

Compliance with the Bald and Golden Eagle Protection Act Frequently Asked Questions

1. *Does delisting of the bald eagle mean that we no longer need to assess potential project impacts to this species?*

The bald eagle is no longer listed under the Endangered Species Act; however bald eagles are still federally protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. They are also protected under the State Bald Eagle Protection Act.

2. *What is the Bald and Golden Eagle Protection Act?*

This Act was originally enacted in 1940 as the Bald Eagle Protection Act to protect bald eagles and later amended to include golden eagles. It prohibits the taking or possession of and commerce in bald and golden eagles, parts, feathers, nests, or eggs with limited exceptions. The definition of take includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. Bald eagles may not be taken for any purpose unless a permit is issued prior to the taking. Activities which can be authorized by permit are: Scientific collecting/research, exhibition, tribal religious, depredation, falconry, and the taking of inactive golden eagle nests, which interfere with resource development or recovery operations. Currently, the U.S. Fish and Wildlife Service (USFWS) has a permitting process in the proposal stage for other activities, which may disturb bald eagles or take an eagle nest where their location poses a risk to human or eagle safety.

3. *Does the Eagle Act apply only to activities with a Federal Nexus?*

No, the Bald and Golden Eagle Protection Act applies to everyone. For WSDOT projects, this means a biologist must assess potential project impacts to bald eagles to ensure we are in compliance with the Eagle Act and the State Bald Eagle Protection Act. Compliance with the Eagle Act is also part of the NEPA/SEPA documentation.

4. *Is “take” under the Eagle Act, the same as take under the Endangered Species Act?*

“Take” under the Endangered Species Act is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (as defined under the Endangered Species Act 16 U.S.C. 1532(19)). Harm is defined by the USFWS to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3).

“Take” under the Eagle Act includes both direct taking of individuals and take due to disturbance where “disturb” in is defined as: *“to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.”* (50 CFR 22.3). *“In addition to immediate impacts, this definition also covers impacts that result from human-caused alterations initiated around a previously used nest site during a time when eagles are*

not present, if, upon the eagles return, such alterations agitate or bother an eagle to a degree that injures an eagle or substantially interferes with normal breeding, feeding, or sheltering.” (USFWS National Bald Eagle Management Guidelines, May 2007).

Therefore many actions that were considered likely to incidentally “take” bald eagles (from harassment, harm or habitat alterations) under the Endangered Species Act would fall under the definition of disturb in the Eagle Act.

5. *How do we determine what will disturb a bald eagle to avoid violation of the Eagle Act?*

To help advise landowners and other how to avoid take of bald eagles, the USFWS published the *National Bald Eagle Management Guidelines* (May 2007). These guidelines are based on the current information regarding disturbance to bald eagles and ways to avoid or minimize adverse impacts to bald eagles. The guidelines are voluntary and do not supersede state laws. A permitting process is currently proposed for activities that are otherwise lawfully conducted, but would fall outside the management guidelines and potentially result in unintended, unavoidable take or in situation where there is a safety risk to either humans or eagles.

As stated in Question 4, disturbance includes activities that may occur during construction and those that may result after the initial activities have occurred (foreseeable, ongoing future uses). Therefore, impacts may not necessarily be limited to the footprint of the initial activity. In general, routine activities such as maintenance of existing facilities would not need to be permitted unless the activity resulted in a significantly different intensity and likelihood eagles will be disturbed. The project biologist will need to take into consideration the following factors: topography, vegetation, ambient sound levels, eagle habituation to human activities, line-of-sight, and levels of project-generated sound and visual stimuli. Technical assistance for bald eagle issues and permits is provided by the USFWS field offices (Spokane, Lacey, and Wenatchee). If you are a **consultant working for WSDOT**, contact your project office if you need technical assistance from a USFWS field office. The project office will work directly with the USFWS field office.

6. *Does the removal of large trees occasionally used by roosting and perching eagles constitute a violation of the Eagle Act?*

“Removal of trees is not in itself a violation of the Eagle Act. The impacts of such action can be a violation, however, if the loss of the trees kills an eagle, or agitates or bothers a bald or golden eagle to the degree that results in injury or interferes with breeding, feeding, or sheltering habits substantially enough to cause a decrease in productivity or nest abandonment, or create the likelihood of such outcomes. However, if the large trees are only occasionally used, the probability of such an outcome is lower than if the trees were within a traditional communal roost site or were the primary perch trees used by eagles in an important foraging area.” (Question and answer from 72 FR 31132)

7. *How is compliance with the Eagle Act documented?*

If you are a **consultant working for WSDOT** and are asked to address bald eagles for compliance with the Eagle Act, you may use the form on the WSDOT Biology webpage (http://www.wsdot.wa.gov/Environment/Biology/bio_esa.htm#topics). Note: if you are

writing a biological assessment (BA), bald eagles will no longer be part of the ESA consultation and **should not** be addressed in the BA. **Consultants working with local agencies** should inform the local agency that bald eagles are still federally protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act and that the local agency is responsible for compliance even if federal money, a federal permit, or federal authorization is not involved. In addition, they may need to comply with the State Bald Eagle Protection Rule (primarily habitat protection) and any local critical area ordinances. A Highway and Local Program version of the WSDOT form to document compliance is also available on the WSDOT Biology webpage at http://www.wsdot.wa.gov/Environment/Biology/bio_esa.htm#topics.

8. *What if the project cannot follow the National Bald Eagle Management Guidelines?*

The management guidelines suggest conducting work outside of sensitive periods at recommended distances from various activities. If, after consultation with the project office, a project will not be able to meet the distance or restrict project timing to comply with the management guidelines, a permit would be needed to conduct the proposed activity. Currently, a permitting process for activities that disturb bald or golden eagles or remove their nests for safety reasons is in the proposal stage.

If you are a **consultant working for WSDOT**, contact your project office if you think a project you are reviewing will not be able to follow the management guidelines. The project office will work with USFWS and potentially, the Washington Department of Fish and Wildlife.

If you are working for a **local agency who is working with the Highways and Local Programs Office**, contact your local agency if you think a project you are reviewing will not be able to follow the management guidelines. They will need to contact the USFWS.

9. *What penalties are involved for noncompliance?*

A criminal violation of the Eagle Act can result in a year in prison and a fine of \$100,000 for an individual or \$200,000 for an organization. A second violation of the Eagle Act is a felony and can result in a maximum of two years in prison and fines of up to \$250,000 for individuals and \$500,000 for an organization. Maximum civil penalties are \$5,000 for each violation.