DIVISION 665
SPECIFIED RESOURCE SITE PROTECTION RULES

PURPOSE
OAR 629-665-0000

(1) OAR 629-665-0000 to 0300 shall be known as the specified resource site protection rules.

(2) These rules provide a protection goal, describe the duties of the State Forester, landowner, timber owner and operator, and outline protection for:
- ***(a) Sensitive Bird Nesting, Roosting and Watering Resource Sites (OAR 629-665-0100);***
- ***(b) Threatened and Endangered Fish and Wildlife Species that use Resource Sites on Forestlands (OAR 629-665-0200);***
- ***(c) Biological Sites that are Ecologically and Scientifically Significant (OAR 629-665-0300); and***
- ***(d) Significant Wetlands on Forestlands (OAR Chapter 629, Division 645).***

APPLICATION:

These sections are not used for enforcement action.

ADMINISTRATION:

These sections introduce the rules that guide landowners in identifying and protecting resource sites. The "process rules" (OAR 629-665-0010 and OAR 629-665-0020) are used to apply the protection goal for a resource site, describe the responsibilities of various parties and determine the appropriate protection measures for "specified" resource sites.

Under Section (2)(a) the Board of Forestry has adopted protection rules for:
OAR 629-665-0110 Osprey Resource Sites, effective 1-1-91; and
OAR 629-665-0120 Great Blue Heron Resource Sites, effective 5-23-91.
OAR 629-665-0130 Bald Eagle Nesting Sites, effective 09-01-17

Under Section (2)(b) the Board of Forestry has adopted protection rules for:
OAR 629-665-0210 Northern Spotted Owl Nesting Sites, effective 6-6-91;

Under Section (2)(d) the Board of Forestry has adopted protection rules for:
OAR 629-645-0000 to 629-645-0050 Significant Wetlands, effective 10-30-91.

Review Division 645 guidance for administration of the Significant Wetland rules.

PROTECTION GOAL FOR A RESOURCE SITE.

OAR 629-665-0010

(1) The goal of resource site protection is to ensure that forest practices do not lead to resource site destruction, abandonment or reduced productivity.

APPLICATION:

This section is not used for enforcement action.

ADMINISTRATION:

This section defines the protection goal for resource sites. This goal is interpreted differently for each type of site:

1. For sensitive bird nesting, roosting, and watering sites and for sites used by threatened or endangered species, the goal of resource site protection is to maintain the integrity of the key components and to prevent disturbing nesting during the critical period of use. The key components are essential to continued site productivity.

2. For significant wetlands, the goal of resource site protection is to prevent conversion of the wetland to upland and to maintain wetland functions and values. This goal is met by protecting the soil, hydrology, and vegetation in the wetland and riparian management area (see OAR 629-645 significant wetlands).

Proposed operations near any resource site must be evaluated to determine protection measures necessary to achieve these goals. It is the intent of the Board of Forestry that conflicts be resolved in favor of the sites. Structural or temporal protection may include the outright exclusion of a proposed operation.

Where appropriate, the Board of Forestry also intends that forestry and wildlife management techniques used in conjunction with a resource site monitoring plan will be preferred over outright exclusion of the proposed activity. If on-site monitoring during forest activities indicates that the activities are causing adverse effects, then the activities must be altered or halted to ensure the protection goal of the resource site.

Exceptions to protection may be permitted only if specifically addressed in the rule for each resource site.

Example: structural or temporal exceptions may be permitted if an incidental take permit has been issued by the U.S. Fish and Wildlife Service as discussed in OAR 629-665-0130 (3) or OAR 629-665-0210 (5).

RELATED RULES AND STATUTES:

- OAR 629-600-0100 *"Conflict"*
- OAR 629-600-0100 *"Key components"*
- OAR 629-605-0180 (1)(c) Interim process for protecting sensitive resource sites requiring written plans
- OAR 629-665-0130 (3) Bald eagle nesting sites; key components; protection requirements; and exceptions
- OAR 629-665-0210 (5) Interim requirements for northern spotted owl nesting sites

PROTECTION GOAL FOR A RESOURCE SITE.
OAR 629-665-0010

(2) A resource site shall receive protection when the State Forester determines:
(a) It is an active resource site; and
(b) Proposed forest practices conflict with the resource site.

APPLICATION:

This section is not used for enforcement action.

ADMINISTRATION:

When a notification is received for an operation "near" (interpreted to be within ½ mile-see guidance for 629-605-0190) a resource site, it must be determined whether special protection measures are appropriate.

1. Is the site active?

   Special protection measures are appropriate for specified resource sites when the SF determines they are "active". An active resource site means a resource site that has been used in the recent past by a listed species. "Recent past" is identified for each affected species in administrative rule. Active sites should be protected even if the protected species are not directly observed in the pre-operation survey. The SF should consult with ODF's Wildlife Biologist or Oregon Department of Fish and Wildlife (ODFW) if there is uncertainty whether available information is sufficient to support requiring protection measures. The SF should coordinate with the appropriate agencies (e.g., ODFW, USFS, and BLM) or landowners that may survey the site to assure that the resource site inventory is accurate and current.

   Special protection measures are not warranted for an "abandoned resource site" (OAR 629-600-0100 (1)). The length of time a site must be unoccupied before it is considered abandoned is specified for each species.

   SF must consult the ODF's Wildlife Biologist before declaring a site "abandoned".

   In many cases, an on-site evaluation (OAR 629-665-0020) is needed to determine whether a mapped wetland is actually a wetland or if it meets to size requirements to be considered a significant wetland.

2. Does the proposed operation conflict with the resource site?

   Special protection measures are appropriate when conflicts with protection of the resource site may exist. "Conflict" is site abandonment or reduced productivity as a result of forest practices (OAR 629-600-0100 (13)). The SF must consult with ODF's Wildlife Biologist or ODFW to determine the interrelationships between habitat structure/function

and the protection goal for a resource site as defined in OAR 629-665-0010 (1). This information, combined with knowledge of forest operations, will determine whether the proposed operation "conflicts" with protection of the resource site. Activities that are likely to conflict with protection goals of resource sites are described in the guidance for each specified resource site.

Special protection measures are not required when no conflict exists; however, a written plan may still be required. Refer to guidance for OAR 629-665-0020 on the application of protection and exception rules, and guidance for OAR 629-605-0170 on written plans.

RELATED RULES AND STATUTES:

- OAR 629-600-0100 *"Abandoned resource site"*
- OAR 629-600-0100 *"Active resource site"*
- OAR 629-600-0100 *"Conflict"*
- OAR 629-605-0170 Written plans
- OAR 629-665-0020 Application of protection and exception rules
- OAR 629-665-0110 (1)(a) Osprey resource sites
- OAR 629-665-0120 (1)(a) Great blue heron resource sites
- OAR 629-665-0130 (1)(a) Bald eagle nesting sites
- OAR 629-665-0210 (2) Northern spotted owl nesting sites

REFERENCES:

- Forest Practices Notes # 8, *Spotted Owls*, ODF, 1994
- Forest Practices Notes # 10, *Ospreys*, ODF, 1992
- *Oregon's Forest Protection Laws An Illustrated Manual*, Oregon Forest Resources Institute, 2018

PROTECTION GOAL FOR A RESOURCE SITE.
OAR 629-665-0010

(3) The State Forester may grant an exception from either structural or temporal protection as determined by the Board for each species or resource site.

APPLICATION:

This section is not used for enforcement action.

ADMINISTRATION:

For some resource sites, the SF may grant an exception from protection. Exceptions are listed in the administrative rules for each type of site. There are two types of exceptions:

1. A structural exception is when protection of the site or its key components (i.e., physical components of the site, such as nest tree(s), perch tree(s), replacement tree(s), or forested buffers) will not be provided. A structural exception must occur outside the critical period of use, unless a temporal exception is also allowed.

2. A temporal exception is when protection from disturbance during the critical period of use will not be provided to a site. Full structural protection is still required; however, it is determined that site productivity failure for one year will be acceptable.

The SF **must** consult with ODF's Wildlife Biologist in evaluating exception criteria and document reasons for granting or denying the request. ODFW input is also highly recommended for structural and temporal execptions.

Examples: An exception may be granted for an incidental take permit under the federal Endangered Species Act or Bald and Golden Eagle Protection Act. In other situations, factors such as the size of the local breeding population, the availability of alternate sites, and economically feasible alternatives to protect the site must be evaluated in considering an exception.

RELATED RULES AND STATUTES:

- OAR 629-665-0110 (3) - (6) Osprey resource sites
- OAR 629-665-0120 (3) - (6) Great blue heron resource sites
- OAR 629-665-0130 (3) Bald eagle nesting sites
- OAR 629-665-0210 (5) Northern spotted owl nesting sites

REFERENCES:

- Forest Practices Notes # 8, *Spotted Owls*, ODF, 1994
- Forest Practices Notes # 10, *Ospreys*, ODF, 1992
- *Oregon's Forest Protection Laws An Illustrated Manual*, Oregon Forest Resources Institute, 2018

APPLICATION OF PROTECTION AND EXCEPTION RULES; STATE FORESTER DUTIES; LANDOWNER, TIMBER OWNER AND OPERATOR DUTIES
OAR 629-665-0020

(1) When a landowner, timber owner or operator proposes an operation near a resource site that requires special protection, the State Forester shall inspect the resource site with the landowner or landowner's representative, the operator and when available, the appropriate representative of the Department of Fish and Wildlife. The State Forester shall:
- ***(a) Identify the resource site.***
- ***(b) Apply the protection goal in OAR 629-665-0010.***
  - ***(A) If the proposed forest practices do not conflict with the resource site, the operation will not be subject to the protection requirements for the resource site. The operation shall be conducted in compliance with all other existing forest practice rules;***
  - ***(B) If the proposed forest practices conflict with the resource site, the structural and temporal protection requirements for the resource site shall be required to eliminate the conflict;***
  - ***(C) When the proposed forest practices conflict with a resource site, the landowner or operator may request a structural or temporal exception, through a plan for an alternate practice, if the applicable administrative rule provides for such an exception.***
  - ***(D) The State Forester shall document and maintain on file the reasons for granting or denying all exceptions.***

APPLICATION:

This section is not used for enforcement action.

ADMINISTRATION:

This section requires an on-site review to encourage the development of site specific protection plans.

When a notification is received for an operation, the SF must determine if it is "near" a known specified resource site. "Near" is within **one-half mile** of a known site. Review of an operation for potential conflict occurs if the planned operation occurs within one-half mile of a site in the ODF database, but the distance within which a conflict may occur varies dependent on the species and is often ≤ ¼ miles. Even if an operation is planned outside of the zone of conflict for a species (e.g., between ¼ and ½ mile), the status of the site should be evaluated to ensure that the site location has not moved (e.g., bird has not moved its nest site).

For operations where a conflict seems likely, an onsite inspection is recommended. The SF should document whether or not the ODF Wildlife Biologist or ODFW Wildlife Biologist conducts the joint inspection.

The ODF Wildlife Biologist provides and interprets policy and guidance on fish and wildlife issues. This specialist is a valuable resource on technical issues, and to help facilitate decisions on operational issues. The ODF Wildlife Biologist is not a substitute for ODFW consultation, but can provide valuable input if ODFW staff are not available.

The purpose of the on-site inspection is to develop a thorough understanding of the proposed operation; discuss how the resource site may be affected by the proposed operation; and where necessary, discuss protection requirements for the site. This meeting should be an interactive process. All parties should work together to accomplish the objectives of the proposed operation and the objectives for the protection goal of the resource site.

The SF determines whether the operation "conflicts" with the protection of the specified resource site. If the proposed operation poses no conflicts with protection of the resource site, the SF should document in a pre-operation inspection "how the operation will be conducted" even though special protection measures are not required. This documentation provides the basis for the "no conflict" determination, reinforces with the operator the "agreed upon" details of the proposed operation, and provides an enforcement mechanism if the operation is modified and a "conflict" to the site occurs.

If the proposed operation is determined to conflict with protection of the resource site, a written plan must be required. The operation must be conducted to resolve the conflict in favor of the resource site. Protection measures necessary to provide such protection may vary from minimal alteration of the operation, to restricting the timing of the operation, to excluding portions or all of the operation activities.

Note: statutory written plans are required for any operation within 300 feet of a specified resource site, whether or not a conflict exists.

For operations within 300 feet of a specified resource site where it is determined that "no conflict" exists, the statutory written plan must describe how the operation will be conducted to comply with Forest Practice rules.

Note: The above guidance is specific to the protected wildlife sites. See the guidance for written plans (OAR 629-605-0170) and Significant Wetlands (OAR 629-665-645) for additional guidance for application of the written plan rules to significant wetlands.

The SF should consult with the ODF Wildlife Biologist or ODFW to determine if monitoring is an alternative to excluding an activity entirely. If monitoring indicates operation activity conflicts with protection of the resource site, the operation must be stopped or otherwise modified to resolve the conflict. Monitoring is the responsibility of the landowner. Landowners should be encouraged to use environmental professionals to conduct monitoring.

The monitoring program must be described in the written plan. A clear description of how the monitoring will be conducted and the conditions under which the operation would cease must be included in the plan.

RELATED RULES AND STATUTES:

- OAR 629-600-0100 *"Conflict"*
- OAR 629-605-0170 Written plans
- OAR 629-605-0190 Written plans for operations near critical, threatened, or endangered wildlife habitat sites
- OAR 629-645-0000 through -0050 Water protection rules: RMA and protection measures for significant wetlands
- OAR 629-665-0010 (3) Protection goal for a resource site - exceptions
- OAR 629-665-0100 Species using sensitive bird nesting, roosting and watering sites
- OAR 629-665-0200 Resource sites used by threatened and endangered species

REFERENCES:

- Forest Practices Notes # 8, *Spotted Owls*, ODF, 1994
- Forest Practices Notes # 10, *Ospreys*, ODF, 1992
- *Oregon Forest Protection Laws, an Illustrated Manual,* Oregon Forest Resource Institute, Third Edition

APPLICATION OF PROTECTION AND EXCEPTION RULES; STATE FORESTER DUTIES; LANDOWNER, TIMBER OWNER AND OPERATOR DUTIES
OAR 629-665-0020

(2) If the proposed operation conflicts with the resource site, the operator shall submit a written plan to the State Forester before starting operations. The written plan shall comply with the requirements of OAR 629-605-0170, Written Plans.

APPLICATION:

This section is used for enforcement action.

A **statutory** written plan is required for operations within 300 feet of a specified resource site. The SF may not waive this requirement, regardless of whether the operation would conflict with the site. See OAR 629-605-0170(5) for more information.

The requirement for a **non-statutory** written plan under this rule may be waived after the SF determines that the formal plan process is not needed to help ensure resource protection. Consideration of the waiver begins when the operator requests the waiver. Unless the SF grants the waiver, a **non-statutory** written plan is required and must be submitted before the practice or operation begins.

When assessing the plan for completeness, the SF shall consider the adequacy of protection as well as the detail about how protection will be provided. Comments should be provided on written plans if they do not adequately address how the operator will achieve rule compliance. A restatement of the rules is not adequate to ensure compliance.

COMPLIANCE:

An operator complies with this section when a required written plan is submitted, prior to commencing an operation.

Unsatisfactory Condition: An unsatisfactory condition exists if:
1. An operation is conducted within 300 feet of a specified resource site without a statutory written plan being submitted.
2. An operation is conducted further than 300 feet from a specified resource site without a required non-statutory written plan being submitted.

Damage: Damage exists if the operator has been properly notified of the requirement for a written plan and fails to submit one before conducting an operation.

Written Statement of Unsatisfactory Condition: Issue a Written Statement when an operator has **not** been notified of the requirement for a written plan and the SF determines that a conflict exists. The written statement should identify the conflicts and direct the activity to cease within the area of conflict, until a written plan is submitted.

ADMINISTRATION:

When proposed forest practices conflict with protection of a resource site or whenever an operation will be conducted within 300 feet of a specified resource site, the SF must notify the landowner that a written plan is required.

Failure by the department to notify does not relieve landowner and operator responsibility to protect specified resource sites they are aware of or become aware of during the forest operation (OAR 629-665-0020 (4)).

A statutory written plan is **always** required if the operation is within 300 feet of a resource site, even if the operation does not conflict with the site. These statutory written plans are subject to the statutory general comment period and appeal specified in OAR 629-605-0170 (9), (11), (15).

The 300-foot distance has no bearing on the protection requirements for a site. The on-site inspection should identify needed protection for the key components or wetland management area, which may be less than or greater than 300 feet. For threatened or endangered species and sensitive bird sites, 300 feet should be measured from the actual nest tree, roost trees, foraging perch, or activity center of a northern spotted owl. For significant wetlands, 300 feet is measured from the wetland boundary.

If an operation is proposed greater than 300 feet from a specified resource site and the operation is determined to conflict with protection of the site or any associated key components, then a non-statutory written plan is required. These non-statutory written plans are **not** subject to the 14-day general public comment period but **are** subject to the 14-day department comment period, unless waived by the SF.

RELATED RULES AND STATUTES:

- ORS 527.670 (3)(c), (4) and (5) Commencement of operations; when notice and written plan required; notice of chemical application; appeal of plan
- OAR 629-605-0170 Written plans
- OAR 629-605-0173 Plans for an alternate practice
- OAR 629-605-0190 Written plans for operations near critical, threatened, or endangered wildlife habitat sites
- OAR 629-680-0020 Resource site defined for the purpose of a hearing

REFERENCES:

- Forest Practices Technical Note # 10, “Waiver of Statutory Written Plan, July, 2017”
- Forest Practices Notes # 8, *Spotted Owls*, ODF, 1994
- Forest Practices Notes # 9, *Written Plans Guidance*, ODF, 1994
- Forest Practices Notes # 10, *Ospreys*, ODF, 1992
- *Oregon Forest Protection Laws, an Illustrated Manual*, Oregon Forest Resource Institute, Third Edition

APPLICATION OF PROTECTION AND EXCEPTION RULES; STATE FORESTER DUTIES; LANDOWNER, TIMBEROWNER AND OPERATOR DUTIES.
OAR 629-665-0020

(3) When the written plan in subsection (2) of this rule does not follow the written recommendations of the Department of Fish and Wildlife or other responsible coordinating state agency, the State Forester shall maintain on file a written explanation of the reasons for:
(a) Differences in the identification of the resource site; and
(b) Different protection levels required for the resource site.

APPLICATION:

This section is not used for enforcement action.

ADMINISTRATION:

There should be few situations where written plans do not address ODFW written concerns. The SF and the ODFW Wildlife Biologist should work with the landowner to resolve all issues. Comments should be provided on the written plan to document these concerns.

If disagreements arise, the SF should request assistance from the ODF Wildlife Biologist and Forest Practices Field Coordinator to facilitate resolution of issues and concerns.

When a written plan does not follow written recommendations from ODFW or other responsible coordinating state agency, the SF must document the differences regarding identification or protection of the specified resource site. Copies shall be sent to the Forest Practices Field Coordinator. The SF should also send a copy to ODFW.

RELATED RULES AND STATUTES:

- OAR 629-605-0120 Consultation
- OAR 629-605-0170 (5), (9), (15) Written plans
- OAR 629-665-0010 Protection goal for a resource site
- ORS 527.670(12) Written plan comments

APPLICATION OF PROTECTION AND EXCEPTION RULES; STATE FORESTER DUTIES; LANDOWNER, TIMBEROWNER AND OPERATOR DUTIES.
OAR 629-665-0020

(4) When a resource site is discovered by the operator, timber owner or landowner during a forest operation, the party making the discovery shall:
(a) Immediately protect all remaining trees within 300 feet of the resource site and submit to the State Forester a written plan for the resource site; and
(b) Immediately notify the State Forester.

APPLICATION:

This section is used for enforcement action.

COMPLIANCE:

Operators comply with this section when they immediately protect all remaining trees within 300 feet (slope distance) of a newly discovered specified resource site, and notify the SF of the site discovery within 24 hours.

Unsatisfactory condition: An unsatisfactory condition exists when an operator fails to immediately protect all remaining trees within 300 feet (slope distance) of a newly discovered specified resource site, fails to notify the SF within 24 hours or continues to operate within 300 feet of the resource site without submitting a written plan to the State Forester.

Damage: Damage exists if the operator has continued operations after discovery of a resource site and by continued action removed or harmed the site or key components associated with the site.

Written Statement of Unsatisfactory Condition: Issue a Written Statement when the operator fails to notify the department, but no damage has occurred. The written statement should identify the conflicts and direct the activity to cease within the area of conflict, until a written plan is submitted.

ADMINISTRATION:

Landowners and operators are responsible to protect any resource site discovered during an operation. When operators become aware of a site (even if they were not informed) they must follow the instructions in this section.

Violation of either or both subsection (a) and (b) should be treated as one violation. Additional violations may also exist under the specific protection rule for the specified resource site if the site or any of its associated key components are not protected to the maximum extent possible upon discovery.

Landowners and operators should be able to identify the following specified resource sites: osprey nesting sites, great blue heron nesting sites, and bald eagle nesting sites. Similarly, a landowner or operator should recognize other situations that require collaboration with the SF, including wetlands and sightings of bald eagles. Landowners or operators likely will not be able to identify northern spotted owl nesting sites because of this species more secretive behavior.

REFERENCES:

- Forest Practices Notes # 8, *Spotted Owls*, ODF, 1994
- Forest Practices Notes # 9, *Written Plans Guidance*, ODF, 1994
- Forest Practices Notes # 10, *Ospreys*, ODF, 1992
- *Oregon Forest Protection Laws, an Illustrated Manual*, Oregon Forest Resource Institute, Third Edition

SPECIES USING SENSITIVE BIRD NESTING ROOSTING AND WATERING SITES
OAR 629-665-0100

The following species use sensitive bird nesting, roosting and watering resource sites:

(1) Osprey use sensitive bird nesting sites.

(2) Great blue herons use sensitive bird nesting sites.

(3) Bald eagle use sensitive bird nesting sites

APPLICATION:

These sections are not used for enforcement action.

ADMINISTRATION:

This rule lists those species that have been recognized by the Board of Forestry as using sensitive nesting, roosting, or watering sites. The board uses the process identified in OAR 629-680-0200 to identify such species.

Nesting, roosting, or watering sites used by species identified on this list receive the protection afforded under OAR 629-665-0020, OAR 629-665-0110 (osprey), OAR 629-665-0120 (great blue heron), and OAR 629-665-0130 (bald eagle).

RELATED RULES AND STATUTES:

- OAR 629-665-0020 Application of protection and exception rules
- OAR 629-665-0110 Osprey resource sites
- OAR 629-665-0120 Great blue heron resource sites
- OAR 629-665-0130 Bald eagle resource sites
- OAR 629-680-0200 Process for board listing and de-listing species that use sensitive bird nesting, roosting and watering forest resource sites

REFERENCES:

- Forest Practices Notes # 9, *Written Plans Guidance,* ODF, 1994
- Forest Practices Notes # 10, *Ospreys,* ODF, 1992
- *Oregon Forest Protection Laws, an Illustrated Manual,* Oregon Forest Resource Institute, Third Edition

OSPREY RESOURCE SITES; KEY COMPONENTS; PROTECTION REQUIREMENTS; EXCEPTIONS
OAR 629-665-0110

(1) For osprey, the resource site is the active nest tree and any identified key components.

(a) An active nest tree is one that has been used by osprey within the past five (5) nesting seasons. No protection is required for abandoned resource sites.

(b) The key components associated with an osprey resource site are perching and fledgling trees and replacement trees. Factors to consider when identifying key components:

(A) Actual observation data if available;

(B) Perching trees should provide for maximum visibility of the surrounding terrain and structure that allows the osprey easy access, such as large, tall snags or trees that have broken or dead tops, forks, or lateral branches high in the crown;

(C) Replacement trees should provide maximum visibility of the surrounding terrain, and be large enough to support an osprey nest;

(D) Perching and fledging trees and replacement trees should be located within 600 feet of the active nest tree;

(E) Areas of high winds may require that additional trees be retained to protect the resource site from damage.

APPLICATION:

This section is not used for enforcement action.

ADMINISTRATION:

All attributes of the resource site, which includes the active nest tree and any identified key components, contribute to maintaining the productivity of the nesting territory, thereby requiring the application of the protection requirements defined in OAR 629-665-0110 (2).

An active nest tree is one with known or inferred presence of a mated pair of ospreys as indicated by observance of at least one of the following activity patterns:

1. Two adult ospreys present on or near a nest, which has recently been repaired with fresh sticks (clean breaks) or fresh boughs on top, and/or having droppings and/or molted feathers on its rim or the ground underneath.

2. One adult osprey sitting low in the nest, presumably incubating eggs.

3. Either adult carrying prey to nest.

4. Young in nest or fledglings present.

One adult osprey near an empty, unrepaired nest, or two adults seen together during the breeding season with no known nest, is not sufficient evidence of an active site.

Determining if a site has been used in the past five years may have to be made at times of the year when the birds are not using the site, or when there have been no specific observations in the past several years. In these cases, the SF must rely on the professional judgment of the ODF Wildlife Biologist or ODFW following an on-site inspection examining the general condition of the site and looking for evidence such as skeletal remains of prey, castings, whitewash, and feathers below the nest or evidence of whitewash or fresh sticks and material in the nest (e.g., branches with small twigs or needles still attached).

To determine "abandoned" status of a historic nest site, unoccupied status must be substantiated in each of the past five breeding seasons. At least two, two-hour observation periods, should occur between April 1 and August 15, with the second visit occurring no earlier than June 1, when osprey are most likely to be present for surveys. If no activity is observed the nest site may be considered unoccupied for the year.

Key components associated with a nest site are perching trees, fledging trees, and replacement nest trees. The intent is to provide the retention of suitable trees necessary to avoid site abandonment or reduced site productivity. In most situations, eight to twelve adjacent trees of a similar size and conformation should be adequate to fulfill the minimum requirements necessary to provide for the functions of nesting, perching, fledging and replacement nest trees.

The most accurate and reliable method to determine key components is to observe osprey use. When actual observation is not possible, the decision must be based upon the best professional judgment of the ODF Wildlife Biologist or ODFW and the SF. First priority should be given to choosing perching, fledging, and replacement nest trees that have suitable structure and function. When ospreys select trees for nesting, perching, and fledging, tree structure appears to be more important than tree species. Trees usually differ from the surrounding stand by being taller and larger in diameter and having an open structure, such as broken or dead tops, forks, or irregular growth patterns, which provide strong, lateral branches high in the crown. Most successful nest structures provide maximum visibility of the surrounding terrain and adequate support for the nest and birds. Ospreys usually nest in large snags or broken-top trees, which provide "platforms" above the forest canopy. Preferred nest trees have a minimum of 12 inches diameter at the top, and range from 25-60 inches DBH and 100-150 feet tall. The top must be large enough to provide adequate support for the nest, which is, typically 4-6.5 feet in diameter and 1-2 feet deep. When selecting replacement nest trees, large dead-topped trees, entirely dead trees that are still sound, or large live trees with defective tops should be preferred over healthy, live, intact trees. Dead or damaged trees are more likely to function as replacement nest trees.

One or more perches are usually near the nest tree. After foraging, adult osprey generally eat a portion of a fish near the nest, and then deliver the remainder to their mates at the nest. These trees are also used as perches by fledglings when learning to fly. In many situations, trees or snags may serve more than one purpose. A nest tree with a sturdy branch protruding away from the nest itself might also function as a perch tree. A tree next to the nest tree might function as a fledging tree, a perch tree, or a replacement nest tree.

Key components should be concentrated as close to the nest tree as possible. Key components centered on the occupied nest tree are best for maintaining site fidelity. Perching, fledging, and replacement nest trees should be located within 600 feet of the occupied nest tree. Situations will occur where the best choices for key components will be located at greater distances from the occupied nest tree. The SF must consider the likelihood that the osprey will use perching, fledging, and replacement nest trees located farther away or key components of lesser structure and function located closer to the occupied nest. Selection of key components more than one-quarter mile from the occupied nest site should be avoided.

RELATED RULES AND STATUTES:

- OAR 629-600-0100 *"Abandoned resource site*"
- OAR 629-600-0100 *"Active resource site*"
- OAR 629-600-0100 *"Fledging tree"*
- OAR 629-600-0100 *"Key components"*
- OAR 629-600-0100 *"Perch tree"*
- OAR 629-600-0100 *"Replacement tree"*
- OAR 629-600-0100 *"Resource site"*

REFERENCES:

- Technical review: osprey. ODF: June 20, 1990
- Forest Practices Notes # 10, *Ospreys*, ODF, 1992
- *Oregon Forest Protection Laws, an Illustrated Manual*, Oregon Forest Resource Institute, Third Edition

OSPREY RESOURCE SITES; KEY COMPONENTS; PROTECTION REQUIREMENTS; AND EXCEPTIONS
OAR 629-665-0110

(2) When the State Forester identifies the resource site as per OAR 629-665-0020, the operator shall provide the following protection measures:
(a) Retain the active nest tree; and
(b) Retain no fewer than eight additional trees as key components (i.e.: perching, fledging and replacement trees).
(c) During forest operations, the resource site shall be protected from damage. The operation shall be designed to protect these trees from windthrow.
(d) During the critical period of use, the active nest tree and any perch tree identified as a key component shall be protected from disturbance. From March 1 through September 15, forest operations shall not be permitted within 600 feet of the active nest tree or perch tree unless the State Forester determines that the operations will not cause the birds to flush from these trees. The critical period of use may be modified in writing by the State Forester as the resource site is evaluated as per OAR 629-665-0020.

APPLICATION:

This section is used for enforcement action.

COMPLIANCE:

An operator complies with this section when the active nest tree and associated perching, fledging, and replacement nest trees are retained and protected from damage. An operator complies with this section when birds are not caused to flush from the nest tree or perch tree(s) during the critical period of use between March 1 and September 15, unless the operation has been granted a temporal exception by the SF.

Unsatisfactory condition: An unsatisfactory condition exists when an operator damages or removes an active nest tree, or key components of an active nest site, or conducts an operation within 600 feet of an active nest or perch tree during the critical period of use.

Damage: Damage exists if an active nest site is destroyed or alternate key components of equal value are not available. Damage exists if an active nesting pair is disturbed and results in failure to successfully fledge young that season.

Written Statement of Unsatisfactory Condition: Issue a Written Statement when the operator can designate key components of equal value to any that have been damaged or destroyed. Issue a Written Statement when there is no active nesting occurring or disturbance can be stopped, and successful nesting is not precluded for the current season.

ADMINISTRATION:

The goal of osprey resource site protection is to avoid resource site abandonment or reduction in productivity by maintaining the integrity of the resource site and avoiding disturbance during the critical period of use. Rather than adopting rigid buffer requirements, the Board of Forestry chose to adopt key components in rule form and allow field personnel the flexibility to implement protection measures on a site-specific basis. A written plan for an osprey resource site must address how the key components are identified on the ground and must state how these components will be protected during the operation. In most cases, after the key components are identified on the ground, it is not difficult to develop a harvesting plan to protect these trees.

The active nest tree, and perching, fledging, and replacement nest trees shall be protected from windthrow. The SF, the ODF Wildlife Biologist, and the ODFW Wildlife Biologist (if involved), must agree with vegetation retention plans to provide appropriate protection from windthrow. Local knowledge of windthrow potential and any site-specific signs of past windthrow must be considered. Resource sites located in areas of high windthrow susceptibility may require the retention of an area containing substantial numbers of adjacent trees.

Ospreys prefer to nest and perch in large, prominent snags and broken-top trees, neither of which are commonly available. An operator who desires to enhance habitat for osprey, should be encouraged to designate snag management areas and retain additional trees adjacent to the occupied nest tree and identified perching, fledging, and replacement nest trees. These additional trees, if retained, may be counted toward the snag and green tree retention requirements for harvest type 2 and harvest type 3 units.

The 600-foot distance specified in the rule is intended to be an outer limit, within which operations must be evaluated. The intent is to prevent all operations, which would cause the birds to flush from the resource site. The potential for disturbance should be addressed on a case-by-case basis, including consideration of the level of disturbance to which a site is currently exposed.

Activities which have a high probability of causing disturbance include timber felling and bucking, cable yarding, tractor and wheeled skidding systems, low-level aircraft operations, operation of heavy equipment, road construction, blasting, and burning. Hauling is not usually considered a disturbance unless it is occurring on a newly established road or one that usually receives little to no traffic. Hauling on highways, paved county roads, main logging roads, or other roads that receive regular traffic is generally not considered a disturbance. Osprey typically acclimate to background activities such as road traffic, thus added traffic from log trucks is not likely to cause birds to flush from the nest. In contrast, log truck traffic on a newly established or little-used road may constitute a “novel” disturbance to which the birds are not acclimated and may cause birds to flush from the nest.

Reforestation, ground application of chemicals, and normal road maintenance (i.e., road grading) activities have a lower probability of causing disturbance. These activities should be conducted during midday (1000-1400 hours), coinciding with periods when the birds are typically least active in tending the nest; and should not be conducted for more than three consecutive days.

The operator, SF and ODF Wildlife Biologist must evaluate whether a particular operation poses a conflict. The operator must describe what the proposed operation entails. The biologist must integrate this information with knowledge of the specific pair of birds involved to assess the likelihood of the operation to cause the birds to flush.

Ospreys are adaptable and nest successfully under many circumstances, although quantitative studies have shown that ospreys nesting near human activity have lower productivity than those nesting in more isolated areas. These studies have also reported that ospreys nesting near humans eventually tolerated their activities whereas those nesting farther from human activity were less tolerant.

The dates specified in this rule outline the general nesting season for ospreys. The critical period of use can be modified in writing based upon site-specific conditions.

Example: Evidence that the birds have not yet returned from migration or that they are not using the site in the current year. Any changes in the critical period of use must be coordinated with the ODF Wildlife Biologist or ODFW.

Ospreys are most susceptible to disturbance early in the nesting season during courtship. The SF should not modify the starting date unless there is good historical evidence that the birds in question traditionally do not arrive at the site until later (e.g., see USGS publication for Willamatte Valley region). The critical period of use should be considered to have ended once any of the following occurrences is documented:

1. The nest site is not occupied for that year. (Refer to administration and implementation guidance for OAR 629-665-0110 (1) to determine occupied status.)

2. A documented nesting failure occurs.

3. Successful fledging of young has occurred. Young osprey will continue to use the nest site even after their first flight and may be dependant on the site for a few weeks. A site should not be considered fledged until juveniles are no longer present at the site or are clearly independent. Absence of young should be verified by at least two visits of at least two hours during which no birds are observed. Young osprey can be presumed to be independent if they are observed to fly from the nest site for an extended period of time (e.g., bird seen flying towards a foraging area and not returning for 1 hour or more) during the observation period. Young birds observed to fly clumsily should NOT be considered independent.

Juvenile ospreys have a similar appearance to adult osprey once they develop feathers. To determine if a bird in a nest is an adult or juvenile, look carefully at the dark back and wing feathers. Adult feathers will be solid dark brown whereas juvenile feathers will have a light-colored edging present.

If osprey are still occupying a nest site after September 15 and the young have not yet fledged, the critical period of use should be extended until the young fledge.

Application of FPA Rules for nest sites in artificial nest structures.
Ospreys readily nest on a variety of artificial structures such as power poles, piers, and man-made platforms. Operations proposed near an osprey nest site on an artificial structure are subject to the seasonal restriction period. Structural requirements of OAR 629-665-0110 are required only if the artificial nest structure was created as a replacement nest structure during a previous operation under OAR 629-665-0110 (3). Because artificial nest sites are not located in trees, the structural requirements of OAR 629-665-0110 are not usually required (also see guidance section for OAR 629-665-0110 (3).

RELATED RULES AND STATUTES:

- OAR 629-665-0110 (1) Osprey Resource Sites; Key Components; Protection Requirements; and Exceptions

REFERENCES:

- Technical review: osprey. ODF: June 20, 1990
- Forest Practices Notes # 10, *Ospreys*, ODF, 1992
- Ospreys in Oregon and the Pacific Northwest. US Geological Society, USGS Fact Sheet 153-02, Revised September 2005
- *Oregon Forest Protection Laws, an Illustrated Manual*, Oregon Forest Resource Institute, Third Edition

OSPREY RESOURCE SITES; KEY COMPONENTS; PROTECTION REQUIREMENTS; AND EXCEPTIONS
OAR 629-665-0110

(3) The State Forester shall not permit structural exceptions for the resource site: Removal of a resource site may be permitted if replacement nest trees, artificial structures, or replacement key components are provided by the operator or landowner. Replacement is not considered an exception, since the productivity of the nesting territory is maintained. When addressed in a plan for an alternate practice, replacement may be considered by the State Forester when:
(a) Alternate forest practices which retain and protect the resource site are not economically feasible; and
(b) The productivity of the nesting territory is not reduced.

APPLICATION:

This section is not used for enforcement action.

ADMINISTRATION:

There are no structural exceptions allowed for protection of the resource site because ospreys are territorial nesters, and each territory is important to the population. If a resource site is eliminated, it is not easily replaced because availability of suitable nest structures is usually limited. Removal of a resource site may be permitted if replacement key components are provided. Replacement is not considered an exception since the productivity of the nesting territory is maintained. Active nest tree or key component removal/replacements must occur outside the critical period of use unless a temporal exception is also allowed. An approved plan for an alternate practice is required for such a replacement. It is recommended that a copy of any plan for alternate practice involving replacement of a nest tree be maintained indefinitely or until the nest site is determined to be abandoned. It is important to maintain a record for any structural replacement projects as application of OAR 629-665-0110 (2) is interpreted differently for artificial structures that are installed as replacement structures under this rule versus artificial structures that are voluntarily installed (not due to mitigation under the FPA).

Areas lacking suitable nest sites, or where present nesting snags are falling, might benefit from cultivating snag management areas. Large standing snags or living trees, suitably located but having tops unable to support osprey nests, may be improved by cutting off tops above a whorl of limbs able to support a nest, or by placing an artificial platform structure on the top.

Approval of requests for removal/replacement of an osprey resource site should be considered a last resort, and only in rare circumstances should it be determined that alternate forest practices are not feasible to accomplish multiple objectives. A wide variety of timber harvesting systems, equipment and rigging options exist to meet environmental and economic goals. In evaluating economic feasibility, the determination should be based upon whether the alternate practice could be implemented by operators who are regularly engaged in the growing and harvesting of trees, without resulting in the costs of the alternative exceeding the value of the timber. This

determination should not be based on the financial condition of individual operators, but rather on the basis of whether the alternative is feasible for a reasonable and prudent operator.

ODFW and the ODF Wildlife Biologists must be consulted in making the determination that the proposed removal/replacement does not reduce the productivity of the nesting territory. The SF in consultation with the operator, ODFW Wildlife Biologist, and the ODF Wildlife Biologist, must evaluate requests for removal/replacement of a resource site with an understanding of osprey ecology, alternate forest practices, and economic feasibility.

RELATED RULES AND STATUTES:

- OAR 629-600-0100 *"Structural exception"*
- OAR 629-600-0100 *"Structural protection"*
- OAR 629-605-0173 Plans for an Alternate Practice
- OAR 629-665-0010 (3) Protection goal for a resource site

REFERENCES:

- Forest Practices Notes # 10, *Ospreys*, ODF, 1992
- *Oregon Forest Protection Laws, an Illustrated Manual,* Oregon Forest Resource Institute, Third Edition
- Technical review: osprey. ODF: June 20, 1990

OSPREY RESOURCE SITES; KEY COMPONENTS; PROTECTION REQUIREMENTS; AND EXCEPTIONS
OAR 629-665-0110

(4) Temporal exceptions for the resource site may be approved by the State Forester when addressed in a plan for an alternate practice that demonstrates:
- ***(a) Nest disruption or failure for a season does not affect the local population; and***
- ***(b) There are no economically feasible forest practices that avoid disturbance to the resource site during the critical period of use.***

(5) Factors considered by the State Forester before approving a plan for an alternate practice under section (4) of this rule shall include, but are not limited to:
- ***(a) The size of the local population;***
- ***(b) The contribution of the resource site in question to the local population; and***
- ***(c) The feasibility of alternate forest practices that do not cause disturbance.***

APPLICATION:

These sections are not used for enforcement action.

ADMINISTRATION:

A temporal exception permits disturbance during the critical period of use. Complete structural protection (i.e., physical components of the site, such as nest tree(s), perch tree and fledging tree) is still required. Site productivity failure for one year must be acceptable and there must be no economically feasible alternatives.

Strategic area planning and unit layout, in addition to the use of alternative haul routes, should be used to resolve most conflicts with the protection requirements during the critical period of use.

In evaluating economic feasibility, the determination should be based upon whether the plan for an alternate practice could be implemented by operators who are regularly engaged in the growing and harvesting of trees, without resulting in the costs of the alternative exceeding the value of the timber. This determination should not be based on the financial condition of individual operators, but rather on the basis of whether the alternative is feasible for a reasonable and prudent operator.

ODFW and the ODF Wildlife Biologists must be consulted in determining that nest disruption or failure for a season, as a result of the proposed temporal exception, does not affect the local population. The number of pairs, breeding pairs, successful pairs, and number of young to reach acceptable fledging age, are important in evaluating the size of the local population and the contribution of the resource site in question.

RELATED RULES AND STATUTES:

- OAR 629-600-0100 *"Temporal exception"*
- OAR 629-600-0100 *"Temporal protection"*
- OAR 629-605-0173 Plans for an alternate practice
- OAR 629-665-0010 (3) Protection goal for a resource site

REFERENCES:

- Forest Practices Notes # 10, Ospreys, ODF, 1992
- *Oregon Forest Protection Laws, an Illustrated Manual,* Oregon Forest Resource Institute, Third Edition
- Technical review: osprey. ODF: June 20, 1990

OSPREY RESOURCE SITES; KEY COMPONENTS; PROTECTION REQUIREMENTS; AND EXCEPTIONS
OAR 629-665-0110

(6) The State Forester shall document all requests and decisions concerning structural or temporal exceptions. All approved structural replacements shall be documented.

APPLICATION:

This section is not used for enforcement action.

ADMINISTRATION:

All correspondence and documentation concerning structural replacements and temporal exceptions must be maintained on file by the SF including a brief summary of chronological events. The operator must provide a complete description of the proposed operation, including an identification of the resource site, and economic feasibility analysis. Biological information useful in making a determination should be provided by ODFW. Salem staff must be notified as soon as requests for structural or temporal exceptions are received.

GREAT BLUE HERON RESOURCE SITES; KEY COMPONENTS; PROTECTION REQUIREMENTS; AND EXCEPTIONS
OAR 629-665-0120

(1) For the great blue heron, the resource site is the active nest tree(s) and any identified key components.

(a) An active nest tree is one that has been used by one or more pairs of great blue herons within the past three nesting seasons. No protection is required for an abandoned resource site.

(b) The key components associated with a great blue heron resource site are the nest tree(s), a vegetative buffer around the nest tree(s) including perching and fledging trees, and replacement tree(s). Factors to consider when identifying key components:

(A) Actual observation data when available:

(B) Perching, fledging, and replacement tree(s) should be tall with plenty of space for these large birds to fly into and out. Older trees with open branching should be retained;

(C) Areas of high winds may require that additional trees be retained to protect the active nest tree and identified key components from damage.

RULE COMPLIANCE:

This rule is not used for enforcement action.

ADMINISTRATION:

All attributes of the resource site, which includes the active nest tree(s) and any identified key components, contribute to maintaining the productivity of the heron rookery (heronry), thereby requiring the application of the protection requirements defined in OAR 629-655-0120(2). An active nest tree may be identified by observing the following situations;

1. Two adult great blue herons present on or near a nest, which has recently been repaired with fresh sticks (clean breaks) or fresh boughs on top, and/or droppings and/or molted feathers on its rim or underneath.

2. One adult great blue heron sitting low in the nest, presumably incubating on the nest.

3. Young present in or near the nest.

One adult great blue heron near an empty, unrepaired nest or two adult great blue herons seen together during the breeding season with no known nest should not be recognized as sufficient evidence for an occupied nest.

Determining if a site has been used in the past three years is easy when herons have been observed using the site. However, this determination may have to be made at times of the year when the birds are not using the site, or when no specific observations of the site have taken

place in the past several years. In these cases, the SF should rely on the professional judgment of the ODF Wildlife Biologist or ODFW following an on-site inspection to look for evidence of recently built nest(s). Recently built nests look like delicate platforms of interlaced dry branches, and older nests are bulky structures of different sizes. Older nests can be up to 3 feet in diameter and have a central depression 4-12 inches deep with a radius of 6 inches. The central depression is usually lined with twigs, moss, lichens, or conifer needles. Younger nests may look like a smaller, somewhat unorganized pile of sticks.

No protection is required for an abandoned resource site. In determining "abandoned" status of an historic nest site, it is important to keep in mind that unoccupied status must be substantiated in each of three consecutive breeding seasons. To determine unoccupied status, at least two visits of a known or historic heronry should occur between February 15 and July 31 (preference is that surveys occur from mid-March to mid-June to avoid missing early or late nesting birds). If no activity patterns diagnostic of an occupied nest are observed during at least two individual two-hour observation periods, with the second visit occurring no earlier than May 15, the nest site may be considered unoccupied for the current year.

Great blue herons are colonial nesters, usually occupying established rookeries (or heronries) near water from year to year. However, sometimes herons will nest solitarily and not in association with other herons. The key components that are essential to the use and productivity of a great blue heron resource site include: 1) the nest tree(s); 2) a vegetative buffer of no less than 300 feet around the outermost nest tree(s) including perching and fledging trees; and 3) replacement tree(s). In the majority of cases, all key components of a great blue heron rookery will be located within a contiguous block of timber, rather than scattered over the landscape. The rule defines a 300 foot buffer area around perching, fledging, and replacement nest trees that need to be retained. The protection goal is to provide for the retention of trees necessary to avoid site abandonment or reduced site productivity. The intent of the rule is to leave a forested buffer around the rookery. This buffer provides several values: insulation from disturbing influences; protection from the elements (wind); perching and fledging trees adjacent to the nest trees; and replacement trees.

The most accurate and reliable method to determine key components for a great blue heron resource site is to observe heron use. However, when actual observation is not possible, the decision should be based upon the best professional judgment of the ODF Wildlife Biologist or ODFW and the SF. In most situations, a 300-foot buffer around the outside nest trees can be expected to provide the desired resource values. However this 300-foot distance should be used as a guideline, rather than a firm standard. Other factors such as topographic features, timber type changes, likelihood for windthrow, proximity of disturbing influences, etc., should also be considered when designing the buffer around a rookery.

Priority should be given to choosing a vegetative buffer around the nest tree(s) which includes perching, fledging, and replacement nest trees that have suitable structure and function. Great blue heron nests may be built in any species of tree, but are usually found in cottonwood, Douglas-fir, red alder, western hemlock, Sitka spruce, or ponderosa pine. Most successful heronries are built in trees that have two characteristics in common: 1) the structure provides adequate support for the nest and birds; and 2) there is adequate space for the birds to fly into and out of the nest tree(s). Trees used as nest sites usually are at least 20 feet tall and have many

branches of at least one inch diameter that are capable of supporting nests. Trees may be alive or dead, but must have an "open canopy" that allows easy access to the nest. In younger, closed-canopy conifer forests, nests are sometimes located towards the top of the tree.

The open branching pattern of larger, older trees usually provides easy access for herons. A useful guideline in selecting key components is to mimic the characteristics of the occupied nest tree(s).

The vegetative buffer around a rookery is not necessarily a "no-touch" area. However, when conducting forest management activities within this buffer, operators should consider heron protection as the highest priority. The vegetative buffer needs to provide a visual screen from disturbing influences around the rookery, and must also be designed to protect the nest tree(s), perching, fledging, and replacement tree(s) from windthrow.

Examples: Forest management activities that may occur within the vegetative buffer include tree topping and/or other methods of "feathering" the outer edges of the buffer to reduce windthrow potential, or removal of individual trees (especially along the edge of the buffer), providedthe integrity of the buffer is maintained and all the key components are adequately protected. Input from the ODF Wildlife Biologist or ODFW is important when marking trees to be removed from within the buffer.

RELATED RULES AND STATUTES:

- OAR 629-600-0100 "Active resource site"
- OAR 629-600-0100 "Fledging tree"
- OAR 629-600-0100 "Key components"
- OAR 629-600-0100 "Perch tree"
- OAR 629-600-0100 "Replacement tree"
- OAR 629-600-0100 "Resource site"
- OAR 629-665-0120(2) Great Blue Heron resource sites; key components; protection requirements; and exceptions

REFERENCES:

- Technical review: great blue heron. ODF: January 9, 1991
- *Oregon Forest Protection Laws, an Illustrated Manual*, Oregon Forest Resource Institute, Third Edition

GREAT BLUE HERON RESOURCE SITES; KEY COMPONENTS; PROTECTION REQUIREMENTS; AND EXCEPTIONS
OAR 629-665-0120

(2) The operator shall provide the following protection measures when operating within or near a great blue heron resource site:

(a) Retain the active nest tree;

(b) Retain a vegetative buffer not less than 300 feet around the outermost nest as key components that includes perching and fledging trees, and replacement trees.

(c) The vegetative buffer around a rookery may be actively managed if the key components in subsection (1) are protected. When conducting forest management activities within this buffer, operators shall consider heron protection as the highest priority. The vegetative buffer needs to provide a visual screen from disturbing influences around the rookery, and must be designed to protect the nest tree(s), perching, fledging, and replacement tree(s) from windthrow. Examples of forest management activities that may occur within the vegetative buffer include tree topping, and/or other methods of "feathering" the outer edges of the buffer to reduce windthrow potential, or remove individual trees (especially along the edge of the buffer) if the integrity of the buffer is maintained and all the key components are adequately protected. Operators should consult with the State Forester and the Oregon Department of Fish and Wildlife when marking trees to be removed from this buffer.

(d) During and after forest operations, the resource site shall be protected from damage. The operation shall be designed to protect the key components from windthrow.

(e) During the critical period of use, operations shall be designed and conducted so as not to disturb great blue herons using the key components. From February 15 through July 31, forest operations shall not be permitted within 1/4 mile of the active nest tree(s) unless the State Forester determines that the operations will not cause the birds to flush from these trees. The critical period of use may be modified by the State Forester after the resource site is evaluated following OAR 629-665-0020.

APPLICATION:

This section is used for enforcement action.

COMPLIANCE:

An operator is in compliance with this rule when forest operations are conducted in such a way to retain and protect the active nest tree, perching and fledging trees and replacement tree with a vegetative buffer of no less than 300 feet. Compliance also requires that operations that would cause the birds to flush from trees in the resource site are conducted outside the critical period of use.

Unsatisfactory Condition: An unsatisfactory condition exists when a forest operation does not retain the active nest tree and associated perching, fledging, and replacement nest trees, and additional buffer trees needed to protect these key components from windthrow. An unsatisfactory condition exists when operations are conducted during the critical period of use without an approved temporal exception.

Damage: Damage occurs when the unsatisfactory condition results in adverse effects to the components of the resource site to the extent that the intended functions for which they have been retained are no longer provided.

Written Statement of Unsatisfactory Condition: Issue a Written Statement when the operator can designate key components of equal value to any that have been damaged or destroyed. Issue a Written Statement when there is no active nesting occurring or disturbance can be stopped, and successful nesting is not precluded for the current season.

ADMINISTRATION AND IMPLEMENTATION:

The goal of great blue heron resource site protection is to avoid resource site abandonment or reduction in productivity. This is done by maintaining the integrity of the resource site and avoiding disturbance during the critical period of use. Rather than adopting rigid buffer requirements, the Board of Forestry chose to adopt key components in rule form and allow field personnel the flexibility to implement protection measures on a site-specific basis. A written plan for a great blue heron resource site must address how the key components are identified on the ground and must state how these components will be protected during the operation. In most cases, after the key components are identified on the ground, it is not difficult to develop a harvesting plan to protect these trees.

Protecting the active nest tree, and perching, fledging, and replacement nest trees from windthrow is the most difficult conflict to resolve. The rules intend that, where necessary, the nest tree and key components shall be protected from windthrow. The SF, ODF Wildlife Biologist and the ODFW Wildlife Biologist (if available), must come to agreement on what vegetation retention requirements are necessary to provide a reasonable degree of wind firmness to the resource site. In making this decision, local knowledge of windthrow potential and any site-specific signs of past windthrow must be taken into consideration. Resource sites located in areas of high windthrow susceptibility may require the retention of an area containing substantial numbers of adjacent trees. It is important to remember that trees are being left to perform a function—either to act as a key component of the site or to protect the key components from windthrow.

Enhancement of the resource site may be achieved by **encouraging** retention of additional trees adjacent to the occupied nest tree(s); a vegetative buffer around the nest tree(s) (including perching and fledging trees); and replacement tree(s). These additional trees, if retained, may be counted toward the snag and green tree retention requirements for harvest type 2 and harvest type 3 units.

Certain forest management activities may affect great blue heron rookeries adversely by disturbing the herons when they are using the site. Compared to the osprey and bald eagle, great-blue herons are generally more prone to flush from their nest sites due to disturbance activities. Disturbance that causes herons to leave their nests during the nesting season may cause reduced site productivity in four ways: 1) increased mortality of young or eggs due to exposure; 2) increases mortality of young or eggs due to predation; 3) older nestlings may leave the nest prematurely; and 4) nest desertion or complete abandonment of a colony.

Forest management activities within one-quarter (1/4) mile of an active great blue heron resource site which disturb the birds are not allowed during the critical period of use, which is February 15 through July 31 each year. As a general guideline, activities which have a high probability of causing disturbance include: **timber felling and bucking, cable yarding, tractor and wheeled skidding systems, low-level aircraft operations, operation of heavy equipment, road construction, blasting, and burning.** Hauling may constitute a disturbance to great blue herons. Hauling on highways, paved county roads, main logging roads, or other roads that receive regular traffic is generally not considered a disturbance. If a great blue heron rookery is already exposed to road traffic, added traffic from log trucks is not likely to cause birds to flush from the nest. In contrast, log hauling traffic on a newly established or little-used road may constitute a "novel" disturbance to which the birds are not acclimated and may cause birds to flush from the nest.

Reforestation, ground application of chemicals, and normal road maintenance (i.e., road grading) activities have a lower probability of causing disturbance. As a general guideline, any of these activities occurring within 1/4 mile of the active resource site should be conducted during midday (1000-1400 hours), thereby coinciding with time periods in which the birds are typically least active in tending the nest, and should not be conducted for more than three consecutive days.

The 1/4 mile distance specified in the rule is intended to be an outer limit within which operations must be evaluated as to whether or not the operation would cause the birds to flush from the resource site. There is no intention to prevent all operations from occurring within 1/4 mile of these sites—only those which would cause the birds to flush from the resource site. Ideally, the potential for disturbance should be addressed on a case-by-case basis, including consideration of the level of disturbance to which a site is currently exposed. The operator, SF, and ODF Wildlife Biologist or ODFW Wildlife Biologist must work together to properly evaluate whether or not a particular operation poses a conflict. The operator must describe what the proposed operation entails. The SF must be able to evaluate and communicate the types and level of disturbances which would be expected with such an operation. Finally, the ODF Wildlife Biologist or ODFW Wildlife Biogist must integrate this information with knowledge of the specific pair of birds or rookery involved to advise the SF of the likelihood that the operation would cause the birds to flush from the nest(s).

The dates specified in this rule outline the general nesting season for great blue heron in Oregon. Different pairs of birds in different parts of the state may be active at different times during the season. Therefore, the critical period of use can be modified in writing based upon site-specific conditions. Any changes in the critical period of use must be coordinated with the ODF Wildlife Biologist and the appropriate ODFW Wildlife Biologist. .

Great blue herons are most sensitive to disturbance early in the nesting season, when slight disturbances may cause the entire colony to leave the area for a considerable time. Therefore, SFs should not consider modifying the starting date unless there is good historical evidence that the birds in question traditionally do not arrive at the site until a later date. The ending date (July 31) is more flexible. The critical period of use should be considered to have ended once any of the following occurrences is documented:

1. The historical nest site is not occupied for that year. (Refer to administration and implementation guidance for OAR 629-665-0120(1) to determine occupied status.)

2. A documented nest failure occurs.

3. Successful fledging of young occurs. At approximately eight weeks of age, the young birds often fly clumsily from one tree to another, but always return to the nest to be fed. At about 10 weeks, the young herons leave their nest for good and are independent of their parents. Therefore, fledging should be judged to be successful approximately two weeks after the young birds leave the nest.

Please keep in mind, however, that if herons are still occupying a nest site after July 31, and the young have not yet fledged, the critical period of use should be extended until two weeks after the young birds leave the nest.

RELATED RULES AND STATUTES:

- OAR 629-665-0120(1) Great Blue Heron resource sites; key components; protection requirements; and exceptions

REFERENCES:

- Technical review: great blue heron. ODF: January 9, 1991
- *Oregon Forest Protection Laws, an Illustrated Manual,* Oregon Forest Resource Institute, Third Edition

GREAT BLUE HERON RESOURCE SITES; KEY COMPONENTS; PROTECTION REQUIREMENTS; AND EXCEPTIONS
OAR 629-665-0120

(3) Structural exceptions for the resource site may be approved by the State Forester when addressed in a plan for an alternate practice. The State Forester may approve such a plan when these criteria are met:
- ***(a) The site contains five nests or fewer;***
- ***(b) The State Forester determines that the loss of the site will not adversely affect the local population; and***
- ***(c) There are no economically feasible alternatives that maintain the key components.***

(4) Factors considered by the State Forester before approving a structural exception to protection of a great blue heron resource site shall include, but are not limited to:
- ***(a) The size of the site (number of nests);***
- ***(b) The size of the breeding population in the local area;***
- ***(c) The productivity of great blue herons in the local area;***
- ***(d) The contribution of the site to local productivity;***
- ***(e) The probability that protection measures will be successful;***
- ***(f) Available alternate nesting sites; and***
- ***(g) Whether alternatives that protect the site are economically feasible.***

APPLICATION:

This rule is not used for enforcement action.

ADMINISTRATION:

The intent of this rule is to allow for removal of a resource site if it does not have significant importance in maintaining the local population **and** there are no economically feasible alternatives that will maintain the site. The SF in consultation with the operator, ODF's Wildlife Biologist and an ODFW, must evaluate requests for a structural exception for a resource site with an understanding of great blue heron ecology, alternate forest practices, and economic feasibility. To be considered for a structural exception, the site must contain five nests or fewer, and the loss of the site must not adversely affect the local population. The ODF Wildlife Biologist and the ODFW **must** be consulted in making this determination. Sites containing more than five nests are considered important to maintaining the local population of great blue herons, and should not be considered for a structural exception.

A wide variety of timber harvesting systems, equipment and rigging options exist to meet environmental and economic goals. Therefore, approval of requests for a structural exception for a great blue heron resource site should be considered a last resort. Only in rare circumstances should it be determined that alternate forest practices are not feasible to accomplish multiple objectives.

In evaluating economic feasibility of alternatives that will maintain the key components, the determination should be based upon whether the alternate practice could be implemented by operators who are regularly engaged in the growing and harvesting of trees, without resulting in the costs of the alternative exceeding the value of the timber. This determination should not be based on the financial condition of individual operators, but rather on the basis of whether or not the alternative is feasible for most operators, most of the time.

Approved structural exceptions must occur outside the critical period of use unless a temporal exception is also allowed.

All correspondence and documentation concerning structural replacements and exceptions must be maintained on file by the SF. A complete description of the proposed operation, including identification of the resource site and economic feasibility analysis, must be provided by the operator. Biological information useful in making a determination should be requested from the ODF Wildlife Biologist or ODFW. The SF should establish a brief summary of chronological events as they occur, and Salem staff should be notified as soon as possible upon receiving requests for structural exceptions.

RELATED RULES AND STATUTES:

- OAR 629-600-0100 "Structural exception"
- OAR 629-600-0100 "Structural protection"
- OAR 629-665-0010(3) Protection goal for a resource site, exceptions

REFERENCES:

- Technical review: great blue heron. ODF: January 9, 1991
- *Oregon Forest Protection Laws, an Illustrated Manual,* Oregon Forest Resource Institute, Third Edition

GREAT BLUE HERON RESOURCE SITES; KEY COMPONENTS; PROTECTION REQUIREMENTS; AND EXCEPTIONS
OAR 629-665-0120

(5) Temporal exceptions to protection of a great blue heron resource site may be approved by the State Forester when addressed in a plan for an alternate practice. The State Forester may approve such a plan when:
- ***(a) The State Forester determines that nest disruption or failure for a season, or site abandonment will not adversely affect the local population; and***
- ***(b) There are no economically feasible alternatives that will not disturb the birds during the critical period of use.***

(6) Factors considered by the State Forester before approving a temporal exception shall include, but are not limited to:
- ***(a) The size of the site (number of nests);***
- ***(b) The size of the breeding population in the local area;***
- ***(c) The productivity of great blue herons in the local area;***
- ***(d) The contribution of the site to local productivity; and***
- ***(e) Whether alternatives that protect the site are economically feasible.***

APPLICATION:

This rule is not used for enforcement action.

ADMINISTRATION:

A temporal exception occurs when protection from disturbance during the critical period of use is not provided to a site. Complete structural protection (i.e., physical components of the site, such as nest tree(s), a vegetative buffer around the nest tree(s) including perching and fledging trees, and replacement tree(s)) is still required. However, it must be determined that site productivity failure for one year will be acceptable and there are no economically feasible alternatives that will avoid disturbance during the critical period of use. Both of these criteria must be satisfied before requests for a temporal exception are approved.

The SF in consultation with the operator, the ODF Wildlife Biologist, and ODFW Wildlife Biologist, must evaluate requests for temporal exceptions with an understanding of great blue heron ecology, timing and/or use of alternate forest practices, and economic feasibility. Strategic area planning and unit layout which takes into consideration the timing of forest practices, in addition to the use of alternative, albeit longer, haul routes, should be used to resolve most conflicts with the site protection requirements during the critical period of use.

The ODFW Wildlife Biologist and ODF Wildlife Biologist **must** be consulted in making the determination that nest disruption or failure for a season, as a result of the proposed temporal exception, will not affect the local population. Basic information for estimates of reproductive success and production, such as number of pairs in the area, number of breeding pairs, number of successful pairs, and number of young to reach acceptable fledging age, are important in

evaluating the size of the local population and the contribution of the resource site in question to the local population.

In evaluating economic feasibility of alternatives that will not disturb the birds during the critical period of use, the determination should be based upon whether the alternate practice could be implemented by operators who are regularly engaged in the growing and harvesting of trees without resulting in the costs of the alternative exceeding the value of the timber. This determination should not be based on the financial condition of individual operators, but rather on the basis of whether or not the alternative is feasible for most operators, most of the time.

The temporal exception relieves the operator from strictly adhering to the disturbance restriction during the critical period of use but does not obligate the operator to cause nest failure at the site. The SF should use discretion in requiring measures to help alleviate disturbance. These may include restrictions during certain times of day or staging different activities at different times to help relieve disturbing influences.

All correspondence and documentation concerning temporal exceptions must be maintained on file by the SF. A complete description of the proposed operation, including identification of the resource site and economic feasibility analysis, must be provided by the operator. Biological information useful in making a determination should be requested from the ODF or ODFW Wildlife Biologist. The SF should establish a brief summary of chronological events as they occur, and Salem staff should be notified as soon as possible upon receiving requests for temporal exceptions.

RELATED RULES AND STATUTES:

- OAR 629-600-0100 “Structural exception”
- OAR 629-600-0100 “Structural protection”
- OAR 629-665-0010(3) Protection goal for a resource site

BALD EAGLE NESTING SITES; KEY COMPONENTS; PROTECTION REQUIREMENTS; EXCEPTIONS
OAR 629-665-0130

(1) For bald eagle nesting sites, the resource site is the active nest tree and, if present, all identified key components:

(a) An active nest tree is one in which a bald eagle has nested in the past five (5) nesting seasons. No protection is required for abandoned resource sites.

(b) An active nest tree may fall down or may become structurally incapable of supporting a bald eagle nest site. When this happens the nest resource site shall be considered active and shall be protected only if the site contains suitable replacement trees.

(c) The key components associated with a bald eagle nesting site are perching and fledging trees, replacement nest trees, and a forested buffer around the nest tree. Factors to consider when identifying key components:

(A) Actual observation data when available.

(B) Perching and fledging trees should be tall enough to provide maximum visibility of the surrounding area. Perching and fledging trees are often snags or decadent live trees with exposed, strong, lateral branches high in the crown.

(C) Replacement nest trees should provide maximum visibility of the surrounding terrain, and be large enough to support a bald eagle nest. Bald eagles prefer to nest in large, tall trees that are alive, with large limbs, broken tops, or irregular growth patterns with open structure.

(D) Areas of high winds may require that additional trees be retained to protect the active nest tree(s) and identified key components from damage.

APPLICATION:

This rule is not used for enforcement action.

ADMINISTRATION:

All attributes of the resource site (the active nest tree and any identified key components) contribute to maintaining the productivity of the nesting territory, thereby requiring application of the protection requirements defined in OAR 629-665-0220(2). An active nest tree is one in which a bald eagle has nested in the past five years. Bald eagles often construct more than one nest within a territory and vary use between them from year to year. All bald eagle nests within a given territory require the specified protection requirements in OAR 629-665-0220, even though a nest may not be currently occupied or may not have been used for raising young for one or more years. Each nest is protected for five years after last being used for nesting.

For the purposes of protection, an active nest tree is one which has known use of a mated pair of bald eagles as indicated by observance of at least one of the following conditions:

1. A bald eagle nest is observed in a tree;
2. An adult bald eagle is detected (seen) on the nest;
3. Either adult (male or female) carries prey to the nest;
4. Eggs or young are detected in the presence of one or both adults.

Determining if a tree has been used in the past for nesting is most difficult to ascertain when birds have not been directly observed using the site. This determination may have to be made at times of the year when the birds are not present at the site, or when there has been no documented evidence of site use or specific observations in the past. In these cases, the SF must rely on professional judgment, following an on-site inspection, to determine whether the nest is one in which a bald eagle has nested in the past, and is structurally capable of successful future use. Bald eagle nests in Oregon are typically large—five to eight feet in diameter and two to three feet deep. Nests typically are within the top half of the tree, and live branches usually cover the nest. The tree selected for nesting characteristically is one of the largest in the stand, or is at least co-dominant with the overstory. Conifers such as Douglas-fir and ponderosa pine are often used for nesting, however cottonwood is also a common nesting tree for habitat along major rivers. Nest trees usually provide an unobstructed view of an associated water body and often are in prominent locations on the topography. Osprey nests are similar to bald eagle nests, but they are generally smaller, more rounded in appearance, and in most cases, are located directly on top of the nest tree. The nests of bald and golden eagles are often similar, but several distinguishing characteristics are evident. Unlike those of bald eagles, nests of golden eagles are often found near the edge of a stand next to a clearcut or opening, in trees below the overall canopy level, and not associated with water. The ODF Wildlife Biologist or ODFW Wildlife Biologist are available to aid the SF in making nest identification determinations.

The presence of one bald eagle, or two adults seen together during the breeding season with no known nest, should not be recognized as sufficient evidence for an active nesting site. However, it may suggest such activity in the general vicinity, and should be brought to the attention of the ODF Wildlife Biologist and ODFW Wildlife Biologist. Further investigation to collect additional information, such as observation periods from a vantage point(s) of the landscape, may be useful in verifying and confirming any such nesting activity.

An active nest tree may fall down or become structurally incapable of supporting a bald eagle nest site. When this happens the nesting resource site shall continue to be considered active and shall be protected only if the general area of the historic nest tree contains other suitable replacement nesting trees. If there is no evidence of renesting in a replacement tree within five-years, then the site can be considered “abandoned” and the protection requirements specified in OAR 629-665-220 no longer apply. In addition, intact nest trees with documented “non-use” for a five-year period may be considered an “abandoned” resource site. It is important to keep in mind that “unoccupied” status must be substantiated in each of five consecutive breeding seasons after the point in time when the historic nest tree falls down or becomes structurally incapable of supporting a bald eagle nest to be considered “abandoned.” The Oregon Cooperative Wildlife Research Unit (OCWRU) previously provided ODF with an annual report on status and history of use of bald eagle nest locations in Oregon. As of 2008, an annual report is no longer created.

Check with the local ODFW Wildlife Biologist, ODF Wildlife Biologist, or the agency that manages the site (e.g., BLM, USFS) to determine if information is available to determine current status. Sites with no current survey information may require a site visit to determine if it is still being used for nesting. Surveys are required to determine "abandoned" status for all nest trees. Instructions for surveys and a form is available from ODF for those wishing to conduct surveys of bald eagle nest trees to determine the status of the site.

Key components associated with an active bald eagle nesting site are perching and fledging trees, replacement nest trees, and a forested buffer around the nest tree. The rule does not define a minimum number of perching, fledging, and replacement nest trees that need to be retained. The protection goal is to provide for the retention of trees necessary to avoid site abandonment or reduced site productivity. The most accurate and reliable method of determining key components for a bald eagle nest site is to observe bald eagle use. However, when actual observation is not possible, the decision must be based upon the best professional judgment of the ODFW Wildlife Biologist, the department's fish and wildlife specialist, and the SF. Their first priority should be to identify trees of suitable structure and function to serve as perching and fledging trees, replacement nest trees, and a forested buffer around the nest tree, in order to maintain the suitability of the site as bald eagle nesting habitat.

As a general guideline, at least 16 trees should be identified to fulfill the functions of perching and fledging trees and replacement nest trees. Tree species does not seem to be as important as tree size, branch form, and location, although certain tree species meet nesting requirements more often than others. Along the coast and lower Columbia River in Oregon, more than 70 percent of the nests are in Douglas-fir. Approximately 80 percent of the nests in the Cascade Mountains and Klamath Basin are in ponderosa pine, with Douglas-fir utilized as a secondary species. Cottonwood is a commonly used tree along the Columbia, Willamette, and other large rivers. Growth forms of nest trees usually differ from the surrounding stand. They tend to be taller, are of larger diameter, and often extend above the canopy. In Oregon the average height and DBH of nest trees along the coast, in the Cascade Mountains, and in the Klamath Basin are 191 feet and 69 inches, 134 feet and 46 inches, and 124 feet and 41 inches, respectively. These DBH values are between 113-150 percent greater than the average for surrounding stands. Bald eagles prefer to nest, almost exclusively, in trees that are alive, with either broken or dead tops or living, intact tops. Trees which fork or grow irregularly are preferred, as are trees with open structure allowing easy access to the nest. Replacement nest trees should mimic these characteristics to the greatest extent possible.

Certain trees adjacent to bald eagle nests are used habitually for perching or as nest access points by the adults, and may also function as fledging trees or perch trees that nestlings use when they are learning to fly. Important elements of perching sites include height and structure of the perch tree, occurrence on edges with proximity to open regions, and visual access to adjacent habitats. Unlike nest trees, which usually are alive, perching and fledging trees often are snags or decadent live trees with exposed, strong, lateral branches high in the crown. Presence of dead branches or an open branching pattern is important to allow access and a wide visual field for these large birds. Perching and fledging trees should mimic these characteristics to the greatest extent possible

The purpose of the forested buffer around the nest tree is to protect the key components and further minimize disturbance which could cause nest failure. The forested buffer should protect the nest tree(s), perching and fledging trees, and replacement nest tree(s) from windthrow, provide a visual screen from disturbing influences, and maintain the physical integrity of the nesting site. The forested buffer around the nest tree should not be less than 330 feet from the nest. However, the size and shape should be adjusted by the actual use of the area around the nest tree, topographic features, habitat type changes, stand density, likelihood for windthrow, and proximity of disturbing influences. In those situations where stand stocking levels are low or windthrow potential is high, a larger buffer may be needed to provide protection.

RELATED RULES AND STATUTES:

- OAR 629-600-0100 *"Active resource site*"
- OAR 629-600-0100 *"Fledging tree"*
- OAR 629-600-0100 *"Key components"*
- OAR 629-600-0100 *"Perch tree"*
- OAR 629-600-0100 *"Replacement tree"*
- OAR 629-600-0100 *"Resource site"*

REFERENCES:

- *Bald Eagle Technical Report*: ODF, March 2016
- *Technical review: bald eagle;* ODF; July 19, 1991
- Bald eagles (*Haliaeetus leucocephalus*) nesting in Oregon and along the lower Columbia River, 1978 – 2007, Final Report, March 18, 2011. Frank Isaacs and Robert Anthony; Oregon Cooperative Fish and Wildlfie Unit, Corvallis, OR.
- *National bald eagle management guidelines;* U.S. Fish and Wildlife Service, Portland, Oregon; 2007
- *Management of Wildlife and Fish Habitat in Forests of Western Oregon and Washington* - "Bald eagles", p. 269-290; E. R. Brown, technical editor; U.S. Forest Service, Pacific Northwest Region, Portland, Oregon; Publication No. R6-F&WL-192-1985; 1985

BALD EAGLE NESTING SITES; KEY COMPONENTS; PROTECTION REQUIREMENTS; EXCEPTIONS
OAR 629-665-0130

(2) The operator shall provide the following protection measures when operating within or near a bald eagle nesting site:

(a) During and after forest operations, the resource site shall be protected from damage. The operation shall be designed to protect the trees from windthrow;

(b) Retain the active nest tree.

(c) Retain a forested buffer not less than 330 feet around the active nest tree as a key component that includes perching, fledging, and replacement tree(s).

(d) During the critical period of use, operations shall be designed and conducted to not disturb bald eagles using the resource site:

(A) Except as provided in paragraph (B) of this subsection, during the critical period of use, operations shall not be permitted within six hundred and sixty (660) feet, and use of aircraft within one thousand (1,000) feet.

(B) If the State Forester determines through review of the written plan that the operations will not cause the birds to flush from the trees identified in paragraph (A) of this section, then there is no conflict and the distance restrictions in paragraph (A) of this section may be modified.

(C) The critical period of use is January 1 through August 31. The specific critical period of use for individual nesting resource sites may be modified in writing by the State Forester depending upon the actual dates that bald eagles are present at the resource site and are susceptible to disturbance.

APPLICATION:

This section is used for enforcement action.

COMPLIANCE:

An operator is in compliance with this rule when, during and after forest operations, the key components are retained and protected from damage, including windthrow.

Unsatisfactory Condition: An unsatisfactory condition exists when forest operations results in adverse effects to key components of the resource site.

Unsatisfactory condition occurs if:

1. An operation is conducted without an approved structural exception such that it does not retain the active nest tree and associated key components (i.e., perching and fledging trees, replacement nest trees, forested buffer around the nest tree) and protect them from damage.

2. An operation is conducted without an approved temporal exception and creates disturbances to bald eagles using the active nest tree or identified key components during the critical period of use. The critical period of use is between January 1 and August 31 each year.

Damage: Damage occurs when the unsatisfactory condition results in adverse effects to key components to the extent that the intended functions for which they have been retained are no longer provided.

Noncompliance generally causes damage. Damage is caused by removal of the active nest tree and/or associated key components and disturbances that disrupt reproductive activities of eagles using the resource site. Both types of actions may lead to resource site destruction, abandonment, or reduced productivity. Damage usually can not be repaired.

Written Statement of Unsatisfactory Condition: A written statement of unsatisfactory condition should be issued when corrective action or complete repair is feasible and practical prior to damage occurring.

If the operator has been properly notified of the requirement for a statutory written plan, noncompliance should also be regarded as a statutory written plan violation under OAR 629-605-0170 (5)(b) However, if the operator has not been notified of the requirement for a statutory written plan and the SF determines that a conflict exists, then the SF should issue a written statement to the operator under OAR 629-605-0170 (5)(b). The written statement should identify the conflicts, and direct the activity to cease within the operation area until a statutory written plan is submitted. When an operation is determined by the SF not to conflict with protection of the active nest tree or any of its associated key components and the operation is greater than 300 feet from the resource site, then the operation may proceed with a nonstatutory written plan which may be waived in writing by the SF.

ADMINISTRATION:

The goal of bald eagle nesting site protection is to avoid resource site abandonment or reduction in productivity by maintaining the integrity of the resource site and avoiding disturbance during the critical period of use. Rather than adopt rigid buffer requirements, the Board of Forestry chose to adopt key components in rule form and allow field personnel the flexibility to implement protection measures on a site-specific basis.

When a landowner proposes an operation near (within one-half mile) of a bald eagle nesting site, the site review process in OAR 629-665-0020 must be followed. The landowner is responsible for designing and submitting a written plan that describes how the resource site (i.e., active nest tree and key components) will be protected. The written plan should consider the role of physical features and human use patterns that are unique to the site (i.e., topography, past land use in the vicinity, remaining habitat, vulnerability to disturbance, and the behavior of particular eagles). A written plan for a bald eagle nesting site must address how the key components are identified on the ground and state how these components will be protected during the operation.

It must also describe how conducting of the operation will prevent disturbance to bald eagles using the resource site during the critical period of use.

Protecting the active nest tree and its associated key components (i.e., perching and fledging trees, replacement nest trees, forested buffer around the nest tree) from windthrow is the most difficult conflict to resolve. In most cases, retention of a circular 330' radius buffer around the nest tree is adequate to protect the nest tree and key components. In other situations, where windthrow is less or more of a risk, a modified buffer may be appropriate. The rules intend that, where necessary, the nest tree and key components shall be protected from windthrow. The SF, ODF Wildlfie Biologist, and ODFW (if available) must come to agreement on what vegetation retention requirements are necessary to provide the resource site with adequate protection from wind. In making this decision, local knowledge of windthrow potential and any site-specific signs of past windthrow must be taken into consideration. Resource sites located in areas of high windthrow susceptibility may require methods to "feather" the outer edges of the buffer to reduce windthrow potential, or may require the retention of an area containing substantial numbers of adjacent trees. It is important to remember that trees are being left to perform a function—either to act as a key component of the site or to protect the key components from windthrow.

Disturbance is defined as those actions that may disrupt reproductive activities of bald eagles. Activities involving the operation of chainsaws, large machinery, or explosives for a prolonged period (greater than one day) when carried out within 660 feet of the active nest tree or perch tree(s) during the breeding season (January 1 - August 31, or revised based on local knowledge) are considered disturbance Low level aircraft operations are also considered disturbance if within 1,000 feet of the nest tree.

Examples: Forest management activities that are likely to cause disturbance include **timber felling and bucking, cable yarding, tractor and wheeled skidding systems, road construction, aerial chemical application, blasting, aircraft use, and burning.** Within 660 feet, or 1,000 feet for use of aircraft, these activities should be restricted during the critical period of use, January 1 until August 31.

Examples: Activities not classified as disturbance include: planting, surveying, pruning, manual brush cutting without chainsaws**,** ground application of chemicals, and normal road maintenance (i.e., road grading, roadside seeding, etc.). Hauling is usually not considered a disturbance unless it is occurring on a newly established road or one that usually receives little to no traffic. Hauling on highways, paved county roads, main logging roads, or other roads that receive regular traffic is generally not considered a disturbance. Bald eagles typically acclimate to background activities such as road traffic, thus added traffic from log trucks is not likely to cause birds to flush from the nest. In contrast, log hauling traffic on a newly established or little-used road may constitute a "novel" disturbance to which the birds are not acclimated and may cause birds to flush from the nest. As a general guideline, any of these activities occurring within 660 feet of the active resource site should be conducted between the times of four hours following sunrise and four hours before sunset and should not be conducted for more than two consecutive days. This coincides with time periods in which the birds are typically least active in tending the nest.

The 660 foot and 1,000 foot distances specified in the rule are intended to be an outer limit within which an operation must be evaluated as to whether or not it would cause the birds to

flush from the resource site. There is no intention to prevent all operations from occurring within these distances from all sites—only those which would cause the birds to flush from the resource site. Ideally, the potential for disturbance should be addressed on a case-by-case basis, including consideration of the level of disturbance to which a site is currently exposed. The operator, SF, ODF Wildlife Biologist and ODFW Wildlife Biologist (if consulted), must work together to properly evaluate whether or not a particular operation poses a conflict. The operator must describe what the proposed operation entails. The SF must be able to evaluate and communicate the types and level of disturbances which would be expected with such an operation. Finally, ODF Wildlife Biologist and the ODFW Wildlife Biologist must integrate this information with knowledge of the specific pair of birds involved to advise the SF of the likelihood the operation may cause the birds to flush. If the SF determines that the operation will not cause the birds to flush from the active nest tree or perch tree(s), then there is no conflict and the distance restrictions may be modified.

It is important to keep in mind that the critical period of use may be adjusted based upon reliable historical evidence indicating that birds in question traditionally do not arrive at the site until a later date or if survey data for the current year indicates that eagles are not nesting. Since the intent of the rule is to provide protection during the critical nesting and fledging periods, temporal protection is not warranted when it can be reliably determined that the pair is not nesting or no young are present. Any changes in the critical period of use specified in this rule must be coordinated with the ODF Wildlife Biologist and appropriate ODFW Wildlife Biologist and must be documented in writing.

Bald eagles are most sensitive to disturbance during the first 12 weeks of the breeding season. Therefore, SFs should rarely consider modifying the beginning of the critical period of use as specified in the rule. However, the ending date (August 31) is more flexible depending on the eagles' reproductive status each year. The critical period of use may be considered to have ended once any of the following occurrences are documented:

1. The historical nest site is not occupied for that year. To determine unoccupied status in the absence of information provided by another agency, at least two visits of a known or historic nest site should occur between March 15 and August 31. This coincides with the primary nest initiation and rearing of young period. If no activity is observed during at least two individual two hour observation periods, with the second visit occurring no earlier than May 15, the nest site may be considered unoccupied for the current year. Survey period(s) should be conducted during suitable weather/observation conditions, and should include the period within half an hour of sunrise and/or sunset. Observations should always be from a vantage point that does not disturb the eagles. A form with instructions is available for landowners wishing to survey bald eagle sites on or near their property (Bald Eagle Nest Site Survey Form and Instructions, July 2017).

2. A documented nest failure occurs. To determine a nest failure in the absence of information provided by another agency, at least two visits of an occupied nest site should occur between May 15 and July 15 to locate and count young. A nest failure is inferred if no young are detected in the nest or in the presence of one or both adults, and if the adults fail to bring prey to the nest site during at least two individual two-hour observation periods. Survey period(s) should be conducted during suitable weather/observation

conditions, and should include the period within half an hour of sunrise and/or sunset. Observations should always be from a vantage point that does not disturb the eagles.

3. Successful fledging of young occurs. Fledging is when an eaglet first flies from the nest, but successful fledging requires that each eaglet survive a post-fledging period. For successful fledging to occur, it is important that fledglings become self-sufficient enough to no longer need to be fed there by the adults or roost there at night. Fledging is considered successful approximately three weeks after the young birds leave the nest. To determine if or when fledging has occurred, at least two individual two-hour site visits should be made to the active nest site between July 15 to August 15. An estimate can then be made of the age of the juveniles present at the resource site and a determination of their susceptibility to disturbance.

If birds are still occupying a nest site after August 31 and the young have not yet fledged, the critical period of use should be extended until three weeks after the young birds leave the nest.

RELATED RULES AND STATUTES:

- OAR 629-600-0100 *"Conflict"*
- OAR 629-605-0170 Written plans
- OAR 629-665-0010 Protection goal for a resource site
- OAR 629-665-0020 Application of protection and exception rules

REFERENCES:

- *Bald Eagle Technical Report*: ODF, March 2016
- *Technical review: bald eagle;* ODF; July 19, 1991
- Bald eagles (*Haliaeetus leucocephalus*) nesting in Oregon and along the lower Columbia River, 1978 – 2007, Final Report, March 18, 2011. Frank Isaacs and Robert Anthony; Oregon Cooperative Fish and Wildlfie Unit, Corvallis, OR.
- *National bald eagle management guidelines;* U.S. Fish and Wildlife Service, Portland, Oregon; 2007
- *Management of Wildlife and Fish Habitat in Forests of Western Oregon and Washington* - "Bald eagles", p. 269-290; E. R. Brown, technical editor; U.S. Forest Service, Pacific Northwest Region, Portland, Oregon; Publication No. R6-F&WL-192-1985; 1985
- *Bald Eagle Nest Site Survey Form and Instructions.* ODF., July 2017. 4 pp.

BALD EAGLE NESTING SITES; KEY COMPONENTS; PROTECTION REQUIREMENTS; EXCEPTIONS
OAR 629-665-0130

(3) Structural or temporal exceptions for the resource site are allowed if the operator is in compliance with, and has on file with the State Forester, an applicable incidental take permit issued by federal authorities under the federal Bald and Golden Eagle Protection Act.

APPLICATION:

This rule is not used for enforcement action.

ADMINISTRATION:

The bald eagle was removed from the Federal Endangered Species Act in July, 2007, but the species is still protected under the federal Bald and Golden Eagle Protection Act. Incidental Take Permits are available from the US Fish and Wildlfie Service under this Act. If the landowner has an appropriate take permit under the Bald and Golden Eagle Protection Act, the operation may be exempt from the FPA rules. It is important to obtain and review the federal take permit as the terms of the permit vary and may allow for permanent removal of the nest tree, or only allow for disruption of nesting efforts (through disturbance of normal nesting activities) for one or more years. The exceptions allowed for the FPA rules should match the terms of the take permitThese situations should be evaluated on a case-by-case basis with assistance from the ODF Wildlife Biologist.

RELATED RULES AND STATUTES:

ORS 527.670 When notice and written plan required

RESOURCE SITES USED BY THREATENED AND ENDANGERED SPECIES
OAR 629-665-0200

The following resource sites used by threatened or endangered species are sensitive to forest practices:

Northern spotted owl nesting sites.

APPLICATION:

This section is not used for enforcement action.

ADMINISTRATION:

These sections identify resource sites used by threatened and endangered species that have been recognized by the Board of Forestry. OAR 629-680-0100 is used to evaluate threatened and endangered fish and wildlife species that use resource sites that are sensitive to forest practices.

Resource sites used by threatened and endangered species receive protection through OAR 624-665-0210 (northern spotted owl). As of September 2017, bald eagles are no longer protected under this section. See OAR 629-665-0130 for bald eagle rules.

REFERENCE:

- OAR 629-680-0000 through 0430 Resource Site Inventory and Protection Process Rules

***INTERIM REQUIREMENTS FOR NORTHERN SPOTTED OWL NESTING SITES*.**
OAR 629-665-0210

(1) Whenever the State Forester determines that an operation will conflict with protection of a nesting site of the northern spotted owl (Strix occidentalis caurina), the operator must submit to the State Forester a written plan before commencing the operation. The written plan, at a minimum, must address how the operation will be conducted to provide for the following:

(a) A 70 acre area of suitable spotted owl habitat encompassing the nest site, to be maintained as suitable spotted owl habitat;

(b) Prevention of disturbances resulting from operation activities which cause owls to flush from the nesting site. Such disturbances must be prevented during the critical period of use for nesting. The critical period of use is the time period between March 1 and September 30, each year.

APPLICATION:

This section is used for enforcement action.

COMPLIANCE:

Operators comply with this section when:
1. A requested written plan is submitted before commencing an operation that is determined to conflict with protection of a spotted owl nest site;
2. A 70 acre area of suitable spotted owl habitat encompassing the nest site is identified and maintained;
3. Operations which could cause spotted owls to flush from the nesting site are prevented during the critical period of use (between March 1 and September 30).

Unsatisfactory condition: An unsatisfactory condition exists when:
1. A written plan was not requested but a later determination is made that operation conflicts with protection of a northern spotted owl nest site;
2. A 70 acre area of suitable spotted owl habitat encompassing the nest site is not identified in a written plan, but can be readily corrected to comply with the rule;
3. Operations which could cause spotted owls to flush from the nesting site are conducted during the critical period of use (between March 1 and September 30).

Damage: Damage occurs when;
1. A written plan was requested but not submitted before commencing an operation that is determined to conflict with protection of a spotted owl nest site;
2. A 70 acre area of suitable spotted owl habitat is not maintained around the spotted owl nest site or does not adequately encompass the nest site;
3. An actively nesting pair is disturbed, causing spotted owls to flush from the nesting site during the critical period of use between March 1 and September 30 resulting in failure to successfully fledge young that season.

Written Statement of Unsatisfactory Condition: Issue a Written Statement when the operator can designate a 70-acre area of suitable spotted owl habitat that encompasses the nest site and there is no active nesting occurring or disturbance can be stopped, and successful nesting is not precluded for the current season.

ADMINISTRATION:

Before submitting a notification to operate in an area where spotted owls are known, or are likely to be found, landowners or operators should check with the appropriate ODF district or unit office.

1. When a notification is received, any listed spotted owl nest sites or activity centers in the ODF inventory will be identifed. Sites near (within one-half mile) of their proposed operation will be identified. The SF should consult with the ODF Wildlife Biologist to determine the status of the identified location(s) and inform the operator of the protected status of the sites. Failure to inform the operator, such as a site that has not been previously inventoried, **DOES NOT** relieve the operator of the responsibility to protect the site.

2. If the owl site is less than one-half mile from the proposed operation, a written plan may be required before the operation can begin (OAR 629-605-0170 (5)(b) and OAR 629-665-0020(2)). If the owl site is more than one-half mile from the proposed operation the proposed operation is not affected.

3. The SF shall inspect the resource site. Inspections often begin with an evaluation of owl data to determine the appropriate center of protection and spatial data to evaluate the relationship of the protected owl site to the operation, to determine if a conflict is likely. The ODF Wildlife Biologist can assist with these evaluations.

4. The FPA only allows for protection of a single location for a spotted owl site. In some situations, there may be multiple activity centers in the database for a single spotted owl site. These are indentified in the owl spatial database by the MSNO field—points with the same MSNO field represent alternate locations for the same spotted owl site/territory. This is most common for sites located on or near BLM lands. In situations where multiple locations for nest sites or activity centers exist, the protected site will need to be designated. ODF will make the designation of spotted owl resource sites. The ODF Wildlife Biologist should be consulted to assist with these determinations. Maps showing locations of these resource sites shall be kept from public display.

5. If the proposed operation is 300 feet, or less, from an active nesting site or activity center, a statutory written plan is **ALWAYS** required **REGARDLESS** if conflict exists or not (OAR 629-605-0170 (5)(b)).

6. If the proposed operation is greater than 300 feet from the nest site, the 15-day waiting period should not be waived unless a decision has been made that there is no conflict. A conflict means site abandonment or reduced productivity. If the operation will potentially

impact a 70-acre area of suitable owl habitat or cause disturbance during the nesting season, a nonstatutory written plan is required (OAR 629-665-0020(2) and 629-665-0210 (1)).

7. Forest practices within one-quarter mile of a nest site which cause owls to flush from the nesting site are also conflicts. Nesting owls can least tolerate disturbance between March 1 and September 30. In some situations, the one-quarter mile distance may be inadequate to effectively protect the owls against disturbance. In other situations, the one-quarter mile distance may not be needed.

   Example: An operation may be located on the other side of a ridge from an owl site. Site-specific recommendations may differ from the one-quarter mile guideline. The critical period of use may be adjusted based upon a site-specific analysis using survey data for the current year. Temporal protection is not required when it can be reliably determined that the pair of spotted owls is not nesting or no young are present. Temporal restrictions should not be waived if young were produced as young spotted owls continue to rely on the core area for their survival following fledging.

   Log hauling, reforestation, normal road maintenance, research/monitoring, ground application of chemicals, aerial applications that do not require multiple passes, and burning are generally **NOT** considered to be disturbances, unless these activities will occur within 300 feet of the nesting site.

8. If a conflict exists, the landowner shall submit a written plan describing how the operation will be conducted to achieve compliance; the plan must have sufficient detail to allow the SF to evaluate and comment on the likelihood of compliance (OAR 629-665-0200 (2), OAR 629-605-0170 (12)and 629-665-0210 (1)). The department may consult with the operator, ODFW Wildlife Biologist, and any other agency, group, or private consultant for assistance in determining if the proposed operation has a potential to conflict with protection of the resource site.

9. Written plans must address how the operation will be conducted such that the 70-acre area of suitable spotted owl habitat encompassing the nest site or activity center will be maintained and how disturbance which may cause owls to flush from the nesting site will be avoided (OAR 629-665-0210 (1)(a) and (b)).

   In most situations, it is not sufficient to describe the presence of 70 acres of suitable habitat. A map showing the location of the core area is needed. Generally speaking, if the proposed operation is within approximately 1000 feet of the spotted owl nest site or activity center, the 70 acre core area to be maintained should be designated on a map and submitted with the written plan. If suitable habitat is limited in the area, it may be prudent to request a core area map for operations at a greater distance from the owl site. The core area should be designated regardless of land ownership boundaries. The core area must contain at least 70 acres of suitable spotted owl habitat and must encompass the nest tree or activity center. Available suitable habitat is determined relative to the existing timber types surrounding the nesting site. In the absence of "ideal" habitat which exhibits all of the characteristics described in OAR 629-665-0210 (3)(a), the available forested habitat which comes closest to approximating the listed conditions should be included in the 70-acre area. Forest stands, which do not exhibit at least two characteristics, are **NOT** suitable habitat**.** The 70-acre area **must** consist of **suitable**

habitat, not simply an area encompassing 70 acres. In order to ensure that the nest tree is adequately encompassed and buffered from windthrow, the edge of the core area should be at least 300 feet from the nest tree. A larger buffer around nest trees should be encouraged.

Spotted owl use patterns, such as previous years nest tree(s), activity center(s), and response locations may be useful in configuring an acceptable 70-acre area. Topographic features that either facilitate or discourage use by spotted owls should also be considered. The 70-acre area should be as contiguous as possible to provide the maximum amount of "interior" forest habitat.

Example: A circular shape is preferred to a long and narrow configuration. Fragmentation (i.e., clearcuts and openings) and corridors (i.e., roads) should be excluded within the 70-acre area whenever possible. If the core area cannot be designated to avoid openings, the openings within the core area boundary cannot be used to count towards the 70 acre requirement. For example, if a 5 acre opening is to be included within the core area boundary the total acreage for the core must be at least 75 acres.

10. Temporal restrictions during the critical use period may be waived if survey information determines that the spotted owl pair is not nesting, that the nesting attempt has failed, or that a pair of spotted owls is not present. Spotted owl surveys must be conducted according to the current version of the U.S. Fish and Wildlife Service Northern Spotted Owl Survey Protocol, unless an alternative survey method is approved by the USFWS, ODFW, or the ODF Wildlife Biologist. All surveys must be completed prior to waiving seasonal restrictions, except in situations where mousing is conducted and non-nesting is confirmed. In determining reproductive status, "mousing" procedures are used and must meet established U.S. Fish and Wildlife Service protocol. These surveys must be conducted between April 1 and July 15. The SF should consult with ODF's Wildlife Biologist when reviewing survey information.

11. Individual tree salvage along roads, or salvage of large areas of blow down, may be allowed after a site-specific review involving the ODF's Wildlife Biologist or the ODFWWildlife Biologist. Silvicultural treatments designed to promote diversity and/or a multi-storied canopy to enhance habitat suitability for spotted owls may also be allowed after a site-specific review.

12. Exceptions are allowed only if the operator has obtained an incidental take permit from the U.S. Fish and Wildlife Service under the federal Endangered Species Act (OAR 629-665-0210 (5). These permits are associated with approved Habitat Conservation Plans or Safe Harbor Agreements.

13. In some situations, such as when multiple private landowners are involved, it is beneficial to have a joint meeting to designate a core area for an owl site. Attendees may include the landowners, operators, ODFW Wildlife Biologist, the SF, the ODF Wildlife Biologist (OAR 629-665-0020 (1)), and any other agency, group, or private consultant who may have information that is beneficial in designating a core area.

14. When a core area is designated on another landowner's land, the impacted landowner should be given a copy of the written plan including the core area map and be allowed to

provide comment. The Stewardship Forester should review any comments received and share the comments with the landowner who submitted the written plan.

15. Statutory written plans for operations occurring within 300 feet of a spotted owl resource site require a 14 calendar day comment period following the date the plan was submitted. The plan must be sent to notification subscribers. A seven calendar day department comment period begins after the 14 calendar day period. Comments may be provided by the department during this period.

16. All written plan comments shall include a statement indicating that compliance with the Forest Practices Act does not imply compliance with the federal Endangered Species Act (OAR 629-665-0210 (4)). Include the following in the comments:

"Compliance with the forest practice rules does not guarantee compliance with the federal Endangered Species Act. Parties conducting operations are subject to all federal requirements as well as any requirements administered under the forest practice rules. The federal Endangered Species Act is enforced by the U.S. Fish and Wildlife Service."

The above statement should also be submitted as formal comments in all cases when it is determined that there is a spotted owl activity center near a proposed operation, including situations when a site does not have a pair of spotted owls present but does have Resident Single status or has had recent detections of spotted owls. These types of sites are not protected under the Forest Practices Act but may be protected under the Federal ESA.

17. The SF should advise the operator on options for an acceptable 70-acre area of suitable spotted owl habitat, but **SHOULD NOT** designate a "core area," as it relates to the requirements of the federal ESA. The liability for designating a core area as defined by the U.S. Fish and Wildlife Service (USFWS) and avoiding "take" of owls is exclusively between the operator and USFWS.

RELATED RULES AND STATUTES:

- OAR 629-600-0100 *"Conflict"*
- OAR 629-605-0170 Written plans
- OAR 629-665-0010 Protection goal for a resource site
- OAR 629-665-0020 Application of protection and exception rules
- OAR 629-665-0210 Interim requirements for Northern Spotted Owl nesting sites

REFERENCES:

- *Protocol for surveying proposed management activities that may impact northern spotted owls;* U.S. Fish and Wildlife Service; February, 2011, revised January 9, 2012
- *Spotted Owl Disturbance Guidelines;* David Johnson; ODFW; April 7, 1993

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(2) For the purposes of this rule, nesting site means and includes the tree, when known, containing a spotted owl nest; or when not specifically known, includes an activity center of a pair of adult spotted owls. An activity center is a location determined by the State Forester to have been reliably identified as being occupied by an adult pair of spotted owls, capable of breeding. Such determination must be supported by repeated observation of the owls in close proximity or observation of nesting behavior.

APPLICATION:

This section is not used for enforcement action.

ADMINISTRATION:

For threatened and endangered species in general, "resource site" is defined for site protection purposes as being the nest tree, roost trees, foraging perches and all identified key components (OAR 629-600-0100 (49)). For the spotted owl, a resource site can either be an actual nest tree or an activity center. The resource site is the nest tree or activity center and 70 acres of surrounding suitable spotted owl habitat. The 70-acre core area is considered a key component essential to maintaining the use and productivity of the site.

Nest Site: Observation of any one of the following nesting behaviors is required to confirm existence of a nest site.

1. The female or male is detected (seen) on a nest.
2. Either owl carries natural or observer-provided prey to the nest.
3. Recently fledged young are detected in the presence of one or both adults. Only recently fledged young, not capable of sustained flight, should be used to determine that a nest site is present. Because young barred owls look like young spotted owls until late in the summer, young alone are not sufficient. Older young, typically observed in late summer and capable of sustained flight, can be found far from the nest tree and thus should not be used to designate a new nest site.
4. A female possesses a brood patch when examined in hand during mid-April to mid-June.

Activity Center: Spotted owls do not necessarily nest every year, or return to the same tree to nest, although they show some fidelity to a stand or area suitable for nesting. An activity center exists when an adult pair of spotted owls, capable of breeding, has been identified by repeated observation in close proximity. **"Pair"** status is established by any of the following:

1. A male and female spotted owl are heard and/or observed (either initially or through their movement) in proximity (less than one-quarter mile) to each other on the same visit.
2. A male takes a mouse to a female.

3. One or both adults are observed with young, not capable of sustained flight. Young alone do not define a pair because young barred owls look like young spotted owls until late in the summer. Older young, typically observed in late summer and capable of sustained flight, can be found far from the nest tree. The ODF Wildlife Biologist should be consulted to determine if observation of fledged young warrant establishment of a new activity center.

Spotted owls can breed as early as one year old when they are still considered subadults. However, spotted owls typically do not establish territories until they are two to three years of age and considered adults. Most "pairs" of spotted owls are "**capable of breeding**", and productive nesting is likely if adequate habitat and prey are available.

"**Reliably identified**" The knowledge, skills, and abilities of operators, other agencies, groups, or private consultants' must be evaluated to determine the degree of confidence in information presented. This is especially important given the prevalence of barred owls as both species can look similar to an untrained eye.

"**Repeated observation**" At least two observations of both male and female in close proxmity.

"**Close proximity**" means that the male and female are observed within ¼ mile of each other on the same survey visit (within a seven-day time period). Owls detected further than ¼ mile from eachother on the same visit or within ¼ mile but not within the same survey visit do not meet the criteria to be designated as a “Pair” under the USFWS survey protocol.

In all situations, the SF will make designations of spotted owl activity centers based upon a biological evaluation, which shall include consultation with the ODF Wildlife Biologist.

In many cases, the activity centers are already designated and mapped by the agency that conducts surveys for the area (e.g., BLM, USFS PNW Research Station, or ODF State Forest Program). In most cases, ODF relies on the designated activity centers from these other agencies. ODF may assign a different activity center location if it is determined that more recent or more significant information exists (e.g., a more recent nesting attempt occurred but the source agency did not designate a new activity center due to their own internal policies). In these cases, or when evaluating survey information submitted by a landowner or other party directly to ODF, the following hierarchy of information is used to determine the appropriate location for the activity center or nest tree.

1. Response type: When known, the activity center location should be based on the loction of the actual nest tree. When the nest tree loction is not known, the following hierarchy should be considered. Nestling(s)/fledglings (not capable to sustained flight) are typically in closest proximity to the owl's activity center. Similarly, "pair" responses are more indicative of nesting behavior than "single" responses (i.e., Nest location > Nestling(s)/Fledgling(s) location > Pair location > Single owl location).

2. Year: The most recent year's response information typically represents the best available information (i.e., 1996 > 1995 > 1994, etc). Typically the protected location is the most recent tree where a nesting attempt occurred.

3. Time of day: When the location of a nest tree is not known, the detection pattern for the owls may need to be examined. Daytime locations typically are in closer proximity to the owl's activity center than evening locations. During evening hours, owls often move considerable distances (i.e., Day locations > Night locations).

4. Time of year: Locations during the nesting season (March - June) typically are in closer proximity to the owl's activity center than locations in the remainder of the year. (i.e., breeding season > non-breeding season)

5. Consistency of location: Owls that are consistently (over a period of months or years) located in a specific area are typically in closest proximity to the activity center.

In some cases, the geographic location selected as an activity center may not actually be where an owl was identified. In some situations, forest stand conditions (habitat quality) adjacent to documented owl responses will determine the designation of the activity center.

Designated northern spotted owl nesting sites should be considered "active", requiring protection until there is reliable evidence that the site is no longer occupied by a pair of adult spotted owls (i.e., abandoned or resident single status). All surveys and pair/single status determinations must adhere to the guidelines of the USFWS as described in the current Northern Spotted Owl Survey Protocol. Surveys of suitable habitat within 0.7 mile[1] of the protected nest site or activity cener are needed to evaluate active versus abandoned status. Landowners must submit a formal request to have the status of a site changed to “abandoned” under the FPA, including all required documentation (see Northern Spotted Owl Site FPA Abandonment Request Form). ODF’s Wildlife Biologist must evaluate all requests to have the status of a spotted owl site changed to “abandoned” under the FPA..

An historical site can be considered an abandoned resource site if:

1. No spotted owl responses (i.e., visual or vocal observations) are obtained in the general area (within 0.7 miles of activity center) of the historic nesting site after five consecutive years of protocol surveys.
2. Five consecutive years of protocol surveys indicate alternating or varying combinations of unoccupied status (i.e., no visual or vocal observations) and resident single status.
3. Evidence, such as observations of banded birds, that <u>both</u> members of a pair have moved their nesting site. (The FPA rules require protection of only one 70-acre area of suitable habitat for each known nesting adult pair of northern spotted owls.)

The department will maintain an inventory of owl resource sites, which is a compilation of shared information from, BLM, USFS, ODFW, private landowners and ODF. The inventory shall include the mapped location of nesting pairs and resident single(s) owls. Because the dataset is compiled from information from outside sources which may submit data that is not current, the actual status of an owl site should always be evaluated. Information on the current

[1] ODF policy differs from the USFWS protocol in that ODF only requires surveys around the core area (within 0.7 miles of a nest site) rather than throughout the entire provincial home range distance (1.2 to 1.5 miles); this is the only deviation from the USFWS protocol standards allowed for purposes of meeting compliance with FPA rules.

status can be obtained from the ODF Wildlife Biologist or from the source of the spotted owl information.

The spotted owl inventory information can be made available to landowners needing the information for planning purposes. If the proposed operation does not conflict with protection of the nesting site, the operator does not "need to know" the exact location of the nest tree or activity center. However, the operator should be informed that they are operating near (within one-half mile) a spotted owl nesting site or activity center, and there may be additional regulatory requirements under the federal Endangered Species Act.

If any other person requests spotted owl nesting site location information, they must submit a public records request and demonstrate a "need to know."

Example: If a private landowner asks if there is a spotted owl nesting site on his or her land for the purposes of evaluating and planning future forest management activities, the information may be released when the landowner signs an "Agreement for Release of Biological/Archeological Information". If a realtor inquires whether an owl is on a parcel that has a "For Sale" sign on the fence, the realtor doesn't "need to know" the exact location of the nesting site. However, information can still be conveyed as to whether or not a particular ownership would be affected by the FPA spotted owl rule requirements if a nesting site is in the area. Requests for locations of spotted owls near property can be forwarded to the ODF Wildlife Biologist for approval and processing. Requests pertaining to specific taxlots or operations can be handled at the districts; requests for spatial data or for large properties should be processed by the Salem office. Requests for spatial data can be sent to either the ODF Wildlife Biologist or GIS program coordinator.

RELATED RULES AND STATUTES:

- OAR 629-600-0100 *"Resource Site"*

REFERENCES:

- *Active vs. abandoned northern spotted owl sites;* Rod Krahmer; ODF; June 15,1995
- *Forest Practices Act*—Criteria for Spotted Owl "abandoned" sites. November 1, 2012.
- *Guidelines for identifying and designating northern spotted owl activity centers;* ODFW; 1992
- *Northern Spotted Owl Site FPA Abandonment Request Form;* ODF Private Forests, 2018.
- *Protocol for surveying proposed management activities that may impact northern spotted owls;* U.S. Fish and Wildlife Service; February, 2011, revised January 9, 2012

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(3) (a) For the purposes of this rule, suitable spotted owl habitat means and includes:

(A) A stand of trees with moderate to high canopy closure (60 to 80%); a multi-layered, multi-species canopy dominated by large overstory trees (greater than 30 inches in diameter at breast height); a high incidence of large trees with various deformities (e.g., large cavities, broken tops, and other evidence of decadence); numerous large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly; or

(B) In the absence of habitat which exhibits all the characteristics listed above, the available forested habitat which comes closest to approximating the listed conditions.

(b) Stands which do not exhibit at least two of the characteristics listed in paragraph (a) (A) of this section are not suitable habitat.

APPLICATION:

This section is not used for enforcement action.

ADMINISTRATION:

This section defines suitable habitat that must be protected, based upon research at Oregon State University. The study concluded that the average area used by fledgling spotted owls, before dispersal, was 70 acres.

Mortality in juvenile owls is very high, with predation and starvation being the primary causes of death. A relatively closed canopy of contiguous suitable habitat is important to survival prior to dispersal by providing protection from predators from above. The 70-acre core area encompassing the nest site is not intended to provide all the habitat requirements needed by a pair of spotted owls (e.g., foraging habitat, roost sites, alternate nest sites).

REFERENCES:

- *A conservation strategy for the northern spotted owl;* Thomas, J.W., E.D. Forsman, J.B. Lint, E.C. Meslow, B.R. Noon, and J. Verner, Interagency Scientific Committee to address the conservation of the northern spotted owl; U.S. Government Printing Office 1990-791-171/20026; 1990
- *Revised recovery plan for the northern spotted owl (Strix occidentalis caurina);* U.S. Department of the Interior, Fish and Wildlife Service; Washington, D.C.; 2011

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(4) (For information only) Federal law prohibits a person from taking northern spotted owls. Taking under the federal law may include significant alteration of owl habitat on any class of land ownership. Compliance with subsection (1) of this rule is not in lieu of compliance with any federal requirements related to the federal Endangered Species Act.

APPLICATION:

This section is not used for enforcement action.

ADMINISTRATION:

Section 9 of the federal ESA sets out prohibited acts, with respect to federally listed species, that apply to any person under the jurisdiction of the United States. The ESA prohibits the "take" of federally listed species, unless either a "scientific" or "incidental" take permit is granted. Take means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct". Harm, as used in the definition of "take", can occur through destruction or modification of habitat that significantly impairs essential behaviors, including breeding, feeding, rearing, or migrating. The USFWS has established four guidelines to assist landowners and operators to avoid a "taking".

Development of regulations and programs to carry out the purposes of the ESA is the responsibility of the USFWS. Other federal agencies have specific obligations to further the purposes of the ESA, in recovery of threatened or endangered species. States and their agents are prohibited only from engaging in acts, which result in a "taking". State laws, such as the Oregon Forest Practices Act, may require certain protection measures independent of the ESA.

The Board of Forestry has interpreted Oregon's law to limit its authority to the protection of specific resource sites as opposed to the broad scale habitat guidelines associated with the ESA. The spotted owl resource sites protected are nesting sites only.

Commercial forest operations proposed to occur within a 1.5-mile radius (depending on physiographic province) of any known spotted owl site may be subject to federal regulation. Operators are required to avoid a "taking" as prohibited by the ESA. The SF should inform the operator of their responsibility under the ESA. Landowners should consult with the U.S. Fish and Wildlife Service, Portland Field Office at (503) 231-6179 for specific direction about ESA compliance.

Compliance with the state Forest Practices requirements does not imply compliance with federal ESA requirements or federal agency rules, regulations, policies or agreements. It is the responsibility of the landowner and operator to insure federal laws and regulations are incorporated into the operations plan.

REFERENCES:

- *Background and Rationale Leading to FPA Administrative Policy on Protection of 70 Acre Core Area Around Known Northern Spotted Owl Nests or Activity Centers;* Charlie Stone, ODF; September 4, 1990
- *Endangered Species Act of 1973 as amended through the 108th Congress;* U.S. Fish and Wildlife Service; 2004
- *Procedures leading to endangered species act compliance for the northern spotted owl;* U.S. Fish and Wildlife Service; July, 1990
- *The Endangered Species Act: a guide to its protections and implementation;* D.J. Rohlf; 1989

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(5) Exceptions to the requirements for protecting northern spotted owl nesting sites are allowed if the operator is in compliance with, and has on file with the State Forester, an applicable incidental take permit issued by federal authorities under the Endangered Species Act.

APPLICATION:

This section is not used for enforcement action.

ADMINISTRATION:

Administering and implementing the federal Endangered Species Act has focused on avoiding "jeopardizing" species, "taking" species, and adversely modifying critical habitat. The federal Endangered Species Act also permits activities to affect listed species under circumstances that provide adequate protection for their survival and recovery. Section 10(a) of the federal Endangered Species Act authorizes the U.S. Fish and Wildlife Service to issue Incidental Take Permits (ITPs) based on Habitat Conservation Plans (HCPs) or Safe Harbor Agreements (SHAs). The HCP typically describes the steps that will be taken to minimize or mitigate the impact to listed species while conducting the desired activity. SHA's typically describe baseline conditions at the time of enrollment and how management actions will provide a "net conservation benefit" to the species.

Exceptions to the requirements for protecting northern spotted owl nesting sites are allowed if the operator has obtained an incidental take permit from the U.S. Fish and Wildlife Service. A copy of the HCP or SHA and the corresponding ITP must be on file at the district office. Lands covered by the ITP are exempt from the FPA spotted owl rules.

ITP's only apply to the enrolled landowner. Thus specific sites near property boundaries may be exempt from FPA rules for the covered landowner (the one that holds the ITP), but still considered protected resource sites for other landowners.

REFERENCE:

- ORS 527.670 When notice and written plan required

OPERATION SCENARIOS

Purpose: These scenarios list the duties of landowners/operators and ODF, the role ofODFW and other agencies. Landowners have obligations under both the forest practice rules and the federal Endangered Species Act (ESA).

Scenario A: *Notification is submitted and it is flagged for having a spotted owl site within ½ mile. SF determines that the site is 700 feet from a notified Type 3 timber harvest operation.*

Steps to be taken for further review:

- SF should provide formal comment in FERNS:Compliance with the FPA rules does not ensure compliance with the federal Endangered Species Act."
    - This comment should be provided for all instances when an owl point is within ½ mile of a proposed operation as federal protections may apply even if it is determined that no protections are needed under the FPA.
- SF should review the resource site in Vantage or ArcGIS.
    - Look at the attributes for the point as well as the attributes for other nearby spotted owl points. There may be multiple points for the same owl site. Use the Status, LstYrPR, and LstYrRepro columns to determine the likely status of the site, the last year a spotted owl pair was present at the point, and the last year confirmed reproduction was at this point. Do this for all points for the same owl name/ MSNO #. In most cases, the protected resource site will be the point with the last known nesting attempt. This is not always the case, however, so consult with the ODF Wildlife Biologist.
    - If the actual protected point/ Alt Site for the owl territory is > ¼ mile from the operation, there is no conflict and no further review is needed.
    - If the point near the operation is determined to be the protected resource site, further review is needed to determine if a conflict exists.
        - Examine the proximity of the owl point from the operation and the topography in the area. In this case, the point is within 700 feet so a conflict is likely. Had the owl site been closer to ¼ mile and over a prominent ridge, it may have been determined that a conflict was not likely.
- SF should notify (FERNS Formal Comment) the landowner/operator of the presence of the protected owl site and inform them that a **non-statutory written plan** is required. The written plan needs to address how the operation will be conducted to avoid a conflict to the owl site. This includes both how the site will be protected from disturbance and the presence of at least a 70 acre core area of suitable spotted owl habitat that will remain intact following the completion of the operation.
- The landowner/operator is responsible for developing and submitting the written plan. If the written plan includes a map with the owl site location, it should be e-mailed to the SF and not submitted on FERNS.
    - The SF and ODF Wildlife Biologist can provide technical assistance in development of the plan, especially in the designation of a spotted owl core area. The SF cannot designate the owl core for the landowner, but can provide them with a set of possible options that are likely to meet the requirement of the rule.

- The SF should review the written plan with the assistance of the ODF wildlife biologist (if needed). ODFW Wildlife Biologist may need to be consulted for difficult situations.
    - If the written plan is not complete or the proposed protections are not likely to adequately avoid a conflict, the SF should communicate with the landowner to attempt to get a revised written plan.
- The SF should upload the complete written plan and core area map to FERNS. Any documents that include the location of the owl site (including core area map) should be uploaded as an "other" document so that it is not viewable to the public (these are considered sensitive information and exempt from public disclosure). The text for a spotted owl written plan can be uploaded as normal if the location of the owl site is not included.
- If the spotted owl core area is located on an adjacent landowner or landowners, a copy of the written plan should be submitted to the adjacent landowners for their input.
    - In some situations, the SF may want to encourage a meeting with all affected landowners prior to development of the written plan. This may be especially helpful when multiple private landowners are likely to be involved in designation of a core area.
    - If the owl site is on public lands (e.g., BLM, USFS, ODF), up front communication should be encouraged. The written plan should be sent to the appropriate local Wildlife Biologist to provide an opportunity for input.
    - The SF should review any input received, with help from the ODF Wildlife Biologist if needed. Comments received should be shared with the landowner and included in the SF formal comments. The SF should encourage revision of the written plan if it seems warranted from the comments received.
- The SF should provide formal comment on the written plan in FERNS.

Scenario B: *Same as above except the owl point is located 200 feet from the boundary of the operation.*

- Because the point is within 300 feet of the operation, a **statutory written plan** is required (FERNS Formal Comment).
    - The written plan requirement cannot be waived even if it is determined that a conflict does not exist (which is unlikely if the operation is within 300 feet)
    - The written plan is NOT required when ODF has determined that the point is not actually a protected resource site. This can occur when:
        - The site has already been formally reviewed and determined to be an abandoned resource site under the FPA or
        - There are multiple points for the same owl site/territory and the protected location is determined to occur elsewhere, beyond ½ mile from the operation.
    - The written plan must include a core area for the owl site that "adequately encompasses the nest tree". ODF interprets this to mean that a minimum of a 300 foot buffer around the nest tree is required. This is true in all situations, even if some of this 300' buffer is not currently owl habitat. Even if younger timber, it may still provide buffering to the nest tree and/or prey resources. Because of this requirement, the operation boundary as notified will likely need to be adjusted to accommodate the core area for the owl.

Scenario C: *Same as Scenario A except landowner wishes to have seasonal restrictions waived before the end of the critical use period*

- Current spotted owl surveys are required to document that one of the following situations has occurred:
    - A pair of spotted owls is present, but ODF has confirmed that they are not nesting
    - A pair of spotted owls is present, but ODF has confirmed that their nesting attempt failed
    - Surveys are completed and only a single spotted owls is present
    - Surveys are completed and no spotted owls were detected
- For owl sites being surveyed by another agency, the SF or ODF Wildlife Biologist can contact the agency Wildlife Biologist to request information on the status and outcome of survey effort.
- For owl sites surveyed by the landowner, data sheets should be submitted and reviewed by the ODF Wildlife Biologist.
- SF makes a FERNS Formal Comment about the determination of the request for an exception to the seasonal restriction.