

August 4, 2006

Mr. J. Daniel Sullivan, Jr.
Endangered Species Coordinator
Bald Eagle Management Plan Comments, DHSC
Florida Fish and Wildlife Conservation Commission
620 S. Meridian St., M.S. 10
Tallahassee, FL 32399-1600
via email to daniel.sullivan@myfwc.com

Re: Audubon recommendations for the Bald Eagle management plan

Dear Mr. Sullivan:

We congratulate you, the FWC and the state on reaching this point where Bald Eagles may be considered for removal from the state list of threatened and endangered (T&E) species. This improvement in their population is no doubt related to the direct protections of federal and state listing, as well as the commensurate city and county land use protections keyed to T&E designations. As you know, the threat to eagles has changed in this last century, from persecution, to inadvertent pesticide poisoning, to now, what we fear may be their greatest threat, habitat loss to development. We will be looking for the following components in your Bald Eagle management plan, which will help to protect eagle populations in the face of increasing development, regardless of the removal of their listed status.

Eagle nest trees

There should be no permitted nest taking, and when a nest is blown from a tree, that tree should be protected for five complete breeding seasons, long enough for young reared in the nest to reach sexual maturity and return to it. Pre-development nest surveys must be required, and local, regional and state planning agencies should be required to confirm nest site presence against FWC's database before a project leaves the conceptual planning stage. The dwindling number of viable nest trees will be a limiting factor in continued eagle population recovery, and accordingly, their protection should be emphasized.

Eagle nest disturbance

While disturbance tolerance varies between nesting pairs, a standard of minimum setbacks is necessary due to the staff burden of writing individual plans for each development site and the variability in disturbance tolerance of eagle pairs that may occupy any nest in subsequent years. 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.

Mitigation

If it is necessary to mitigate nest impacts, the plan should encourage 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.

General Public Outreach

For much of the public, the Bald Eagle is THE symbol of the Endangered Species Act and the true ramifications of its delisting are poorly understood. Much of the success of this effort will hinge on the state's ability to communicate this issue to various sectors of the public. It is crucial that any FWC education campaign on this issue should address: (1) the significant, remaining protections for this bird under federal and state laws, (2) clarifying the listing process so the public better understands delisting cannot happen until a management plan is in place, and (3) making the public aware that a non-game species can and will be protected, even if it is not technically threatened or endangered.

Monitoring and Relisting

Because of the delay in state listings resulting from the long development of the state's new listing process, there is significant concern in the conservation community and among the general public that once a species is downlisted, it will not be relisted expeditiously if its population later declines. This management plan must not only prescribe rigorous, frequent and long-term monitoring of Florida's eagle population, but should also prescribe regular status reports accompanying these monitoring efforts, as an assurance of the State's vigilance.

State Statute, Agency Rule and Municipal Code Protections

Currently, state protection is afforded to the Bald Eagle by virtue of more than just its regulation by the Florida Fish and Wildlife Conservation Commission (FWC). Its listed status also garners protection in state statute, multiple agency rules and municipal codes. One of the biggest uncertainties of eagle delisting is the effect of removing these protections. The Bald Eagle Management Plan should (1) identify these instances in statutes, agency rules and codes, (2) specify what protections they confer upon eagles, (3) evaluate whether the loss of these protections will unduly imperil the eagle population, and (4) prescribe necessary actions to compensate for the changes in these codes. The document "Distribution and use of imperiled species terms in Florida laws and rule" compiled for the FWC by Perran Ross and Lindsay Nester in April 2005 gives some preliminary structure for this much-needed analysis.

Recommendations for Municipal Land Use Planning

Similarly, many 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 FWC for biological guidance, which is why they originally tied their protections to T&E listings. The management plan should prescribe outreach to cities and counties making them aware of the delisting and include a document with suggested or recommended language that they 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 threatened designation.

Some examples of suggestions 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

- Adding references to the Bald and Golden Eagle Protection Act (BGEPA) to any ordinances referencing T&E listings. This year, at the request of Audubon, the Legislature added a reference to BGEPA to terms in the Development of Regional Impact statute (Chapter 380.06, F.S.).
- Requiring developers to conduct pre-development eagle nest surveys
- Inserting language into local development approval processes requiring a mandatory check of the FWC's eagle nest database and confirmation of nest presence prior to a project leaving the conceptual planning stage.

We look forward to reviewing the first draft of your Bald Eagle Management Plan and thank you for this opportunity to contribute to its development.

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