

Proposed revisions to the FPA rules pertaining to the BOF decision for changes to bald eagle rules

Review Version

Only rules pertaining to eagles, or other rules with proposed changes are shown

February 2017

629-600-0100

Definitions

As used in OAR chapter 629, divisions 605 through 669 and divisions 680 through 699, unless otherwise required by context:

- (1) "Abandoned resource site" means a resource site that the State Forester determines is not active.
- (2) "Active resource site" means a resource site that the State Forester determines has been used in the recent past by a listed species. 'Recent past' shall be identified for each species in administrative rule. Resource sites that are lost or rendered not viable by natural causes are not considered active.
- (13) "Conflict" means resource site abandonment or reduced resource site productivity that the State Forester determines is a result of forest practices.
- (23) "Fledging tree" means a tree or trees close to the nest which the State Forester determines are regularly used by young birds to develop flying skills.
- ~~(24) "Foraging area" means an area (usually a body of water) where bald eagles concentrate their hunting activities.~~
- ~~(25) "Foraging perch" means a tree or other structure that overlooks a portion of a foraging area and is habitually used by bald eagles as a vantage point while hunting.~~
- (40) "Key components" means the attributes which are essential to maintain the use and productivity of a resource site over time. The key components vary by species and resource site. Examples include fledging trees or perching trees.
- (51) "Nest tree" means the tree, snag, or other structure that contains a bird nest.
- (52) "Nesting territory" means an area identified by the State Forester that contains, or historically contained, one or more nests of a mated pair of birds.
- (56) "Perch tree" means a tree identified by the State Forester which is used by a bird for resting, marking its territory, or as an approach to its nest.
- (60) "Replacement tree" means a tree or snag within the nesting territory of a bird that is identified by the State Forester as being suitable to replace the nest tree or perch tree when these trees become unusable.
- (61) "Resource site" is defined for the purposes of protection and for the purposes of requesting a hearing.

Commented [WJ1]: Only definitions which relate to the bird rules are shown here.

The numbering for definitions will be corrected later

- Underline shows new text
- Strikethrough shows text to be deleted
- Plain text means no changes from the original rule language.

(a) For the purposes of protection:

(A) For threatened and endangered bird species, "resource site" is the nest tree ~~roost trees, or foraging perch~~ and all identified key components.

(B) For sensitive bird nesting, roosting and watering sites, "resource site" is the nest tree, roost tree or mineral watering place, and all identified key components.

(C) For significant wetlands "resource site" is the wetland and the riparian management area as identified by the State Forester.

(b) For the purposes of requesting a hearing under ORS 527.670(4) and 527.700(3), "resource site" is defined in OAR 629-680-0020.

~~(64) "Roosting site" means a site where birds communally rest at night and which is unique for that purpose.~~

~~(65) "Roost tree" is a tree within a roosting site that is used for night time roosting.~~

~~(73) "Staging tree" is a tree within the vicinity of a roosting site that is used for perching by bald eagles before entering the roost.~~

(77) "Structural exception" means the State Forester determines that no actions are required to protect the resource site. The entire resource site may be eliminated.

(78) "Structural protection" means the State Forester determines that actions are required to protect the resource site. Examples include retaining the nest tree or perch tree.

(79) "Temporal exception" means the State Forester determines that no actions are required to prevent disturbance to birds during the critical period of use.

(80) "Temporal protection" means the State Forester determines that actions are required to prevent disturbance to birds during the critical period of use.

DEPARTMENT OF FORESTRY

DIVISION 665

SPECIFIED RESOURCE SITE PROTECTION RULES

629-665-0000

Commented [WJ2]: No changes so rule language not shown

629-665-0100

Species Using Sensitive Bird Nesting, Roosting and Watering Sites

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.

629-665-0110

Commented [WJ3]: No changes so rule language not shown

Osprey Resource Sites; Key Components; Protection Requirements; Exceptions

629-665-0120

Commented [WJ4]: Minor change to language in 0120 (2). Only that rule clause shown.

Great Blue Heron Resource Sites; Key Components; Protection Requirements; Exceptions

(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 trees 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. Input from the ODFW wildlife biologist and ODF's fish and wildlife specialist is important when marking trees to be removed from this buffer. Operators should consult with the State Forester and the Oregon Department of Fish and Wildlife when marking trees to be removed from this buffer.

Commented [WJ5]: Correction to the wording for this clause.

(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 one-quarter (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.

629-665-0130

Bald Eagle Nesting Sites; Key Components; Protection Requirements; Exceptions

Commented [WJ6]: The new eagle rules are currently displayed to show changes from the original rule language.

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

(a) An active nest tree is one that has been used by eagles within the past five (5) nesting seasons. No protection is required for abandoned resource sites, in which a bald eagle has nested in the past, and that the State Forester determines to be structurally capable of successful future use, whether or not the tree still contains a nest.

- Underline shows new text
- Strikethrough shows text to be deleted
- Plain text means no changes from the original rule language.

(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 for ~~an additional five (5) years~~ only if the site contains suitable replacement nesting trees sites. ~~In this case, if bald eagles do not re-nest in the nesting territory within a nesting resource site is not used during this five-year period, or if there are no replacement nesting trees present, the site shall be considered abandoned and no protection will be required.~~

(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.

(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 one-quarter (1/4) mile of the active nest tree. ~~If the eagles have line-of-sight vision from these trees to the operation, the distance is one-half (1/2) mile.~~

(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.

(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 Endangered Species Act Bald and Golden Eagle Protection Act.

(4) (For information only) Federal law prohibits a person from taking bald eagles. Compliance with subsections (1) and (2) of this law is not in lieu of compliance with any federal requirements related to the federal Bald and Golden Eagle Protection Act.

629-665-0200

Resource Sites Used By Threatened and Endangered Species

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

(1) Northern spotted owl nesting sites.

~~(2) Bald eagle nesting sites.~~

~~(3) Bald eagle roosting sites.~~

~~(4) Bald eagle foraging perches.~~

629-665-0210

Commented [WJ7]: One minor change to 0210 (1). Only that rule clause shown.

Interim Requirements for Northern Spotted Owl Nesting Sites

(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*~~) (*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.

629-665-0220

Bald Eagle Nesting Sites; Key Components; Protection Requirements; Exceptions

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

~~(a) An active nest tree is one in which a bald eagle has nested in the past, and that the State Forester determines to be structurally capable of successful future use, whether or not the tree still contains a nest.~~

~~(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 for an additional five (5) years only if the site contains suitable nesting sites. In this case, if a nesting resource site is not used during this five-year period, the site shall be considered abandoned and no protection will be required.~~

~~(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.~~

(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 one-quarter (1/4) mile of the active nest tree or perch trees. If the eagles have line-of-sight vision from these trees to the operation, the distance is one-half (1/2) mile.

(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.

(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 Endangered Species Act.

629-665-0230

Bald Eagle Roosting Sites; Key Components; Protection Requirements; and Exceptions

(1) For bald eagle roosting sites, the resource site is the active roost trees, probable roost trees as identified by the State Forester, and all identified key components:

(a) An active roosting site is one that has been used within the past 5 years for roosting by bald eagles. No protection is required for an abandoned bald eagle roosting site.

(b) The key components associated with a bald eagle roosting site are staging trees, probable roost trees as identified by the State Forester, and a forested buffer around the roost trees. Factors to consider when identifying key components:

(A) Actual observation data when available.

(B) Roost sites frequently occur in mature forests. Roost trees are often significantly larger than the rest of the stand.

(C) Staging trees are often large, dead-top or dominant trees or snags where one or more eagles can perch and have direct access to the roosting site.

(D) The surrounding forested buffer must be adequate to maintain a suitable microclimate around the roost trees.

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

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

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

(b) Retain the active roost tree(s).

(c) Retain a forested buffer not less than 300 feet around the outermost active roost trees as a key component that includes probable roost trees.

(d) Retain staging trees.

(e) 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 one-quarter (1/4) mile of the active roost trees. If the eagles have line-of-sight vision from these trees to the operation, the distance is one-half (1/2) mile.

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

(C) The critical period of use for bald eagle roosting sites in the Klamath Basin is October 31 through March 31. In other areas of Oregon the critical period of use is November 15 through March 15. The specific critical period of use for individual roosting 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.

(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 Endangered Species Act.

629-665-0240

Bald Eagle Foraging Perches; Key Components; Protection Requirements; and Exceptions

(1) For bald eagle foraging perches, the resource site is the active foraging perch. An active foraging perch is one that is habitually used by eagles as a vantage point while hunting. No protection is required for abandoned bald eagle foraging perches. The presence or absence of foraging perches within or near a foraging area shall be determined by the State Forester when the forester conducts an operation inspection. Factors to consider when identifying key components:

(a) Actual observation data when available.

(b) Bald eagles usually perch in the tallest trees on the edge of forest stands overlooking the hunting area. Snags and dead-top trees are often used.

(c) Areas of high winds may require that additional trees be retained to protect the active foraging perch from damage.

(2) The operator shall provide the following protection measures when operating near a bald eagle foraging perch:

(a) During and after forest operations, the foraging perch shall be retained and protected from damage. The operation shall be designed to protect the foraging perch from windthrow.

(b) During the critical period of use, operations shall be designed and conducted so they do not cause excessive disturbance to bald eagles using the foraging area. The critical period of use shall be determined on a site specific basis. The critical period of use varies for each bald eagle foraging area, depending on whether the foraging area is used by nesting, wintering, or migrating bald eagles.

(3) Temporal exceptions for the entire foraging areas shall not be permitted by the State Forester. Temporal protection is determined by evaluating the potential disturbance to the entire foraging area used by a breeding pair or wintering population of bald eagles. Disturbance at a single foraging perch in a foraging area may be determined by the State Forester to not cause a conflict. This evaluation shall be based on the number of alternative foraging perches in the bald eagle foraging area.

(4) Structural exceptions for an active foraging perch may be permitted if the State Forester determines that adequate replacement foraging perches will remain in the vicinity after completion of the forest operation.