



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Caribbean Ecological Services Field Office
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U.S. Fish and Wildlife Service Standing Analysis on Communication Tower Projects in Puerto Rico and U.S. Virgin Islands

This analysis letter (Key) is only for use within the Commonwealth of Puerto Rico and the Territory of U.S. Virgin Islands.

The U.S. Fish and Wildlife Service (Service) is the lead Federal Agency charged with the protection and conservation of Federal Trust Resources, including threatened and endangered species and migratory birds, in accordance with section 7 of the [Endangered Species Act of 1973](#), as amended (Act) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*) and the [Migratory Bird Treaty Act](#) (40 Stat. 755; 16 U.S.C. 701 *et seq.*).

Section 7 of the Act requires that each federal agency, in consultation with the Service, ensure their actions are not likely to jeopardize the existence of any species federally listed as threatened or endangered or result in the adverse modification of critical habitat designated for these species. The Key was developed for consultation with the Federal Communications Commission (FCC) or other federal agencies for new telecommunication tower construction on urban developed areas, co-location of antennas on existing communication towers or other structures, and the repair, maintenance or relicensing of existing structures. When proposed projects have the potential to affect migratory birds, additional consultation with the Migratory Bird office may be necessary, please visit: <https://www.fws.gov/program/migratory-birds>

Pursuant to section 7 of the Act, the lead action agency must review the best available data and exercise their responsibility to support determinations with clear and substantial information. The questions in the determination Key are intended to assist the lead action agency in evaluating whether the proposed action will result in adverse effects to a species protected under the Act. The responses to each of the questions in the determination Key should be considered within the context of the proposed action and site-specific information. If the lead action agency is aware of a nuance in a project that makes it different from the Key, then the lead action agency always has the option not to use the Key and to make a determination based on their best professional judgement. In all cases, the lead action agency should document the reasoning behind their determination. Please request technical assistance from the Service for the proposed action if you would like additional guidance in evaluating whether the species is likely to be present and how the proposed action is likely to affect the species.

The purpose of this Key is to assist the Federal Communications Commission (FCC), the non-federal designee of the FCC, or other Federal agencies in making appropriate effects determinations for communication tower projects under section 7 of the [Endangered Species Act of 1973](#) as amended (Act) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*) within Puerto Rico and the U.S. Virgin Islands. The Key is intended to streamline consultation with the U.S. Fish and Wildlife Service (Service) when the proposed action can be walked through the Key, and the

appropriate conclusion is the proposed action will have no effect on listed species. This Key is applicable only on already existing antennas, rooftop antennas, or in highly urban, residential, or industrial developed areas (e.g. commercial buildings, shopping malls, parking lots, restaurants, apartment complexes, townhouses or condominiums, sport fields, community centers, etc.). For towers where the Service believes that further evaluation of the proposed tower is necessary, the Key recommends contacting the local field office and requesting consultation. Currently, this Key is not applicable to proposed actions that occur within Critical Habitat Designations, conservation or protected areas, for new construction in rural areas (e.g. land that has not been cultivated, developed, or used for agriculture, often implying a natural, pristine state, forested areas, grass-shrublands, etc.) or tower installation where vegetation removal is needed.

Rationale for no effect determinations:

The following provides supporting rationale for no effect determinations:

In order to avoid adverse effects to listed avian species from lighting on proposed communication towers and support a no effect determination for any tower in this Key, the applicant must implement the most current Federal Aviation Administration's obstruction marking and lighting circular ([Advisory Circular 70/7460-1M](#)). The link to this guidance as well as additional information and guidance from the Service and FCC on how to minimize and avoid impact to birds are posted on our national web site:

<https://www.fws.gov/library/collections/bird-friendly-communication-tower-toolkit>.

The Key screens proposed tower projects that are new or co-located, with a sensitive features layer to ensure the proposed action would be consistent with a no effect determination. This layer excludes from consideration towers proposed within 50 meters inland from the high tide and an additional buffer zone of 20 meters, for a total of 70 meters setback and buffer, to minimize indirect impacts from the project or within designated critical habitat.

Proposed projects that are co-located on an existing communication tower and do not include any ground disturbance, are considered consistent with the current structure and negative effects are not expected with the addition of the new feature. Furthermore, the proposed construction of a new tower must occur in an entirely developed site (i.e., previously disturbed, urbanized, developed), to be consistent with a no effect determination. Proposed projects that fall outside these areas are considered for further potential effects to listed species.

Conclusion

For any species analysis that is consistent with no effect determinations, use of the Key will provide documentation that the proposed project does not warrant additional consultation under the Act. If any species analysis is found to be consistent with a may affect, but not likely to adversely affect (NLAA) or may affect, likely to adversely affect (LAA) determination, further evaluation with the Field Office is warranted. The Service strongly encourages applicants to implement the guidance provided by the Division of Migratory Bird

Management in its document *Recommended Best Practices for Communication Tower Design, Siting, Construction, Operation, Maintenance, and Decommission* (March 2021; <https://www.fws.gov/sites/default/files/documents/usfws-communication-tower-guidance.pdf>) to avoid and minimize potential adverse effects to migratory birds and other species protected under the Act and the Migratory Bird Treaty Act.

Obligations under section 7 of the Act must be reconsidered if: (1) new information reveals impacts of this identified action that may affect listed species or critical habitat in a manner that was not previously considered; (2) this action is subsequently modified in a manner not previously considered in this determination; or, (3) a new species is listed or critical habitat determined that may be affected by the identified action. If the project is not initiated within one year of completing a review using the Key, we recommend reevaluating the project.

Proposals for the construction or installation of communication towers that do not meet the criteria stated above should be submitted to the Caribbean Ecological Services Field Office. These will be reviewed on a case-by-case basis to assess possible adverse effects under the Endangered Species Act of 1973 (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.), and Migratory Bird Treaty Act (16 U.S.C. 703, et seq.).

If you have any questions, please contact the Caribbean Field Office at 786-244-0081 or caribbean_es@fws.gov. Thank you for your effort and cooperation in protecting federally threatened and endangered species and other wildlife resources in Puerto Rico and U.S. Virgin Islands.

Sincerely,

Lourdes Mena