

Statement of Roberta A. Kellam, Franktown VA
January 23, 2020

Ladies and Gentlemen of the Department of Game and Inland Fisheries Board,

The Department has always been a great friend to birds and other wildlife on the Eastern Shore of Virginia, where I live, with 25 years of supporting the Eastern Shore Birding and Wildlife Festival and ongoing investments in the Birding and Wildlife Trail and our local website, Birding Eastern Shore (www.BirdingEasternShore.org) to support our local ecotourism industry and public education for our local community. I deeply appreciate the work of this Board.

Local experts seem to agree that, without an alternative nesting area in the James River watershed, the impacts to local populations of gulls and terns, especially Royal and Sandwich Terns, could be catastrophic if VDOT continues to pursue the eradication of the 25,000 seabird colony at the Hampton Roads Bridge Tunnel that began with paving the South Island last year.

It's hard not to wonder why it is that we are just a couple of months from the return of the Birds, with no plan yet developed to protect these birds. VDOT's published Environmental Impact Statement stated that the HRBT expansion would be compatible with the bird colony and observe time of year restrictions, and ultimately the island would be enlarged and allow for even more birds. In other words, there is no need to eradicate the seabird colony for the HRBT expansion; therefore this is not an incidental take, but an intentional eviction. VDOT's plans for hazing that includes removal of chicks and eggs are particularly egregious violations of the Migratory Bird Treaty Act, even under the Trump Incidental Take Policy. Item 1A of the April 11, 2018 US Fish and Wildlife Service MBTA Guidance provides an example of a Transportation Department removing active swallow nests prior to painting a bridge as being subject to a MBTA permit because it was purposeful and intentional, not accidental or incidental. I understand that VDOT has relied upon a local US Fish and Wildlife Service staff opinion that none of the activities planned by VDOT would require an MBTA permit, but I would note that the Atlantic Coast Pipeline is now 2 years behind because Courts have thrown out 8 environmental permits (including one issued by the US Fish and Wildlife Service).

Today I ask that you direct VDOT to restore the bird habitat at the South Island so the birds can nest in 2020 and beyond if need be. Plans to build a new island could be expedited by having VDOT pay for it. Scientists report that the birds are mostly fledged by the first week of August. The HRBT does not yet have the requisite environmental permits, and in fact, I learned yesterday that the Army Corps of Engineers plans to re-open the public comment period for the HRBT expansion project.

Going forward, the public greatly needs full transparency with respect to the impacts to any birds at the HRBT. I have been writing letters to the Secretary of Natural Resources since July 2019 asking for a new island to be built immediately for the birds. I received no adequate responses and certainly no information about imminent paving and planned removal of chicks and eggs. At a minimum, there should be full time video camera monitoring of the activities at the South Island so that the public can have assurances that no birds are being harmed. In addition, any agreements with VDOT and internal guidance and management protocols for the seabird colony should be made public. There should be regular inspections by DGIF at the HRBT. Full transparency will help the public have a better understanding of how our natural resources, in this case a nesting colony of 25,000 birds, will be protected. We cannot let this staggering loss of our public trust resources with no mitigation be the new normal in Virginia.