

Delaware Valley Eagle Alliance

Article From: Newsletter Volume 5, Issue 2

www.dveaglealliance.org

Protection After Delisting

By Yoke DiGiorgio

Director, Delaware Valley Eagle Alliance

On June 28, 2007 the U.S. Fish and Wildlife Service (Service) formally declared a victory for the comeback of the bald eagle and announced its removal from the Endangered Species Act protection. There are now nearly 10,000 breeding pairs in the lower 48 States, up from only 417 in 1963 - one of the greatest wildlife success stories in the history of this country! Bald-eagle experts look to the new rules and need to monitor them to ensure the continued survival and prosperity of the species.

"Although U.S. Fish and Wildlife Service was right to pursue delisting due to the rapid expansion of bald population, delisting is a new national experiment. We have not had much experience in delisting", says Dr Larry Niles, former Chief of Endangered and Non-game Species Program Division of Fish, Game, and Wildlife, NJ DEP.

"Eagles will be a test case," says Dr Bryan Watts, Director of the Center for Conservation Biology, College of William and Mary. Now that they are delisted, says Watts, "what happens will say a lot about how our culture will handle other conflicts between landowners and species". Attention will now shift to the new rules and how they are enforced. Monitoring, says Watts, "will be even more important to shed light on how a species is impacted by delisting."

The Bald and Golden Eagle Protection Act (Eagle Act)

The Eagle Act will now be the primary law protecting bald and golden eagles. Originally passed in 1940 and amended several times since then, the Eagle Act provides for the protection of the bald eagle and the golden eagle by prohibiting the take, possession, sale, purchase, barter, offer to sell, purchase or barter, transport, export or import, of any bald or golden eagle, alive or dead, including any part, nest, or egg, unless allowed by permit. The Eagle Act defines the "take" of an eagle to include a broad range of actions - "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."

A violation of the Eagle Act can result in criminal and civil penalties, including fines of \$100,000 (\$200,000 for organizations) and imprisonment for one year (or both) for a first offense. Penalties increase substantially for additional offenses, and a second violation is a felony. Copies of the Eagle Act are available at: <http://permits.fws.gov/ltr/ltr.shtml>.

Three Management Actions Proposed

Along with announcing the delisting, the Service has also announced three management actions designed to protect eagles under the Eagle Act.



© John A. DiGiorgio, Photographer

1. Regulatory definition of "disturb" under the Eagle Act

Disturbing eagles has been prohibited since the Eagle Act was enacted. Although a statutory definition was provided for "take", the meaning of "disturb" had not been explicitly defined by the Service or by the courts. The Service has proposed the following regulatory definition of "disturb" under the Eagle Act:

"Disturb means 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."

This definition will apply to eagles throughout the United States, including Alaska (where the bald eagle has never been listed under the Endangered Species Act). The Service has proposed this definition to reduce uncertainty and add clarity, and address earlier concerns expressed on ability to appropriately implement and enforce the Eagle Act.

2. Publish the National Bald Eagle Management Guidelines

The Service developed the National Bald Eagle Management Guidelines to provide guidance to help people avoid disturbing bald eagles, namely - landowners, land managers, and others who share public and private lands with bald eagles - particularly where their actions may constitute "disturbance," which is prohibited by the Eagle Act. A variety of human activities can potentially interfere with bald eagles, affecting their ability to forage, nest, roost, breed, or raise young.

Protection After Delisting *continued*

The Guidelines themselves are not law. Their primary purpose is to provide information that will minimize or prevent violations only of Federal laws governing bald eagles. Copies of the Guidelines are available at: <http://www.fws.gov/migratorybirds/baldeagle.html>.

3. Create a new permit program

Currently, there is no regulatory mechanism in place under the Eagle Act that permits the take of eagles comparable to under the Endangered Species Act (ESA). The Service has proposed new permit regulations to authorize the take of eagles under the Eagle Act where: a) the take to be authorized is associated with otherwise lawful activities; b) permit provisions be established for the intentional take of eagle nests in rare cases where their location poses a risk to human safety or to the eagles themselves (ie: close proximity to an airport runway); and c) the regulation also contain provisions to extend the Eagle Act authorization to persons authorized to take eagles under an ESA permit.

The Service has commented that the permitting process being proposed would be less burdensome for the public to comply with than what is in place under the ESA, while continuing to provide appropriate protection. The Service has announced that a final ruling will be made on this proposal following a 90-day public comment period, scheduled to end September 4, 2007.

Additional Protective Regulations

In addition to the Eagle Act, the bald eagle will continue to be protected by the Migratory Bird Treaty Act (MBTA), the Lacey Act and individual state laws.

1. Migratory Bird Treaty Act (MBTA)

The MBTA, enacted in 1918, is a Federal law that carries out the United States' commitment to four international conventions with Canada, Japan, Mexico and Russia. Those conventions protect birds that migrate across international borders and prohibits the taking of any migratory bird or any part, nest, or egg, except as permitted by regulation. In 1972 an agreement supplementing one of the bilateral treaties underlying the MBTA resulted in expanding the scope of the Act to cover bald eagles and other raptors. "Take" is defined under the MBTA as "pursue, hunt, shoot, wound, kill, trap, capture, possess, or collect."

Penalties under the MBTA include a maximum of two years imprisonment and \$250,000 fine for a felony conviction and six months imprisonment or \$5,000 fine for a misdemeanor conviction. Fines double if the violator is an organization rather than an individual. Copies of the MBTA are available at: <http://permits.fws.gov/ltr/ltr.shtml>.

2. Lacey Act

Passed in 1900, the Lacey Act protects bald eagles by making it a Federal offense to take, possess, transport, sell, import, or export their nests, eggs and parts that are taken in violation of any state, tribal or U.S. law. It also prohibits false records, labels, or identification of wildlife shipped, prohibits importation of injurious species and prohibits shipment of fish or wildlife in an inhumane manner.

Penalties include a maximum of five years and \$250,000 fine for felony convictions and a maximum \$10,000 fine for civil violations and \$250 for marking violations. Fines double for organizations.

3. State laws and regulations

In addition to Federal laws, many states and some smaller jurisdictions and tribes have additional laws and regulations protecting bald eagles. In some cases those laws and regulations may be more protective than federal regulations. Some states may continue to list the bald eagle as endangered, threatened, or of special concern. New Jersey State protective regulations are, according to Niles, more restrictive than federal regulations. Ultimately, it will be up to the states to monitor and enforce the new rules following the delisting, including land development.

A major concern for the continued survival and prosperity of the species is suitable habitat; concern that some landowners may have the incorrect impression that they can disturb eagles. Watts says, "We had gotten calls all the time from developers waiting for delisting because they thought protection would be reduced a great deal." The pressure to develop land increases as our population increases. Niles says, "Development is an irreversible problem. The water line is where everyone wants to live, eagles included."

To ensure that eagles continue to thrive, the Service has announced that it will work with state wildlife agencies to monitor eagles for at least five years. Should eagles again need the protection of the ESA, the Service can propose that they be "re-listed".

While there is cause to celebrate the remarkable recovery of the bald eagle, it is important to note that they are not out of danger. How eagle habitat will be protected in the future and the part we all play in habitat preservation is key to their continued recovery and prosperity.

SOURCES: www.fws.gov/migratorybirds

Dr Larry Niles, former Chief of Endangered and Non-game Species Program Division of Fish, Game, and Wildlife, NJ DEP.

Dr Bryan Watts, Director of the Center for Conservation Biology, College of William and Mary & Virginia Commonwealth University.

