



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Raleigh Field Office  
Post Office Box 33726  
Raleigh, North Carolina 27636-3726

#### **U.S. Fish and Wildlife Service Clearance to Proceed with Communication Tower Projects**

The U.S. Fish and Wildlife Service (Service) is responsible for the protection and conservation of federal trust resources including threatened and endangered species and migratory birds in accordance with the following Acts:

- Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)(ESA);
- Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) (Eagle Act); and
- Migratory Bird Treaty Act (16 U.S.C. 701 *et seq.*) (MBTA).

Included in this mandate is the review of communication tower projects. The Federal Communications Commission (FCC) authorizes these projects and as part of its authorization and obligations under the ESA and the National Environmental Policy Act (NEPA) requires a project environmental impact review. These 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 continuing advances in cellular communication technology, and resulting widespread consumer demand for this service, the Raleigh Ecological Services Field Office has experienced a significant increase in the number of requests for review of these projects. To fulfill our statutory obligations under the ESA 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 may be found at <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>. This guidance is applicable within the Raleigh Ecological Services Field Office work area, a map of which can be found at [http://www.fws.gov/raleigh/media/work\\_area.gif](http://www.fws.gov/raleigh/media/work_area.gif)

#### **Federally Listed Species and Migratory Birds Assessment**

For new tower construction and related activities, applicants are responsible for conducting an initial assessment and site survey to determine if any federally listed species occur within, or in proximity to the project footprint. Our Web site, [http://www.fws.gov/raleigh/es\\_tes.html](http://www.fws.gov/raleigh/es_tes.html), contains information about protected species in North Carolina. Information about how to avoid impacts to known bald eagle (*Haliaeetus leucocephalus*) nests is available at <http://www.fws.gov/southeast/birds/Eagle/tamain.html>. For projects located in suitable nesting or foraging habitat for the red-cockaded woodpecker (*Picoides borealis*) that are on public lands, contact the landowner/manager for additional information. For projects on private lands, please use the survey protocol at [http://www.fws.gov/rcwrecovery/recovery\\_plan.html](http://www.fws.gov/rcwrecovery/recovery_plan.html).

In addition, we recommend that you consult the Service's migratory bird web site (<http://www.fws.gov/migratorybirds>), which provides useful information about migratory birds. If the site assessment and/or survey reveal listed species within the project footprint, the project should be forwarded to our office for further evaluation and possible consultation.

### **Project Design and Maintenance**

If an assessment or survey does not detect federally-listed species or the presence of designated critical habitat 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 below, NO further coordination with the Service is necessary.** This guidance is a general clearance for all future projects meeting these criteria.

1. The construction of lattice or monopole design communication towers less than 400 feet above ground level (AGL) that do not contain guy wires. The tower must be in previously disturbed, urbanized, or developed areas or areas that do not represent potential habitat for federally listed species. If taller than 199 feet, the tower should use the minimum amount of pilot warning and obstruction avoidance lighting required by the FAA. Unless otherwise required by the FAA, only white (preferable) or red strobe lights should be used at night, and these should be the minimum number, minimum intensity and minimum number of flashes per minute allowable by the FAA. 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 use of solid red or pulsating red warning lights at night should be avoided. In addition, the tower must be at least 2,500 feet from any active wood stork or other wading bird nesting colony.
2. The construction of guyed communication towers less than 400 feet tall as outlined 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, as described in the paragraph above. The same provisions outlined below regarding bald eagle nests and above regarding wood stork and other wading bird breeding colonies apply.
3. The co-location of a new antenna on an existing structure (e.g., light pole, billboard, water tower, building) must 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, if the activity does not increase the height of the tower above 400 feet or increase its footprint into natural vegetative communities, and the tower does not contain an eagle nest or an active osprey nest (a nest that contains an egg or young). Note: the osprey nesting season generally occurs from 1 April to August 15 in North Carolina.

**Please Note:** The Service delisted the bald eagle from the protections of the ESA in August 2007; however, a final Rule published in the Federal Register on September 11, 2009, implemented a permit program designed to protect bald and golden eagle populations in the future. These final regulations authorize the limited take of bald and golden eagles through the issuance of permits under the Eagle Act where the take to be authorized is associated with otherwise lawful activities. These regulations also establish permit provisions for intentional take of eagle nests where necessary to ensure public health and safety, and in other limited circumstances. Please refer to the following web site for more information and application procedures: <http://www.fws.gov/southeast/birds/Eagle/eaglepermit.html>. For any questions regarding this rule or bald eagle protection issues, please contact Ms. Ulgonda Kirkpatrick of the Migratory Birds Division at (321) 972-9089. Please note that ospreys (*Pandion haliaetus*) frequently nest on communication towers, however if eagles use it for nesting it becomes an eagle nest. Confirmed osprey nests that are inactive (no eggs or young in nest) 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. (Note: It is recommended that modifications [e.g. spider deterrent or physical barriers] be made to deter future osprey nesting attempts on the structure if the nest is creating concerns or issues). Where the proposed work is associated with an existing tower supporting an active Osprey nest, refer to our National Migratory Bird Program web sites related to laws and permits (<http://www.fws.gov/migratorybirds/RegulationsPolicies/treatlaw.html> or <http://www.fws.gov/migratorybirds/mbpermits.html>), and/or contact our Southeastern Region Division of Migratory Birds in Atlanta, GA at (404) 679-7055 for further guidance prior to any work.

For existing towers that do **not** include any modification, footprint expansion or construction, **no** further coordination with the Service is necessary. This includes those projects for relicensing of existing towers. Therefore, this guidance is a general clearance for all existing projects meeting these criteria as outlined in the Project Design and Maintenance Section above.

For those projects that do not meet the above criteria, we recommend modifications to the project to:

1. Reduce the height of the tower;
2. Erect towers that do not need guy wires;
3. Install a white or red strobe light operating at the minimum allowable intensity; and/or
4. Ensure wire bundling is orderly and secure to prevent bird entanglement and/or injury.

In summary, for communication tower projects that occur within the Raleigh Ecological Services Field Office work area, if federally listed species or designated critical habitat are not present within the project footprint and the project design or maintenance activity meets one of the four criteria described above under Project Design and Maintenance, **no** further coordination with the Service is necessary. If the project sponsor cannot design or modify the project to negate

impacts to federally listed species, they are advised to submit the project plans to our office for further evaluation and consultation.

The Service appreciates your cooperation in the protection of federally listed species and migratory birds in North Carolina.

A handwritten signature in blue ink, appearing to read 'Pete Benjamin', is written over the printed name below.

Sincerely,

Pete Benjamin  
Field Supervisor