

Changed Definitions: FWHCAs

New Definitions

In 2010 the WACs dealing with minimum standards for classifying critical areas, Best Available Science, and GMA procedural issues were reorganized, resulting in:

- Chapter 365-190 containing the minimum standards local governments must consider when designating resource lands and critical areas.
- Chapter 365-195 containing guidelines related to Best Available Science (BAS).
- Chapter 365-196 containing procedural guidelines that local governments should consider.

This was not simply a reorganization as there were also substantive changes to improve clarity. From the perspective of fish and wildlife conservation, the most significant changes were:

1. New definition: “Fish and Wildlife Habitat Conservation Areas” are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species. (WAC 365-190-030(6)(a))
2. New/modified definition (showing additions and ~~deletions~~): “Fish and wildlife habitat conservation ~~areas~~” means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term. Counties and cities should engage in cooperative planning and coordination to help assure long term population viability. ~~cooperative and coordinated land use planning is critically important among counties and cities in a region. In some cases, intergovernmental cooperation and coordination may show that it is sufficient to assure that a species will usually be found in certain regions across the state.~~
Fish and wildlife habitat conservation areas contribute to the state's biodiversity and occur on both publicly and privately owned lands. Designating these areas is an important part of land use planning for appropriate development densities, urban growth area boundaries, open space corridors, and incentive-based land conservation and stewardship programs. (New WAC 365-190-130(1), old WAC 360-190-080(5))
3. Modified definition (showing additions and ~~deletions~~): “Habitats of local importance” designated as fish and wildlife habitat conservation areas include those areas found to be

locally important by counties and cities. Habitats of local importance include, a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus, and wetlands. (new WAC 365-190-030(6)(b)), old WAC 365-190-030(9)).

4. Modified definition (showing additions and deletions): Habitats and species areas of local importance. Counties and cities should ~~determine which~~ identify, classify and designate locally important habitats and species ~~are of local importance.~~ Counties and cities should consult ~~may use~~ current information on priority habitats and species identified prepared by the Washington state department of fish and wildlife ~~to classify and designate locally important habitats and species.~~ Priority habitat and species ~~are being identified by the department of wildlife for all lands in Washington state~~ information includes endangered, threatened and sensitive species, but also includes candidate species and other vulnerable and unique species and habitats. While these priorities are those of the Washington state department of fish and wildlife, they ~~and the data on which they are based~~ should ~~may~~ be considered by counties and cities as they include the best available science. The Washington state department of fish and wildlife can also provide assistance with identifying and mapping important habitat areas at various landscape scales. Similarly, the Washington state department of natural resources' natural heritage program can provide a list of high quality ecological communities and systems and rare plants. (new WAC 365-190-130(4)(b), old WAC 365-190-080(5)(c)(ii))

WDFW recommends local jurisdiction's Critical Areas Ordinance reflect these modified definitions and minimum standards; departures should be explained using best available science and a reasoned process.

Bald Eagle Management Changes

In 2007, the federal government delisted the bald eagle as a *Threatened* species under the Endangered Species Act. Because their populations demonstrated sustained improvement, in 2011 the Washington State Fish and Wildlife Commission downlisted the bald eagle from *Threatened* to *Sensitive* and changed WAC 232-12-292 by dropping a requirement to create Bald Eagle Management Plans for land use actions that potentially impact bald eagle habitat.

Because of its continued recovery, WDFW's engagement is no longer necessary nor can WDFW afford to continue with activities related to bald eagles as other imperiled species need staff attention. Management of bald eagles is now the primary responsibility of the US Fish and Wildlife Service under the federal Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act. To determine if a permit is needed from USFWS for a land use action that has the potential to disturb bald eagles, USFWS has created a self-certification tool available at http://www.fws.gov/pacific/eagle/permit_types/do_i_need_a_permit.html. WDFW considers the National Bald Eagle Management Guidelines (<http://www.fws.gov/pacific/eagle/documents/NationalBaldEagleManagementGuidelines.pdf>) to be the preferred way to protect bald eagle habitat and recommends that anyone involved with actions that may affect bald eagles, their nests, or communal roosts consult and abide by these guidelines.

Roles and responsibilities related to bald eagles

Topic	Federal gov't (USFWS)	State government (WDFW)	Local government	Citizens
Land use	Issue permits when necessary to enforce provisions of the federal <i>Bald and Golden Eagle Protection Act</i> and <i>Migratory Bird Treaty Act</i> that prohibit <i>take</i> of a bald eagle	Make management recommendations regarding habitat conservation. Refer questions to appropriate person at USFWS.	Ensure bald eagle habitat is protected in keeping with GMA, SMA, local ordinances. Refer questions to appropriate person at USFWS.	Abide by federal laws that prohibit <i>take</i> of a bald eagle and local requirements related to habitat protection.

Topic	Federal gov't (USFWS)	State government (WDFW)	Local government	Citizens
Killing of bald eagles ¹	Enforce federal laws that prohibit the intentional killing of bald eagles.	Enforce state laws that prohibit the intentional killing of bald eagles.	Report potential cases of intentional killing to WDFW and USFWS Enforcement.	Report potential cases of intentional killing to WDFW and USFWS Enforcement.
Injured eagles ²	Lead efforts to rehabilitate injured bald eagles.	Refer questions to appropriate person at USFWS.	Refer questions to appropriate person at USFWS.	Report injured bald eagles to USFWS.
Dead eagles ³	Lead efforts to collect dead bald eagles (for feathers for tribal ceremonial use).	Refer questions to appropriate person at USFWS.	Refer questions to appropriate person at USFWS.	Report dead bald eagles to USFWS.

Local government regulations should not require WDFW involvement in creating or reviewing a Bald Eagle Habitat Management Plan.

USFWS recommends that for projects that are likely to harm eagle nests or roosts, local governments require that developers (1) abide by the [National Bald Eagle Management Guidelines](#) and (2) demonstrate either (a) that they *don't* need a USFWS permit via self-certification (http://www.fws.gov/pacific/eagle/permit_types/do_i_need_a_permit.html) or (b) if a USFWS permit is required, that they demonstrate that they have obtained it. USFWS recommends local governments *NOT* require that all development near bald eagle habitat get a permit from USFWS. The permits cost \$500 and require time to process. In keeping with the Guidelines people who plan activities that may harm eagle habitat should use the self-certification tool to determine if a USFWS permit is needed. In many cases, developer will be able to take actions that will make a USFWS permit unnecessary. For more information contact USFWS Migratory Bird Permit Office at (503) 872-2715.

¹ Contact WDFW Enforcement at (877) 933-9847 and/or USFWS Enforcement at (425) 883-8122

² See http://www.fws.gov/pacific/eagle/all_about_eagles/injured_eagle.html

³ See http://www.fws.gov/pacific/eagle/all_about_eagles/dead_eagle.html