

## STAFF REPORT

Agenda Item No.:	5
Work Plan:	Private Forests
Topic:	Forest Practices Act (FPA) Rule Policy Review
Presentation Title:	Specified Resource Site Rule Making for Bald Eagles
Date of Presentation:	July 25, 2017
Contact Information:	Jennifer Weikel, Wildlife Biologist, Private Forests Division 503-945-7398, <a href="mailto:jennifer.weikel@Oregon.gov">jennifer.weikel@Oregon.gov</a> Josh Barnard, Field Support Manager, Private Forests Division 503-945-7493, <a href="mailto:josh.w.barnard@oregon.gov">josh.w.barnard@oregon.gov</a>

### SUMMARY

This agenda item presents final rule language and supporting documentation for the Specified Resource Sites Protection for Bald Eagle rulemaking. Upon direction and approval from the Board of Forestry (Board), the Department of Forestry (department) will complete any final edits and file the final rules with the Secretary of State's office (SOS).

Following the March 2017 Board meeting, the department initiated the public comment period for the Bald Eagle rules. The department held three public meetings throughout the affected geographic regions, which consisted of an open house session followed by public testimony on the proposed rules. In addition to the comments provided during these three events, the department also received comments via mail and email. Staff have reviewed all of the comments and made minor edits to the proposed rules submitted to the Board at the March 2017 Board meeting.

The department is requesting approval from the Board on the final Bald Eagle rule language (Attachment 2) and asks the Board to direct the department to file the final Bald Eagle rules with the SOS.

### 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 Regional Forest Practice Committees (RFPC) in an advisory role.

## **BACKGROUND**

Changes made from the existing rules 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:
  - 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 were 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.

The proposed final rules are included in Attachment 2.

At the March 2017 Board meeting, the Board directed the department to move forward with formal administrative rule making for the Bald Eagle rules following the SOS process. The department initiated the formal comment period, held three public hearings, and received both mail and email comments on the proposed rule language.

## **ANALYSIS**

The department has reviewed and compiled all comments received during the public comment period, which closed at 5:00 p.m. May 15, 2017. The department has summarized and provided responses per the comments received (Attachment 1). Staff and field review of the proposed Bald Eagle rules identified minor changes needed to clarify the rules. This work resulted in the rules (Attachment 2) presented to the Board for final approval of rule language.

## **RECOMMENDATION**

The department is requesting approval from the Board on the final Bald Eagle rules (Attachment 2) and asks the Board to direct the department to file the final Bald Eagle rules with the SOS.

## **NEXT STEPS**

The department will file the final rules with the Secretary of State's office and Legislative Counsel in order to complete the rulemaking.

## **ATTACHMENTS**

- Attachment 1: Report to Board of Forestry on Rulemaking Hearings for Proposed Bald Eagle Protection Rules
- Attachment 2: Rule language for submission to Secretary of State.
- Attachment 3: Reader friendly version of Bald Eagle rule language