

Wildlife Licensing Guidance Note

Activities that are not likely to meet the definition of take or disturb for fauna

Purpose

The purpose of this document is to provide guidance for the type of activities that are not likely to require lawful authority under the [Biodiversity Conservation Act 2016](#) (BC Act) as they do not meet the definitions for taking or disturbing fauna. Activities considered in this document include basic fauna survey methods, commercial interaction activities, management of problem fauna and management operations where mitigation measures have been implemented to reduce the likelihood of impact or interaction with fauna. This guidance note is not definitive; it is the responsibility of the proponent to determine if an activity is likely to take and or disturb fauna. Where there is uncertainty, the precautionary principle should be applied, and further advice sought.

The guidance provided for activities below is only pertaining to the take and disturbance of fauna under the BC Act. It is the proponent's responsibility to ensure whether other approvals are required for different pieces of legislation (e.g., animal ethics approvals under the Animal Welfare Act 2002, the CALM Act 1984).

Introduction

Subject to some exceptions, a person must not 'take' or 'disturb' native fauna unless the person has lawful authority to do so.

Definition of 'take' and 'disturb' under section 5 of the [BC Act](#):

take—in relation to fauna, includes the following:

- (i) to kill, injure, harvest or capture fauna by any means;
- (ii) to cause or permit anything referred to in subparagraph (i) to be done.

disturb—in relation to fauna, includes the following:

- (i) to chase, drive, follow, harass, herd or hunt fauna by any means;
- (ii) to apply an identifier to fauna by any means;
- (iii) to engage in an activity that has the effect, whether directly or indirectly, of altering the natural behaviour of fauna to its detriment;
- (iv) to cause or permit anything referred to in subparagraph (i), (ii) or (iii) to be done.

For non-threatened fauna, lawful authority may be provided by, among other things, a fauna taking or disturbance licence granted under the [Biodiversity Conservation Regulations 2018](#) (BC Regulation). These licences include:

- Regulation 25 - Fauna taking (scientific and other purposes) licence
- Regulation 27 - Fauna taking (biological assessment) licence
- Regulation 28 - Fauna taking (relocation) licence
- Regulation 29 - Fauna causing damage
- Regulation 30 - Fauna disturbing (commercial interaction) licence
- Regulation 31 - Fauna disturbing (other purposes) licence
- Regulation 32 - Fauna disturbing (feeding) licence

Lawful authority is not generally required to take or disturb the 'managed fauna' listed in Schedule 4 of the BC Regulations. 'Managed fauna' are species that can be managed or taken in specific areas without the need to get a BC Act lawful authority as they have been identified as likely to cause significant damage or can have major negative impacts on other native species, typically because they have established outside of their natural range or are overabundant due to human influence. Note, there are restrictions on the devices and methods that may be used to take or disturb 'managed fauna', and the circumstances in which some managed fauna may be taken and disturbed, refer to Part 5 and Schedule 2 under the [BC Regulations](#).

A section 40 authorisation under the BC Act is required to take or disturb threatened fauna. Threatened fauna are those species that are listed under section 19 of the BC Act as critically endangered, endangered or vulnerable.

This document provides an overview of activities that are not likely to meet these definitions and therefore are not likely to be contrary to the taking or disturbance offence provisions. Consequently, they are not likely to require lawful authority.

Activities that are not likely to require a lawful authority

A list of activities that do not require a lawful authority are listed below in Table 1. Please note, modification to activities listed in the table may require assessment. When determining if a lawful authority is required it is important to consider the frequency of the activity or the actions that are undertaken as part of that activity (e.g., number of visits to a site) and the impacts that this may have on fauna. If the response of a fauna species to an activity is unknown but has the potential to meet the legislated definition of disturb, then the activity should be assessed.

Department of Biodiversity Conservation and Attractions (DBCA) wildlife scientists and subject matter experts have assessed whether activities listed below have the potential to meet the legislative definition of take or disturb in relation to native fauna. Table 1 will be reviewed as new information and science becomes available.

Activities that are not likely to meet the definition of take or disturb for fauna

Where you cannot determine whether an application should be submitted, please send an email to wildlifelicensing@dbca.wa.gov.au for further advice. Please outline the proposed activities and your assessment of the likelihood of disturbance in your correspondence.

Table 1: Activities that are not likely to require a fauna taking or disturbing licence or section 40 authorisation are identified below.

ACTIVITY	CONSIDERATION
<p>REMOTE SENSING CAMERAS Deployment of un-lured or non-consumable lured remote sensor-cameras where there is no intent or ability for the lure to be eaten by fauna (e.g. food lure is held in a container and is not accessible for consumption by fauna or olfactory lures)</p>	<p>Lawful authority is unlikely to be required if deployment is not long-term, high frequency or routine and does not impact fauna in a way that is likely to reduce survivorship of adults or their young.</p> <p><i>Things to consider:</i></p> <ul style="list-style-type: none"> • Careful consideration must be given when undertaking activities during breeding or nesting seasons. • Placement of cameras should ensure minimal environmental impact such as not trampling vegetation or any habitat elements, particularly in areas where the target species rely on those habitat elements for shelter. For example, devices placed in areas of potential habitat for Night parrots (<i>Pezoporus occidentalis</i>) or Western Ground parrots (<i>Pezoporus flaviventris</i>) should not damage vegetation as it is likely to disturb parrots. <p>An application should be submitted if the placement and/or checking of cameras is likely to cause:</p> <ul style="list-style-type: none"> • Adults to abandon a nest or den site, resulting in reduced survivorship of dependent young, • Adults to move the nest or den site and relocate young; or • Increased visitation to the site by predators. <p><i>Note:</i> A person must not feed fauna unless the person has lawful authority to feed it (<i>BC Regulation 2018</i>), this includes the use of lured remote sensing cameras where bait is consumable.</p>
<p>ACOUSTIC RECORDERS Deployment of passive acoustic recorders and listening surveys in the general environment; and deployed outside or at the entrance of a cave/burrow/nest.</p>	<p>Where deployment or placement of devices does not interfere with fauna movement, installation does not occur when fauna are active, and will not disturb fauna in a way that is likely to reduce survivorship of adults and dependent young, the activity is unlikely to require authorisation. For example, nesting/denning adults are not easily disturbed, causing them to flee or be flushed, leaving dependent young; visits are not high frequency to regularly cause disturbance.</p> <p><i>Things to consider:</i></p> <ul style="list-style-type: none"> • Careful consideration must be given when undertaking activities during breeding or nesting seasons. • Placement of devices should not trample vegetation or any habitat elements, particularly in areas where the target species rely on those habitat elements for shelter. For example, devices placed in areas of potential habitat for Night parrots (<i>Pezoporus occidentalis</i>) or Western Ground parrots (<i>Pezoporus flaviventris</i>) should not damage vegetation as it is likely to disturb parrots. <p><i>Note:</i> The deployment of passive acoustic recorders in known habitat for the critically endangered Night parrot (<i>Pezoporus occidentalis</i>) and Western Ground parrot (<i>Pezoporus flaviventris</i>) is considered to disturb and requires a section 40 authorisation. Note, the precautionary principle has been applied to these species.</p>

<p>REMOTELY PILOTED AIRCRAFT or VEHICLE (RPA/RPV e.g. drones) IN A TERRESTRIAL ENVIRONMENT</p>	<p>Lawful authority is unlikely to be required if observation is from a distance that does not impact fauna in a way that is likely to reduce survivorship of adults or their young. Use of RPA/RPV must not harass fauna, disrupt behaviour repeatedly, or persist for long durations. Any disturbance caused is temporary, and disturbance is not for long durations or repeatedly. The drone operator must have experience working with target species and understand species behaviour cues (such as behaviour when under stress).</p> <p><i>Things to consider:</i></p> <ul style="list-style-type: none"> • RPA/RPV are increasingly being utilised and can cause disturbance. This can be particularly detrimental to threatened species or high value populations / breeding / roosting / resting areas. Adverse events have occurred that can pose significant risks to the conservation of species (e.g. drone crash caused mass abandonment of eggs in a seabird nesting ground). <p><i>Note:</i> The use of RPA/RPV that approach threatened fauna during breeding seasons constitutes a disturbance of that fauna and requires a section 40 authorisation or other lawful authority. The use of drones to inspect nest hollows requires a section 40 authorisation or other lawful authority. The precautionary principle has been applied to this activity when interacting with birds.</p>
<p>REMOTELY PILOTED AIRCRAFT or VEHICLE (RPA/RPV e.g. drones) IN A MARINE ENVIRONMENT</p>	<p>Lawful authority is unlikely to be required if observation is from a distance that does not impact fauna in a way that is likely to reduce survivorship of adults or their young.</p> <p>For marine prescribed fauna, if used outside the minimum separation distances stated in the BC Regulations (minimum 60 m for all prescribed species). Marine species that are listed as prescribed fauna include:</p> <ul style="list-style-type: none"> • whale sharks • whales • killer whales • dolphins • dugongs • seals <p>Use of RPA/RPV does not harass fauna, disrupt behaviour repeatedly, or for long durations. Any disturbance caused is temporary. Drone operator has experience working with target species and understands species behaviour cues (such as behaviour when under stress).</p>
<p>IN WATER FILMING MARINE ENVIRONMENT</p>	<p>Lawful authority is unlikely to be required if observation is from a distance that does not chase, follow or harass fauna.</p> <p>For marine prescribed fauna (see above), if conducting activities outside the minimum separation distances for persons in the water and for vessel approach distances, in accordance with Part 5, Division 2, stated in the BC Regulations.</p>

Activities that are not likely to meet the definition of take or disturb for fauna

<p>MARINE TRACK SURVEYS Turtle track surveys.</p>	<p>Lawful authority is unlikely to be required for observations of turtle tracks along beaches. If no other activity involving turtles is undertaken (e.g. no contact with turtles) then lawful authority is unlikely to be required.</p> <p>Best practice techniques should be carried out, refer to the DBCA Turtle Watcher's Code of Conduct (dbca.wa.gov.au).</p>
<p>OBSERVATION AND PHOTOGRAPHY Observation and recordings from a distance (e.g. use of binoculars, photographing with a telescopic lens).</p>	<p>Lawful authority is unlikely to be required for observation from a distance that does not chase, follow or harass fauna.</p> <p>Observation and photography does not harass fauna, disrupt behaviour repeatedly, or for long durations. Any disturbance caused is temporary and reasonable measures have been taken to avoid disturbance (e.g., frequency of activity, number of people present that may increase likelihood of disturbance).</p> <p>Best practice techniques should be carried out, refer to DBCA Standard Operating Procedures - Ethical Wildlife Photography (dbca.wa.gov.au)</p>
<p>SPOTLIGHTING Single spotlighting event for species identification non-consecutive spotlighting nights.</p>	<p>Where reasonable measures have been taken to avoid disturbance during spotlighting surveys (as per best practice techniques) then likely no licence, section 40 authorisation or other lawful authority is required. Reasonable measures include minimal time spent observing fauna; moving away once species is identified; single event; non-consecutive spotlighting nights.</p> <p>Best practice techniques include the following:</p> <ul style="list-style-type: none"> • Walking or driving (<20km/hour) the transect at a slow and steady pace. • Use of a light with a narrow beam. • Use of a red filter and dimmer switch and reduce intensity when observations are to be made (< 30 seconds) once the animal has been spotted.
<p>MOUND MONITORING (MALLEEFOWL)</p>	<p>Where reasonable measures have been taken to avoid disturbance to fauna in a way that is likely to reduce survivorship of adults or their young then lawful authority is unlikely to be required. Reasonable measures include minimal time spent at the nest site (just enough time to gather required data and not more than 2 minutes if bird/s present); moving away from the mound if a bird has been observed; infrequent, single visits to measure, observe and photograph mounds.</p> <p>The following activities can be carried out without an authorisation*:</p> <ul style="list-style-type: none"> • Searching areas for mounds, (i.e.) “grid walking”, including multiple individuals searching in a line. • Mound measuring; observation; and photographing. • Deployment of un-lured remote sensor-cameras at mounds. <p>* As per the techniques described in the <i>National Malleefowl Monitoring Manual: Edition: 2019-1</i>, National Malleefowl Recovery Team.</p> <p><i>Note:</i> The use of all-terrain vehicles, motorbikes, horses or drones to search large areas for mounds requires a section 40 authorisation or other lawful authority. Note, the precautionary principle has been applied to these activities when interacting with malleefowl.</p>

<p>INSPECTIONS OF NATURAL OR ARTIFICIAL NEST HOLLOW (BIRDS ONLY)</p>	<p>Where reasonable measures have been taken to avoid disturbance to fauna in a way that is likely to reduce survivorship of adults or their young then it is unlikely that any lawful authority is required. Reasonable measures include minimal time spent at the nest site (just enough time to gather required data and not more than 2 minutes at hollow opening if bird/s present); only observing from the hollow opening (not allowing objects to enter the hollow) moving away from the tree once the bird has been flushed or hollow inspected; not reinspecting hollows repeatedly where birds were not identified during the initial survey as the disturbance may deter use.</p> <p>The following activities can be carried out without a licence or authorisation:</p> <ul style="list-style-type: none"> • Knock/tap/rake/rub tree trunk. • Telescopic pole and camera. • Ladders and climbing equipment. • Elevated work platforms (cherry picker). <p><i>Things to consider:</i></p> <ul style="list-style-type: none"> • Careful consideration must be given to nest hollow inspections undertaken during the nesting season. <p><i>Note:</i> The use of drones to inspect nest hollows requires a section 40 authorisation or other lawful authority. The precautionary principle has been applied to this activity when interacting with birds.</p>
<p>INSTALLATION OF NEST BOXES OR ARTIFICIAL HOLLOW (BIRDS AND MAMMALS)</p>	<p>Assessment is unlikely to be required provided careful consideration has been given to nest box and artificial hollow placement and location. See guidance on the design and installation of artificial nest hollows for black cockatoos.</p> <p><i>Things to consider:</i></p> <ul style="list-style-type: none"> • Installation of nest boxes and artificial hollows in inappropriate areas or habitat can impact survivorship and health of fauna. For example, a black cockatoo artificial hollow installed too low on a tree or too close to a busy road could increase the risk of mortality to cockatoos using the hollow. • Inspection of <u>nest boxes</u> (not hollows for birds as above) requires assessment given the potential disturbance of species inside and the uncertainty of which fauna species may be present. <p><i>Note:</i> Land holder permission should be sought to install artificial habitat as there may be other projects underway that proponents are not aware of.</p>
<p>SCARING OR REPELLING TECHNIQUES OF BIRDS This includes techniques deployed in agriculture (e.g., orchards) and management of</p>	<p>Routine land management activities that temporarily modify a species behaviour by moving them on but not to their detriment. Activities used to discourage or frighten birds away from crops include the use of:</p> <ul style="list-style-type: none"> • audible devices (e.g., electronic noisemakers, gas cannons, car horns, shoot to scare, recorded bird distress and predator calls), • visible devices (e.g., decoys), physical (e.g., nets placed over a crop). <p>See also:</p>

Activities that are not likely to meet the definition of take or disturb for fauna

<p>infrastructure (e.g. airports, waste transfer stations)</p>	<ul style="list-style-type: none"> • DBCA <i>Best Practice Guidelines for Bird Scaring in Orchards</i> (July 2023) and <i>Best Practice Guideline for Bird Scaring in Orchards – Noise Considerations</i> (July 2023) (dbca.wa.gov.au). This details best practice for compliance with the BC Act 2016 in particular for threatened species (e.g. black cockatoos). • Regulation 103 of the BC Regulations for birds that are 'managed fauna'. <p><i>Things to consider:</i></p> <ul style="list-style-type: none"> • Careful consideration must be given when undertaking activities during breeding or nesting seasons. • Possible impacts of the activity such as indirect risks, both onsite and offsite, that may cause the taking or disturbing of fauna. • Duration and frequency of audible means. Note, local governments have the delegated responsibility of administering noise regulation. <p><i>Note:</i> The use of animals (e.g., dogs) off leash, or motorbikes, to chase birds constitutes the definition of 'disturb', including birds listed as managed fauna. A section 40 authorisation or other lawful authority would likely be required.</p>
<p>LAND MANAGEMENT ACTIVITIES THAT ARE SMALL SCALE OR MINOR IN NATURE</p>	<p>Activities that temporarily modify habitat on a small scale as part of a land management activity that is not ongoing are unlikely to meet the threshold for take or disturb. Careful consideration should be given to the likelihood that threatened fauna may be present and are likely to be disturbed or taken in the process.</p> <p>For example:</p> <ul style="list-style-type: none"> • Land or waterway restoration. • Infill planting. • Replacing fence posts on an existing fenceline. <p><i>Things to consider:</i></p> <ul style="list-style-type: none"> • Threatened fauna occurrence records in the target area. • Biology, ecology and habitat requirements of threatened fauna (e.g. timing of activity in relation to presence or breeding season of threatened fauna such as ground nesting birds in areas of disturbed ground, or pruning in an area where a foliage dependent invertebrate occurs). • Ability for fauna to move short distances to avoid disturbance. • Habitat suitability for fauna in the absence of records. • Habitat parameters within the target area that may influence suitability for fauna (e.g. salinity, vegetation condition). • Possible impacts of the activity such as indirect, both onsite and offsite risks, that may cause the taking or disturbing of threatened fauna (e.g. dust, presence of acid sulfate soils that are activated by soil disturbance activities, inappropriate hygiene management that may facilitate spread of <i>Phytophthora dieback</i> disease). <p><i>Note:</i> Activities that are small scale or minor in nature may require assessment if they pose a threat to threatened species. Such as fences proposed near species that fly under low light conditions, such as ghost bats, ground parrots and night parrots;</p>

Activities that are not likely to meet the definition of take or disturb for fauna

	<p>or fences adjacent to a key resource such as a roost site or a waterhole in an arid area. Please contact DBCA to discuss your activity.</p>
<p>ROUTINE OR ONGOING LAND MANAGEMENT ACTIVITIES THAT ARE SMALL SCALE OR MINOR IN NATURE</p>	<p>Activities that temporarily modify habitat on a small scale as part of a routine land management activity, or ongoing management regime are unlikely to meet the threshold for take or disturb. Careful consideration should be given to the likelihood that threatened fauna may be present and are likely to be disturbed or taken in the process.</p> <p>For example:</p> <ul style="list-style-type: none"> • Pruning vegetation along an infrastructure corridor. • Maintaining existing access tracks. • Clearing culverts/drains to maintain water flows. • Weed control in bushland area or along infrastructure corridor. <p><i>Things to consider:</i></p> <ul style="list-style-type: none"> • See 'Land Management activities that are small scale or minor in nature' above. <p><i>Note:</i> If unsure, please contact DBCA to discuss your activity.</p>
<p>MANAGEMENT OPERATIONS WHERE MITIGATION ACTIVITIES ELIMINATE IMPACT / INTERACTION TO FAUNA</p>	<p>Activities where strategies have been applied that will effectively remove the risk that threatened fauna will be disturbed or taken are unlikely to require authorisation.</p> <p>Strategies may include, but are not limited to:</p> <ul style="list-style-type: none"> • The exclusion of fauna habitat from a management operation activity. • Restricted/small area. • Timing of activity eliminates interaction with fauna (e.g. non-breeding period). • Mitigation strategies eliminate interaction with fauna (e.g. barriers, silt curtains). <p>For example:</p> <ul style="list-style-type: none"> • Small scale dredging. • New access tracks / roads. • Development of cleared areas. <p><i>Things to consider:</i></p> <ul style="list-style-type: none"> • Careful consideration must be given to any potential indirect, both onsite and off-site risks, even where mitigation measures are in place. • Proposed timing of activity. • Size and extent of area. • Referral of these activities for approval under other legislation.

Activities that are not likely to meet the definition of take or disturb for fauna

	<p><i>Note:</i> If unsure, please discuss DBCA to discuss your activity.</p>
FIRE MANAGEMENT ACTIVITIES WHERE AN EXEMPTION APPLIES	<p>The <i>Biodiversity Conservation (Exemptions) Amendment Order 2021</i> (Amendment Order) means that authorisation is not required for bushfire mitigation activity or bushfire suppression that has been specified in the Exemptions Order (Fire information notes (dbca.wa.gov.au)).</p> <p><i>Things to consider:</i></p> <ul style="list-style-type: none">• Exemption is conditional upon meeting the specifications of the Exemption Order.• An authorisation for threatened fauna will be required if landowners and occupiers want to undertake planned burning at intervals less than six years over the same area.

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