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# ROCKY FLATS PLANT BALD EAGLE PROTECTION PLAN

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by  
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# ROCKY FLATS PLANT BALD EAGLE PROTECTION PLAN

## INTRODUCTION

This Bald Eagle Protection Plan, herein after referred to as the Plan, is required under Procedure 1-DO6-EPR-END.03, Identification and Protection for Threatened, Endangered, and Special-Concern Species (T&E Procedures). The bald eagle (*Haliaeetus leucocephalus*) is protected as an endangered species under the Endangered Species Act (ESA) of 1973, as amended, 16 U.S.C. 1531 et seq.. The species also receives protection under the Bald Eagle Protection Act (BEPA) of 1940, 16 U.S.C. 668-668d, 54 Stat. 250, as amended, and the Migratory Bird Treaty Act (MBTA) of 1918, 16 U.S.C 703-712, 40 Stat. 755, as amended, and the State of Colorado Non-game, Endangered, or Threatened Species Conservation Act, C.R.S. 33-2-101 to 33-2-108. Due to its protected status, steps must be taken to avoid "take," as defined in statutes and regulations, when a bald eagle is encountered at Rocky Flats Plant (RFP) or within offsite locations where RFP related activities are being performed. "Take," as defined, is punishable under several statutes and their associated regulations, by substantial fines and terms of imprisonment. A definition of "take", as defined under the ESA, is given below.

Development of this Plan was required under the RFP T&E Procedures because bald eagles are known to seasonally frequent RFP and the surrounding vicinity generally during the winter months. Additionally, a pair of bald eagles constructed a nest and exhibited courtship behavior during the 1992-93 breeding season at a location within Operable Unit 3, approximately 1.2 miles from the RFP Buffer Zone boundary, adjacent to Standley Lake. Biologists with the U.S. Fish and Wildlife Service and the Colorado Division of Wildlife believe that a viable nesting attempt may continue at that location for the foreseeable future. An active bald eagle nest in close proximity to RFP would require revision of this Plan, such as establishing a buffer area around the nest, and development of much more stringent avoidance procedures, to address concerns not present with the current nest location. This Plan is intended to provide guidance to all RFP personnel who are involved in outdoor activities including, but not limited to research, remediation, construction, or recreation within the

boundaries of RFP or at offsite work areas.

## DEFINITIONS

- END - Ecology and NEPA Division of EG&G Rocky Flats
- Habitat - Habitat is the general environment within which a living organism finds food, shelter, water, and conditions necessary to successfully live and reproduce. In the case of bald eagles in the RFP vicinity, habitat includes, but is not limited to, the geographical areas between Eldorado Canyon and Standley Lake. Essential components within this bald eagle habitat include the night roost, foraging areas such as geographical areas containing prairie dog colonies, loafing trees and day perches, and fisheries within foraging areas including Great Western Reservoir, Mower Reservoir, Standley Lake, and possibly others.
- Penalties - Penalties for violation of the ESA may include fines up to \$200,000 and imprisonment up to one year, or both. Violations prosecuted under the BEPA may include fines up to \$500,000 and imprisonment of up to two years, or both. Additionally, violations under the MBTA may include fines up to \$500,000 and imprisonment up to two years, or both.
- Raptor - A bird-of-prey
- RFP - Rocky Flats Plant
- Take - "Take" as defined in the ESA "means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to collect, or to attempt to engage in any such conduct."

## DESCRIPTION OF BALD EAGLES AND SIMILAR SPECIES

### Bald Eagle

The adult bald eagle is a striking and easily distinguished bird-of-prey. These birds are identified by their white head and tail, dark brown body, and bright yellow bill and feet. Even at a distance bald eagles appear very large (31 to 37 inches tall, and with a 70- to 90-inch wingspan).

Immature birds are more difficult to identify, particularly at a distance, and may be confused with immature golden eagles. Immature bald eagles are brown mottled with white, have a dull tan bill, and are nearly the size of the adults, but lighter bodied. Immatures often show white at the root of the tail. The call of bald eagles of all ages is a high, piping note that is sometimes slurred or rapidly repeated. It is a surprising vocalization for such a large, fierce-looking bird.

### Golden Eagle

Golden eagles appear all dark from a distance, but when observed closely are a rich brown with a distinct golden wash over the head and neck. In fully mature birds, the gold sometimes looks almost blond. The bill is a dull tan in color, and the feet are yellow. Immature golden eagles can be distinguished in flight by the white patches on the underside of the wings, and the wide white band at the root of the tail. In overall size, golden eagles are somewhat smaller than bald eagles, but most individuals fall within the same general size range as bald eagles (30 to 40 inches tall, and with a 80- to 88-inch wingspan). Unless the birds are very close, or the observer is using optical equipment such as binoculars, it can be very difficult to be sure if the raptor being observed is a bald or golden eagle. Golden eagles are protected by Federal statute under the BEPA and the MBTA.

### Osprey

Ospreys frequent similar habitat to some of that preferred by bald eagles, i.e., open water and lake shore areas. Ospreys subsist almost exclusively upon fish, and where bald eagles and ospreys share feeding areas, bald eagles frequently pirate prey caught by ospreys. Ospreys are

approximately two-thirds the size of bald eagles, and might be mistaken for bald eagles if observed from the back. Ospreys are dark brown to blackish on the back and wings, but white underneath, including the throat, breast, belly, and underwings. The white crest on the top and back of the head could cause an osprey to be confused with a bald eagle if observed from a distance at the right angle. Once the bird is observed from the front, or has taken flight, any confusion should immediately disappear.

#### Red-tailed, Swainson's, Ferruginous, and Rough-legged Hawks

Red-tailed, Swainson's, ferruginous, and rough-legged hawks are the most commonly observed large raptors in the vicinity of RFP. These species are not easily confused with bald or golden eagles because they are noticeably smaller, about two-thirds the size of eagles. All of these species display distinctive color patterns that are not easily confused with bald eagles.

### **BALD EAGLE PROTECTION STRATEGIES**

The RFP T&E Procedures require evaluation of all proposed field activities for the potential to impact on any threatened, endangered, or other species of special concern or to its associated habitat. Bald and golden eagles are included in the list of these species, and any proposed or ongoing field activity must be assessed to determine potential to impact these species. The RFP T&E Procedures also require the development of this Plan because bald eagles are seasonal residents, and golden eagles are year-round residents; these two species are considered resident threatened or endangered species and/or species of special concern at RFP. Since both species are highly mobile, and their occurrence at a given location at a specific time can be highly variable, the protection strategies described below are sitewide in scope, and call for the discretion of RFP personnel to carry out. The actions described below must be implemented anywhere within the boundaries of RFP, and at any associated offsite locations, such as Operable Unit 3, where RFP activities are involved.

If an individual or work party should encounter a bald or golden eagle(s) at a planned work site, that individual or work party should retreat to a distance of not less than 300 yards. No attempt may be made to flush or scare the bald or golden eagle(s) or interfere with its activities in any

way, or to otherwise disturb it. If the eagle(s) leaves the vicinity of its own volition, work may proceed as planned. Note that immature bald eagles are very difficult for untrained or unaccustomed personnel to distinguish from golden eagles, particularly in the absence of good optical equipment such as binoculars. Also note that golden eagles are afforded the same protection from interference as bald eagles under the BEPA and MBTA. If there is any doubt about the identity of an observed raptor, proceed as though it were a positively identified bald or golden eagle until positively determined otherwise.

In the event that a bald or eagle enters the work area, the appropriate response is to observe the eagle to determine if it remains in the area or departs from the vicinity. If the eagle stops, lands on the ground, perches, or starts hunting within 300 yards of the work activity, the individual or work party must cease operations and retreat to a distance of not less than 300 yards, and preferably to within the interior of a motor vehicle. If the eagle departs from the work area, work may resume. If the eagle remains, work must remain suspended until the eagle departs.

Protection of eagle habitat, as it applies to RFP, involves taking no action to significantly affect, in an adverse manner, the food web, prey base, nesting, feeding, roosting, and perching habitats used by bald and golden eagles. This includes preserving the integrity of prey sources, perches, retreat and loafing areas, and other features recognized for their potential use by the bald or golden eagles. The Buffer Zone of RFP currently provides a diverse variety of habitats with the accompanying resident species, many of which are prey to bald and golden eagles. There is evidence to support the belief that the bald eagles are in the vicinity of RFP due to the extensive area of undisturbed natural habitat that has been protected within the Buffer Zone for in excess of two decades. Numbers of over-wintering bald eagles have been increasing slowly over the past several years, reflecting the comeback of the species from endangerment.

Since bald and golden eagles are observed in courtship behaviors in the vicinity of RFP, in habitats similar to those found on RFP, and the bald eagle's courtship behavior has included nest building near RFP, RFP personnel should be cautious of planned or ongoing activities with the potential to violate regulations in the ESA, BEPA, and MBTA. END should be

consulted for guidance on the potential of activities to violate these acts.

## **REPORTING**

If any bald eagle activity is observed within the boundaries of RFP, or in the immediate vicinity, a description of the activity shall be reported to END as soon as possible, but within 24 hours. Should any suspected bald or golden eagle hunting, prey capture, or nest building activity be observed, such information shall be reported to END as soon as possible, but not more than 24 hours after the observation, to allow verification by END. A report of these activities should include the name, organization, and telephone extension of the observer, as well as a description of the activity, time, date, location, and any other pertinent information. The report may be made on the Species of Concern Observation Report form from the T&E Procedures (Appendix A).

## **CHANGE IN STATUS**

Should bald eagles undergo a change in protection status under the federal statutes, this Plan shall be revised or repealed as necessary. In the unlikely event that bald or golden eagles should establish an active nest within the boundaries of RFP, this Plan shall be revised and reissued to afford the necessary protection to such a nest.

## REFERENCES

50 CFR 402, Endangered Species Act of 1973, as amended, 16 U.S.C. 1561 et seq.

50 CFR 22, Bald and Golden Eagles Protection Act of 1978, 16 U.S.C. 668-668D

Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666C, as amended

Migratory Bird Treaty Act, 26 U.S.C. 703-711, and 50 CFR Parts 10, 13, 14, 20 and 21

State of Colorado Wildlife Statute, Title 33, Article II, Threatened Wildlife: Colorado Nongame, Threatened, and Endangered Species Conservation Act

## SOURCE REFERENCES

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