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MEMORANDUM

To: Tim Clapp
From: Art Gilman
Date: 23 May 2006
Re: PSB Docket 6860, VELCO NRP, 115 kV (New Haven to Queen City), Osprey

Introduction

On 28 January 2005, the Public Service Board issued a Certificate of Public Good (CPG) for VELCO's Northwestern Vermont Reliability Project. Relying on my testimony (Gilman/Briggs sup. pf. (5/20/04)) and the testimony of Tom Dunn and Dave Harr (Dunn/Harr DD pf. at 5-6), the Board found (Finding 495) that:

“An osprey, currently listed as an endangered species, has established a nest site on an existing transmission structure on the west side of South Slang in North Ferrisburgh. VELCO has proposed removing this structure during construction. VELCO intends to install a raised wooden nesting platform at the top of an H-frame structure on the west side of the Slang. The existing nest would be removed when the nest is unoccupied (November through February). VELCO would need to obtain an endangered species permit for removal of the existing nest.”

The Board further ordered (p. 226 of the Order) that

“Petitioners must file with the Board, the Department, ANR, the Town of Ferrisburgh, and any other party that requests copy, an analysis of the impact of moving the transmission structure alongside the Slang in Ferrisburgh, on the osprey nest atop that structure.”

This memorandum provides that analysis.

Existing Situation and Proposed Action

As noted in my testimony, there is an existing osprey nest on a structure (# 381) immediately on the western shore of South Slang. Ospreys have been observed here in each year since my original field work in 2002; when I visited the area on 8 May of this year, typical nesting and defense behavior was noted. Nesting success and number of fledglings is not known, but it is

assumed that the nesting is successful. Because ospreys often pair for life, it is likely that the same pair has continued to use the nest for several years.

Structure 381 is part of the existing Green Mountain Power powerline, and being in-line with the proposed new 115 kV line, needs to be removed so that line can be constructed and operated in a safe manner. Therefore, the old Structure 381 will be removed and a new nesting platform provided for the osprey to nest on. The exact location of this structure, and its height, have not yet been determined. It is likely that the new platform will be at or near the edge of the 100-wide corridor, not far from the old Structure 381.

VELCO has been an active participant in osprey re-establishment since the early 1990's, when it installed its first osprey nest platform. Since that time, VELCO crews have constructed successful nesting platforms at Colchester Pond in Colchester, at the Sand Bar Wildlife Management Area in Milton, and most recently, in winter of 2005, near Lake Memphremagog. A useful set of guidelines for construction of replacement platforms has been developed by the Florida Fish and Wildlife Commission (FFWC 2004) (*see* Attachment A at p. 5). Similar protocols will be used by VELCO crews. A standard design known to be used by osprey will be used, and as noted in testimony, the timing of construction will be at a period when the nesting pair is not present.

Osprey Use of Nesting Platforms and Powerlines

The placement of nest platforms for ospreys has been standard management technique since the 1970's, and in Vermont since 1987. According to Poole et al (2002), "Providing artificial nest sites has become the single most important tool for managing osprey populations, and has led to dramatic increases in osprey numbers in some areas." This has also been the case in Vermont, where osprey were essentially absent from the state as recently as 1981 (Laughlin and Kibbe 1985). Electrical service companies, in particular Central Vermont Public Service Company (CVPS) and VELCO have engaged in a program of installing nesting platforms. A first success at Arrowhead Mountain Lake in Georgia was followed by others in the northwestern Vermont, and along the Connecticut River. There are other nest platforms in the South Slang area.

In fact, the recent nesting success of osprey in Vermont has led to its removal from the statutory Endangered Species list on 23 April 2005. The recovery goals set by the Agency of Natural Resources for osprey have been met, with the population reaching levels of approximately 80 nestlings fledged in 2001 (NNHP), 68 in 2002 (Gobeille 2003). Currently (2004/2005), the population of osprey in Vermont has sustained approximately 75 nests and 100 fledglings/year (Steve Parren, Vt. Department of Fish and Wildlife, personal communication). Similar numbers are being achieved in New Hampshire as well (Martin 2005), in part due to artificial nesting platforms.

Throughout its range, osprey is noted as commonly utilizing powerline structures for nesting. In Vermont, this is apparent at, for example the Sand Bar Wildlife Management Area in Milton, where several VELCO structures are used by osprey. In fact, from the beginning of recovery, the majority of the Vermont osprey population nests have been on artificial structures, including both platforms and power poles (Dye 2000). Such sites may be safer, more permanent, and more

optimally placed, than natural sites (i.e., trees). In other parts of the country, osprey can reach nuisance levels on powerlines.

Possible Negative Factors

Poole et al (2002) noted that osprey use of powerline structures, especially those with double cross-arms and transformers, has led to electrocutions, but concluded that nesting platforms offer a safer nesting habitat for these birds than the powerline structures do.

Interactions with other birds, i.e., competition for platforms, has been documented. For example, in the Great Lakes area, competition by great blue herons, various hawks, owls, bald eagles, and even Canada geese has been noted (Ewins et al., 1994). These types of conflicts are relatively rare, however, so it is unlikely that some other species will utilize the nest platform, forcing the breeding pair to an alternative site.

Predation of osprey nests by raccoons or other predators has been recorded. This can be obviated by providing the supporting pole with a metal guard or shield. Also, siting the pole away from trees will help. At present the area is mostly open, not treed, so a treetop route for predators will be avoided.

The availability of nest sites is a limiting factor for this species, so providing an additional structure may encourage an additional pair to nest in the vicinity. However, inter-pair competition is not intense among osprey, which often nest in loose colonies.

Conclusions

Given the propensity of osprey to nest on powerline structures, and their similar use of artificial nesting platforms, it is likely that the pair currently nesting at South Slang will utilize either a new powerline structure (i.e., one of the 3-pole angle structures with cross-arms on either side of the Slang), or on the nearby nesting platform. There is no way to predict which might be preferred, and either one may be equally likely. A nesting platform would provide a safer habitat from an electrocution standpoint, but that does not mean it would be chosen.

Or, with an already established pair-bond (if our assumption is correct), the pair may choose to look for an alternative nest site, probably somewhere nearby in the vicinity of South Slang or Little Otter Creek. There may be other suitable sites available in the area.

Overall, the impact will likely be either neutral (relocation of the same pair to a new power line structure) or slightly positive (relocation to a safer nest platform). It is somewhat less likely to be negative, if the pair chooses not to use the platform or new powerline structure, and cannot find another suitable site.

Literature Cited:

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- Ewins, P. J., M. R. Miller, M. E. Barker, and S. Postupalsky. 1994. Birds breeding in or beneath osprey nests in the Great Lakes Basin. *Wilson Bulletin* 106: 743-749.
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- Laughlin, S. B. and D. P. Kibbe, eds. 1985. *The Atlas of Breeding Birds of Vermont*. University Press of New England. Hanover, NH.
- Martin, C. J. 30 September 2005. Breeding Status of Ospreys in New Hampshire in 2005. Report prepared for the New Hampshire Fish and Game Department.
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Florida Fish and Wildlife Conservation Commission
Division of Habitat and Species Conservation
Species Conservation Planning Section
620 South Meridian Street, Mail Station 2A, Tallahassee, FL 32399-1600
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OSPREY NEST REMOVAL POLICIES



Florida Fish and Wildlife Conservation Commission OSPREY NEST REMOVAL POLICIES

A significant percentage of osprey (*Pandion haliaetus*) pairs in Florida nest on power poles or other man-made structures. Under permits issued by the Florida Fish and Wildlife Conservation Commission (Commission), a number of these nests are removed each year. This document outlines osprey nest removal policies and reporting requirements that help us determine the effects of these activities on Florida's osprey populations.

Osprey Protection and Nest Removal Regulation

The osprey is federally protected by the Migratory Bird Treaty Act (16 U.S.C. 703-712) and state protected by Chapter 68A of the Florida Administrative Code (F.A.C.). Pursuant to the federal act, it is unlawful to take, possess, buy, sell, purchase, or barter any migratory bird (including the osprey), including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations. Although both active and inactive osprey nests are protected Federally, only **active** nests require Federal permits for taking.

The specific state regulation protecting ospreys is rule 68A-4.001, F.A.C., which prohibits the taking or transporting of "...wildlife...or their nests, eggs, young, homes, or dens..." Additional state protection is provided in rule 68A-13.002, F.A.C., which adopts as state rules the federal Migratory Bird Treaty Act and all rules promulgated therefrom. Ospreys and their nests in Monroe County are provided even further protection by virtue of that population being listed as a "species of special concern" (rule 68A-27.005 F.A.C.), thereby protected by rule 68A-27.002, F.A.C.

Exceptions to these regulations are provided in rule 68A-9.002, F.A.C., which allows the Executive Director of the Commission to issue permits authorizing the taking or possession of wildlife or their nests for management or other "justifiable purposes." Such permits are subject to any terms, conditions, or restrictions that might be prescribed.

State permits to take active and inactive osprey nests are issued for the Executive Director of the Commission by the Section Leader of the Species Conservation Planning Section, Division of Habitat and Species Conservation, 620 South Meridian Street, Mail Station 2A, Tallahassee, Florida 32399-1600. Requests for such permits should be submitted to that office (see Attachment A for application form). Federal permits to take active osprey nests are issued by the U.S. Fish and Wildlife Services Region IV, Division of Law Enforcement, Special Agent in Charge, 1875 Century Boulevard, Atlanta, Georgia 30345, (404) 679-7049. There are no provisions in state law for verbal authorizations to remove active or inactive nests. Likewise there is no provision in Federal law for verbal authorizations to remove active nests.

Description of Permit Conditions

1. Only *inactive* nests may normally be taken. Inactive nests may be determined by the absence of any egg or dependent (i.e., flightless) young in the nest. Permittees may take inactive osprey nests at any time while the permit is valid.

2. Replacement nesting structures of comparable or better quality than the nest support structure removed or destroyed must normally be erected by the permittee. The replacement nest structure shall be located in the immediate vicinity of the old nest, if possible. Extenuating circumstances may prevent the placement of a replacement nest structure. In these circumstances, the permittee shall explain why replacement is not an option on the Species Conservation Planning Section application and the situation will be reviewed on a case by case basis. *Suggested* guidelines for constructing replacement osprey nest structures are attached, but other designs may be used if the permittee prefers.
3. The permit is not transferable, but other qualified personnel designated and instructed by the permittee may assist in the permitted activities.
4. The permit must be readily available for inspection at all times while engaging in the permitted activities.
5. The permit does not authorize access to any public or private properties.
6. Permits include an expiration date, but are subject to revocation prior to that time pursuant to Chapter 120, F.S.

Reporting Requirements

Blanket permittee holders are required to submit annual reports to the Species Conservation Planning Section documenting all nest removal. Permittees removing only 1 nest are exempted.

1. Complete 1 report form for each relocated nest site or replacement nest

structure during the nesting season immediately following nest removal (See attachment B).

2. Enter the state nest removal permit number(s) and the full name of the permittee. Enter the unique identifier for the nest site as used in your records to differentiate among osprey nest sites. Give a brief but accurate written description of the replacement nest site location with enough detail to allow our personnel to locate the nest structure. Enter the county.
3. Record the dates the original osprey nest was removed and the replacement nest structure was erected.
4. Send completed forms to: **The Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, Species Conservation Planning Section, Protected Species Permit Coordinator, 620 South Meridian Street, Mail Station 2A, Tallahassee, Florida 32399-1600**, by June 30 each year.

These data will be used to assess the overall success of our nest removal policies and are designed to help us better manage Florida's osprey population.

Records

The Division of Habitat and Species Conservation in Tallahassee maintains a file of permits to take osprey nests, and sends copies to the appropriate Commission regional offices (and Regional U.S. Fish and Wildlife Service office, for active nests). Annual reports are received, reviewed and filed by the Species Conservation Planning Section. SCPS staff will analyze data collected in these reports.

Enforcement

Enforcement of illegal nest take (active or inactive) and permit adherence is the responsibility of the Commission's Division of Law Enforcement.

Acknowledgements

This report was prepared by Ms. Susan Cerulean and Mr. Brian Millsap of the Florida Fish and Wildlife Conservation Commission. Review and comments were provided

by Mr. Don Wood, Major Kyle Hill, Ms. Julie Hovis, Dr. Doug Runde, and Dr. Brad Gruver of the Commission. Helpful comments were also provided by Dr. Michael Collopy, Mr. Mark Westall, and Mr. Peter Quincy.

This report was revised by Ms. Angela T. Williams of the Florida Fish and Wildlife Conservation Commission, Species Conservation Planning Section, in response to changes in Federal policy.

*Effective July 1, 2004 the Florida Fish and Wildlife Conservation Commission (Commission) restructured as follows:

- Division of Wildlife (DOW) became Division of Habitat and Species Conservation (HSC)
- Bureau of Wildlife Diversity Conservation (BWDC) became the Species Conservation Planning Section (SCPS)

These changes are reflected throughout this document.



State of Florida Fish and Wildlife Conservation Commission
Division of Habitat and Species Conservation

MIGRATORY BIRD NEST REMOVAL PERMIT APPLICATION

(Please Print or Type)

Applicant Name _____ Date of Application _____

Applicant Signature _____

Affiliation _____

Mailing Address _____

Telephone Number(s): _____

Voice line

Fax

Email address

Certification: I hereby state and confirm by signature that the information submitted in this application and supporting documents is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to criminal penalties. I further state that I will abide by all applicable State, Federal, and local laws. Finally I hereby confirm by signature that representatives of the Florida Fish and Wildlife Conservation Commission (Commission) have my permission as the applicant and that of the landowner(s) to enter on and inspect the property(ies) described in the application for all reasonable purposes pertaining to applicable Commission rules.

Bird species: Burrowing Owl* _____ Osprey _____ Other _____

Did you previously have a state permit for the proposed work at this site? _____ Permit number _____

Nest information:

Number of nests or burrows to be removed _____ Duration of work _____

Location of nest (i.e., what structure [light pole, tree, tower etc.] block, lot, street address, city, county, Township/Range/Section [T,R,S]): _____

Are eggs or flightless young present? Yes/No Are any adult birds present? Yes/No. How many? _____

You must also contact Special Agent in Charge, US Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345, (404) 679-7049 for a federal permit, if any eggs and/or flightless young are in the nest.

Has an environmental consultant or other trained or experienced person inspected the nest(s) or owl burrow (s)? Yes/No. If yes, please provide written confirmation of the inspection from the environmental consultant or other trained individual (indicating they have inspected the nest(s) or owl burrow(s) and have verified the current status.) _____

Justification for removal of nest(s) or owl burrow(s) (i.e.-location of nest conflicts with proper functioning/installation of a structure or prohibits construction) _____

Describe proposed measures to (i.e., placement of T-perch on-site, starter burrows, erecting replacement nest structure, etc.) mitigate for this loss of nesting habitat for this species (refer to appropriate species policy/guidelines): _____

* - Those applying for a permit to remove a burrowing owl nest burrow must include a site plan or scaled diagram of the property that shows the location of the burrow(s) relative to the proposed construction.

The Florida Statutes require state agencies to approve or deny complete applications within 90-days of receipt. This office operates on a self-imposed policy to make every effort to approve or deny complete applications within 45 days of receipt. Therefore we ask you to submit a complete application and include all relevant information as attachments (i.e. scientific project proposals, site plans etc.). Complete permit applications should be submitted a minimum of 45 days prior to the requested effective date.

Mail to: Protected Species Permit Coordinator, Florida Fish and Wildlife Conservation Commission, Division of Habitat and Species Conservation, 620 South Meridian Street, Mail Station 2A, Tallahassee, Florida 32399-1600, (850) 921-5990, ext. 17310, Fax: (850) 921-1847.

Nest removal application.doc
Revised 30 September 2004

GUIDELINES FOR CONSTRUCTION OF REPLACEMENT OSPREY NEST STRUCTURES

The Florida Fish and Wildlife Conservation Commission requires that osprey nests removed under migratory bird permits be replaced by replacement structures of comparable or better quality. The reasons for this policy are two-fold. First, it helps ensure that osprey populations will not decline as a result of nest removal activities. Second, ospreys are strongly attached to nest sites, and will often rebuild a nest in the undesirable location unless a superior site is provided nearby.

An acceptable replacement nest structure and site meet the following conditions:

1. It is as tall or taller than the original nest site. If the original nest support structure is to be removed, the replacement structure should be as tall or taller than other surrounding structures. The alternative nest structure should never be less than 15 feet above ground.
2. It is located as close as possible to the original nest site (no further than 300 feet, and preferably less than 150 feet).
3. It is in an exposed location (e.g., not under or within the canopy of a tree).
4. It consists of a suitable platform mounted securely on an adequate support structure.
 - a. The platform and structure should be capable of supporting a nest that may weigh 100 to 200 pounds.
 - b. The platform may be either circular or rectangular. Rectangular plat-

forms should have side dimensions of no less than 2 feet on any side, with a minimal 3 foot diagonal. Circular platforms should have a diameter of at least 3 feet.

- c. Whenever possible, the old nest should be relocated intact onto the new platform. When this is not feasible, arrange sticks in the shape of a nest on the platform.
- d. Pole-top mounted nest platforms are preferred replacements for nests on power transmission poles, light poles, etc.

If the support structure for the original nest is to be left intact, it should be modified to discourage ospreys from rebuilding. This is best accomplished by covering the original nest site with material that will prevent ospreys from perching. Flexible rubber highway detour cones work well on open structures (such as power pole crossarms) if they are placed close together and cover all the potential nesting surface.

Woodworking for Wildlife: Homes for Birds & Mammals by Carrol L. Henderson contains diagrams for building raptor platforms.

Osprey policies.doc
Revised 30-Sept-04