

Removal or Relocation of Osprey Nests in Virginia:

A Guideline for Landowners

June 2010



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Introduction

The Virginia Department of Game and Inland Fisheries (VDGIF, Department) and the U.S. Fish and Wildlife Service (USFWS), respectively, exercise state and federal authority over conservation and management of ospreys (*Pandion haliaetus*) in Virginia. The VDGIF, in consultation with USFWS and with the Virginia Wildlife Services office of the U.S. Department of Agriculture (USDA/WS), has developed the following guidance to ensure that problematic osprey nests are managed in a consistent and lawful manner in Virginia. These guidelines address laws that pertain to protection of ospreys and their nests, osprey nest removal, and construction and placement of alternative nest platforms, and may be modified as appropriate to address individual situations. They are intended to inform landowners and land managers of regulations and protocols for addressing problematic osprey nest situations: they are not regulatory in themselves and they are not intended to supplant onsite review or consultation, nor to address programmatic or regional issues such as Bird Aircraft Strike Hazard (BASH) management.

The Chesapeake Bay historically has been recognized as supporting one of the largest populations of ospreys in the world (Henny et al. 1974, Watts and Paxton 2007, Glass and Watts 2009). Habitat loss, egg collection, persecution, and shooting contributed to population declines from the mid-1800s through the 1930s, however (Henny et al. 1977, Watts and Paxton 2007); and, during the post- World War II era, the Bay osprey population (as elsewhere) declined dramatically due to pesticide-induced reproductive suppression (Henny et al. 1977, Watts and Paxton 2007). The population reached an estimated low of about 1,450 pairs in the early 1970's (Henny et al. 1974), but then began to recover after banning of DDT and related pesticides. Surveys during the mid-1990s in Maryland and Virginia indicated significant recovery, and the Chesapeake Bay regional population was then estimated at nearly 3,500 breeding pairs (Watts et al. 2004, Watts and Paxton 2007). More recent data suggest a current Chesapeake Bay population of at least 6,000 pairs (Dr. Bryan Watts, pers. comm. June 2010). The recovery has not been consistent geographically throughout the bay, however, with low-salinity and tidal-fresh reaches exhibiting much larger population increases than higher salinity reaches over the last 40 years, evidently in response to availability of high-quality food resources (Watts et al. 2004, Watts and Paxton 2007, Glass and Watts 2009).

As elsewhere, ospreys in Virginia have benefited from exploitation of artificial nest supports (e.g. channel markers, nest platforms, duck blinds, and dock pilings). Virtually all osprey nest accounts prior to 1950 reported nests in living or dead trees, but by the 1990's over ninety percent of all nests in Chesapeake Bay were built on man-made structures (Watts and Paxton 2007). Aside from banning of DDT and similar compounds, availability of man-made nesting substrates likely has been the most significant factor in recovery of the Chesapeake Bay osprey population (Watts and Paxton 2007).

The great majority of Virginia's ospreys are migratory, arriving from their winter haunts in the West Indies, Central America and South America in March and April, and then departing in August and September (Watts and Paxton 2007). Males typically arrive on their breeding territories one to two weeks before females, with mating activity commencing immediately after arrival of the female. Eggs are typically laid in April and are incubated by the female for 35-37 days. The young remain in the nest for approximately 8 weeks after hatching. Most young are capable of sustained flight by late June or early July; yet, after fledging from the nest, the young remain dependent on the parents for up to 2 months.

Laws Protecting Ospreys

Migratory Bird Treaty Act (16 U.S.C. §§ 703-712): This federal law (MBTA), first adopted in 1918, generally prohibits taking or attempting to take any migratory bird, nest, egg, or parts thereof, except as permitted by the USFWS. To *Take* is broadly defined as to pursue, hunt, shoot, wound, kill, trap, capture, possess, or collect any migratory bird species, their nests, or their eggs. In April 2003, however, the USFWS provided clarification (USFWS 2003) that destruction of inactive nests of migratory birds not otherwise protected (*i.e.*, bald or golden eagles, and Threatened or Endangered species) is not prohibited under the MBTA, provided that no possession occurs during the destruction of said nest. Nest destruction that entails possession of the nest, or that results in the unpermitted take of migratory birds or their eggs, though, remains illegal and fully prosecutable under the MBTA.

Under a federal Migratory Bird Special Purpose / Depredation Permit issued to VDGIF by the USFWS, the Department may salvage inactive nests and infertile eggs of migratory birds, and may collect for rehabilitation or euthanize sick, injured, or orphaned migratory birds including ospreys. Department employees also may trap and relocate ospreys, active nests, or eggs when the safety of the bird, nest, or eggs is at risk if they are not moved. Otherwise, however, the Department may only take uninjured, healthy birds or active nests with eggs or young in emergency situations when the adult birds, nests, or young pose a direct threat to human health or safety. Birds or active nests may not be taken under this permit for nuisance management purposes.

The Wildlife Services office of the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA/WS) also has authority from USFWS (and from VDGIF) to take migratory birds and their nests and young, specifically with regard to minimization or avoidance of aircraft strike hazards, and management of nuisance wildlife. Regarding ospreys, the USDA/WS staff in Virginia focuses on airport/aircraft safety issues in close consultation with VDGIF and USFWS, though they increasingly are being called upon to address "nuisance" osprey nest situations, with the cost normally borne by the affected landowner.

The Code of Virginia (§29.1-521): This statute and VDGIF regulation 4 VAC 15-30-10 generally protect all native birds and their nests, eggs, and young, except those subject to legal hunting or harvest under prescribed conditions. There is no provision in Virginia law or VDGIF regulations for legal hunting or harvest of ospreys, active osprey nests, eggs, or young (other than theoretical take of adults or young for falconry purposes). Though Virginia Code §29.1-

100, defines a “nuisance species” to include a species “. . . concentrated in numbers and manners as to constitute a health hazard or other nuisance” and §29.1-511 then provides for year-round take of such “nuisance” animals, §29.1-100 specifically excludes any species protected by state or federal law (e.g., the federal MBTA) from the definition of a “nuisance species.”

VDGIF regulation 4 VAC 15-30-50 provides authorization for Department employees, certain U.S. Government employees, and certain local government animal control officers to capture, temporarily hold or possess, transport, release, or euthanize wildlife (including problematic or nuisance species) in the performance of their official duties. Under this authority, though, such activities may only be conducted subject to the additional constraints of the Migratory Bird Treaty Act as discussed above.

Note also that, under the authority of Virginia Code §29.1-103, §29.1-501, and VDGIF Regulation 4 VAC 15-30-50, the Department issues Commercial Nuisance Animal Permits to qualified individuals for capture, possession, transport, release, and euthanasia of wildlife that are causing damage to property, causing refuse problems, or posing a risk to human health or safety. Ospreys, however, as a protected species under the Migratory Bird Treaty Act discussed above, are specifically excluded (General Condition 5(B)iii) from the authorities granted by these permits. Thus, it is unlawful for Commercial Nuisance Animal Permit holders to remove or relocate ospreys, or their active nests or young, under these permits.

Osprey Nest Relocation or Removal

Inactive Nests: An inactive nest is defined as a nest without any eggs or dependent (flightless) young and includes nests under construction. Inactive nests should only be removed if the nest or placement of the nest poses a threat to property integrity, human health, or safety. No authorization or consultation is required for removal of inactive nests from 16 September through 15 April, though affected landowners may call VDGIF or USDA/WS to informally consult on pending removals or relocations if they so desire. It can be very difficult to discern the status of a nest from below: thus, from 16 April through September 15, inactive nests should only be removed upon written confirmation of nest status (as inactive) by VDGIF or USDA/WS.

Active Nests: An active nest is defined as a nest containing eggs or occupied by dependent (flightless) young. All reasonable measures to protect an active nest until the young fledge must be considered before authorization to relocate or remove the nest is sought. Removal of active nests is generally not permitted, but a nest may be relocated or removed if it poses a direct threat to human health or safety; or when the birds, nest, or eggs themselves are threatened unless they are moved. In rare situations, relocation or removal of a nest that merely constitutes a nuisance may be authorized if it interferes with the intended use of the structure.

Anyone seeking to have an active nest relocated or removed must contact the VDGIF, the USFWS, or the USDA/WS in advance. To comply with Virginia law and VDGIF regulations, active nest relocation or removal may only be undertaken by an authorized federal, state, or local employee in the performance of their official duties as provided in 4 VAC 15-30-50, or by an individual authorized by USFWS for the nest removal. To comply with federal law, active nest

relocation or removal may only be undertaken by an individual authorized by the USFWS for the relocation or removal. Individuals interested in applying for a USFWS permit to remove or relocate an active nest may do so at:

<http://www.fws.gov/migratorybirds/mbpermits/ApplicationForms.html>.

Replacement Nesting Platforms: We strongly recommended that a replacement nesting platform be erected any time an osprey nest is removed. Replacement platforms ensure that a preferred nest site is not “lost” from the regional population, and also may reduce the likelihood of the resident pair renesting on the original platform or structure. The following guidance applies to siting and construction of replacement nest structures (see Fig. 1 for details regarding platform construction):

1. The replacement platform should be as tall as or taller than the original nest support, but not less than 15 feet above the ground or normal water elevation.
2. The replacement platform should be located as close as possible to the original nest site; preferably within 150 feet of the original nest site, and no more than 300 feet distant.
3. The replacement platform should be in an exposed location (*i.e.*, not under or within the canopy of a tree or other shelter).
4. The platform support should be strong enough to support a 200-pound nest.
5. Nest platforms should be circular or oval, or of any convex polygonal shape with more than three sides, with a minimum width of 3 feet in any horizontal dimension.
6. If feasible, old nests should be relocated intact onto the new platform. When this is not feasible, sticks from the old nest should be roughly arranged on the platform in the shape of a nest.
7. The original nest support or substrate should be modified to discourage ospreys from rebuilding a nest at the site.

Contact Information

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APHIS / Wildlife Services

P.O. Box 130

Moseley, VA 23120

Phone: 804-739-7739

FAX: 804-739-7738

http://www.aphis.usda.gov/wildlife_damage/state_office/virginia_info.shtml

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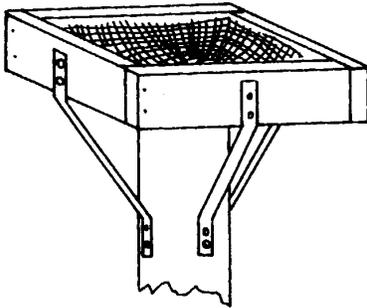
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Watts, B.D. and B.J. Paxton. 2007. Ospreys of the Chesapeake Bay: population recovery, ecological requirements, and current threats. *Waterbirds* 30(Special Publication 1):39-49.

OSPREY NEST PLATFORM



LUMBER: One 12" x 12" x 1/2" exterior plywood
 One 2" x 6" x 12' cedar board
 One 20' or 30' cedar support post
 One 2" x 6" x 8' cedar board

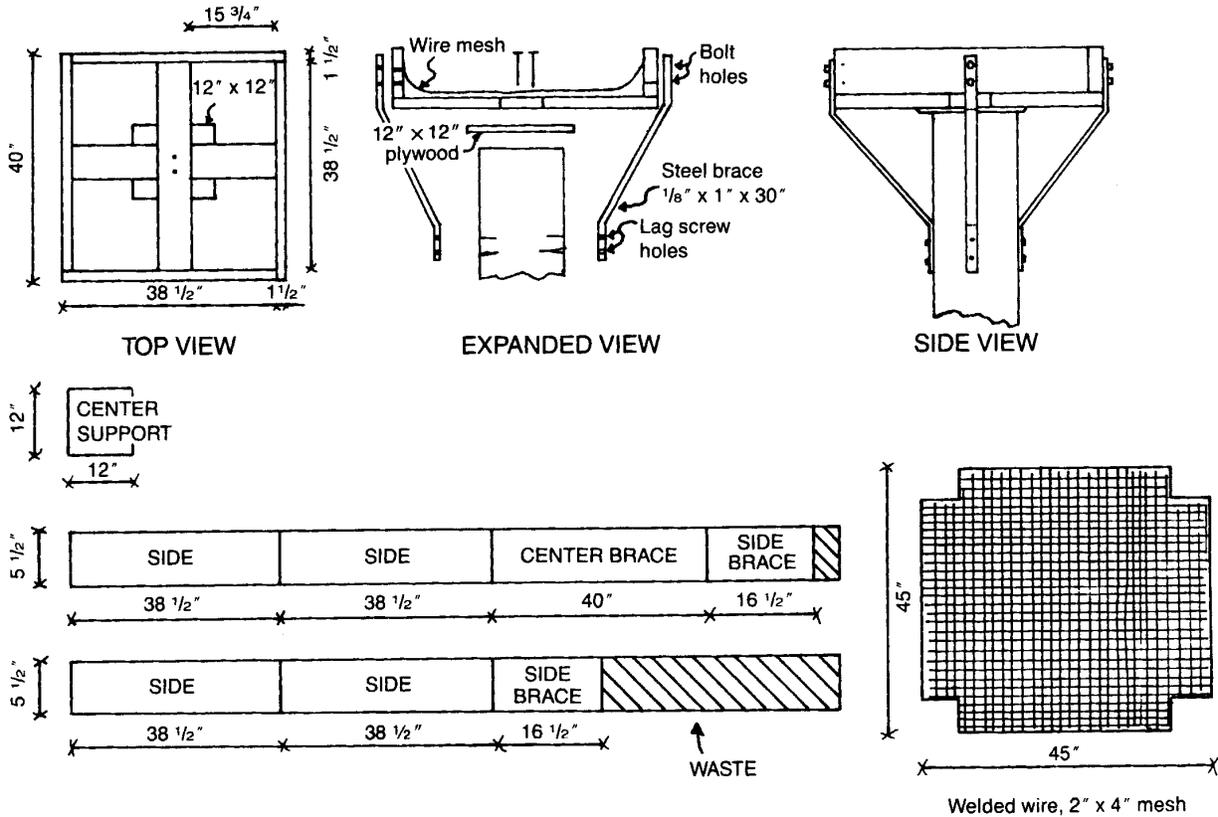


Fig. 1. Diagram for an osprey nest platform. To construct the platform, the following materials are required: (1) 2" x 6" x 12' cedar board; (1) 2" x 6" x 8' cedar board; (1) 12" x 12" x 1/2" exterior plywood; (1) 45" X 45" piece of heavy duty wire mesh; (20) galvanized 40D nails; (4) 1/8" x 1" x 30" steel strapping; (8) 2 1/2" x 1/2" bolts with washers and nuts; (8) 4" x 1/2" lag screws; (1) 6" or 8" diameter cedar post, 20' to 30' long; and wood preservative and stain. To prevent splitting, pre-drill all nail and bolt holes. Treat the entire structure with wood preservative and stain brown. To encourage use by ospreys, wire several sticks into the platform (National Wildlife Federation 1987; used with permission).