



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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Memorandum

To: David Sutherland, Chesapeake Bay Field Office

Through: Branch Chief, Endangered Species Division (Mary Ratnaswamy)

From: Supervisor, Virginia Field Office

Subject: Consultation with U.S. Nuclear Regulatory Agency

The Virginia Field Office (VAFO) received a letter from Dominion Generation dated January 25, 2001. Dominion Generation, through the U.S. Nuclear Regulatory Commission, plans to apply to renew the licenses at two nuclear power plants in Virginia: Surry and North Anna Power Stations. Dominion Power's Environmental Reports are enclosed.

VAFO reviewed both projects for potential impacts to federally listed species. The North Anna Power Station license renewal will not affect federally listed species. The Surry Power Station license renewal may affect the bald eagle, *Haliaeetus leucocephalus*. An eagle nest, VASU96-04, is approximately one mile from the power station. Furthermore, the power station is located within an eagle shoreline use area.

VAFO understands that the Chesapeake Bay Field Office (CBFO) will now take the lead on this project. Enclosed is the latest version of the eagle guidelines for Virginia as prepared by VAFO and the Virginia Department of Game and Inland Fisheries (VDGIF). VAFO and VDGIF will continue to provide support to CBFO.

If you have any questions or need further assistance, please contact Eric Davis at (804) 693-6694 ext. 104.

J. Eric Davis Jr.
for Karen L. Mayne

Enclosures

cc: VDGIF (Don Schwab)
Dominion Generation (Tony Banks)



BALD EAGLE PROTECTION GUIDELINES FOR VIRGINIA



Prepared by

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INTRODUCTION

The Virginia Department of Game and Inland Fisheries (VDGIF) and the U.S. Fish and Wildlife Service (USFWS) are responsible for the conservation and management of the bald eagle (*Haliaeetus leucocephalus*) throughout Virginia. To provide consistent management of the bald eagle in Virginia, the VDGIF and USFWS have developed the following general guidelines. These guidelines indicate the zones around eagle nests, night roosts, and shoreline use areas in which the provisions of various laws and their implementing regulations may apply. All proposed activities that may affect or result in the take of a bald eagle in Virginia will be evaluated by the VDGIF and USFWS on a case-by-case basis, using site-specific information. The recommendations given in these guidelines may be modified as necessary in individual cases, based on a number of factors such as topography, existing forest canopy, and observed reactions of eagles to disturbance at a particular site.

In Virginia, adult bald eagles typically remain on or near their breeding territories year round. Nest building and repair begins as early as November and peaks in mid-winter, but may occur during any month of the year. Courtship flights and related mating behavior are most frequently observed during January and February, and eggs are usually laid between mid-January and late March. Most eggs hatch between early March and early May and eaglets stay in the nest for 11 to 12 weeks after hatching. Most young are capable of sustained flight by mid July, but remain

dependent on the parents and stay in the general vicinity of the nest for several more weeks. Eagles are most sensitive to disturbance from mid-December to early July, the period when they are building their nests, incubating eggs, raising young, and while the young are learning to fly.

Virginia also has several areas along the major tidal river systems where non-breeding eagles are known to concentrate for roosting and feeding. Some of these areas are used by eagles in the summer and some are used in the winter. These eagle concentration areas are extremely important, because they are used by eagles from throughout the East Coast, as well as resident eagles.

FEDERAL LAWS PROTECTING THE BALD EAGLE

Endangered Species Act (ESA) (87 Stat. 884; 16 U.S.C. 1531 et seq.; 50 CFR Part 17) – Section 7(a)(2) requires federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any federally listed threatened or endangered species. If a federal agency determines that its action “may affect” a listed threatened or endangered species, the agency is required to consult with the USFWS regarding the degree of impact and measures available to avoid or minimize the adverse effects.

Section 9 of the ESA makes it illegal for any person subject to the jurisdiction of the United States to “take” any federally listed endangered or threatened species of fish or wildlife without a special exemption. “Person” is defined under the ESA to include individuals, corporations, partnerships, trusts, associations, or any other private entity; local, state, and federal agencies; or any other entity subject to the jurisdiction of the United States. Under the ESA, “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns such as breeding, feeding, or sheltering. Harass is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering.

Section 10(a)(1)(B) of the ESA establishes an incidental take permit provision that authorizes the USFWS, under some circumstances, to permit the taking of federally listed wildlife by private individuals if such taking is “incidental to, and not the purpose of carrying out otherwise lawful activities.”

Bald and Golden Eagle Protection Act (54 Stat. 250, as amended; 16 U.S.C. 668; 50 CFR Part 22) – This 1940 Act prohibits the taking of bald and golden eagles or their nests and eggs. Under this Act, taking is defined as “to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.”

Migratory Bird Treaty Act (MBTA) (40 Stat. 755, as amended; 16 U.S.C. 701 et seq.; 50 CFR

Parts 10, 20, 21) – This Act, passed into law in 1918, was established to protect migratory birds and prohibits the taking of any migratory bird, nest, egg, or part, except as permitted by the USFWS. The prohibitions under this law and its implementing regulations generally include activities or attempted activities that pursue, hunt, shoot, wound, kill, trap, capture, possess, or collect any migratory bird species and their nests and eggs.

VIRGINIA LAWS AND REGULATIONS PROTECTING THE BALD EAGLE

Virginia's Endangered Species Act (§29.1-563 - §29.1-570) – This law provides that VDGIF is the state regulatory authority over federally or state listed endangered or threatened fish and wildlife in the Commonwealth, defining *fish or wildlife* as “. . . any member of the animal kingdom, vertebrate or invertebrate, except for the class *Insecta*, and includes any part, products, egg, or the dead body or parts thereof.” It prohibits the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any fish or wildlife listed as a federally endangered or threatened species, except as permitted by the Board of Game and Inland Fisheries for zoological, educational, scientific, or captive propagation for preservation purposes.

The Act further authorizes the Board to adopt the federal list of endangered and threatened species, to declare by regulation that species not listed by the federal government are endangered or threatened in Virginia, and to prohibit by regulation the taking, transportation, processing, sale, or offer for sale of those species. Implementing regulations passed pursuant to this authority (4 VAC 15-20-130 through 140) further define “take” and other terms similarly to the federal Endangered Species Act.

Federal Endangered Species Act Cooperative Agreement – Federally listed endangered or threatened species also are placed under VDGIF jurisdiction via a cooperative agreement signed in 1976 with the USFWS pursuant to Section 6 of the ESA. This Cooperative Agreement recognizes VDGIF as the Virginia agency with regulatory and management authority over federally listed or threatened animals excluding insects, and provides for federal/state cooperation regarding the protection and management of those species.

State Protection of Wildlife Species – In addition to these endangered species laws, regulations, and cooperative agreement, the Code of Virginia (§29.1-521) and VDGIF regulations (4 VAC 15-30-10) provide legal protection to all native birds and to their nests, eggs, and young.

GENERAL CONSERVATION RECOMMENDATIONS

The following recommendations are *generally* appropriate to avoid take of bald eagles, and thus avoid the need for any state or federal permits or Section 7 consultation (if a federal action is involved). Activities and projects that do not conform with these recommendations will likely

require some form of approval or permit from the VDGIF and/or USFWS, and should always be coordinated with these agencies to ensure compliance with state and federal laws.

Guidelines for Eagle Nests

Primary Management Zone – This is defined as the area 750 feet (229 meters) in radius around an occupied nest. The precise size of this zone should depend on site conditions and the individual eagles' tolerance for human activity. The following activities should not occur at any time within this zone:

- land clearing, clear cutting, mining, and other habitat modification activities;
- development of residential, recreational, agricultural, commercial, or industrial structures, power lines, roads, trails, or any other construction activity;
- use of chemicals toxic to wildlife, such as pesticides and herbicides.

The following activities should not occur during the breeding/nesting season (December 15 - July 15), unless the nest is determined to be unoccupied in a particular year (VDGIF usually has this information after March 31):

- maintenance of existing buildings and roads;
- use of motorized vehicles and heavy equipment;
- aircraft flyovers within 1000 vertical feet of the ground;
- human entry and activities, including recreation, such as hiking, camping, picnicking, hunting, fishing, boating, jet skiing, etc.;
- loud noise generating activities, including blasting.

Limited selective timber harvest to within 300 feet (91 meters) of the nest tree, after consultation with the VDGIF/USFWS biologists, may be possible *outside* the breeding/nesting season, if a forest canopy is maintained.

Secondary Management Zone – This is defined as the area from 750 feet (229 meters) to 1,320 feet (400 meters) in radius around an occupied nest. The precise size of this zone should depend on site conditions and the individual eagles' tolerance for human activity. Restrictions in this zone are necessary to minimize disturbance that could compromise eagle use of the nest. Most activities within this zone should be restricted during the breeding/nesting season, and allowable activities should be determined by VDGIF/USFWS on a case-by-case basis. Development and vegetation clearing should be minimized and line-of-sight vegetation buffers to the nest should

be maintained. The following activities generally should not occur at any time within this zone:

- development of multi-story buildings; high density housing (construction of single story, low density residential houses may be acceptable); large commercial, industrial, or agricultural facilities; high traffic roads; and facilities that would generate loud noise;
- use of chemicals toxic to wildlife, such as pesticides and herbicides.

The following activities should not occur during the breeding/nesting season (December 15 - July 15), unless the nest is determined to be unoccupied in a particular year (VDGIF usually has this information after March 31):

- aircraft flyovers within 1000 vertical feet of the ground;
- construction activities;
- recreational activities that generate loud noise, such as motorized boats, jet skis, etc.;
- other loud noise generating activities, including blasting.

Outside of the breeding/nesting season, most other activities can be conducted within the secondary management zone as determined on a case-by-case basis by VDGIF/USFWS.

Nest/Nest Tree Removal – The eagle nest and the tree/structure in which it is located cannot be removed as long as any portion of the nest remains in the tree/structure.

Abandoned Nest – For three consecutive nesting seasons after the last season in which the nest was occupied (and any portion of the nest is present), the primary and secondary management zone guidelines described above should be followed. In April of the third year after the nest was last occupied, a determination of nest abandonment should be made by VDGIF/USFWS before restricted activities within these zones are undertaken.

Guidelines for Eagle Concentration Areas

Management zones for communal night roosting sites and documented high use shoreline foraging areas generally should be applied the same as for nests. Seasonal occupation varies depending on the specific roost or shoreline area, but is generally defined as summer (May 1 - September 30) and winter (November 1 - February 28). Appropriate human use and building/land disturbance restrictions should be determined on a case-by-case basis by VDGIF/USFWS.

DEFINITIONS

Active nest – A nest that is seen to have an adult eagle in incubating or brooding position, or that contains eggs or young.

Breeding/nesting season – December 15 through July 15 in Virginia. This period includes courtship, nest building/repairs, breeding, incubation, raising young, late nesting, and fledgling use of the nest.

Fledgling – Young bird capable of flight.

Occupied nest – A nest where there is evidence that a pair of adult eagles was present during the breeding season, even if there is no evidence that eggs were laid.

Productive/successful nest – An eagle nest that fledges young.

REFERENCES

- Cline, K. 1985. Bald eagles in the Chesapeake: A management guide for landowners. National Wildlife Federation, Washington, D.C.
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