

Avian Mortality at Communications Towers

A workshop sponsored by
The United States Fish and Wildlife Service, The Ornithological Council, and The American Bird Conservancy.
www.towerkill.com/index.html
www.fws.gov/r9mbmo/issues/tblcont.html

Presentation Number 12

FCC permitting, NEPA, endangered species, refuge issues: the role of the Fish and Wildlife Service

Robert Willis, Branch of Federal Activities, Division of Habitat Conservation,
USFWS, 4401 N. Fairfax Drive, Suite 400, Arlington, VA 22203
Phone - (703)358-2183 E-mail: Robert_Willis@fws.gov

Al Manville's introduction of the twelfth speaker, Robert Willis.

I indicated earlier that my Agency has several different mandates as far as towers are concerned and our next speaker is going to address one of those concerns from the Service's Division of Habitat Conservation perspective. Robert Willis did his undergraduate work at Auburn University and graduate work at Louisiana State University. He holds a Masters in wildlife management. He's been a wildlife biologist with the Louisiana Wildlife and Fisheries Commission and the Kentucky Department of Fish and Wildlife Resources where he was Chief of Surveys in Kentucky for five years. He joined the FWS in 1980 and most recently he has been in Anchorage, Alaska, for the past seven years working on the subsistence management program. He just recently – within the last couple of months – came to work in our headquarters office in Arlington, Virginia. Robert is going to be talking about permitting, NEPA, endangered species, refuge issues, and the role of the FWS. Robert.

Robert Willis

The Service has several mandates which require our involvement in matters dealing with migratory birds. All of them revolve around our primary mission, which is working with other people to conserve and enhance fish and wildlife resources for the benefit of the American public. We've become involved in evaluating the impacts of towers on birds through several avenues. The National Environmental Policy Act, Section 1503.4, provides a duty for the Service to comment on Federally licensed activities by stating that agencies which have jurisdiction by law, or which have special expertise which would be of benefit to the licensing agency, must provide comments to the licensing agency. That brings the Service in through the Migratory Bird Treaty Act, which gives us jurisdiction by law, and also through special expertise, since we are the migratory bird management agency of the Federal government. Another section of the National Environmental Policy Act provides an opportunity for the Service to be a cooperating agency in evaluating Federally licensed activities. Typically, this is done at the request of the lead agency when they are dealing with a Federally licensed or Federally funded activity which may affect fish and wildlife. We also have the option to invite ourselves in if we feel that we need to be involved and the lead agency has not seen fit to invite us.

There is an additional opportunity to become involved with the construction of towers when they are located on what the NEPA defines as a Federally licensed wildlife preserve. In the case of the Service, this would be a National Wildlife Refuge. The Refuge Improvement Act of 1997, which was an update of the 1966 Act, requires a compatibility study prior to any type of construction on refuge lands. Construction of a communications tower would have to be consistent with the purposes and the mission of the refuge before it would be permitted.

That determination is made by the refuge manager. Finally, the Service is involved through the Endangered Species Act. If construction of a tower may affect an endangered or threatened species or its habitat, the applicant for a Federal license must contact the Service.

The Federal Communications Commission regulations for construction of communication towers list eight circumstances where an applicant must provide environmental information prior to constructing a tower. Only 2 of the 8 involve the Fish and Wildlife Service: when endangered or threatened species or their habitats may be impacted, or when they are proposed for construction on National Wildlife Refuge lands. The FCC representative mentioned earlier that the FCC's procedure is to pass on to the applicant for a license the responsibility for determining if an environmental assessment is required for a tower that they plan to construct. The applicants generally pass the responsibility on to their tower contractor. For towers that are to be located on refuges, this is not a problem, since the refuge manager will be directly involved and will make a recommendation on whether or not the license should be granted. On non-refuge lands, the system tends to break down.

The applicant or contractor is unlikely to voluntarily say that they need to do an environmental assessment unless required by law to do so, as this can increase the expense and time required for construction. Except in the case of an endangered or threatened species, there is no requirement in regulation for any type of environmental analysis prior to tower construction. In most cases the tower contractor or their environmental consultant sends a request to the closest Service field office for information on endangered and threatened species and habitats in the area. The Service provides that information to the extent of our knowledge. However, at the current rate of over 5,000 towers per year being constructed, our personnel cannot visit every site and do an inspection of each project. Upon receiving the information, the contractor is under no obligation to comply with Service recommendations or even acknowledge their receipt.

If the Service office sees an environmental problem with a tower, they must document the problem and present the information to the FCC with a request that the license not be granted or the permit be modified. This is one of the points of contention that the Service has with the current FCC interpretation of the regulations. The fact that the FCC is two steps removed from the person who is making the decision on whether or not an environmental assessment is necessary, leads to far fewer assessments being done, and far less response to comments on the siting and construction of towers than we feel are necessary.

Migratory birds are not specifically mentioned in FCC regulations as requiring an environmental assessment, and are thus considered to be categorically excluded from this requirement. Categorical exclusion means that a determination has been made that there is no direct or cumulative impact to the human environment. The Service believes that the large number of towers that already exist probably does constitute a cumulative impact on migratory birds, and with the proliferation of towers that is expected over the next decade or so, that impact is going to increase exponentially. The Service has efforts underway with the FCC, the communications industry, and the Council on Environmental Quality to try to come to grips with this issue. The Service feels that cumulative impacts are already significant and are probably going to become more significant, and unless the problem is recognized nationally, there is little likelihood of getting the funding for the research that is needed to determine how to make towers more bird-friendly. That is the thrust of the Habitat Conservation Division of the Service at present – to try to get some national recognition of this problem and some nationwide research to address it.

**Presentation number 12
in the workshop
Avian Mortality at Communications Towers
www.towerkill.com**