

The Bald Eagle and the Endangered Species Act



Summary

1. Bald eagles were never in danger of extinction because of the massive population in Alaska and Canada.
2. The 1972 DDT ban was the paramount cause of the eagle's resurgence, not the 1973 Endangered Species Act.
3. The Endangered Species Act may have done more harm than good.
4. The Endangered Species Act's land-use restrictions have been transferred to the Bald & Golden Eagle Protection Act.

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It is great news indeed that bald eagle populations in the contiguous 48 states have done so well in recent decades that on June 29, 2007 they will officially be removed from the endangered species list.

Unfortunately some serious problems remain. First, the story is not being told of how many different factors led to the recovery of the bald eagle. Second, the Endangered Species Act's role has been significantly overstated. Third, the Act may well have caused more harm than good to the eagle. Fourth, the bald eagle will be removed from the endangered list in name only because despite the species' much hailed recovery the U.S. Fish and Wildlife Service (FWS) has cut-and-pasted the Endangered Species Act (ESA) land-use regulations—the “teeth” that make the law so broadly powerful—to the Bald and Golden Eagle Protection Act (Eagle Act).

Many Factors Led to the Recovery of the Bald Eagle, while the ESA likely did more harm than good

- 1) **Contrary to claims by a number of prominent ESA boosters, the bald eagle was never in danger of extinction** because the vast majority of the species' population (around 75%) has lived in Alaska and British Columbia, Canada where the combination of superb habitat and lack of DDT has kept them safe. Alaskan eagles have never been listed under the ESA.
- 2) **Banning DDT in 1972, not the passage of the ESA a year later, is widely acknowledged as the paramount reason for the bald eagle's resurgence.** Seventy percent of the bald eagle population in the 48 contiguous states were not even listed under the ESA, and therefore not afforded the purported benefits of its protection, until 1978, several years after DDT was banned.
- 3) **Habitat conservation and creation is far more nuanced than portrayed by the ESA's boosters.** The ESA may well have done more harm than good on private land, where most of the listed eagles exist. In addition, the tolerance of some eagles to human activity and habitat creation by humans undermine the portrayal of the eagle as a wilderness denizen. Lastly, the warming climate will likely be beneficial to wintering eagles in the northern portion of their range.
- 4) **Releasing young eagles in areas where the species had been extirpated proved to be very effective in the recovery effort,** but these captive breeding programs were carried out primarily by states and private organizations, not federal agencies. The main contribution of the federal ESA was to provide funding for these efforts, though given

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the eagle's charisma, state and private entities proved able to raise substantial funds for these projects.

- 5) [Public attitudes about eagles have changed and people are much more inclined to respect and admire eagles and avoid bothering them.](#) The ESA's land-use regulations were not necessary to curtail shooting, and penalties for shooting got their biggest boost from the 1987 Criminal Fines Improvement Act, not the ESA. The ESA played little role in people's increasing environmental consciences and attitude towards eagles.
- 6) [The 1991 federal ban on lead shot for waterfowl hunting was done as much for waterfowl as it was bald eagles.](#) When compared to other conservation measures, most notably the DDT ban, the lead shot ban was relatively unimportant to the bald eagles' recovery.

[The Fish and Wildlife Service cut-and-pasted the ESA's draconian land use restrictions to the Bald and Golden Eagle Protection Act.](#)

- 1) [Under the ESA and the Eagle Act, FWS has made land use restrictions the centerpiece of their strategy to protect bald eagles.](#) These land use restrictions did more harm than good, leading many landowners to make their land inhospitable to eagles.
- 2) [In the mid-1990s the bald eagle population in the 48 contiguous states reached over 3,000 breeding pairs which met the goal for recovery of the species under the ESA.](#) But the FWS was in no hurry to remove the eagle from the endangered list until 2005 when Minnesota landowner Edmund Contoski sued the FWS for failing to delist the eagle in a timely manner. He won his case, and the court ordered the FWS to remove the bald eagle from the endangered list. As of now there are at least 11,137 pairs, which exceeds the recovery goal by 371%.
- 3) [Congress never intended for the Eagle Act to contain land-use control provisions.](#) The FWS used an administrative rulemaking process to essentially add the ESA land use control provisions to the Eagle Act. In addition, the FWS's changes to the Eagle Act extend the ESA's land-use regulations to bald eagles in Alaska and golden eagles in the contiguous 48 and Alaska, both of which have never been covered by such regulations.
- 4) [The land use restrictions added by FWS to the Eagle Act can be used to encumber huge amounts of habitat.](#) Applying FWS nest protection guidelines under the Eagle Act means that the 11,137 pairs in the 48 contiguous states occupy 5.6 million acres (roughly the size of New Hampshire or New Jersey)-524,834 acres of which will be the most stringently regulated because it is closest to nest sites. Keep in mind, these figures don't account for regulations protecting nesting birds in the outer extent of their ranges, non-nesting eagles, wintering eagles that migrate across the Canadian border, the Alaskan population of bald eagles, or golden eagles-all also potentially subject to the revised Eagle Act.
- 5) [If the bald eagle were removed from the endangered list without increasing the land use restrictions of the Eagle Act, the population of bald eagles would certainly continue to increase.](#) The combination of the bald eagle's symbolic importance and state and private conservation efforts will ensure the eagle prospers into the future. The time is long overdue for the bald eagle to fly free of the Endangered Species Act's land-use controls.