

Law Enforcement and the Bald Eagle Protection Act

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The Bald Eagle Protection Act provides for the protection of eagles and their nests. How the Act is used or not used is based on the circumstances of the violations involved. Oftentimes the results are not what is expected or desired. This leads to the use of other federal laws to protect eagles.

The Bald Eagle Act, 16 USC 668, which took effect on June 8, 1940, was enacted when Congress recognized that the Bald Eagle was threatened with extinction. The Act states in part "whoever, without being permitted to do so, shall knowingly, or with wanton disregard for the consequences of his act take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner, any Bald Eagle commonly known as the American Eagle, or any Golden Eagle, alive or dead, or any part, nest or egg thereof of the foregoing eagles, or whoever violates any permit or regulation pursuant to sections 668 to 668d of this title, shall be fined not more than \$5,000, or imprisoned not more than one year or both."

Section 668 (a) of the Act authorizes the taking, possession and transportation of specimens for scientific, or exhibition purposes of public museums, scientific societies and zoological parks or for the religious purposes of Indian tribes, or when it is deemed necessary to permit the taking of such eagles for the protection of wildlife or of agricultural or other interests, in a particular locality.

Section 668 b (b) of the Act authorizes the forfeiture of all guns, traps, nets and other equipment, vessels, aircraft and other means of transportation used in the unlawful activities concerning the species.

The Act also provides for civil penalties to be assessed against persons who violate the law. The words "knowingly, or with wanton disregard for the consequences of his act" are not in the civil penalty section, thus requiring a lower burden of proof from the government. It is a monetary penalty only with no imprisonment possible.

As used in the Act, the term "take" includes also pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.

Since its enactment, there have been several amendments. Although enacted on June 8, 1940, the law did not take effect in Alaska until it was amended for statehood in 1959.

Golden Eagles came under the protection of the Bald Eagle Protection Act in 1962. This

amendment also authorized the take of eagles for the religious purposes of Indian tribes. Another amendment in 1972 authorized the Secretary of the Interior to permit the taking, possession and transportation of Golden Eagles for the purpose of falconry, except that only Golden Eagles which would be taken because of depredations on livestock or wildlife may be taken for purposes of falconry.



Timothy Bowman with a dead immature Bald Eagle found during studies after the *Exxon Valdez* oil spill. Photo by USFWS.

The Eagle Act has usually taken second place to the Endangered Species Act of 1975 in the lower 48 states for prosecution of eagle shooters due to the endangered and threatened status of the eagle in the contiguous U.S. The Endangered Species Act provides for penalties of \$20,000 and one year in jail.

The Eagle Act was enhanced with the passage of the Fine Enhancement Act of 1987, 18 USC 5625 which makes a misdemeanor punishable by imprisonment for more than six months and a fine of up to \$100,000.

When the sale of eagle feathers is involved in a violation, the Migratory Bird Treaty Act, 16 USC 705, enacted on August 16, 1916, is usually substituted for the Eagle Act. The reason for this is that under penalty section, 16 USC 707, of the Migratory Bird Treaty Act, the sale of migratory bird feathers is a felony calling for a \$2000 fine and two years in jail. This brings the potential penalties up to \$250,000 for an individual and \$500,000 for an organization or corporation, due to the effects of the Fine Enhancement Act of 1987.

Some of the unpermitted takes of eagles in Alaska are as follows:

Electrocutions: Eagle electrocutions occur in a variety of locations in Alaska. This problem is being addressed in new construction planning and consultation.

Oil Spills: The *Exxon Valdez* oil spill resulted in the suspected deaths of large numbers of eagles due to the effects of oil. Additional eagle deaths can be expected around any oil spill which kills other wildlife which eagles feed on.

Prosecution of the take of eagles resulting from the *Exxon Valdez* oil spill were not sought under the Eagle Act due to the requirement that the government prove that the take was done knowingly and with wanton disregard for the consequences of the act. Prosecution was considered under the Migratory Bird Treaty Act.

Trapping: Trapping can and does take a large number of eagles if it is not done properly. There are frequent reports of eagles trapped or of eagles flying around with traps on their legs.

Shooting: Shooting takes a large percentage of eagles both in Alaska and in the lower continental United States. Eagles transplanted from Alaska to other states have suffered mortality due to shootings. Almost every community in Southeastern Alaska has had eagles shot in their area.

Trapping and shooting probably place the heaviest burden on eagle populations in Alaska. In trapping, even if the eagle is released in what appears to be an unharmed condition, the eagle will not have a good chance of survival if tissue damage is extensive or if the temperature has been below freezing, when the lack of blood flow allows the feet to freeze.

The trapping of eagles is illegal without a permit even if it is unintentional. When the

price of bobcat hides climbed in the late 70's, large numbers of Golden Eagles were taken by bobcat trappers in the western states.

In April of 1987 a trapper pled guilty to violating the Eagle Act by catching three eagles on the Kenai National Wildlife Refuge. The trapper was fined \$500, ordered to pay \$204 to the veterinarian to which he took one of the eagles and was ordered to contribute \$500 to a fund established for the care of injured eagles. The trapper also forfeited his refuge trapping permit for failure to check his traps every seven days. All three eagles died of exposure.

In 1984, a man came to the Fish and Wildlife Service Law Enforcement office in Ketchikan to tell of finding three eagles in wolf traps several months before. No prosecution was sought because the person released the dead birds from the traps and allowed the carcasses to float away with the tide.

One of the major differences between the incidental trapping of eagles and shooting them is intent. A marten or wolf trapper does not want eagles in his traps although he may be careless in setting them. The eagle shooter obviously has the intent to kill the eagle. In June of 1988, two twelve year old juveniles shot a nesting eagle off the south end of Douglas Island near Juneau. Due to complications and procedures in prosecuting juveniles, no prosecution was obtained on them. They did forfeit the two rifles used in the violation. Did they learn not to shoot eagles, or did they learn not to talk about shooting eagles in front of those who would report their actions?

Even eagles which are injured and supposedly protected are not safe from people. In August 1988, a one eyed eagle was being maintained at the Fish and Wildlife warehouse in a locked cage behind a locked gate, awaiting shipment to the Alaska Raptor Rehabilitation Center in Sitka, Alaska. After being shown the eagle by a second person who was trespassing, the violator stated he wanted the talons and left. He later returned with bolt cutters, cut both locks and proceeded to hit the eagle and then cut the legs and head off. Blood was splattered three feet up on the sides of the warehouse. The violator spent six months in jail for trespassing and enrolled himself in a drug and substance abuse program as drugs and alcohol made him violent and uncontrolled. Upon pleading guilty to taking the eagle, the subject was sentenced to continued attendance in the drug program, served probation and paid \$40 for the two locks.

Valentines day 1983 was the start of one of two investigations into what is probably the shooting of the greatest number of eagles by one person since the Eagle Act took effect in Alaska. The end results do not reflect that fact nor was a trial held which would expose what was happening.

On Valentines day 1983, a family of four were at the shooting range by the dump of a logging camp on Prince of Wales Island, Alaska. As the wife was leaving with the children to walk home, she heard a shot, looked up and saw an eagle fall from a tree. Approximately one minute later, the manager of the camp was observed driving from where the shot was fired with a rifle in the gun rack of the pickup. As a result of the

witness moving away and a second witness involved in later actions moving away, the government declined to pay the cost of bringing the witnesses from the mid-west for the trial and instead settled for a civil penalty. The penalty was \$1000 and there was no admission expressed or inferred by reason of the compromise. That civil penalty was completed on March 8, 1985 and the killing did not stop during that time although several people knew what was happening and chose not to do anything about it.

In May 1987, information was received that about 20 eagle carcasses were found in the logging camp dump. An investigation revealed that parts of what was believed to be at least 30 eagles were located in the area of the dump. After an extensive investigation and the offering of a substantial reward, two witnesses came forward with statements that they had seen the subject shoot eagles or saw him leave the area where the witness saw an eagle shot. Both of these violations occurred during the time of the first investigation. One of the witnesses stated the subject had frequently told him of shooting "X" number of eagles that day. When added up, the specific numbers that the witness could remember were between 60-70 eagles. The second witness was fishing under a bridge when he heard a vehicle stop on the bridge. The witness heard a shot and saw an eagle fall from a tree. Climbing the bank and onto the road he was able to see and identify the subject leaving the area. In a plea bargain, the 68 year-old violator plead to one count of taking an eagle and paid a fine of \$750 and spent 30 days in jail and was on one year of active probation.

This penalty can be compared with another Eagle Act case. In September 1986 a civil penalty of \$3812.50 was assessed a man who shot a transplanted Golden Eagle which was sitting on a post in a cow pasture in Georgia. This civil penalty was issued after the subject had completed an affidavit admitting to shooting the eagle, had a jury trial and was found not guilty. The penalty was equal to the cost of the transplant.

In the Cordova area, a man was standing next to his skiff on the shoreline, about 200 yards from a fishing vessel. He observed a rifle barrel come out of a window and looked in the direction it was pointed and saw an eagle. A second man saw an eagle flying, heard a shot and saw the eagle fall. Looking to where the shot came from, he saw a rifle barrel being pulled back into the fishing vessel cabin. The vessel was seized and the subject was interviewed and completed an affidavit admitting to shooting the eagle. The violator pleaded not guilty and at the trial stated that the agents threatened him with the loss of his vessel if he did not admit to shooting the eagle. The first trial ended in a hung jury as did the second trial.

It seems as if we have not learned to value or cherish our natural resources and wildlife in the 300 years since European settlers first appeared on our eastern shores or in the two centuries our nation has existed. Are eagles not to be valued above their status as rifle targets? Tourists visiting Alaska who have not had the opportunity to see eagles in their home states do cherish the sight of eagles.

As the human population grows and demand for resources increases, the loss of nesting habitat and nest trees will increase along with nest disturbances. Logging operations take

nest trees but it also opens up areas allowing nest trees to be blown down by winds when buffering trees are removed. On Long Island an eagle nest tree was observed where every tree within approximately 100 yards had been removed. How many October and November storms will it take before it falls?

Road construction is a continued problem with heavy equipment, blasting and construction activity around nesting eagles, scaring them off the nests during critical periods causing the loss of eggs.

Mining activities also cause disturbances of eagle nests and possible nesting failures. At the development of one mining claim, helicopters were arriving and departing within 100 yards of the nesting eagles and resulted in a suspected nest abandonment.

People purchase land from state land sales knowing of eagle nest trees on the property and then ask how to remove or construct around them. Some people purchase land from others and only later when they inspect the land do they find out about the eagle nest tree. During a telephone conversation a Southeast Alaskan developer explained how he could remove an eagle nest tree from his property and make it look like wind damage or an accident in cutting a second tree. His actions would be totally illegal as his intent was the removal of the eagle nest tree and thus the nest.

Construction for national defense can even be a cause of disturbance to nesting eagles. The Back Island submarine testing facility construction is suspect in the disturbance of the nesting eagles there (Canterbury 2008).

The Southeast Alaska area has hundreds of eagle nests. The enforcement of the Eagle Act at so many locations is an impossible task. Some construction sites are monitored; however, such monitoring is usually not adequate. Eagles which are disturbed may continue to nest well after the disturbance. Once the nest is abandoned, the eggs are subject to predation, which destroys evidence.

What can be done to slow this loss of both bird and nest? What is needed is a change in attitude among all people, that their individual actions will influence the "take" of an eagle or nest, whether it is with a rifle, trap, bulldozer, or chainsaw?

Individual action is important, especially by those who know of and have direct knowledge of violations. While not threatened by extinction in Southeast Alaska, eagle populations around human population centers are under pressure from development. Pressure on eagle populations will increase without active involvement by those knowledgeable of violations. The alternative is a decline in the species with increased regulations and restrictions on development and human activities.

Literature Cited

Canterbury, J. 2008. Bald Eagle reaction to construction on Back Island, Alaska. In: Wright, B.A. and P.F. Schempf, eds. Bald Eagles in Alaska.