

ARIZONA GAME AND FISH DEPARTMENT

Common Questions regarding the U.S. Fish and Wildlife Service's decision to:
Not Declare the Sonoran Desert Nesting Bald Eagle Population a Distinct Population Segment, and
Not List the Species under the Endangered Species Act

Q1: What was the U.S. Fish and Wildlife Service's decision on bald eagles in Arizona?

A: The U.S. Fish and Wildlife Service (USFWS) decided not to designate the Sonoran Desert Nesting Bald Eagle as a distinct population segment. Therefore, it does not require protection under the Endangered Species Act (ESA). This decision means that the entire Arizona bald eagle population is no longer considered threatened.

Q2: Did the Arizona Game and Fish Department make the decision to delist the bald eagle in Arizona?

A: No, the decision to delist the bald eagle in Arizona was made by the U.S. Fish and Wildlife Service. The ESA is a federal law and all decisions to list, downlist (move from endangered to threatened), or delist (remove) a species are made by them.

Q3: Did the Arizona Game and Fish Department have any influence on the decision to delist bald eagles in Arizona?

A: Yes. The Department has overseen bald eagle management in Arizona since 1991 and provided the U.S. Fish and Wildlife Service with the data collected during these management efforts to consider during the 12-month status review.

Q4: Does the Arizona Game and Fish Department think that bald eagles in Arizona should be protected by the ESA?

A: No. The Department fully supports the federal listing of species under the ESA when those species are either threatened with the possibility of going extinct or meet the criteria for being endangered. However, one of the primary purposes of any listing is to ensure appropriate conservation measures are taken to remove threats and recover the species. The Department believes that the recovery of the bald eagle in Arizona is one of the great success stories of the ESA. The Arizona bald eagle population has experienced nearly 600 percent growth since it was originally listed as endangered in 1978. In accordance with the ESA, the population will be monitored to ensure it does not decline to a degree that would initiate another status review.

Q5: Why was the USFWS reconsidering the status of Arizona's bald eagles when the species was delisted nationally in 2007?

A: The bald eagle was delisted nationally in July 2007. Prior to this decision, the USFWS had been petitioned to declare the Sonoran Desert Nesting Bald Eagle as a distinct population segment; list it as an endangered species; and, declare critical habitat. The USFWS determined that the petition was not warranted and addressed it in the July 2007 decision. The petitioners then filed suit against the USFWS. In April 2008, a federal judge ruled that the USFWS must declare the Sonoran Desert Nesting population of the bald eagle as a distinct population segment and relist it as threatened under the ESA until a 12-month status review of the population was complete. The announcement this week is the result of that 12-month status review.

Q6: Does this mean that bald eagles no longer have federal protection in Arizona?

A: No. The bald eagle is still protected under the five federal laws listed below. The primary federal regulatory mechanism is the Bald and Golden Eagle Protection Act (BGEPA). In addition, bald eagles also receive protections under Arizona Revised Statutes, Title 17, which protects all of Arizona's native wildlife, including threatened and endangered species.

- Migratory Bird Treaty Act
- Bald and Golden Eagle Protection Act
- Lacey Act
- Airborne Hunting Act
- Convention on International Trade in Endangered Species of Wild Flora and Fauna.

Q7: What are the differences and the similarities between the protections offered by the BGEPA and the ESA?

A: The USFWS outlined the primary differences and similarities of both acts on pages 15-16 of the [*Final Environmental Assessment to Permit Take as Provided Under the Bald and Golden Eagle Protection Act*](#).

In addition, a federal court ruling that offers an interpretation of the federal laws protecting bald eagles can be found [here](#).

The Arizona Game and Fish Department notes that both protection acts define how "take" can occur. However, it appears that the allowance for "take" under the BGEPA may be more restrictive than what was allowed for under the ESA. In contrast, the ESA has a component within it to address habitat protection while the BGEPA does not. However, the BGEPA does include a broader definition of "disturb," which provides for the loss of productivity from impacts to breeding and foraging areas (i.e. habitat). Other differences include provisions in the ESA that allow citizen lawsuits and the development of partnerships for recovery

Q8: Has the Arizona Game and Fish Department ever indicated that the protections provided by the BGEPA are similar to those in the ESA?

A: Yes. In 2009, while being interviewed about the expansion of Arizona's bald eagle population into the Mogollon Rim area, an employee did say that the BGEPA offers similar protections to those found in the ESA. While that was a non-scripted response by a field biologist and not an official Department position, the Department maintains that it was an acceptable response given the circumstance. From the perspective of a field biologist, the transition to protection by the BGEPA continues to provide federal regulation related to "take," requires a federal permit for management activities in either scenario, and both laws allow for continued Department oversight of bald eagle management activities. Obviously, the Department recognizes that the two laws are not the same and that each addresses key issues in different ways. Most delistings do not result in ongoing federal protection from an alternative federal law. In this case, an alternative federal law does apply and that law was amended to further define "disturb" specifically to address these concerns.

Q9: How will this decision effect bald eagle management in Arizona?

A: For many years, the Department along with the Southwest Bald Eagle Management Committee (SWBEMC) has been preparing for the eventual delisting of the bald eagle. A plan has been developed to continue the most efficient and effective management practices that have helped the species recover in Arizona. As part of [*The Conservation Assessment and Strategy for the Bald Eagle in Arizona*](#), the SWBEMC prioritized management activities based upon available funding. To solidify this plan, the Department has a Memorandum of Understanding with 11 other members of the SWBEMC to continue implementing top priority management activities, including:

- Seasonal Closures and buffer zones to protect breeding activities
- Helicopter flights to monitor breeding activity
- The Arizona Bald Eagle Nestwatch Program
- Annual nest surveys to identify new nesting locations.

Q10: Will this decision affect the presence of bald eagles in Arizona?

A: The bald eagle population in Arizona has grown 600 percent since the species was federally listed in 1978. The management actions in place while the bald eagle was listed are some of the same management actions the SWBEMC has agreed to continue under *The Conservation Assessment and Strategy for the Bald Eagle in Arizona*. We expect the population to stabilize or grow from these management actions.

Q11: Will I be able to access areas previously closed for breeding bald eagles?

A: No, this decision will not change Arizona's seasonal bald eagle breeding closures. Each land management agency where seasonal breeding area closures exist has agreed to continue

those closures in the future. Regardless of the species' protected status, bald eagles remain sensitive to human activity during the breeding season.

Q12: What will the proposed loss of the Heritage Funds mean to future bald eagle management?

A: The Department and the Commission will be faced with the difficult decision to reprioritize Department activities if Heritage funds are lost. Many programs that are currently supported by Heritage funds may receive funding from alternative funding sources such as the Wildlife Conservation Fund or the Arizona Wildlife Fund. Fortunately, bald eagle management has traditionally received funding support from a variety of partners that contribute funding annually. Because of this strong partnership, the Department believes that, at a minimum, all biologically necessary activities will continue at some level.