

## STAFF REPORT

Agenda Item No.:	2
Work Plan:	Private Forests Work Plan
Topic:	Forest Practices Act (FPA) Rule Policy Review
Presentation Title:	Specified Resource Site Rule Making for Bald Eagles
Date of Presentation:	March 8, 2017
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### SUMMARY

Because the bald eagle is no longer listed as a threatened species, the Board of Forestry (Board) has been working through the process to determine if continued protection under the Forest Practices Act (FPA) is warranted, and if so, to promulgate rules under the appropriate rule section. In July, 2016 the Board made a decision to rescind FPA rules for Bald Eagle Roosting Sites (OAR 629-665-0230) and Bald Eagle Foraging Perches (OAR 629-665-0240). The Board also decided to modify the nesting rules for the bald eagle and move the modified rules into the Species Using Sensitive Bird Nesting, Roosting and Watering Sites (Oregon Administrative Rule [OAR] 629-665-0100), utilizing the Regional Forest Practice Committees (RFPC) in an advisory role. The department is now seeking a decision by the Board on the draft rule language for the modified nesting site rules for bald eagles. If the Board approves the draft rule language, the department will initiate the public review phase of this project.

### CONTEXT

The Board's *2011 Forestry Program for Oregon* supports an effective, science-based, and adaptive FPA as a cornerstone of forest protection on private lands in Oregon. The Board's guiding principles and philosophies includes a commitment to continuous learning, evaluating, and appropriately adjusting forest management policies and programs based upon ongoing monitoring, assessment, and research (Value Statement 11).

The bald eagle has been removed from both the federal and Oregon endangered species lists. However, the FPA still identifies bald eagle nesting, roosting and foraging perch sites as resource sites used by threatened and endangered species and includes rules for their protection (OAR 629-665-0220 through 629-665-0240). When a threatened or endangered species is delisted by the Oregon Fish and Wildlife Commission and/or the U.S. Fish and Wildlife Service (USFWS), the Board must determine whether continued rules for protection of the species' resource sites are warranted. If the Board determines that continued protection rules are warranted, then rules shall be promulgated under the appropriate statutory authority. If the Board determines that continued protection rules are not warranted, existing rules must be repealed.

In July 2016, the Board made a decision to rescind FPA rules for Bald Eagle Roosting Sites (OAR 629-665-0230) and Bald Eagle Foraging Perches (OAR 629-665-0240). The Board also decided to modify the nesting rules for the bald eagle and move the modified rules into the Species Using Sensitive Bird Nesting, Roosting and Watering Sites (Oregon Administrative Rule [OAR] 629-665-0100), utilizing the RFPC in an advisory role.

## **BACKGROUND AND ANALYSIS**

The proposed rule changes are included in Attachments 1 and 2. Attachment 1 shows the edits from the old nesting rules to the new nesting rules and Attachment 2 is the rule language in the Secretary of State (SOS) format.

The rule changes include:

- Revisions to the definitions section to delete references to terminology used only in the roost site and foraging perch rules. Some other minor edits are also included.
- Redaction of the entire section of Threatened & Endangered rules for bald eagles (OAR 629-665-0220, 0230, and 0240).
- Addition of new rules for bald eagle nest trees under OAR 629-665-0130. The new rules include clauses for:
  - Define an active nest site as one that has been used in the last 5 years—this allows for sites to be determined an “abandoned” resource site under the FPA.
  - Protection of active nests by maintaining the nest tree, replacement trees, perch trees, and a 330 foot buffer.
  - Protection of active nests from disturbance by restricting operations during the critical use period (January 1 – August 31) within 660 feet for most activities and within 1000 feet for use of aircraft.
  - Allowing exceptions to the FPA rules if the operator has an incidental take permit under the Bald and Golden Eagle Protection Act.
  - Add language to make operators aware that bald eagles are federally protected under the Bald and Golden Eagle Protection Act.
- In addition to the bald eagle rules, minor corrections are being made during this rule process for one clause each in the great-blue heron and northern spotted owl rules.

The Eastern, Northwest, and Southwest RFPC have all reviewed the draft rule language and each committee voted to approve the changes.

## **RECOMMENDATION**

The department recommends that the Board approve the draft rule language (attachment 2) and to initiate formal administrative rule making.

## **NEXT STEPS**

Public hearings will be held in April/ May of 2017; one hearing will be held in each region (Eastern Oregon, Southwest Oregon, and Northwest Oregon). At the July 2017 Board meeting, the department will present a summary of the public hearings process and final rule

language (see timeline in attachment 2). If the final rules are approved in July, 2017, new rules would be anticipated to go into effect September 2017.

#### **ATTACHMENTS**

- Attachment 1: Bald Eagle Nest Site Draft Rule Language (shows modifications from old rules)
- Attachment 2: Rule package in SOS format
- Attachment 3: Bald Eagle Rulemaking Timeline (Graphic)