

the applicant or the preparation of an EIS by the agency.

10. Prior to construction, all tower owners are required to evaluate whether towers that require registration fall within one of the specified categories of facilities with potential significant environmental impact, to file an EA if they do, and to certify compliance with the environmental rules on the Antenna Structure Registration application form. Similarly, license and certain other permit applicants are required to certify compliance with the environmental rules on the appropriate application form, depending on the particular service. If an EA is not required, the party may proceed with the project without providing any environmental documentation to the Commission. However, if there would be such a potential impact, an EA must be submitted and a Finding of No Significant Impact or Environmental Impact Statement issued before construction.

11. Section 1.1307(a)(3) provides that an EA is required for proposed facilities that may affect listed threatened or endangered species or designated critical habitats, or are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the ESA. 47 CFR 1.1307(a)(3). Thus, applicants and licensees are routinely required to evaluate their construction projects for potential adverse effects on birds that are endangered, threatened, or otherwise subject to § 1.1307(a)(3), and to file an EA if the terms of § 1.1307(a)(3) are met. The Commission's rules require the solicitation and consideration of comments of the Department of Interior with respect to actions specified in § 1.1307(a)(3) of our rules. *Id.* 1.1308 note; *see id.* (a)(3). With respect to other birds, routine evaluation is not required, but an EA shall be required under § 1.1307(c) or (d) if the relevant Bureau finds, in response to a petition or on its own motion, that the proposed construction may have a significant environmental impact other than impacts specified under §§ 1.1307(a)(1) through (8) and (b) of the Commission's rules. The Commission has acted under § 1.1307(c) to consider the impact that proposed construction would have on migratory birds.

D. Developments Relating to Migratory Birds and the Construction of Communications Towers

12. A Communication Tower Working Group (CTWG) consisting of representatives from the scientific, federal and state agency, environmental, consulting, and industry communities was formed under the auspices of FWS to help develop research on the effect that communications facilities may have on migratory birds. The research issues include the roles that certain factors associated with communications towers, including lighting, height, and the type of tower, may have on migratory birds. The CTWG also has sought to examine the potential for research into measures that may minimize migratory bird collisions with towers. On September 14, 2000, FWS issued its "Service Guidance on the Siting, Construction, Operation and Decommissioning of Communications Towers," which includes voluntary, interim guidelines to be used by FWS personnel and recommended for use by the communications tower industry in considering proposed tower sitings for their impacts on endangered species and migratory birds. The guidelines are to be used by FWS personnel until the CTWG's research is "completed, or until research efforts uncover significant new mitigation measures." The guidelines are based on research conducted in several Eastern, Midwestern, and Southern states, and refined through FWS regional review.

III. Request for Comments

A. Current State of Scientific Information

13. The impact that communications towers may have on migratory birds has been the subject of study or other analysis for decades, and several reports have shown bird deaths at individual locations during a single day or over multiple years. Nevertheless, it appears that current knowledge about both the extent to which towers kill migratory birds and the specific factors that may contribute to any danger is limited. For example, a March 2000 review of recent literature and research in progress that was prepared for FWS, Office of Migratory Bird Management, found, among other matters, that: (a) For the 5-year period 1995–1999, very little research was published or conducted that is relevant to the bird-communications tower collision issue; (b) since certain "major reviews" of the late 1970s and early 1980s, there has been little research on the subject; and (c) for the period before 1985, there is a body of literature on the issue, but

most of it is anecdotal and the literature itself has not been examined analytically.

14. We seek comment on and analysis of existing scientific research and studies relating to the impact that communications towers may have on migratory birds. As discussed, at least one source suggests that an estimated four to five million birds may be killed each year due to collisions with communications towers, and another suggests that the number may be higher. In addition, there are reports of bird deaths at individual locations during one day or over time. We seek comment on the extent of migratory bird deaths that may be attributable to collisions with communications towers, the species and geographic locations involved, and what the raw numbers mean in terms of survival of species or in other relevant contexts. We ask that comments thoroughly discuss the methods that are used to quantify any information provided on this matter.

15. We also seek comment on the adequacy and reliability of scientific research on the impact of towers on migratory birds, including whether the parties that conducted the research are considered to be experts in the field, and whether the research was conducted in a scientifically-acceptable and rigorous manner. Comments should address whether the research was performed over an adequate period of time. Specifically, how many years and migration seasons were studied, and why is the length of time either adequate or inadequate to support the empirical conclusion? With respect to the scope of the study and research, was it conducted in a manner that allowed all relevant variables to be considered? We generally expect that variables affecting the impact that towers may have on migratory birds are likely to fall within two categories: (a) Those that may be within the control of the tower owner or licensee, such as tower lighting, height, type of tower structure, and location; and (b) those that are the result of natural phenomena, such as weather, low cloud ceilings, and fog. We seek comment on the extent to which research has considered these or other variables, and whether the research has considered the appropriate combination of variables in order to achieve reliable results. For example, were a sufficient number of towers studied in order to provide an adequate sampling and a reliable indication of the impact of towers on migratory birds? Were the towers located at different sites, and did they include a range of different towers with different variables including: height; location in different geographic