



United States Department of the Interior
FISH AND WILDLIFE SERVICE
176 Croghan Spur Road, Suite 200
Charleston, South Carolina 29407
May 30, 2019



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

The U.S. Fish and Wildlife Service (Service) is one of two Federal Agencies responsible for the protection and conservation of Federal trust resources, such as 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 as part of its obligations under the National Environmental Policy Act (NEPA), which requires a project environmental impact review, and the Endangered Species Act (ESA). Communication tower 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 South Carolina 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. The guidance is the agency's "Recommended Best Management Practices for Communication Tower Design, Siting Construction, Operation, Maintenance, and Decommissioning." This document may be found at <https://www.fws.gov/migratorybirds/pdf/management/usfwscommtowerguidance.pdf>.

Federally Listed Species 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. The South Carolina Ecological Services Field Office Web site, <http://www.fws.gov/charleston> contains information on species, such as the wood stork (*Mycteria americana*), the bald eagle (*Haliaeetus leucocephalus*), and federally protected plants in South Carolina. Information on known bald eagle nests is also available at <http://www.dnr.sc.gov/wildlife/baldeagle/locations.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 location information. On private lands, please go to

http://www.fws.gov/rcwrecovery/recovery_plan.html to find the survey protocol. In addition, we recommend that you consult the Service's migratory bird Web site <https://www.fws.gov/birds/index.php>), which provides useful migratory bird information. If the site assessment and/or survey reveal listed species within the project footprint, the applicant must submit the project to our office for further evaluation and possible consultation. The protected species survey or assessment conducted for the property should be included with this letter when submitting the project to Federal permitting agencies.

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: <https://www.fws.gov/birds/management/managed-species/bald-and-golden-eagle-information.php>. For any questions regarding this rule or bald eagle protection issues, please contact the Migratory Birds Division at (703) 358-1714. Please note that Ospreys (*Pandion haliaetus*) frequently nest on communication towers, and nesting in South Carolina 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 MBTA, 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 Web site, and/or contact our Southeastern Regional Division of Migratory Birds in Atlanta, GA, at (404) 679-7055 for further guidance prior to any work.

Northern Long-eared Bat Consideration

The Service issued a nationwide programmatic biological opinion (PBO) for the northern long-eared bat (*Myotis septentrionalis*, NLEB) on January 5, 2016. The PBO was issued pursuant to section 7(a)(2) of the ESA to address impacts that Federal actions may have on this species. In addition, the Service published a final 4(d) rule on January 14, 2016, which details special consultation provisions for Federal actions that may affect the NLEB. Briefly, the PBO and the 4(d) rule allow for "incidental" take of the NLEB throughout its range under certain conditions. Take is defined in section 3 of the ESA as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Further, incidental take is defined as take that results from, but is not the purpose of, carrying out an otherwise lawful activity. Under the PBO and 4(d) rule, all incidental take of the NLEB is exempted from the ESA's take prohibitions under certain conditions. However, incidental take is prohibited within one quarter mile from known hibernacula and winter roost, or within 150 feet from a known maternity roost tree during the months of June and July.

In consideration of known hibernacula, winter roosts, and maternity roost tree locations in South Carolina, this letter hereby offers blanket concurrence for a may affect, but is not likely to adversely affect determination for the NLEB if the proposed work occurs more than one quarter

mile from known hibernacula, winter roosts, or is further than 150 feet from known maternity roost trees. If an activity falls within one-quarter mile of hibernacula or winter roost or within 150 feet of a maternity roost tree, additional consultation with the Service will be required. As a conservation measure for all projects it is recommended that all tree clearing activities be conducted during the NLEB inactive season of November 15th to March 31st of any given year.

Project Design and Maintenance

For new construction projects, if an assessment or survey does not detect or impact federally listed species and/or their critical habitat within the project footprint, is consistent with the NLEB 4(d) rule (if applicable), and the meets the criteria listed below, no further coordination with the Service is necessary. This guidance is a general clearance for all future projects meeting these criteria.

1. **Construction of lattice or monopole design communication towers 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. In addition, the tower must be at least 2,500 feet from any active wood stork or other wading bird nesting colony.
2. **Construction of guyed communication towers 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 intensity and minimum number of flashes per minute allowable by the Federal Aviation Administration:** 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 outlined above regarding bald eagle nests and wood stork and other wading bird breeding colonies apply.
3. **Co-location of a new antenna on an existing communication tower:** Co-location work must not require the construction of a new access road, nor result in additional disturbance of the site.
4. **Maintenance, or replacement of an existing communication tower:** This type of work must not increase the project's footprint into natural vegetative communities and must occur outside of the October 15 - May 1 nesting season of any bald eagle or other migratory bird nesting on the structure.

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.

For those projects that do not meet the above criteria, the Service recommends four modifications in order to minimize potential impacts:

1. Reduce the height of the tower;
2. Install a white or red strobe light operating at the minimum allowable intensity;
3. Consider co-location onto an existing communications tower; and/or
4. Confine construction to previously disturbed areas.

If the applicant cannot modify or design the project to negate impacts to federally listed species, critical habitat, migratory birds or other Federal trust resources, the applicant must submit the project plans to the South Carolina Ecological Services Field Office for further evaluation and consultation.

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

Sincerely,



Thomas D. McCoy
Field Supervisor