

June 16, 2006

Michelle Morgan
Chief, Branch of Recovery and Delisting
Endangered Species Program
U.S. Fish and Wildlife Service
Headquarters Office
4401 N. Fairfax Drive, Room 420
Arlington, Virginia 22203
Via email to baldeagledelisting@fws.gov

Dear Ms. Morgan:

Audubon of Florida recognizes that Bald Eagle populations have improved since being listed under the endangered species acts of the federal and state governments in the 1970s. The eagle population, though still a fraction of its original size, has increased over the last few decades and faces a significantly reduced threat of extinction. Accordingly, it may be time to remove the Bald Eagle from the list of threatened species. However, our goals for the true recovery of the eagle must go beyond “avoiding extinction,” and should be supported by rigorous and mandatory protections that will ensure the eagle’s continued recovery nationwide. We hope our following comments on the proposed delisting, eagle management guidelines and definition of “to disturb” will help guide you in this continued recovery.

Proposed Delisting of the Bald Eagle

Bald Eagle populations started declining several hundred years ago as European colonists hunted and killed eagles, calling them “vermin.” The passage of the Bald and Golden Eagle Protection Act of 1940 (BGEPA) provided much-needed protection and awareness that allowed eagle populations to begin to stabilize and recover. This brief recovery period was curtailed as the use of organochlorine pesticides became widespread and eagle populations once again declined. Eagle populations have again shown resiliency and rebounded due to changes in pesticide use and the protections afforded by listing under state and federal endangered species acts.

While current federal prescriptions for endangered species confer protection on eagles, so too do ordinances referencing “threatened and endangered species” in state and local development codes. For those species like the Bald Eagle who are most threatened by development, these development codes provide significant benefits. USFWS has been eager to reassure the environmental community that many of the eagle’s current protections due to its threatened status will still be available to eagles under the BGEPA. However, the growth management protections will not since they are tied to “threatened and endangered species” as a whole, rather than to individual species by name. The Florida Fish and Wildlife Conservation Commission identified more than 500 instances where “threatened” and/or “endangered” species were provided for in state statute and municipal code, during a cursory review of those laws. The USFWS has not addressed this significant issue well enough to satisfy our concern for the Bald Eagle’s continued recovery after delisting.

Similarly, we have grave concerns for the timeliness of a re-listing response should populations decline after the removal of the eagle's current listed status. The dearth of federal species listings in recent years is tantamount to a moratorium on listing. Should the Bald Eagle decline after its status is lifted, we fear it would not be re-listed expeditiously.

Lastly, take permits for eagle nests are of great concern to us, as the number of large, suitable nest trees continues to decline in the face of development. We strongly oppose the issuance of any further take permits under BGEPA protections which will remain after federal delisting. If it is necessary to mitigate nest impacts, we support the acquisition of habitat through the use of mitigation banks created to ensure that the resulting preservation areas are comprised of substantial, contiguous, high-quality eagle nesting habitat and have financial guarantees for ongoing habitat management. This would be much more meaningful than the current application of mitigation efforts to isolated parcels with uncertain management futures. Audubon of Florida also strongly prefers that mitigation be applied towards habitat acquisition and management rather than other uses. Mitigation schemes should also be regularly evaluated for their effectiveness.

Proposed Bald Eagle Management Recommendations

Delisting must be coupled with measures that allow the U. S. Fish and Wildlife Service to ensure the continued recovery of the eagle population; this will require more than voluntary guidelines. While we applaud the USFWS intent to provide guidance in the form of Management Recommendations, we have concerns for their implementation and effectiveness.

In the Management Recommendations as they are currently proposed:

- (1) The recommendations currently state:

Where nests are blown from trees during storms or are otherwise destroyed by the elements, continue to protect the site in the absence of the nest for up to three (3) complete breeding seasons. Many eagles will rebuild the nest and reoccupy the site.

We feel a five-year protection would be more appropriate since this is the length of time required for a hatchling to reach sexual maturity. This would allow chicks adequate time to mature and return to their natal tree if it has not been reoccupied by the original pair.

- (2) The Recommendations refer to communal roosting sites, yet do not provide information on how landowners could learn of roost site locations near them.
- (3) Similarly, the "Nesting Bald Eagle Sensitivity to Human Activities" table is helpful, however it assumes this document's target audience will be able to distinguish between eagle courtship, egg laying and incubation and nestling phases. Some detail on typical eagle behaviors during these periods would likely prove helpful.
- (4) Many states, counties and cities who currently protect eagles through threatened species language will likely want to protect eagles specifically now that their existing codes will no longer suffice. These well-meaning elected and regulatory bodies look to the USFWS for biological guidance, which is why they tied their protections to ESA listings originally. An incredibly meaningful addition to the recommendations would be a chapter or appendix with suggested or recommended language that states, counties and cities could adopt into their statutes and ordinances. Translating the bulk of this recommendation document into code-friendly suggestions would significantly improve the chances of cities and counties extending protection to eagles outside the ESA designation.

Some examples of points you could include:

- Including eagle nest setbacks in development code
- Adding protections of pines greater than a threshold DBH to tree ordinances, in an attempt to protect potential nest trees regardless of whether or not they have held a nest previously
- Protecting trees that have held eagle nests in the past for the recommended five years or longer
- Identifying eagle overlay districts in local planning, where special setbacks or contiguous nesting habitat protections are greater than elsewhere in a jurisdiction

Additionally, the Management Recommendations should be paired with mechanisms to protect eagles and their habitat.

- 1) While organochlorides posed the threat that originally imperiled eagles, development is the bird's greatest challenge today. USFWS should establish legitimate landscape-level protections for Bald Eagle nesting and foraging habitat beyond the delisting of the species.
- 2) The USFWS should seek to strengthen BGEPA for greater protection of eagle nest trees or trees of sufficient size, character and location to host eagle nests in the future.
- 3) Lastly, it is imperative that the agency undertake a significant education campaign to ensure the public understands that delisting does not mean eagles and eagle nests are completely unregulated. Amidst the media fervor surrounding this proposed delisting, as well as state delisting efforts in Florida, the press has largely neglected to report protections that will remain in place for the eagle. Outreach to the public, the development community, and municipal regulators of development will be an essential part of any successful delisting action.

Proposed Definition of Eagle Disturbance

We are pleased that the USFWS has revisited the definition of eagle disturbance in anticipation of the bird's delisting. As you know, one of our greatest concerns is for the protection of nest trees and nesting habitat. We feel the proposed definition of "disturb" as an addition to the Bald and Golden Eagle Protection Act is an important step, particularly:

- establishing that the interruption of an eagle's "breeding, feeding or sheltering habits" may have fatal implications for young or eggs, and
- requiring that development outside of the breeding season consider whether the resulting structures and activity will disturb nearby nests once the breeding birds return.

However, in suggesting that eagle nests vary in their tolerance of disturbance and pledging to handle each case on an individual basis, we fear you are setting a dangerous precedent, leaving the interpretation of each bird's behavior and their according "disturbance" up to individuals and open to debate. With limited USFWS staff and pressure for timely determinations by economic interests, we fear that all nests will not receive the setbacks they deserve. Similarly, while one pair of eagles may be very tolerant of adjacent development one year, that nest may be occupied by a less tolerant pair in future years. Minimum necessary setbacks would account for this variability. Individual site recommendations from USFWS could help determine if setbacks in excess of the minimum would be required in special cases.

To this end, we recommend the adoption of two classes of eagle nests: those where eagles have built nests in already developed areas (impacted nest sites) and those where existing eagle nests on undeveloped land are being encroached upon by new development (unimpacted nest sites). The combination of eagle nest management plans, mitigation, and 330-foot setbacks would be appropriate for impacted nests, *but not unimpacted ones*. These natural-state unimpacted nests should be preserved

at all costs with substantial minimum buffers—two to three times those of impacted nests—built into any plans for new development.

We can be proud that current protections have brought the Bald Eagle population to a level where we can consider its delisting. However, we all recognize the challenges the eagle will continue to face, with or without imperiled species status. It is critical that USFWS anticipates problems that may arise as a result of delisting and plan accordingly, because in many states as in Florida, state imperiled species status is being removed as well. Similarly, existing protections in state growth management statutes and municipal development codes will no longer function as a safety net for eagle populations. We ask the USFWS to ensure this will be a secure future for the Bald Eagle; we urge you to postpone delisting until the issues we have raised are addressed.

Sincerely,

A handwritten signature in black ink, appearing to read 'DA Anderson', with a long horizontal flourish extending to the right.

David Anderson
Executive Director
Audubon of Florida

cc: Mr. Brian Millsap, Chief, Division of Migratory Bird Management
via email to baldeagle_managementguidelines@fws.gov and baldeagle_proposedrule@fws.gov