

## CLEARANCE TO PROCEED WITH COMMUNICATION TOWER PROJECTS

Revised and Updated: January 7, 2009 (*Updated external internet site links only*)

### **Background**

The U.S. Fish and Wildlife Service is the lead Federal Agency charged with the protection and conservation of Federal Trust Resources, such as threatened and endangered species and migratory birds, in accordance with section 7 of the Endangered Species Act of 1973, as amended (ESA) (87 Stat. 884; 16 U.S.C. 1531 et seq.), the Bald and Golden Eagle Protection Act, (16 U.S.C. 668-668d) (Eagle Act), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 701 et seq.). Included in this mandate is the review of projects involving communication towers. The Federal Communications Commission (FCC) authorizes such projects, and as part of its authorization and obligations under the ESA and National Environmental Policy Act (NEPA), requires a project environmental impact review. Such projects primarily involve new tower construction, co-location of antennas on existing communication towers or other structures, and the repair, maintenance or relicensing of existing structures.

With the recent and continuing advances in cellular communication technology, and resulting widespread consumer demand for this service, the Jacksonville Ecological Services Field Office has experienced a significant increase in the number of requests for review of these projects. To fulfill our ESA statutory obligations in a timely and consistent manner, and to assist communication companies in addressing FCC and NEPA environmental impact review requirements, we provide the following guidance and clearance. The guidance is largely based on our agency's Interim Guidelines for Recommendations on Communication Tower Siting, Construction, Operation, and Decommissioning. This document is posted on our national web site, and may be reviewed and downloaded by accessing <http://www.fws.gov/migratorybirds/issues/towers/comtow.html>.

### **Federally Listed Species Assessment**

For new tower construction and related activities, applicants are responsible for conducting an initial assessment and possible site survey to determine if any federally listed species occur within, or in proximity to, the project footprint.

Our office web site, <http://www.fws.gov/northflorida> contains information on such species, including the location of wood stork (*Mycteria americana*) nesting colonies, as well as survey protocols for scrub-jays (*Aphelocoma coerulescens*) and sand skinks (*Neoseps reynoldsi*).

Information on known bald eagle (*Haliaeetus leucocephalus*) nests is available via a link on our web site or through [http://myfwc.com/eagle/Eagle\\_Index.htm](http://myfwc.com/eagle/Eagle_Index.htm).

For projects located in suitable nesting or foraging habitat for the red-cockaded woodpecker (*Picoides borealis*) that are on public lands, contact the land owner/manager for location information. On private lands, go to [http://www.fws.gov/rcwrecovery/recovery\\_plan.html](http://www.fws.gov/rcwrecovery/recovery_plan.html) for the survey protocol.

To further assist you with project analysis, we recommend that you consult the following additional electronic sources of information.

- The Florida Natural Areas Inventory website provides information on major feeding sites and congregations of large numbers of migratory and resident birds (<http://www.fnai.org/>);
- The Service's migratory bird website provides useful information concerning migratory birds, and for bald eagles - the National Bald Eagle Management Guidelines (<http://www.fws.gov/migratorybirds/>); and
- Locations of wading bird breeding colonies can be obtained at <http://myfwc.com/waders/>.

If the site assessment and/or survey reveals listed species within the project footprint, the project should be forwarded to our office for further evaluation and possible consultation.

### **Project Design & Maintenance**

If an assessment or survey does not detect federally-listed species within the project footprint, we have determined that the following types of projects and project specifications are not likely to adversely affect federally listed species or have significant adverse impacts on migratory birds. **For projects that meet the criteria listed below, NO further coordination with the Service is necessary.** This guidance may also be used as a general clearance for all future projects meeting these criteria.

1. The construction of lattice or monopole design communication towers less than 200 feet in total height that do not contain guy wires. The tower must be located in previously disturbed, urbanized or developed areas or areas that do not represent potential habitat for federally listed species. In addition, the tower must be located at least 2500 feet from any known active wood stork or other wading bird nesting colony.
2. The construction of guyed communication towers between 200 and 400 feet tall, located as in (a) above, and provided the guy wires are equipped with bird diverter devices and the tower is lighted with a white or red strobe light operating at the minimum allowable intensity. This type of lighting is far less attractive to migratory birds than continuous or pulsating, incandescent red or white lights, regardless of their intensity or frequency or duration of pulsation. The same provisions in (a) regarding bald eagle nests and wood stork and other wading bird breeding colonies, applies.
3. The co-location of a new antenna on an existing communication tower or mounting of a new antenna on an existing structure (e.g., light pole, billboard, water tower, building). Such work shall not increase the tower height above 400 feet, require the construction of a new access road, nor result in additional disturbance of the site; and

4. The repair, maintenance, or replacement of an existing communication tower, provided that the activity does not increase the height of the tower above 400 feet or increase its footprint into natural vegetative communities, and is conducted outside of the October 15 – May 1 nesting season of any bald eagle nesting on the structure. **Please Note:** Since the bald eagle was removed from the protections of the ESA (delisted) in August 2007, a Notice of Availability regarding a draft environmental assessment was published in the *Federal Register (FR)* on August 14, 2008, for a proposed permit program designed to protect bald and golden eagle populations in the future. This program would allow issuance of permits under the Eagle Act authorizing activities that may disturb eagles, require nest removal, or otherwise result in the death of or injury to a bird. The proposed program would allow the Service's Migratory Birds Division to issue permits under the Eagle Act, even though they have been removed from ESA protection. The regulations also include provision for addressing safety emergencies such as eagles nesting near airport runways or in other hazardous locations. **Until such time that this decision is announced, bald eagle nests may not be removed from any cell tower structure without a federal permit.** Please continue to check our website in the future regarding the publication of this rule. For any questions regarding this rule or bald eagle protection issues, please contact Migratory Birds Division at the number referenced below. Note: Ospreys (*Pandion haliaetus*) frequently nest on communication towers, and the nesting in Florida may extend throughout all months of the year. Confirmed nests that are inactive (no eggs or young in nesting) have no special protections under the Migratory Bird Treaty Act, and although nest removal is allowed, we recommend nest removal only be undertaken if there are no alternatives to the required work. Where the proposed work is associated with an existing tower supporting an active osprey nest, refer to our national migratory bird website, and/or contact our Southeastern Regional Division of Migratory Birds in Atlanta, GA at (404)-679-7049 for further guidance prior to any work.

For project relicensing requests for existing towers that do **not** include any modification, footprint expansion or construction, **and** meet the criteria below, **no** further coordination with the Service is necessary. Therefore, this guidance may also be used as a general clearance for all existing projects meeting these criteria.

1. The existing lattice or monopole design communication towers less than 200 feet in total height that do not contain guy wires.
2. The existing lattice communication towers or guyed communication towers between 200 and 400 feet tall provided the guy wires are equipped with bird diverter devices and the tower is lighted with white strobe lights with the maximum off period between flashes (3 seconds is current maximum allowable). This type of lighting is far less attractive to migratory birds than continuous or pulsating, incandescent red or white lights, regardless of their intensity or frequency or duration of pulsation.

For those projects that do not meet these criteria our only available recommendations are:

1. Reduce the height of the tower,
2. Light the tower with a white or red strobe light operating at the minimum allowable intensity: as noted in item 2 above.