



## STEPS TO PROTECT MIGRATORY BIRDS

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The Commonwealth of Virginia will undertake the following steps to ensure that migratory birds are protected in Virginia, despite federal rollbacks to the Migratory Bird Treaty Act (MBTA). This will ensure the long-term viability of the bird colony currently using the South Island of the Hampton Road Bridge Tunnel (HRBT) as a nesting spot.

### VIRGINIA MIGRATORY BIRD INCIDENTAL TAKE PERMIT

- ✓ The Virginia Department of Game and Inland Fisheries (DGIF) has started a process to develop a statewide regulation to define the parameters of “incidental take” — accidental harm done to wildlife during otherwise legal activities — of migratory birds for major commercial, industrial and construction projects.
- ✓ The regulation will ensure that Virginia law provides the same protections for migratory birds as was previously provided by the MBTA.
- ✓ The regulation will include permits based on the size and scope of the project.
- ✓ The regulation will seek to minimize the impacts of incidental take through a combination of avoidance, minimization, and mitigation.
- ✓ DGIF will release a discussion draft for comment by the end of March.
- ✓ The comments received from stakeholders will inform the draft rule, which will go out for public comment in spring 2020.
- ✓ Virginia will be amongst the first states in the nation to address the Trump administration’s rollback of longstanding migratory bird protections.

## SHORT-TERM ALTERNATIVE HABITAT CREATION

- ✓ Rip Raps Island is an artificial island directly adjacent to the South Island that is home to historic Fort Wool. The island is owned and operated by the Department of Conservation and Recreation.
- ✓ Recent engineering studies of the island have shown that the dock, walkway and structures on the island are not structurally sound and pose a risk to public safety. Accordingly, the island has been closed to public access.
- ✓ Because of its proximity to the prior habitat, Rip Raps Island is an ideal alternative habitat for migratory birds.
- ✓ Crews will begin work immediately to ready the island for the 2020 nesting season. Work will include removing trees and vegetation, conducting active predator control, sealing buildings, ensuring protection of the historic structures on the island, and spreading sand or substrate on the island to create attractive habitat.
- ✓ DGIF will seek authorization to position barges to provide additional nesting habitat in advance of the upcoming nesting season.
- ✓ Attraction techniques, monitoring, and adaptive management will be employed to lure birds to these alternative nesting habitats.

## LONG-TERM ALTERNATIVE HABITAT CREATION

- ✓ To provide long-term alternative nesting habitat for migratory birds, DGIF will accelerate its work with the U.S. Army Corps of Engineers to study the feasibility of creating an artificial island to provide long-term habitat for displaced birds.
- ✓ That study was requested on October 22, 2019 as part of the Corps' Beneficial Use of Dredged Material Program (Authorized by Section 204, WRDA 1992).
- ✓ The request stipulates that Virginia prefers an option that will provide adequate nesting bird habitat, while also resulting in no net loss of designated essential fish habitat in the Chesapeake Bay.
- ✓ Virginia stands ready to work with the Corps on feasibility studies and project designs, as well as providing the required state match for such a project.
- ✓ Upon completion of construction activities, the Virginia Department of Transportation (VDOT) will restore a portion of nesting habitat on South Island to the maximum extent possible.

## BIRD MANAGEMENT PLAN

- ✓ The HRBT design builder, in consultation with VDOT and DGIF, will develop, prior to commencement of construction, a bird management plan to ensure effective deterrence of nesting and treatment of nests, eggs, and young that may become established on the HRBT's South Island.
- ✓ The plan will detail deterrence and treatment best management practices.
- ✓ The plan will detail protocols for regular monitoring and inspection by DGIF of the island to ensure successful deterrence and treatment.
- ✓ The plan will ensure that nests with eggs are fenced and protected until the nest has been vacated or a federal take permit is issued to relocate the birds other than the gull-billed tern.

## ADDITIONAL STUDIES AND MONITORING

- ✓ VDOT has executed a \$1.5 million Memorandum of Understanding (MOU) with the Virginia Institute of Marine Science (VIMS) to develop proactive strategies for addressing sea level rise, recurrent flooding impacts, and habitat disturbance related to existing and planned transportation infrastructure.
- ✓ VIMS will provide a forecast of impacts and mitigation options for transportation infrastructure interaction with coastal ecosystems that provide habitat for fish and wildlife, especially migratory birds, and rare, threatened, or endangered (RTE) species impacted by rising sea levels between 2020 and 2080.
- ✓ VIMS will develop a tool to identify management strategies for road segments subject to current or future flooding.