emergency).

We are encouraged by the Department's recognition that public safety, health or national security may be impacted by both emergency and non-emergency situations, and the proposal to streamline regulatory requirements for the activities needed to respond to such situations is a positive development.

Emergency situations:

The current regulatory framework has limited compliance pathways for active emergency situations. An exemption under certain conditions, given such conditions are clear and reasonable, would be a welcome addition to the compliance regime. We recommend that the definition of emergency include any situation in which there is an unplanned power outage or a downed, energized line. Unplanned power outages or downed energized lines create an immediate risk to human health and public safety. The activities required to restore power must be exempt from permitting requirements or any prior approval.

Furthermore, activities that may not be required for *restoring* power but are required for *responding* to an active emergency situation should also be exempt from permitting requirements or any prior approval. For example, there are situations where emergency spilling at a hydro dam is required to prevent/mitigate flooding downstream. Additionally, electricity companies may need to clear trees to prepare a site for safe entry which has been damaged by a natural disaster. As a general principle, if there is an active emergency like a wildfire, natural disaster, or electrical system failure, and electricity companies are called upon to aid in the response, the activities undertaken to respond to the emergency should be exempt from permitting requirements or any prior approval.

The department should not solely adopt a definition of emergency that requires an official declaration of emergency to be in effect. Electricity companies maintain 24/7 response crews who must respond to power outages within minutes. They cannot afford to wait for hours, let alone days, to respond to the urgent needs of the customers they serve.

Non-emergency situations:

Vegetation management – the proactive trimming or removal of vegetation around power lines and within rights-of-way – is essential for ensuring public safety. It prevents tree branches from damaging power lines and causing power outages that can disrupt communities and critical services. It also reduces the risk of wildfires that may result from contact between vegetation and live electrical wires. Vegetation management is how our sector proactively mitigates threats to public safety that can occur if transmission lines, distribution lines and/or utility poles become compromised by surrounding vegetation. Moreover, a compromised utility pole can create the same risks to public safety, health and national security as a tree branch falling on an electrical line.

The importance of vegetation management for emergency prevention cannot be overstated as one in five power outages is caused by falling trees. The scale of the undertaking can also not be overstated. Electricity companies maintain over 165,000 kilometres of transmission lines and over 700,000 kilometres of distribution lines across Canada – it only takes one tree, or one compromised utility pole, to spark an emergency.

The current case-by-case permitting process for replacing/removing a compromised utility pole or a tree adjacent to a right-of-way that contains a pileated woodpecker nesting cavity (or any other Schedule 1 species) is slow and administratively burdensome. The result is that the threat to public safety is maintained longer than necessary. We support the Department's proposal to address these non-emergency activities via an exemption under certain conditions, given these conditions are clear and reasonable.

To further streamline the regulatory process for non-emergency situations, the Department should address the inclusion of pileated woodpeckers in Schedule 1 of the MBR. The large cavities they create in wooden utility poles and trees adjacent to rights-of-way can compromise the structural integrity of the pole, creating a significant and disproportionate public safety risk of pole failure, falling trees, fires, and power outages. It is not tenable under real-world circumstances to move the woodpecker nesting cavity; there should be regulatory flexibility to allow for its removal.

Lastly, we would like to bring to your attention that the inclusion of anthropogenic infrastructure as part of Schedule 1 continues to be an issue for many utilities, which could be addressed through exclusion of anthropogenic structures (e.g., wooden pole structures) from the prohibitions.

Question 2: Situations of projects important to public/national interests (not national interest projects as per the Building Canada Act) that can be demonstrated as having very limited impacts on migratory birds.

We ask that the Department consider the benefit of allowing S.70 permits, which allow for egg or nest destruction, to be made available for 'use of land scenarios'. Currently, the only available permitting option is a S.71 permit for nest relocation, which is not always practical, especially when cavities are located in fragile trees or inside trees on steep terrains. Greater flexibility in

permitting options would help facilitate building/maintaining critical energy infrastructure that is in the public and national interest.

We commend the Department for considering ways to streamline regulatory processes for low-impact activities to align with the government's objective of advancing public interest projects. If changes are implemented thoughtfully and effectively, this is an opportunity to reduce timelines for permitting and approvals and improve regulatory certainty for proponents by right-sizing regulatory requirements with risks to migratory birds.

Question 3: Situations in which the non-lethal hazing (scaring) of migratory birds during routine industrial operations is beneficial to their health and wellbeing.

Electricity companies deploy bird deterrent systems, diverters and other safeguards to proactively prevent nesting/roosting on critical infrastructure components such as transformers that pose a risk to avian health and wellbeing.

Question 4: How has the pilot process for issuing Damage or Danger permits for Pileated Woodpecker nesting cavities in hydroelectricity poles impacted your industry?

We would like to reiterate our concern that the permitting process for Pileated Woodpecker cavities in an undue burden on industry with minimal benefits to migratory birds.

The pilot process for issuing Damage or Danger permits for Pileated Woodpecker nesting cavities has not been widely implemented across electricity companies and regions. As such, we are not able to provide detailed comments about the efficacy of the pilot project at this time. As the Department rolls out this pilot project to more companies and jurisdictions, we urge the Department to ensure reporting requirements are clear and reasonable to align with the objective of improved regulatory efficiency for proponents.

Additional Comments

In addition to the above questions, we would like to provide the following comments on other aspects of the Regulatory Package 1 and 2 proposals.

1. Regulatory language must be principles-based rather than prescriptively narrow. Using broad terms like "threats to human health and safety" or "critical infrastructure reliability" allows for the flexibility needed to address unforeseen risks, rather than being constrained by a limited list of examples.

2. We support the department's mention of a possible *de minimis* threshold, a point below which the administrative burden of authorization outweighs the negligible conservation benefit, as part of Regulatory Package 1. This would indeed free up both utility and regulatory resources, from matters such as substation work, to focus on more significant issues.

3. We support the proposed amendment to include the words “or their nests” to specify that nests causing or likely to cause damage or danger may be authorized for removal, destruction or relocation in recognition that a nest may also be the cause of damage or danger.

4. We support in principle the Department’s initiative to develop an incidental take regulation, but will withhold specific comment until further details are released. For an incidental take regulation to be effective, it must be designed with utility operations in mind. It must be risk-based, recognize the safety protocols and Best Management Practices already employed by our sector, and feature reporting requirements that are both reasonable and proportionate. The lessons from Regulatory Package 1 and the blanket permit pilot should directly inform the incidental take regulation’s development, ensuring it is a workable, long-term solution for both industry and regulators.

Overall, a modernized and pragmatic *Migratory Birds Regulation* is urgently needed. It is essential for allowing Canada’s electricity sector to effectively balance our environmental stewardship with our duty to provide clean, reliable, and affordable power to Canadians.

Our sector is committed to being collaborative partners in this process, and we appreciate the opportunity to engage with the Department at this early stage. We stand ready to provide detailed examples, technical expertise, and our practical experience to inform the drafting of these critical amendments.

Sincerely,

Brian Torrie
Vice President, Regulatory and Indigenous Affairs
Canadian Nuclear Association

Michael Powell,
Vice President of Government Relations
Electricity Canada

Fernando Melo
Senior Director of Public Affairs and Federal Policy
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About Us

The CNA has over 115 members, representing more than 89,000 Canadians employed directly or indirectly in exploring and mining and milling uranium, generating electricity, advancing nuclear medicine, and promoting Canada's worldwide leadership in nuclear science and technology innovation.

CanREA is the voice for wind energy, solar energy and energy storage solutions that will power Canada's energy future. We work to create the conditions for a modern energy system through stakeholder advocacy and public engagement. Our 360 plus members range from small solar installers to major project developers, to service providers, to original equipment manufacturers (OEMs) and are uniquely positioned to deliver clean, low-cost, reliable, flexible, and scalable solutions for Canada's energy needs. We were established on July 1, 2020, when the Canadian Wind Energy Association and the Canadian Solar Industries Association united to create one voice for wind energy, solar energy and energy storage solutions.

Electricity Canada is the national voice of Canada's electricity sector. Our members generate, transmit, and distribute reliable electrical energy to residential, commercial, and industrial customers in every province and territory.

WaterPower Canada (WPC) is the national voice of Canada's waterpower industry. As a not-for-profit trade association, WPC represents members across the sector, including hydropower producers, manufacturers, and developers, who collectively account for over 95% of Canada's waterpower capacity, advocating for the sustainable development and use of waterpower to meet Canada's current and future energy needs.