

Q&A Wiscasset bypass Bald and Golden Eagle Protection Act

12/15/10 Handout  
from USFWS

*What is the status of the bald eagle nest on Davis Island?*

The bald eagle nest was discovered and reported in the spring of 2010 by MDOT employees. This was a new nest location. Maine Inland Fisheries and Wildlife (MDIFW) is no longer doing annual eagle nest surveys because the bald eagle is no longer on the state and federal endangered species lists. However, MDIFW was able to fly over the nest on June 29. There were no young in the nest but an adult eagle was documented near the nest. MDIFW and MDOT did a ground visit on July 13 and found eagle feathers at the base of the tree. MDIFW confirmed this was an eagle nest and it has been assigned nest number 645a. We consider this an active, but unsuccessful nest in 2010. There are adjacent territories down-river (Mason station) and upriver. We believe this is a new nest and is unlikely an alternate nest to adjacent territories. All nests in the Wiscasset area will be flown by USFWS and MDIFW in spring 2011.

*Why can't the eagle nest be removed?*

Although the Bald Eagle has recovered such that it no longer is protected under the Endangered Species Act, it remains protected from take under the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d) and the Migratory Bird Treaty Act (MBTA). The BGEPA prohibits take, possession, transport or sale (among other actions) of live or dead eagles and their parts, nests, or eggs unless authorized by permit. Permits established under the BGEPA Final Rule authorize the removal or relocation of eagle nests only under very limited circumstances. Permits can be issued for the removal of nests (as described in 2009 rulemaking found at 50 CFR 22.27) where 1) necessary to alleviate a safety hazard to people or eagles, 2) necessary to ensure public health or safety, 3) the nest prevents the use of a pre-existing human-engineered structure, or 4) necessary to protect and interest in a particular locality, where the activity necessitating the take or mitigation for the take will, with reasonable certainty, provide a clear and substantial benefit to eagles. Only nests that are not being used by breeding bald eagles may be taken except in the case of safety emergencies.

The need to consider alternatives to taking an eagle nest under situation 4) above is required. Thus, if practicable measures can be taken to protect the interest without taking the nest, the Service is not authorized to issue a nest removal permit under BGEPA. The permits for nest removal can not be issued unless the applicant has done everything practicable to avoid or minimize the impact to eagles. In the case of the proposed Wiscasset Bypass there are a number of seemingly practicable alternatives that would leave the eagle's nest intact and result in little to no disturbance of the eagles. In this case, MEDOT can not apply for a permit to legally remove or relocate the eagle's nest because take of the nest can be practicably avoided. In addition, MEDOT is required to assess the other available options to determine whether they are viable alternatives for this project before any future permit application can be reviewed.

*Doesn't the Bald and Golden Eagle Act (BGEPA) allow the Governor to intervene in such cases?*

The text of the BGEPA law reads as follows

668a Taking and using of the bald and golden eagle for scientific, exhibition, and religious purposes

(Excerpt)

Provided, That on request of the Governor of any State, the Secretary of the Interior shall authorize the taking of golden eagles for the purpose of seasonally protecting domesticated flocks and herds in such State

Provided further, That Bald eagles may not be taken for any purpose unless, prior to such taking, a permit to do so is procured from the Secretary of the Interior

Bald Eagles and Golden Eagles are separate species that are both protected by the BGEPA but are protected in slightly different ways. According to the BGEPA, the exceptions above apply to taking of live Golden Eagles, rather than taking of a nest, and taking is authorized in specific situations to protect against livestock depredation. This exception does not apply to the taking of Bald Eagles or their nests, eggs or young, which is the case in the Wiscasset Bypass Project. Take of a Bald Eagle nest is subject to the provisions of 50 CFR 22.27, which requires that the project proponent receive a permit, which is issued by the Regional Migratory Bird Permit Office on behalf of the Secretary of the Interior. In order to qualify for a nest removal permit, the project must meet one of the four permit issuance criteria, including safety emergency, health and human safety, use of a pre-existing human-engineered structure or benefit to eagles. In addition, the project must do everything practicable to protect the interest without removing the nest. MEDOT is working within the law and protecting Maine's bald eagles by assessing alternative layouts for the Wiscasset Bypass.