

Step-by-Step Instructions for Documenting Compliance on the Bald Eagle Form For WSDOT's On-Call Consultants

**WSDOT Environmental Services Office
Updated June 2011**

Introduction

This form is intended to document project compliance with federal and local protections for bald eagles. Project requirements are summarized on the first page of the form for the environmental permitting coordinator and project engineer. The project biologist and WSDOT reviewing biologist are also identified.

Considerations when filling out the form

Once complete, this form should provide clear, thorough documentation of WSDOT's adherence to any local requirements and the *National Bald Eagle Management Guidelines*. For example, information on nest sites and communal roost locations are a crucial part of an analysis of potential project impacts to bald eagles; however, WSDOT has received environmental documents that only state that there are no bald eagles in the project area. These documents are flagged in the WSDOT review process with the questions: "How do you know?" Did you talk to a local expert, review the PHS data, and if so, did you do a site visit to confirm the information?" It may have seemed obvious to the biologist reviewing the information at the time they wrote the report, but a yes or no answer with no documentation will not help the project office if a compliance question comes up during the latter stage of project design or during construction.

Working as part of the WSDOT project team

If the project will deviate from the guidelines, which may require a project timing restriction, project alteration or a permit, contact the project office. Any changes to a project must be discussed and agreed upon with the project engineer and environmental coordinator.

For commitment tracking purposes, the WSDOT project office is your contact point if you need technical assistance from the U.S. Fish and Wildlife Service (USFWS). The project office will work directly with the appropriate USFWS office.

Accessing the Form

The Washington State Department of Transportation on-call consultant bald eagle form can be accessed from the WSDOT Environmental Services website, Biology Program - Compliance with Federal and State Fish & Wildlife Regulations, under the heading Bald and Golden Eagle Act Protection Act:

<http://www.wsdot.wa.gov/Environment/Biology/compliance.htm#eagle>.

Form Directions

1. Provide project information:

Fill in the project information on page 1.

2. Provide nest and communal roost site information:

Include the Priority Habitat and Species (PHS) data and cite the date of the data. If there are any nest or communal roost sites present in the PHS data, the Washington Department of Fish and Wildlife (WDFW) has an online territory database (http://wdfw.wa.gov/conservation/bald_eagle/territory/) that documents eagle nest sites by territory name, territory number, and county. Database information on nests or communal roost sites within 1 mile of the project should be recorded and the date the website was accessed cited.

Both the PHS data and the WDFW online territory database may not have the most recent data available entered. Therefore, contact a local expert on eagles in the area. Usually the local expert is the local WDFW wildlife biologist, but depending on the location of the project, may be a Forest Service, National Park wildlife biologist, or other biologist. This person should be able to provide the most up-to-date information on nests and communal roosts in the area. Record the contact name, their agency, the information provided, and date(s) of communication.

Confirm the site information with a site visit. A site visit by the project biologist is mandatory. Pertinent information (nest site found, nest no longer present, nest being used by another species, no trees present within 660 ft of project, etc.) from the site visit should be documented, as well as the date of the visit.

3. State Compliance and Local Compliance:

State Bald Eagle Protection Rule – A 2011 amendment to the Bald Eagle Rules (WAC 232.12.292) suspends the Bald Eagle Management planning process. This means that the Washington Department of Fish and Wildlife no longer requires a management plan from a landowner if a timber harvest permit from the Department of Natural Resources or a land use permit is required from a county (stormwater, shoreline, clearing, etc.) within specific distances of bald eagle nests or communal roosts.

Local Requirements – County critical areas ordinances (CAOs) may have requirements for bald eagle habitat. Information on CAOs is available from the County where the project is located. Review the CAO for any bald eagle requirements. Fill in the appropriate check box and any requirements.

4. Federal Compliance:

The Federal Compliance section of the form is intended to document project compliance with the Bald and Golden Eagle Protection Act based on guidance in the *National Bald Eagle Management Guidelines* (May 2007). It is not intended to be a substitute for thorough familiarity with the guidelines by the project biologist and it will not cover all possible project actions. If you have a project with actions in categories not covered, or that do not follow the guidelines, you will need to contact the WSDOT project office you are working with for assistance. The project office will work with the USFWS if necessary.

Because the bald eagle form is based on guidance in the *National Bald Eagle Management Guidelines* and the guidelines do not cover golden eagles, this form will not apply to projects which may potentially impact golden eagles. If a golden eagle may be impacted by a project activity, contact the WSDOT project office you are working with for assistance.

- a. **Assess the project for impacts to nesting bald eagles:** To assess the project for impacts to nesting bald eagles, the USFWS has provided Step-By-Step guidance located at <http://www.fws.gov/pacific/eagle/guidelines/disturbnestingbaea1.html>.
- b. The Step-By-Step Guidance will determine if a timing restriction or permit is necessary for any general construction or other more specific activities. Most WSDOT projects include general construction. However, other project components, such as blasting, pile driving, barge or aircraft use, which may occur as one component of a bigger project, will have different buffer distance guidelines. Some activities may occur on rare occasions, such as off-road vehicle use or pedestrian activity (either could potentially occur during survey work), as part of a larger project or with no other project components.

For each activity, if a timing restriction is necessary, describe the spatial extent of the timing restriction. For example:

The project will repave SR 0 from MP 1.0 to MP 5.0 between May and October of 2011. A bald eagle nest site is located 300 ft from project work at MP 4.0 and is in line of sight of project activity. No paving will occur within 660 ft of the nest (from MP 3.77 to MP 4.13) prior to July 31, unless fledging has been confirmed by a WSDOT biologist.

Check the timing restriction box on page 1 of the form and include the timing restriction information on page 1.

Explain Timing Restrictions: Between MP 3.77 and MP 4.13 project activities may not occur until after July 31 unless confirmation of fledging has occurred by a WSDOT biologist.

If the project cannot follow the guidelines, the nest has the potential to be active and the project occurs during the nesting season, a permit will be required to

complete the project. Contact the project office. The project office will work with the USFWS if necessary.

Note: If a nest has not been active in the previous 5 years or the nest has a low probability of reuse, a timing restriction may not be necessary.

If the nest has not been active for 5 years, a timing restriction may not be necessary. However, the project biologist cannot make this determination. The information documenting nest inactivity must be provided by a WDFW, USFWS, or FS biologist. Their agreement needs to be documented (e.g. attach e-mail or letter from WDFW, the USFWS, or FS). The nest itself remains protected under the Bald and Golden Eagle Protection Act even if inactive.

If a nest has a low probability of being reused and a timing restriction was determined to be necessary for one or more project components, this restriction may be unnecessary. Nests that have fallen, or are in extremely poor condition and have not been occupied for several years would fall into this category. If the nest is unlikely to be reused, contact the project office and provide your rationale. The project office will contact the USFWS for their agreement. Attach the written documentation from the USFWS to the form and check the appropriate box.

Print, sign and attach the USFWS's signature page, if the project can follow the recommendations in the Step-By-Step Guidance.

- c. **Contact your WSDOT project office** if the project **cannot** implement the recommendations provided by the USFWS's Step-By-Step Guidance.

5. Answer the Supplemental Questions on page 2.

Question 1: Assess the project for nesting habitat impacts.

If the project involves cutting of overstory trees within 330 ft of a nest (or a nest tree), whether in use or not, it will not fall under the guidelines and would be a violation of the Bald and Golden Eagle Protection Act. A permit would be needed to conduct this activity. If this situation applies, contact your project office. The project office will work with the USFWS if necessary.

Question 2: Determine if post-construction changes will result from the project that may result in disturbance to bald eagles.

For example:

The project will construct a new rest area located 690 ft from a currently isolated nest that, after construction, will be visible from the rest area. The nest sits between the proposed construction area and a large salmon bearing river with gravel bars where carcasses can wash-up. The construction is within the guidelines for distance to the nest, so no timing restriction is needed. However, the project will result in a long-term increase

of vehicles, pedestrians and activity in the area. Because the nest is visible from the future rest area and it is on the path to the river, it will likely result in foot traffic close to the nest tree.

In the above example, the eagle nest is more than 660 ft from the construction site, but the project may be outside the guidelines, because the nesting eagles are not habituated to human disturbance. If a project results in long term changes to baseline conditions at a specific nest or communal roost site, the project office will need to be contacted. In turn they will consult with the local USFWS field office.

Question 3: From the information gathered in Question 1, check the appropriate box. If a communal roost is located within 1 mile of the area, answer questions 4 through 6, otherwise **fill in the remainder of page 1, and sign and date the form.**

Question 4: Assess the project for habitat impacts to communal roost sites.

Removal of communal roost trees (at any time) is outside the guidelines and would be a violation of the Eagle Act. A permit would be needed to conduct this activity. If communal roost trees will be removed, contact the project office. The project office will work with the USFWS if necessary.

Question 5: Determine if a timing restriction or permit is necessary for specific activities conducted during the wintering period.

Blasting, pile driving, or aircraft activity occurring during the bald eagle wintering period may need to be restricted if blasting/pile driving will occur less than 0.5 miles (1.0 mile if in line of site) or aircraft will operate less than 1000 ft from a communal roost site. If timing restrictions are needed during the wintering period, these should be listed for the activity for which they apply. For example:

The project will occur between September 2010 and February of 2011 and include blasting. A bald eagle communal roost site is documented 0.4 miles from the blasting location. All blasting activity will occur between the September project start date and October 31, 2010, prior to the wintering period for bald eagles (October 31 through March 31).

Include the timing restriction information on page 1.

Explain Timing Restrictions: Blasting activity is allowed between September and October 31, 2010. Blasting is restricted at all other times.

If site specific conditions, such as topography, are present and would limit disturbance at the roost site, then contact the project office for their agreement. The project office will in turn contact the USFWS for their agreement. Agreement from the USFWS should be by letter or electronic mail and be attached to the form.

If the project occurs during the wintering period, is less than 0.5 miles (1.0 mile if in line of site) from a communal roost site and cannot include a timing restriction, it will

fall outside the guidelines and a permit will be required to complete the project. Contact the project office. The project office will work with the USFWS if necessary.

Question 6: Determine if any project activities will be located between a communal roost site and an important foraging area.

A foraging area is defined as “*an area where eagles feed, typically near open water such as rivers, lakes, reservoirs, and bays where fish and waterfowl are abundant, or in areas with little or no water (i.e., rangelands, barren land, tundra, suburban areas, etc.) where other prey species (e.g., rabbits, rodents) or carrion (such as landfills) are abundant*”. (National Bald Eagle Management Guidelines, May 2007).

Communal roost sites are generally located close to foraging areas, but may be located up to five miles away. Therefore, even if the communal roost site is over a mile from project activities, this question may still apply.

If a project would affect foraging at an important location (see above for the definition of foraging area), then provide an explanation of how potential impacts will be minimized to the extent they will not “disturb” bald eagles.

Fill in the remainder of page 1, and sign and date the form.