

Report to Board of Forestry On Rulemaking Hearings for Proposed Bald Eagle Protection Rules

Date: July 25, 2017
To: Chair Imeson, State Board of Forestry
From: Greg Wagenblast, Policy Analyst, Private Forests Division
Subject: Bald Eagle Protection Rulemaking Public Outreach & Hearings

This hearings report contains a summary of agency outreach conducted to generate interest in the public process and a summary of oral comments received at the three public hearings. Submitted written comments that were accepted up until 5:00 PM on May 15, 2017 are also provided.

Three hearings were held in April and May 2017, for receiving public comment on rules associated with protecting Bald Eagles. The Bald Eagle rulemaking programs were scheduled to start at 4:30 PM with an initial public open house/information session being held prior to the official Public Hearing; individuals were asked to sign in, indicate if they would like to provide public comment, and collect handout materials available to them. At the sessions, the audience was given an introduction to the process and a short presentation prior to the start of the formal public hearing. In addition, an announcement was made at the start of each hearing that indicated the hearings were being recorded.

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Outreach

A host of outreach methods was used to garner public response to providing written comments and participating in meetings and hearings. An accounting of the different methods is listed below:

Mandatory Notification to Legislators ¹	1
Mandatory Notification to Interested Parties ²	1
Tribal outreach (through Natural Resource and Cultural Resource clusters, additional emails, meetings)	6
News Releases	3
Media interviews (OPB, Newspaper, Radio)	5
Regional Forest Practice Committee Meetings	6
Committee for Family Forestlands	4
Oregon Small Woodlands Association	1
Tech Report Review – Expert input	1
Tech Report Review – Stakeholder input	1
Public Information Meetings – April and May 2017	3
Public Hearings – April and May 2017	3

¹ As described in OAR 629-001-0000

² As described in OAR 629-001-0000

General Observations

1. All three of the Regional Forest Practice Committees were supportive of the proposed Bald Eagle Rule revisions.
2. Several people would like additional research to occur before any rule changes are implemented.
3. There were also several comments received that they would like to see the ¼ mile buffer retained on nest sites instead of the proposed 660 foot buffer.
4. Most comments submitted expressed concern for rescinding Roost Site protection rules.
5. There is some interest in making the Oregon Forest Practices Act rules the same as the federal protection rules to create less confusion.
6. Some comments have been received in support of the changes from a small landowner's perspective and how it might assist them in management of their timberlands.
7. The email address to send comments to and the postal mail were last checked on May 15, 2017.

Tribal Comments received

May 15, 2017 > The Confederated Tribes of the Grand Ronde Community of Oregon – “On behalf of the Confederated Tribes of Grand Ronde Natural Resources Department (CTGR NRD), thank you for the opportunity to provide comment on the 2017 Proposed Bald Eagle Rule (hereafter referred to as the Rule). The Confederated Tribes of Grand Ronde (the Tribe) is made up of over 27 antecedent tribes and bands that are descendants from western Oregon, southwest Washington, and northern California, areas that are rich in natural resources and of which the Tribe has had a strong connection since time immemorial. As such, the Tribe has a vested interest in continuing to act as stewards for both the natural and cultural resources as well as the Tribal members within its ceded lands and usual and accustomed areas.

While the CTGR NRD fully recognizes the need to balance regulatory environmental enforcements with the need to alleviate undue burden on landowners, the CTGR NRD also has an inherent responsibility to protect the natural and cultural resources that support its tribal members' overall wellbeing. Eagles are both a significant natural and cultural resource to the Tribe and its members. The eagle is a sacred animal, and its feathers and other parts have historically been utilized for a number of religious ceremonies and other associated uses.

The proposed Rule will significantly affect the Tribe and its members' ability to both protect eagles and utilize eagle parts. Reductions in eagle habitat, whether roosting sites, foraging perches, or any other habitat, will quite obviously have negative impacts to the species. Due to the extent of development within the State, the large trees and associated habitat types that are needed to support nesting and roosting are already relatively rare, and the proposed ruling would only decrease their availability.

The CTGR NRD would strongly advise against lowering existing environmental regulations for the bald eagle. In addition, the CTGR NRD would suggest ODF strive to obtain a more up-to-date and accurate database on bald eagle nesting, foraging, and roosting sites before implementing any reductions in regulations such that a more informed decision might be made.

The CTGR NRD wishes to continue working with the ODF to ensure adequate protections for the natural and cultural resources that the Tribe has endeavored to provide for future generations since time immemorial.....”

Response

- We appreciate the input from the Confederated Tribes of the Grande Ronde Community. We recognize the importance of bald eagles to tribal nations and addressed this in our Bald Eagle Technical Report. The Bald Eagle has had dual protection from both the federal and the state government since the initiation of the Forest Practices Act rules for bald eagles. Bald eagles will continue to receive federal protection under the Bald and Golden Eagle Protection Act. The Board of Forestry determined through their rule review process that there was still a role for state-level protection for bald eagle nesting sites in Oregon. This was, in part, due to the fact that a large proportion of the known nesting trees in Oregon are located on or near nonfederal lands. Although the rules pertaining to disturbance restrictions are being modified, the habitat protection rules are similar to what is in place today. Bald eagle nest trees will continue to be protected under the state Forest Practices Act with the same habitat protection standards (i.e., a 330 foot habitat buffer around nest trees).
- ODF maintains a database of known bald eagle nesting sites in Oregon. We continue to collect new information from our sister agencies to attempt to keep it current and up-to-date. To our knowledge, no one has surveyed for roosting bald eagles in Oregon since the 1990's.

Hearing 1 – April 19, 2017, Oregon Department of Forestry (ODF), Klamath Falls, OR

Hearing Officer – Randy Baley, Klamath Falls Protection Unit Forester, ODF

Hearing Secretary – Jennifer Weikel, Wildlife Biologist, Private Forests Division, ODF

At 4:30pm a short public information presentation was provided by Ms. Weikel prior to the formal hearing. In accordance with Oregon Revised Statutes (ORS) 183.335, the rulemaking hearing on the proposed rules associated with protecting bald eagles was convened at 5:20 PM. Mr. Baley welcomed attendees and opened with the purpose for the meeting.

There were 6 individuals in attendance. Two individuals offered to provide public comments; each attendee was given 5 minutes each for their testimony. Excerpts from comments received are below:

- *Bob Anderson, live in Klamath Falls...* “Thank you Randy and Jennifer for your help. We really appreciate your inviting us and listening to our comments. I’m a long time retired Weyerhaeuser company biologist. I am here with Ralph Opp a retired ODFW biologist. Both of us are members on the Board of Directors of the Oregon Eagle Foundation. And so, our comments will be on behalf of the Eagle Foundation and ourselves as individuals. I really only have two points that I would like to surface, first, and I have written copies of earlier comments that were made by both Frank Isaacs and Charlie Bruce. Charlie’s a retired biologist with ODFW. He actually was the first non-game biologist in the state of Oregon in charge of coordinating the Endangered Species work. And so his comments together with Frank Issacs I think Jennifer has seen these before, but I wanted to reinforce those comments as still being pertinent. So in your organization’s review of these public comments, I would hope that those older comments be considered as well. My second point and last, is reference to the 330 feet habitat buffer. I take extreme exception to that number. I know where it came from, it was a 1970’s USF&W Bald Eagle Management Guidelines. It came up with that very arbitrary number out of their hat, or somewhere else. It has no technical basis whatsoever. And I believe that the language in your rules should be changed to “site-specific” determination made by the landowner, the Forest Practice officers and ODFW if available. Site-specific nature case-by-case consideration needs to be given. Not an arbitrary number like 330 feet. The other reason why I disagree with 330 feet is that I believe that agency people need to be held accountable for their on the ground decisions and not simply rely upon an arbitrary number. I hope that is clear. That’s the extent of my comments. I do have that written and you will be given a copy of that. Thank you, Randy.”
- *Ralph Opp. I’m a retired wildlife biologist for ODFW...* “I spent most of my career here in the Klamath Basin. And my additional credentials are; that I like Bob, are intimately involved with the recovery process of the bald eagle. I initially started the Bald Eagle Conference which is the oldest birding festival in the nation and now it’s called the Wind and Wings Festival, which

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was intended and did a good job about education about the bald eagle problem and its recovery. I was the State's representative on the Bald Eagle Recovery Team for the 7 Pacific States so, having said all that, we played a very important and intimate part in that recovery process. Habitat protection being part of it. Very close with Bob and agency people as well statewide and all over the Pacific Coast. I completely support Bob's comments here. We have never liked the 330 foot distance thing. So I would hope, and I understand, you did see Frank Isaac's comments? Frank also being an Eagle Foundation person, intimately involved in Bald Eagle work. I hope that you took into account much of his recommendations. Some of it was corrections. But also I am concerned with the monitoring program. I haven't read the rules here to see how you take responsibility for what's going on with the adoption of these rules. This was a problem with a lot of agency people, they had a very poor, or weak monitoring program keeping an eye on these rules and see these violations. My fear is that we may see a crash again of the bald eagle and that would be so ridiculous. I hope I don't live that long, but intend to live a long time and keep an eye on things like this. I appreciate your efforts and I will read the changes here and if I have any comments I will try to comment, but I am not an electronic media person, I like hard copy stuff. So I do admire Frank Isaac's comments and Charlie Bruce's comments too. And I hope they were taken seriously and I will look for those changes in these plans. Still interested in eagles, we do feel that having played a very important part in their recovery process. Those things don't happen. It's an honor to the Endangered Species Act that it was an important tool for us to have to use during that process and very good success story on the Bald Eagle recovery. So it was done by a lot of people, with a lot of effort. Thank you for having this hearing and I hope you do a good job."

The hearing was closed by Mr. Baley at 6:00 PM.

Response:

- The 330 foot buffer distance for protection of nest trees is the same as the existing FPA rule and is in alignment with the USFWS protection recommendation in the Bald Eagle Management Guidelines document (USFWS 2007). The 330 foot distance provides a clear minimum standard that is straightforward to enforce. Operators may retain greater than a 330 foot buffer voluntarily, or if they wish to propose a site-specific alternative to the 330 foot habitat buffer, they can do so through the Plan for Alternate Prescription approach.
- The comments from Frank Issacs and Charlie Bruce that were submitted during the public comment were initially received during an expert review of early drafts of the Department's Bald Eagle Technical Report. These comments were already considered and incorporated, as appropriate, into the final draft of the Bald Eagle Technical Report which was submitted to the Board of Forestry.

Hearing 2 – April 27, 2017, Douglas Forest Protective Association (DFPA), Roseburg, OR

Hearing Officer – Greg Wagenblast, Policy Analyst, Private Forests Division, ODF

Hearing Secretary – Jennifer Weikel, Wildlife Biologist, Private Forests Division, ODF

At 4:30pm a short public information presentation was provided by Ms. Weikel prior to the formal hearing. In accordance with Oregon Revised Statutes (ORS) 183.335, the rulemaking hearing on the proposed rules associated with protecting bald eagles was convened at 4:52 PM. Mr. Wagenblast welcomed attendees and opened with the purpose for the meeting.

There were 2 individuals in attendance. One individual offered to provide public comments; each attendee was given 5 minutes each for their testimony. Excerpts from comments received are below:

Stanley Vejtasa, Conservation Chair of the Umpqua Valley Audubon Society and live near Roseburg...
“I live off the North Umpqua River. I frequently see eagles fly by where we live. I’m really testifying as the Conservation Chair of the Umpqua Valley Audubon Society. I have mixed interests in various things, including being a forestland owner but my comments today will really reflect what I think Audubon feels. And I want to thank you for having this hearing, and I thought it was a very nice presentation summarizing things. And I didn’t have a whole lot I want to say other than, it appears to me that your rulemaking for nesting sites is reasonable. You’ve modified it a little bit from the Federal sites. I actually have a Bald Eagle nesting site near my property and its only 40 acres, so it’s a quarter mile by quarter mile. I went through the rules and discovered that during the season when things are restricted I basically couldn’t do much of anything because the buffer covered my whole area, but, now that you have modified the buffer it seems fairly reasonable to me. The one area that I know that Audubon would be concerned about is that the habitat. We feel preserving habitat is essential for birds in general and especially for special birds like Bald Eagles. And I would encourage you to make life simpler for everybody by making your roosting and foraging rules which you have gotten rid of, reinstated but making them consistent with the Federal rules. That way there would be no conflict between what the Federal rules are and the State rules are. So that would be my main recommendation for changes that you might do. Really, other than that I don’t think I have anything significant to say, other than I am impressed that you folks did quite a bit of background work on the whole process and I feel you’ve come with somewhat reasonable conclusions although I would recommend this one change. Thank you.”

The hearing was closed by Mr. Wagenblast at 5:45 PM.

Response:

- The Board of Forestry considered a suite of options for future bald eagle nesting rules and ultimately decided to move forward with an approach that is mostly in alignment with federal recommendations, and that is expected to give some relief to forest

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landowners like yourself that have been impacted by the current bald eagle nesting rules.

- The Board considered maintaining protection for roosting sites and foraging perches during the rule development process, but ultimately decided to only develop new rules for bald eagle nesting sites. Bald eagle roosting sites are federally protected under the Bald and Golden Eagle Protection Act and the USFWS continues to have regulatory authority to protect roost sites at the federal level.

Hearing 3 – May 2, 2017, Oregon Department of Forestry (ODF), Forest Grove, OR

Hearing Officer – Greg Wagenblast, Policy Analyst, Private Forests Division, ODF

Hearing Secretary – Jennifer Weikel, Wildlife Biologist, Private Forests Division, ODF

At 4:30pm a short public information presentation was provided by Ms. Weikel prior to the formal hearing. In accordance with Oregon Revised Statutes (ORS) 183.335, the rulemaking hearing on the proposed rules associated with protecting bald eagles was convened at 4:59 PM. Mr. Wagenblast welcomed attendees and opened with the purpose for the meeting.

One individual was in attendance. That same individual offered to provide public comments; each attendee was given 5 minutes each for their testimony. Excerpts from comments received are below:

Joe Liebezeit. The Avian Conservation Program Manager and biologist at the Audubon Society of Portland and live in Portland... “Our organization represents over 15,000 members across the State. We are concerned that the reduction of nest site buffers from ¼ mile to 660’ a 50% reduction could have a negative impact on reproductive success as well as increased potentiality of nest abandonment. Particularly at remote sites where birds are less habituated to humans. While the Technical Report sites one peer-reviewed study in 2013 indicating that Bald Eagles may experience quote-unquote general habituation to disturbance the report provides no evidence that a 50% reduction in the buffer size will not adversely affect nesting success. Or lead to increased nest abandonment. We recommend ODF retain the ¼ mile buffer and all other protection measures under the Oregon Administrative Rule 629.665.0220 until adequate research and monitoring indicates nest survivorship or abandonment would not be significantly influenced by the smaller buffer size. Regarding the Winter Roost Sites, it’s officially, it’s unknown if Eagles can easily relocate to a new roost site. There is also no information on how the loss of large roosting sites could detrimentally impact a local eagle population. Because of this for larger roosts we recommend retaining Oregon Administrative Rule 629.665.0230 which provides the ¼ mile buffer within the critical period. As well as more stringent protections than the

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current proposed rule. This recommendation is in line with ODF's own recommendation to the Board as indicated on page 14 of the Technical Report. Of course, this brings up how to define 'large' winter roosts. In the Technical Report ODF only defines a wintering roost as where multiple bald eagles perch at night. We recommend ODF develop criteria based on best available information to categorize roost sites, so large roosts can be identified. And afforded the original protections. Any new large roosts that would be established in the future would also be insured these protections. Finally, we agree with ODF that, perch sites are likely not a limiting factor to eagles at this time. Thanks again for the opportunity to provide testimony."

The hearing was closed by Mr. Wagenblast at 5:45 PM.

Response:

- The Department of Forestry considered two approaches for protection from disturbance for bald eagle nesting sites: restricting operations within a ¼ mile zone around nest trees or using distances that are recommended by the USFWS (660 feet for most activities and 1000 feet for use of aircraft). These two alternative approaches are described in the Bald Eagle Technical Report (ODF, March 2016). After completion of the Technical report, but prior to the Board of Forestry Meeting, the Department received additional input from the USFWS regarding proposed protection standards, including concern over having conflicting federal and state protection standards. After consultation with the USFWS on this matter, the department recommended that the Board approve the protection standards in alignment with the recommended protections under the National Bald Eagle Management Guidelines (USFWS 2007). The Board considered this and ultimately decided to approve protection standards that largely were in alignment with federal recommendations.
- The Board of Forestry considered maintaining protection for roosting sites, including specifically large roosting sites, during the rule development process, but ultimately decided to only develop new rules for bald eagle nesting sites. Bald eagle roosting sites are federally protected under the Bald and Golden Eagle Protection Act and the USFWS continues to have regulatory authority to protect roost sites at the federal level.
- The comment makes reference to use of only one peer-reviewed study for consideration of disturbance issues to nesting birds. The Department relied largely on other review documents, including the ODFW delisting report when developing the technical report. Only studies that were unique, or published subsequent to these summary reports were identified with citations in the technical report. In addition, the peer reviewed study is not reflected accurately in the comment. It addressed "generational" acclimation to disturbance (i.e., increasing acclimation to humans over many generations of birds), not "general" acclimation.

Summary of Written Comments Received, in order received

April 19, 2017 > Bob Anderson, Retired Weyerhaeuser Company Biologist – “Am here with Ralph Opp, retired ODFW biologist, and fellow Board member of the Oregon Eagle Foundation (OEF). Appointed to the Governor’s Task Force to write the states ESA. Principle author of WA Bald Eagle Protection Rules. I’d like to make 2 points: first, to reinforce earlier written testimony by Charlie Bruce, retired ESA coordinator of ODFW, copies presented. And second, reference 629-665-0130 “Bald Eagle Nesting Sites” section (2)(c) regarding reference to 330 feet from nest trees: Change “330 feet” to: “site-specific determination made by the landowner, the Forest Practices Officer, and ODFW, if available”. BECAUSE: 330 feet is arbitrary, not based on technical data, and needs to be determined on the ground by qualified people. AND Agency people need to be held accountable for their local decisions, not relying on an arbitrary number. Thank you.”

Response:

- The 330 foot buffer distance for protection of nest trees is the same as the existing FPA rule and is in alignment with the USFWS protection recommendation in the Bald Eagle Management Guidelines document (USFWS 2007). The 330 foot distance provides a clear minimum standard that is straightforward to enforce. Operators may retain greater than a 330 foot buffer voluntarily, or if they wish to propose a site-specific alternative to the 330 foot habitat buffer, they can do so through the Plan for Alternate Prescription approach.
- The comments from Frank Issacs and Charlie Bruce that were submitted during the public comment were initially received during an expert review of early drafts of the Department’s Bald Eagle Technical Report. These comments were already considered and incorporated, as appropriate, into the final draft of the Bald Eagle Technical Report which was submitted to the Board of Forestry.

April 19, 2017 > Bob Anderson, Retired Weyerhaeuser Company Biologist – submitted this second written comment at the Klamath Falls hearing (copy of email Mr. Anderson received from Mr. Frank B. Issacs that were comments Mr. Issacs provided ODF on the draft Bald Eagle Technical Report. Scanned copy is in the record)

“Jennifer, Angie and Marganne -

Thanks for the opportunity to review the 5th (Nov 2015) draft of the Bald Eagle Technical Report. I studied nesting bald eagles in Oregon from 1979–2007, wintering and roosting bald eagles in Oregon from 1982–1993, and currently am leading an ongoing golden eagle nest survey project in Oregon that started in 2011. I have reviewed the draft and have the following edits and comments:

pg 5, lower left box of diagram - roosting is misspelled.

pg 6, para 2 - Calling the effects of DDT the “most significant cause of decline” may be misleading. Granted, eggshell thinning caused by pesticides was a significant cause of reproductive failure in the lower 48 states after World War II, but that affected a remnant bald eagle nesting population that had been reduced significantly by direct persecution (shooting, poisoning and trapping), and habitat loss for over 100 years. The effects of DDT provided a catalyst for listing under the Federal ESA but direct persecution and habitat loss were the major causes of the decline of the nesting population, especially in Oregon. Direct persecution probably was the major cause of the decline in Oregon because, as we saw during recovery, habitat apparently was not a limiting factor.

pg 6, para 3 - The Bald Eagle Act was passed in 1940. That was prior to the use of DDT and because of population decline due to direct persecution and habitat loss.

pg 6, para 5 - Consider inserting “after World War II” after “declines” in this sentence.

pg 6, para 6 - Consider this rewrite of the first sentence: "After being listed under the Federal ESA, the bald eagle nesting population recovered throughout the contiguous United States."

pg 7, para 1, line 1 - Consider inserting “nesting” after “eagle”, and “in Oregon” after “rate”.

pg 7, para 1, line 2 - Consider deleting “in Oregon” if the previous change is made.

pg 7, para 1, line 5 - Consider deleting the word “time” and changing “is” to “was” at both places in the sentence.

pg 7, para 2 - I do not believe that either the Eagle Act or Migratory Treaty Act provide adequate habitat protection for nesting or roosting bald eagles. Those laws were passed to provide protection for individual birds and nests and do very little to protect habitat. On the other hand, the existing ODF protection rules were an effective at protecting habitat on private land.

pg 7, para 3 - The Eagle Act does not protect habitat for bald eagles like rules developed under the ESA.

pg 7, para 4 - The “National Bald Eagle Management Guidelines” also are a poor substitute for habitat protection under the ESA because they are voluntary and there is no monitoring of long and short-term impacts.

pg 8, para 1 - Same comment as above on the “self-certification process”... voluntary and no oversight.

pg 8, para 3 - Communal roosting is not limited to winter. Bald eagles congregate where food is abundant and roost communally any time of year. To my knowledge, there has never been a standard definition for a communal roost or communal winter roost. Providing a definition of a "communal winter roost" would be a good first step towards discussing the importance of communal winter roosts. Only protecting roosts that have been used within the past five years is mostly irrelevant because there is no inventory or monitoring program for communal winter roosts.

pg 9, para 3 - I don't recall ever writing that bald eagle juveniles are "typically independent by the end of August" and can't find "Isaacs and Anthony 2003" in the References section or remember a publication of that nature.

pg 9, para 4, next to last sentence - Nesting habitat is one factor in determining carrying capacity. If nesting habitat is not a limiting factor, then food, human activity or territory defense may be the limiting factors. Saying that nesting habitat "will become" limiting as populations reach carrying capacity may not be accurate.

pg 10, para 3 - Saying that ODF "maintains" a database is misleading. That implies ongoing efforts to keep the database complete and up-to-date. Any bald eagle nest or roost database that is published is out of date by the time it is published, and the longer the time from publication, the more inaccurate the data. That is because new nest and roosts are used each year, and previously documented nests are destroyed or roosts are not used.

pg 10, para 4 - There is a big difference between the nest inventories provided annually from 1979-2007, when we were actively searching for and monitoring nests, compared to adding nests that are found or reported anecdotally since then. In the 8 years since our last statewide report, if patterns of nest building and loss continued, there would be ~1000 new bald eagle nest trees on the inventory list.

pg 11, para 3 - The foraging perch rule was always problematic because there was no systematic attempt to collect that data. I suspect that in most cases riparian habitat protection rules adequately protect and provide foraging perches for nesting bald eagles.

pg 12, para 1 - Consider adding herbicide application as another potentially disturbing forest practice.

pg 14, line 2 - Does "range" mean range in Oregon or the entire range of the species? I'm assuming range in Oregon in the following comments.

pg 14, para 3 - I agree that "protection of roosting sites is important for certain populations of eagles in Oregon". To me, it doesn't follow that protection "is unnecessary at this time to ensure continuation of the species throughout its range." If protection is important to certain populations and there is no protection for those populations, then they are not being protected throughout their range. Maybe I'm interpreting this wrong?

pg 16, last para - Consider this rewrite of last two complete sentences on the page: "...move to a new stand due to strong site fidelity or lack of alternative habitat. Thus loss of very large roosting sites due to logging could impact local populations."

pg 17, para 1 - Capitalize "Federal" ?

pg 18, table 2 - Seems like Criteria 1 for roost sites should be yes (Y) for some areas of the state based on the previous discussion.

pg 19, para 1 - Based on my experience and understanding of the ESA and Eagle Act, the Eagle Act does not afford protections similar to the ESA, especially for nesting and communal winter roosting habitat.

pg 19, para 2 - Again, current USFWS guidelines are voluntary and not monitored, so they may be ineffective for protecting habitat.

pg 22, para 2, last 3 sentences - This statement builds a case for protecting roosting habitat under some circumstances. The challenges would be locating and monitoring roosts, defining what constitutes a communal winter roost, and deciding which roosts should be protected.

pg 23, line 1 - To my knowledge, ODF has always defined a nesting site/resource site as a single nest tree. In the literature, a nesting site usually is a larger area that is equivalent to a nesting territory and contains one or more nest trees. For protecting nesting habitat the territory definition makes more sense. At any rate, you should define “nesting site” so that it is clear to the reader how it is being used.

pg 24, first para - 330 foot buffers may be effective in the short-term, however long-term protection of habitat by this size buffer has not been proven. See Anthony and Isaacs 1989:158 for a discussion on this topic. Also, Isaacs et al. 2005:35-37 indicates that the long-term consequences of 330 foot buffer zones are suspect. Consider adding “for 5-10 years but may not be adequate for longer-term habitat protection.” to the last sentence in the paragraph.

pg 24, last para, first line - Unclear what is meant. “is not suggests” must be a typo.

pg 26, last para & pg 27, first para - The abandoned nest/resource site idea is complicated and has potential negative long-term consequences. Some thoughts:

- 1) Distinguishing between resource site and territory is important. An occupied territory may contain one or more nests (resource sites) that are not used for 5 years. Those nests are still important components of the nesting area and should not be considered abandoned as long as the nest is present.
- 2) Determining 5 consecutive years of nonuse requires annual monitoring under an appropriate monitoring protocol by an experienced observer. Monitoring when convenient or by hearsay may result in inaccurate monitoring results.
- 3) We have been fortunate to have been experiencing an increasing nesting population of bald eagles in Oregon since the late 1970s. Consequently, territory abandonment has been extremely rare (Isaacs & Anthony 2011). With a declining population, abandonment would increase and allowing logging of nests after 5 years of nonuse would result in destroying habitat that might be important to a subsequent recovery. I recommend that a resource site be considered worthy of protection until at least 5 years after a nest is destroyed and the nesting territory has been unoccupied for at least 5 years.

Finally, I understand the technical reasons that nesting golden eagles are not addressed in forest practices rules. However, golden eagles have the same federal protection as bald eagles, and golden eagles that nest in trees are susceptible to destruction or disturbance by the same forest practices that affect bald eagles. I recommend that golden eagles should be treated as a Sensitive Species under ODF rules not only to protect the species and its habitat but to help protect private landowners from unknowingly violating the Eagle Act.

Thanks for your thoughtful work on this important issue and for providing me a second opportunity to comment on the draft Bald Eagle Technical Report. Feel free to contact me if you want to discuss this or any other topics related to eagles in Oregon....”

Response:

- The comments from Frank Issacs and Charlie Bruce that were submitted during the public comment were initially received during an expert review of early drafts of the Department's Bald Eagle Technical Report. These comments were already considered and incorporated, as appropriate, into the final draft of the Bald Eagle Technical Report which was submitted to the Board of Forestry.

April 19, 2017 > Bob Anderson, Retired Weyerhaeuser Company Biologist – submitted this third written comment at the Klamath Falls hearing (copy of email Mr. Anderson received from Mr. Frank B. Issacs that is an email Mr. Issacs received from Mr. Charlie Bruce providing comments to ODF on the 5th draft Bald Eagle Technical Report. Scanned copy is in the record)

“Wow, five drafts so far! So I remember commenting on the original technical report that Clint Smith developed when the Sensitive Site rules were first developed in the 1980's. Things have changed for the better since then for the eagles and the existing rules have been a big help.

So a few comments on the draft beyond what Frank Isaacs provided on a page basis plus some other thoughts on implementation at the field level.

p. 6, under Population Recovery. This might be the place to first bring up the information that **breeding areas** for eagles is more than just a single tree over time so it's clear to the reader that you are often talking multiple trees to meet the nesting needs of the species. Maybe a reference to a definition elsewhere. This could be enlarged upon on p. 9 under **Nesting** and then in revised rules more clearly define (i.e., site = breeding area which is may include alternate nesting trees over time).

p. 10-11, Winter roosting. I have to say that the roosting subject is a tough one to sort out since we have no recent data and the breeding population is doing well almost everywhere. Having visited and monitored a few of the roost areas in the past it was apparent they were targeting larger trees in proximity to feeding areas. Larger older trees provide more cover from the elements, "better" perching limbs. Since older forests are almost a thing of the past on private lands both nesting and roosting sites will become limiting in my opinion. Thus I think in lieu of no current data on roosting, we should retain some level of protection, especially in areas where mature trees are limiting. How that would be implemented is another matter. Certainly renewed inventory and research is needed and should be encouraged. ODFW should be asked to step up.

p. 11. Foraging perches. Here's another unknown area but once again it's been my experience that what we may call foraging perches are also used for resting much of the day. Large old snags with limbs along estuaries, rivers and lakes are regularly selected. These perches/resting areas, once lost, will not be replaced on private lands and probably not state lands due to short rotations and minimal buffers. I think there is more value to perches than we might think but real data is limited. Again, focused research is needed if it's not too late as it is in some areas like coastal estuaries.

p. 12, para 2. The point about bald eagles becoming more adapted to disturbance appears true but I would not generalize to the population since a relatively small number are located with urban/developed areas. Part of what we are seeing may be that large suitable nest trees are limited in the area so they go where they

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have to go. Also, I think in the last sentence the USFWS distance would be 660 feet (not 600). It should be pointed out that these football field distances (330 and 660) apparently originated in the Midwest flatter lands (e.g., Minnesota) and really have limited relevance to western mountainous areas.

Missing resource site information. In reviewing Resource Site related rules under Division 680, I noticed under [629-680-0030](#) the Reporting requirements which I think made good sense including identifying research needed. That said, I'm not aware if the monitoring was ever undertaken and reported. I would hope that whatever information came out of the monitoring program is included in the tech report. If the required monitoring did not occur, it should be explained why to the reader and the Board. This certainly was an important section.

p. 15. Nesting Sites, last sentence. I would say that given private lands short rotations, landowner turnover, AND the current FPA rules for buffers along water bodies, there is very clear that usable replacement trees on most private lands will not developed. Since buffers at the most will be less than a tree length wide for Type F streams and lakes (100 feet), any large trees can still be harvested over time and still meet basal area targets. That said, here is a good case for research to assess the status of private lands for current and future nesting habitat and for that matter whether they are meeting rule requirements.

p. 17. Nesting sites. Again, I think we need to state the obvious that whatever nesting habitat remaining on private lands is going to decrease and existing nest sites will be lost in time. That said, we won't really know unless habitat conditions are assessed systematically on a regular basis (e.g., monitoring and research needs to continue with ODFW involvement - maybe an every 5 year evaluation).

p. 17. Last sentence regarding Bald and Golden Eagle Act. The act at best may protect active nests and birds but certainly not roosts and perch sites nor habitat in general.

p. 20. Second para. I would say the based on the lack of information on both roosting and foraging sites, we cannot conclude they are not important statewide. Again, in some regions of the state roosting habitat (i.e., larger mature trees/stands in proximity to foraging areas) is limited and should be protected.

p. 27. Board of Forestry Decision Space. Regardless of the decision, it will be necessary to have a monitoring plan since it is required under 629-680-0030 already. In addition information on nest site conditions, roosting and perching has not been collected for years or at all.

Last, I think you need to point out the changes that have occurred in FPA rules, their implementation and field staffing. I went out on many site visits with what use to be called Forest Practices foresters (now Stewardship foresters) on private lands. Site plans were required and had to be approved by ODF often in consultation with ODFW. ODF no longer has such authority so plans are basically voluntary. Unless outcomes are monitored there is no way of knowing if the landowner followed through with their proposed plan.

Thanks for all the effort you and others have put into this over the past few years. The current status of the bald eagle is refreshing news among others that are not. I do think in the end we all need to continue to push for additional "status" monitoring and research to fill in the gaps and I know myself and others are willing (and still) able to assist...."

Response:

- The comments from Frank Issacs and Charlie Bruce that were submitted during the public comment were initially received during an expert review of early drafts of the Department’s Bald Eagle Technical Report. These comments were already considered and incorporated, as appropriate, into the final draft of the Bald Eagle Technical Report which was submitted to the Board of Forestry.

May 15, 2017 > Libby Mojica, Fort Collins, CO (additional attached documents have been saved to the formal record) – “This letter is in response to your notice of proposed rulemaking regarding forest practices around bald eagle nest and roost sites. I am a Certified Wildlife Biologist and have studied bald eagles for the past 20 years all over the country. I understand your need to realign your agency’s regulations with other state agencies and with the new federal eagle rule. I am concerned, however, that as the lead regulatory agency for approving tree harvesting activities in Oregon, your removal of regulations protecting communal roosts could enable destruction of communal roosts. The trees used for roosting are protected under the Bald and Golden Eagle Protection Act and destruction of the communal roost would require a take permit and potential compensatory mitigation. I am not familiar with your review process for harvest permits, but I suggest continuing review of bald eagle roosts in your permitting. This benefits 1) the landowner by informing them of eagle roost protections under federal law, and 2) protects the habitat resource for eagles.

Communal roosts do not get as much regulatory emphasis as nests, but service hundreds to thousands of eagles a year with some roosts dating back 40 or more years of active use by eagles (Mojica and Watts 2016). Loss of the trees the eagles use for roosting could decrease the eagle population’s use of a region for foraging. We know from telemetry work that the foraging shadow of a roost can be over 100km where eagles forage and return to the roost at night (Watts and Mojica 2012, Watts and Turrin 2017). In areas with limited roosting habitat options, loss of a roost could prevent eagles from effectively foraging constituting disturbance under federal law.

Many roosts are used seasonally so a landowner might decide to harvest trees during summer months not realizing those trees were a long-term winter roost. We also know that roosts provide foraging support for newly fledged juvenile eagles who join roosts immediately after leaving their natal territory and are able to learn about food resources from other more experienced foragers using the roost. Loss of roosts could impact survival rates of juvenile eagles in Oregon and ultimately recruitment into the breeding populations.

In 2014, I created the National Eagle Roost Registry to document eagle roosts across the country with financial support from the U.S. Fish and Wildlife Service. Frank Issacs provided locations and histories of 78 roosts in Oregon, several of which have been already been destroyed by conversion to agriculture. The National Eagle Roost Registry map is available online <http://www.cbbirds.org/maps/#eagleroosts>. I am

also attaching three supporting papers on the importance of communal roost management as background information for your rulemaking.”

Response:

- The Board of Forestry considered maintaining protection for roosting sites during the rule development process, but ultimately decided to develop new rules only for bald eagle nesting sites. As you mention, bald eagle roosting sites are currently federally protected under the Bald and Golden Eagle Protection Act and the USFWS continues to have regulatory authority to protect roost sites at a federal level.
- We appreciate the information on the National Eagle Roost Registry.

May 15, 2017 > Joe Liebezeit, Audubon Society of Portland, Portland, Oregon – “...We appreciate the opportunity to comment on the proposed modification of Oregon Forest Practices Act rules for Bald Eagles due to the Endangered Species Act delisting. The 10 Oregon Audubon chapters signing on to this letter represent over 15,000 members from around the state.

We are concerned that the reduction in nest site buffers from ¼ mile to 660 feet (50% reduction) could significantly increase the chance of nest abandonment and lowered reproductive success for eagles, particularly at remote nest sites where birds are less habituated to humans. While the technical report cites 1 peer-reviewed study (Guinn 2013) indicating that bald eagles may experience “general habituation to disturbance”, the report provides no evidence that a 50% reduction in the buffer size will not adversely affect nesting success or lead to increased nest abandonment. We recommend ODF retain the ¼ buffer and other protection measures under OAR 629-665-0220 until adequate research/monitoring indicates nest survivorship / nest abandonment would not be significantly influenced by the smaller buffer.

Regarding wintering roost sites, it is unknown if eagles can easily relocate to a new roost sites. There is also no information on how the loss of protections at large roosting sites or the cumulative loss of protections at many small roosts could detrimentally impact a local eagle population. Because of this and because of the significant data gap in roost site locations as alluded to in the March 2016 Bald Eagle Technical Report (see page 11), and because the majority of roosts are on nonfederal land, we recommend that the current Forest Practices Act rules remain in place for all winter roosts. If at some time in the future adequate science and roost site information is determined, we recommend retaining protections outlined in OAR 629-66-0230 for larger roosts which provides the ¼ mile buffer during the critical period as well as more stringent protections than the current proposed rule. This recommendation is in line with ODF’s own recommendation to the Board (see page. 14 in the technical report).

In the technical report ODF only defines a wintering roost as “where multiple bald eagles perch at night”. We recommend ODF develop criteria based on best available information to categorize roost sizes so that more important and larger roost sites can be identified.

We agree with ODF that perch sites are likely not a limiting factor to eagles at this time.

One overarching concern is that by dropping the previous rules private industry, in particular, will likely ignore eagles until a federal agency or private citizen who knows there is an eagle nest in proximity to their project reports them to the U.S. Fish and Wildlife Service. This will increase the chance of conflict between federal agencies and timber industry landowners. This is another reason for ODF to follow through with the modified rule change as stated on page 27 of the BAEA tech report specific to nesting sites.

Please refer to our original letter regarding this issue submitted February 1, 2016 during the initial review period for further detail on our concerns. Thank you for your consideration of these comments....”

Response:

- The Department of Forestry considered two approaches for protection from disturbance for bald eagle nesting sites: restricting operations within a ¼ mile zone around nest trees or using distances that are recommended by the USFWS (660 feet for most activities and 1000 feet for use of aircraft). These two alternative approaches are described in the Bald Eagle Technical Report (ODF, March 2016). After completion of the Technical report, but prior to the Board of Forestry Meeting, the Department received additional input from the USFWS regarding proposed protection standards, including concern over having conflicting federal and state protection standards. After consultation with the USFWS on this matter, the department recommended that the Board approve the protection standards in alignment with the recommended protections under the National Bald Eagle Management Guidelines (USFWS 2007). The Board considered this and ultimately decided to approve protection standards that largely were in alignment with federal recommendations.
- The Board of Forestry considered maintaining protection for roosting sites during the rule development process, but ultimately decided to only develop new rules for bald eagle nesting sites. Bald eagle roosting sites are federally protected under the Bald and Golden Eagle Protection Act and the USFWS continues to have regulatory authority to protect roost sites at the federal level.
- The comment makes reference to use of one peer-reviewed study (Guinn 2013). In fact the Department relied largely on other review documents, especially the ODFW delisting report. Only studies that were unique or published subsequent to the other review documents were identified with citations in the technical report. In addition, the peer reviewed study is not reflected accurately in the comment. It addressed “generational” acclimation (e.g., increasing acclimation to disturbance across multiple generations of offspring) to disturbance, not “general” acclimation.

May 15, 2017 > Susan Applegate, Yoncalla OR – “As long as the federal guidelines for protections for the Bald Eagle and all other species that have been listed under the Endangered Species Act, whether listed

as threatened or endangered, are not being lessened under the current Administration, I think the protections should be uniform and consistent between state and federal rules and laws of protection.

I also want our state officials in the Department of Fish and Wildlife and Department of Forestry to monitor the status of the Bald Eagle into the future and should there be any change in its prevalence we should immediately place it back under ESA protections.

The trump Administration has been forceful in removing regulations and protections regarding the environment, and should the federal guidelines change or weaken, the State of Oregon Department of Forestry should continue with the highest levels of protection for our endangered and threatened species...”

Response:

- The Board of Forestry considered state-level protection for roosting sites under the Forest Practices Act, but ultimately decided to defer to the USFWS for protection of these sites. To the extent possible, given the different mandates for our two agencies, the proposed new nesting rules were designed to be largely in alignment with the recommended protections for bald eagle nest sites (see the National Bald Eagle Management Guidelines, USFWS, 2007).
- The authority to place bald eagles back on the federal ESA list lies with the USFWS at the federal level. It is our understanding that nation-wide population monitoring of bald eagle populations is occurring as a component of the process relating to the removal of the bald eagle from the federal ESA list. The authority to place the bald eagle back on the state ESA list lies with the Oregon Department of Fish and Wildlife.
- To our knowledge, there is no state-wide monitoring of bald eagle populations specifically for Oregon. The previous monitoring study ended in 2007. ODF may conduct monitoring relating to bald eagles and the Forest Practices Act protection rules in the future. In the 2016 “Update of the Private Forest Monitoring Strategy”, ODF considered both compliance and effectiveness monitoring for bald eagle rules. Currently, compliance monitoring is identified as a medium priority; effectiveness monitoring is not a current priority but this may change in the future after some time has passed for implementation of the new rules.

Appendix 1 – Notice of Proposed Rulemaking

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form

FILED
3-14-17 11:23 AM
ARCHIVES DIVISION
SECRETARY OF STATE

Department of Forestry 629
Agency and Division Administrative Rules Chapter Number
Sabrina Perez (503) 945-7210
Rules Coordinator Telephone
Department of Forestry, 2600 State St., Salem, OR 97310
Address

RULE CAPTION

Aligning Bald Eagle Rules with current Federal and State delisted protection regulations

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
4-19-17	4:30 p.m.	3200 Delap Road, Klamath Falls, Oregon 97601	Randy Baley
4-27-17	4:30 p.m.	1758 NE Airport Rd. Roseburg, Oregon 97470	Greg Wagenblast
5-2-17	4:30 p.m.	801 Gales Creek Rd., Forest Grove, Oregon 97118	Greg Wagenblast

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

629-665-0130

AMEND:

629-600-0100, 629-665-0100, 629-665-0120, 629-665-0200, and 629-665-0210

REPEAL:

629-665-0220, 629-665-0230, and 629-665-0240

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:

ORS 527.710, 527.630(3), 527.670, 527.714, 526.016(4)

Other Authority:

Statutes Implemented:

ORS 527.630, 527.670, 527.674, 527.710, 527.714, 527.715

RULE SUMMARY

The Oregon Department of Forestry (ODF) has rescinded, revised and added proposed rule language for resource protection requirements on Bald Eagles. The bald eagle has been removed from both the federal and Oregon endangered species lists. 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 of Forestry 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.

The proposed rule changes include rescinding OAR 629-665-0230 for Bald Eagle Roosting Sites and OAR 629-665-0240 for Bald Eagle Foraging Perches. The nesting rules for the bald eagle have been modified and moved into 629-665-0100 for Species Using Sensitive Bird Nesting, Roosting and Watering Sites.

Review of this proposed rulemaking package may be accessed on the Department's web page at <http://www.oregon.gov/ODF/AboutODF/Pages/ProposedLawsRules.aspx> or at the office of the State Forester and are available upon request. Associated supporting materials presented at the July 2016 and March 2017 Board of Forestry meetings are available online. They may be accessed

Appendix 1 – Notice of Proposed Rulemaking (cont.)

through the Board of Forestry website: www.oregonforestry.gov.

Three open houses and public hearings regarding this rulemaking process will be held in Forest Grove, Roseburg and Klamath Falls in late April and early May 2017. Notice of the meetings and hearings will be promoted via flyers, email, media releases and our website prior to the meeting dates.

Written comments must be received by 5:00 p.m. on May 15th, 2017. Submissions should be addressed to Private Forest Bald Eagle Rulemaking, Oregon Department of Forestry, 2600 State Street, Salem, Oregon 97310; or send to PRIVATEFORESTS.PUBLICCOMMENT@oregon.gov or via fax (503) 945-7490.

Comments received by 5:00 p.m. on May 15th, 2017 will be compiled and incorporated into information presented to the Board of Forestry for their review. From this information and the prior work with this rulemaking process, the Board of Forestry will decide whether to approve this proposed rulemaking package. The Department is planning to present this information at the July 2017 Board of Forestry meeting. The Department will propose an effective date of September 1, 2017.

The Oregon Department of Forestry requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

<u>05-15-2017 5:00 p.m.</u>	<u>Sabrina Perez</u>	<u>sabrina.perez@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Appendix 2 – Statement of Need and Fiscal Impact

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form

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3-14-17 11:23 AM
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Department of Forestry

629

Agency and Division

Administrative Rules Chapter Number

Aligning Bald Eagle Rules with current Federal and State delisted protection regulations

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Adopting: OAR 629-665-0130

Amending: OAR 629-600-0100, 629-665-0100, 629-665-0120, 629-665-0200, and 629-665-0210

Repealing: OAR 629-665-0220, 629-665-0230, and 629-665-0240

Statutory Authority:

ORS 527.710, 527.630(3), 527.670, 527.714, 526.016(4)

Other Authority:

Statutes Implemented:

ORS 527.630, 527.670, 527.674, 527.710, 527.714, 527.715

Need for the Rule(s):

The bald eagle has been removed from both the federal and Oregon endangered species lists. 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 of Forestry 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 Forest Practices Act 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 (OAR 629-665-0100)

Documents Relied Upon, and where they are available:

Oregon Department of Forestry Forest Practices Rules OAR Chapter 629, available at <http://aroweb.sos.state.or.us/pages/rules/access/numerically.html>.

Board of Forestry 2011 Forestry Program for Oregon available at http://www.oregon.gov/ODF/Board/Documents/BOF/fpfo_2011.pdf.

ODF Bald Eagle Technical report available at https://www.oregon.gov/ODF/Board/Documents/BOF/20160720/BOFATTCH_20160720_5_1.pdf.

US Fish & Wildlife Service Bald Eagle delisting documents (National Bald Eagle management guidelines) available at https://www.fws.gov/pacific/eagle/all_about_eagles/Bald_Eagle_Management_Guidelines.html

Fiscal and Economic Impact:

The Oregon Department of Forestry (ODF) anticipates that the proposed rule changes would have minimal to no negative fiscal impact. With the Federal U.S. Fish and Wildlife Service (USFWS) and the Oregon Department of Fish and Wildlife (ODFW) delisting, the current ODF forest practices rules are requiring landowners to provide a higher level of protection than what is recommended by the USFWS in the National Bald Eagle Management Guidelines. These rule modifications will modify protection requirements for bald eagles.

There are several outcomes anticipated with the proposed rule modifications on small business (including small forest landowners, logging, trucking, forestry supply companies, etc.) to include:

1. Improved certainty to financially invest in forestry for growing and harvesting trees, which is a long-term investment of 40 to 100

Appendix 2 – Statement of Need and Fiscal Impact (cont.)

years for the private forest property owner -- due to fewer proposed trees, acreage, and managed activity obstacles under the proposed rule changes. Greater certainty for realizing robust future harvest revenues/values, subsequent to today's fiscal investment in growing & managing trees/land-directly motivates current forest investment and ongoing land stewardship/maintenance.

2. Reduced operational forestry costs to harvest, road, treat fuels, release and plant forests -- due to fewer added costs to harvest, access and manage forests under the proposed rule changes. This is related to reductions in, bald eagle rule requirements for seasonal restrictions, juxtaposition obstacles, and other eagle rule encumbrances.
3. Fewer forestry revenues forgone -- due to fewer proposed trees unavailable to harvest due to rescinding of bald eagle rule requirements for roosting and foraging sites and modifications to the nest site rules.
4. Reduced ownership administrative expense to actively manage forestland for growing and harvesting of trees -- due to: a) greater production from an ownership acreage from which to amortized fixed ownership expenses; and b) fewer proposed administrative and supervision costs to harvest, access and manage forest lands under the proposed rule changes.
5. Improved property value - for those forestland properties encumbered by bald eagles, or potentially encumbered by bald eagles [e.g. near rivers or lakes] due to greater acreage available to grow trees, fewer proposed trees unavailable to harvest, and fewer operational limitations.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

These rule changes will have no substantial fiscal or economic effect on the Department of Forestry, state and local government agencies or the public. ODF estimates that the implementation of these rule modifications will reduce or maintain the amount of time agency staff and resources are spent on reviews and consultations. There should be no additional cost of compliance for other state agencies, units of local government or the public since this process is rescinding portions of the rules and reducing other portions that currently exist. Some manuals or handouts will need to be reprinted to reflect these rule changes, but those few agencies that would be impacted are planning on producing updated manuals and handouts with this and other rule changes with the Oregon Forest Practices Act occurring within this next year.

Local and state lands managed as forestlands may see additional outcomes to these lands as listed above in the fiscal and economic analysis section for improved certainty to financial investments, reduced operational forestry costs, additional timber harvest possible, reduced ownership administrative expenses and improved property values.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

There are approximately 70,000 family forestland owners (small businesses), who own between 10 and 5000 acres in Oregon where these rules apply. Throughout the state, there are an estimated 1577 known Bald Eagle nesting sites on public and private lands according to data from the Oregon Department of Fish & Wildlife. There are a number of small businesses associated with forestry, logging, wood product supply and forestry support activities that may be impacted by these rule changes; however, identifying small business that may be directly tied to the modification of the Bald Eagle rules is difficult. The new rules will reduce the complexity, providing landowners and operators increased opportunities for management and harvesting activities during the year around Bald Eagle sites along with the ability to document and abandon inactive nest sites that have not be utilized by a Bald Eagle for 5 years or more.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

Reporting, record-keeping and other administrative activities (including professional services) required for compliance with these revised rules are expected to not have a significant fiscal impact. Under these modified rules, a landowner or a consultant will have the option if they elect to monitor a Bald Eagle nest site for 5 years documenting that it has no activity and provide this information to ODF to request the site be abandoned. This is not required, but a new option, if the landowner elects. Estimated costs associated with this process could range between \$1500 - \$2000 if a consultant is hired to accomplish the documentation and site visits. These costs would be less if the landowner performs the work themselves.

c. Equipment, supplies, labor and increased administration required for compliance:

The Department does not anticipate significant changes related to compliance. Landowners who elect to monitor for an abandoned site, will most likely need a strong pair of binoculars or a spotting scope based on the distance they are from the site to visually inspect for a Bald Eagle and if they do not own a set would need to purchase. If a landowner elects to monitor the site utilizing a consultant there would be a cost to the landowner, please see the information contained in 2b for estimated costs. Labor costs for wildlife consulting projects is not anticipated to increase at a higher rate than normal inflation rates.

How were small businesses involved in the development of this rule?

The three Regional Forest Practices Committees (RFPC), convened by the Oregon Board of Forestry in 1999, reviewed existing forest practice rules and provided recommendations for revisions. 12 of the committee's 27 members are or represent small business. Of these twelve representatives, four are small woodlands owners, six are logging, trucking or consulting forester business and the final two own small woodlands and have a small business as a consultant forester and the other a log trucking company

Appendix 2 – Statement of Need and Fiscal Impact (cont.)

As well as the three RFPC's, the Committee for Family Forestlands (CFF) has also been involved with the rule making process providing input and recommendations for these rules. The CFF is a thirteen member committee includes seven voting and six non-voting members. Voting members include a representative from each region for the family forest owner, environmental, forest products industry, and the general public communities. Non-voting ex-officio members may include representatives from ODF, Oregon State University, Oregon small forestland groups, forestry-related industry associations, and the Oregon Forest Resources Institute. The CFF has also reviewed and commented on the Fiscal Analysis of these proposed rule modifications.

Woodland owners qualify as small business, have representation on the three Regional Forest Practice Committees and the Committee for Family Forestlands established under the Oregon Forest Practices Act. The Oregon Department of Forestry also consulted small woodland owners (Oregon Small Woodland Association) and Associated Oregon Loggers as to the economic and operational effects of these proposed action.

**Administrative Rule Advisory Committee consulted?: Yes
If not, why?:**

<u>05-15-2017 5:00 p.m.</u>	<u>Sabrina Perez</u>	<u>sabrina.perez@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2007