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## Free the Eagle: The bird will do fine off the endangered list

*Seasholes article in National Review Online*

by [Brian Seasholes](#)

February 16, 2007

The bald eagle was supposed to be taken off the Endangered Species list in 48 states on February 16, but environmental pressure groups and the U.S. Fish and Wildlife Service (FWS) prevented this because they are more interested in land-use control than freeing the eagle. As the Endangered Species Act's (ESA) highest-profile species, the eagle has been consistently, but dishonestly, touted by pressure groups and FWS as a success story. One would think they would jump at the chance to celebrate the eagle's recovery. Not so in ESA Never Never Land.

Since August 2006, FWS has been under court order to delist the eagle, after a landowner in Minnesota forced them to do so. Ed Contoski is co-owner of 18 lakeshore acres in central Minnesota. To provide for his retirement, and because heart problems prevented him from using the property, Ed decided in 2004, at the age of 67, to sell his half-share to family. In order raise \$425,000 needed to purchase Ed's share, the only feasible plan was for the northern 7.33 acres of the property to be platted for five residential lots. The southern portion of the property would not yield the necessary cash because development is prohibited on some of it, due to wetlands designated under the federal Clean Water Act, and access restrictions. Then the ESA shoe dropped in the fall of 2004 when authorities informed Ed they would not approve his plan due to the presence of a bald eagle nest that precluded development of the 7.33 acres.

To recover use of his land, Contoski enlisted the help of the Pacific Legal Foundation, which sued FWS for failing to delist the eagle in the one year mandated under the ESA following the proposal to do so in 1999. FWS was in no hurry to delist because, as Contoski's case demonstrates, the eagle has been used to control land-use. Contoski won and FWS was ordered to delist by February 16, 2007.

Faced with the loss of the ESA hammer, FWS proposed a reinterpretation of the Bald and Golden Eagle Protection Act (BGEPA), initially passed in 1940, that adopted much of the ESA's land-use control functions. But this was still not good enough for pressure groups more interested in posturing than conservation. "If the current proposal goes forward, developers will be essentially told that it's OK to pull up right next to a nesting tree and operate a jackhammer, and completely agitate eagles, to the point where they're no longer going to be able to breed," claims John Kostyack of the National Wildlife Federation (NWF).

In fact, FWS's proposed habitat guidelines recommend buffers around nest trees



that are very similar to those used under the ESA; 1/2-1 mile for loud intermittent noises such as jackhammers, 330-660 feet for various types of development, and avoiding the cutting of mature trees 1/2 mile or less from water used by eagles.

Due to opposition from pressure groups, FWS was only too willing to seek, and was granted, an extension until June 29, ostensibly to build a stronger administrative record (i.e. data) for a species that the agency already has massive amounts of data collected over decades. In reality, FWS is happy to make the BGEPA even more onerous to satisfy pressure groups.

Despite the hysterics of pressure groups, the bald eagle will do fine once delisted. The eagle exceeded FWS's recovery goals in the early-to-mid 1990s and the population has continued to grow about 8 percent annually. When delisted, not only will the eagle be protected by the BGEPA, but states will aggressively protect it, most notably ten well-known for their green leanings (California, Florida, Maryland, Maine, Mississippi, Minnesota, Oregon, Virginia, Washington, Wisconsin) that contain 72 percent of the eagle's population in the lower 48. Also, wealthy groups like NWF can get involved in boots-on-the-ground conservation instead of sitting in their ivory towers generating paper and soundbites.

Even though Ed Contoski won his lawsuit, there is the very real possibility that the government will continue to stymie him after the eagle is eventually delisted because of the new BGEPA. The callous disregard shown to him is all the more shameful because he is a proud American who honorably served in the military. And the thanks he got was for the federal government to use the bald eagle to violate his Constitutional property rights. According to the Fifth Amendment, "nor shall private property be taken for public use, without just compensation." But for people like Ed Contoski, whose land has been turned into defacto federal wildlife refuges but have not been compensated, these words ring hollow.

So celebrate the return of the bald eagle this weekend. But don't dishonor this country's symbol, its Constitution, or suffering landowners like Ed Contoski by celebrating the Endangered Species Act.

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