

## U.S. Fish and Wildlife Service

### Region 5 ESA Update

July 14, 2014

#### General News

- 1) **Conserving Aquatic Species (VA)** – For decades, conservation organizations have realized successes in restoring aquatic resources of the Upper Tennessee River Basin, benefitting both the species and people inhabiting the area. However, the long-term likelihood of survival of many aquatic species in this area remains tenuous. Based on our commitment to strategic habitat conservation, managing and conserving resources at the landscape scale, and the use of cooperative efforts to improve efficiency and conservation outcomes in the face of declining budgets, the Service, with facilitation from the U.S. Geological Survey, has drafted an “Imperiled Aquatic Species Conservation Strategy for the Upper Tennessee River Basin.” With the assistance of our partners, we hope this strategy will contribute in a meaningful way to the prioritization of actions targeting the conservation and recovery of federally listed, proposed, and candidate species of fishes and mussels in the Upper Tennessee River Basin. We are now reviewing comments on the strategy provided by our conservation partners and expect to complete and distribute the final document in the coming weeks.
  
- 2) **Improving ESA Implementation (All States)** – Our headquarters office created a Web page devoted to national efforts to improve the Service's implementation of the ESA. The page includes links to proposed policy and regulation changes. [http://www.fws.gov/endangered/improving\\_ESA/index.html](http://www.fws.gov/endangered/improving_ESA/index.html)
  
- 3) **White-Nose Syndrome (All States)** – As of June 2014 WNS is now confirmed in 25 states and 5 Canadian provinces. Michigan and Wisconsin are newly confirmed in 2014. Evidence of the causative fungus has been found in 3 additional states (Iowa, Minnesota, and Mississippi). Disease surveillance has wrapped up for 2014, but additional confirmations may be possible as lab work is completed. For updated maps and other information, visit: <http://whitenosesyndrome.org/>
  - Considerable bat mortality, similar to that of the Northeast, has been documented this year in Ohio, Indiana, Kentucky, and Tennessee. Hardest hit species in the Midwest and Southeast have been the northern long-eared bat, tri-colored bat, little brown bat, and Indiana bat. There is still no evidence of mortality in gray bats, but unusual movements (apparent relocation of large numbers of bats) have been observed suggesting potential impact of WNS.
  - The Service plans to provide approximately \$5 million for WNS research and state response in FY2014 through 3 different opportunities. In March the Service announced nearly \$1.4 million in research grants to Federal agency partners in support of 9 projects. Awards totaling almost \$1.9 million for 9 additional research projects were announced in June. Lastly, up to \$1.5 million is available for state wildlife management agencies through

annual WNS capacity grants. Proposals from states were due on 9 July. Decisions are anticipated by early August. Priorities for research funding are determined by the national working groups and the needs detailed in the national implementation plan.

- The annual WNS Workshop will be held in St. Louis, Missouri, on 9-12 September. Attendance is limited to 175 people, but the plenary session will be webcast for state and Federal biologists who are not able to attend.

- 4) **Section 6 Grant FY13 Awards and 2014 RFP** (All States) – On January 8, 2014, the Service announced the FY14 Request for Proposals for Recovery Land Acquisition (RLA), Habitat Conservation Planning Assistance (HCPA), and Habitat Conservation Planning Land Acquisition grants. Proposals were due March 14, 2014. The Region received four RLA proposals and two HCPA proposals. RLA/HCPA grant awards will be announced before the end of the fiscal year, although a specific date has not been set.
- 5) **Atlantic Salmon Recovery Plan** (ME) – The Service has prepared a Draft Revised Recovery Plan for the expanded Gulf of Maine Distinct Population Segment of Atlantic Salmon. The Service and NOAA-Fisheries are now working together to complete the draft plan. A date for sending the draft plan to the State and Penobscot Indian Nation for review and a date for publication of a Notice of Availability in the Federal Register soliciting public comment have not been set.

### **Section 10 Incidental Take Permits (Habitat Conservation Plans)**

- 1) **Maine Trapping** (ME) – The Maine Department of Inland Fisheries and Wildlife (MDIFW) is in the process of applying for a section 10 permit for the incidental take of Canada lynx from Maine's Trapping Program. The Service will publish a revised draft environmental assessment for MDIFW's Incidental Take Plan and hold a supplemental public comment period this summer.
- 2) **Pennsylvania Forestry HCP** (PA) – The Pennsylvania Game Commission (PGC) and the Department of Conservation and Natural Resources (DCNR) are developing a Habitat Conservation Plan for Indiana and northern long-eared bats to support a section 10 permit application for forest management-related activities on 1.4 million acres of PGC State Game Lands, 2.2 million acres of DCNR State Forests, and 295,000 acres of DCNR State Parks.

### **Classification**

- 1) **Critical Habitat Proposed Regulations** (All States) – On May 12, 2014, the Service published in the Federal Register three proposed critical habitat rules/policy that include updates to our critical habitat regulations, a policy on critical habitat exclusions under section 4(b)(2) of the ESA, and a revised definition of destruction or adverse modification of critical habitat. On June 26, 2014, the Service extended the public comment period on the proposed rules/policy until October 9, 2014.

The proposed rules are posted on the Service's Improving ESA Implementation Web site: [http://www.fws.gov/endangered/improving\\_ESA/index.html](http://www.fws.gov/endangered/improving_ESA/index.html).

- 2) **Significant Portion of the Range Final Policy** (All States) – On July 1, 2014, the Service published in the Federal Register a notice of its final policy defining the phrase “significant portion of its range” within the definitions of endangered and threatened. The policy becomes effective July 31, 2014.

The final policy can be found at the following link: <http://www.gpo.gov/fdsys/pkg/FR-2014-07-01/pdf/2014-15216.pdf>

- 3) **Rufa red knot proposed listing/critical habitat determination** (All States) – On September 30, 2013, the Service published in the Federal Register a proposed rule to list the rufa red knot as a threatened species throughout its range. The proposed listing rule opened a 60-day public comment period, which closed on November 29, 2013. On April 4, 2014, the Service published a Federal Register notice announcing a reopening of the comment period on the listing proposal and the location and dates of public hearings in North Carolina and Texas. On May 15, 2014, the Service published a Federal Register notice announcing an extension of the comment period on the listing proposal and the location and date of another public hearing held in North Carolina. The extended comment period closed on June 15, 2014.

The range includes: Argentina, Aruba, Bahamas, Barbados, Belize, Brazil, British Virgin Islands, Canada, Cayman Islands, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, El Salvador, France (Guadeloupe, French Guiana), Guatemala, Guyana, Haiti, Jamaica, Mexico, Panama, Paraguay, Suriname, Trinidad and Tobago, Uruguay, Venezuela, and the United States (AL, AR, CT, CO, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, MT, NE, NC, ND, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, WY, Puerto Rico, U.S. Virgin Islands). Interior states are included in the proposal because rufa red knots have been documented in those states during migration.

The Service is also developing a critical habitat determination for the red knot; a publication date for this determination has not been set.

Documents pertaining to the listing rulemaking can be found at the following links:

Proposed listing rule: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-30/pdf/2013-22700.pdf>.

Additional supporting materials: <http://www.fws.gov/northeast/redknot/>

Notice reopening comment period: <http://www.gpo.gov/fdsys/pkg/FR-2014-04-04/pdf/2014-07411.pdf>

Notice extending comment period: <http://www.gpo.gov/fdsys/pkg/FR-2014-05-14/pdf/2014-10873.pdf>

- 4) **Northern long-eared bat and eastern small-footed bat** (All States) – On October 2, 2013, the Service published in the Federal Register a combined proposed rule and 12-month findings on the Center for Biological Diversity’s 2010 petition to list the northern long-eared bat and eastern small-footed bat. The Service found that listing the northern long-eared bat is warranted and proposed to list it as endangered, and found that listing the eastern small-

footed bat is not warranted. The Service also found that designation of critical habitat for the northern long-eared bat is not determinable at this time; with this determination, the Service must publish a proposed rule to designate critical habitat for the species within 1 year. The proposed listing rule opened a 60-day public comment period. On December 2, 2013, the Service extended the public comment period to January 2, 2014. On June 30, 2014, the Service extended the public comment period again to August 29, 2014, and announced a 6-month extension to the due date for a final determination. The final determination is now due by April 2, 2015. Documents pertaining to the rulemaking can be found at the following links:

Northern long-eared bat proposed listing rule: <http://www.gpo.gov/fdsys/pkg/FR-2013-10-02/pdf/2013-23753.pdf>.

6-month extension notice: <http://www.gpo.gov/fdsys/pkg/FR-2014-06-30/pdf/2014-15213.pdf>

Additional

information: <http://www.fws.gov/midwest/endangered/mammals/nlba/pdf/FRpropListNLBA2Oct2013.pdf>

- 5) **Canada lynx critical habitat revision** (ME, NH, VT) – On September 26, 2013, the Service published in the Federal Register a proposed rule to revise the critical habitat designation for the contiguous United States distinct population segment (DPS) of the Canada lynx. The Service listed the lynx as threatened under the ESA in 2000, designated critical habitat for the species in 2006, and revised critical habitat in 2009. This new revision was undertaken to address two court orders resulting from litigation over the 2009 critical habitat revision. The Service also proposes to revise the definition of the lynx DPS to ensure that all lynx in the contiguous United States are protected under the ESA. The Service proposes to designate only critical habitat that was occupied at the time of the species' listing in 2000; therefore, only Maine is included in the proposed revision. An informational meeting was held on Monday, November 4, 2013, in Millinocket, ME. The proposed rule opened a 60-day public comment period, which closed on December 26, 2013.

On Friday, June 20, 2014, the Service announced (1) the reopening of the comment period on the September 26, 2013, proposed revised designation of critical habitat, and (2) the availability of a draft economic analysis (DEA) and a draft environmental assessment for the proposal. The comment period will be open until July 21, 2014. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final determination.

The DEA focused on economic impacts to areas where incremental impacts are most likely to occur as a result of the proposed critical habitat designation. According to the DEA, incremental costs resulting from the critical habitat designation are unlikely to reach \$100 million in a given year based on the number of anticipated consultations and per-consultation administrative and project modification costs. Because all proposed critical habitat is occupied by lynx populations and most has been designated as lynx critical habitat since 2009, ESA section 7 consultation already occurs, and incremental costs are expected to be minimal and largely administrative.

Documents pertaining to the rulemaking can be found at the following links:

Proposed rule: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-26/pdf/2013-23189.pdf>.

Notice reopening comment period: <http://www.gpo.gov/fdsys/pkg/FR-2014-06-20/pdf/2014-14400.pdf>.

- 6) **Wolf** (MA, ME, NH, NY, VT) – On June 13, 2013, the Service published in the Federal Register a proposed rule to list the Mexican wolf as an endangered subspecies in the Southwest and to delist gray wolves elsewhere. The rule also recognizes the eastern wolf as a separate species, *Canis lycaon*, rather than as a subspecies of the gray wolf. Under this proposal, wolves would not be protected under the ESA in the Northeast, as they have been under the gray wolf listing. The Service obtained independent peer review of the scientific basis for the proposal and received a report from the peer review panel; the peer review panel focused on the taxonomy of the eastern wolf and concluded that it was premature for the Service to recognize the eastern wolf as a separate species. The Service then re-opened the public comment period from February 10 to March 27, 2014. The Service is now reviewing the public comments and has set a tentative target date of the end of the calendar year for publishing a final determination in the Federal Register. Documents pertaining to this rulemaking can be found at the following links:

Proposed rule: <http://www.gpo.gov/fdsys/pkg/FR-2013-06-13/pdf/2013-13982.pdf>.

Notice reopening comment period: <http://www.gpo.gov/fdsys/pkg/FR-2014-02-10/pdf/2014-02817.pdf>.

Peer review

report: [http://www.fws.gov/home/wolfrecovery/pdf/Final\\_Review\\_of\\_Proposed\\_rule\\_regarding\\_wolves2014.pdf](http://www.fws.gov/home/wolfrecovery/pdf/Final_Review_of_Proposed_rule_regarding_wolves2014.pdf)

- 7) **Loggerhead sea turtle proposed critical habitat final rule** (Atlantic Coast States) – On March 25, 2013, the Service's Southeast Region published in the Federal Register a proposed rule to designate portions of island and mainland coastal beaches in six states along the Atlantic Ocean and the Gulf of Mexico as terrestrial critical habitat for the federally endangered Northwest Atlantic (NWA) population of loggerhead sea turtles. The comment period was reopened on July 18, 2013, and closed on September 16, 2013. On July 10, 2014, the Service published in the Federal Register the final rule, which will become effective on August 11, 2014.

In total, 90 nesting sites in coastal counties located in North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi are included in the designation. The National Marine Fisheries Service will propose marine critical habitat for the NWA population of loggerhead sea turtles in a separate rulemaking.

While the species is federally listed in Virginia and will continue to be protected, Virginia beaches are not included in the proposed designation. Loggerhead sea turtles do nest in Virginia, and this beach habitat is important to the overall conservation of loggerhead sea turtles, but the Virginia beaches did not meet the proposed critical habitat selection criteria.

Documents pertaining to the rulemaking can be found at the following links:

Proposed rule: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-25/pdf/2013-06458.pdf>.  
Notice reopening comment period: <http://www.gpo.gov/fdsys/pkg/FR-2013-07-18/pdf/2013-17205.pdf>.  
Final rule: <http://www.gpo.gov/fdsys/pkg/FR-2014-07-10/pdf/2014-15725.pdf>

- 8) Neosho mucket and rabbitsfoot listing final rule and critical habitat proposed rule** (PA, WV) –On September 17, 2013, the Service published in the Federal Register the final rule for the listing of the Neosho mucket as endangered and the rabbitsfoot mussel as threatened. Of the two, only the rabbitsfoot currently occurs in Pennsylvania; it is considered extirpated from West Virginia, but the final rule lists the mussels throughout their historical range. The listing final rule can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-17/pdf/2013-22245.pdf>.

On August 27, 2013, the Service reopened the comment period on the draft economic analysis for the proposed critical habitat designation for the Neosho mucket and rabbitsfoot mussel. The public comment period closed on October 28, 2013. The proposed rule designates approximately 133 river miles (rmi) of critical habitat for the rabbitsfoot in Crawford, Erie, Mercer, and Venango Counties in Pennsylvania. The proposed designation includes 74.8 rmi in French Creek, 35.6 rmi in the Allegheny River, 12.5 rmi in Muddy Creek, and 10.1 rmi in the Shenango River. On May 14, 2014, the Service published a notice to reopen the comment period for an additional 60 days and to announce informational meetings in Arkansas. The comment period is open until July 14, 2014. Documents pertaining to the critical habitat designation rulemaking can be found at the following links:

Proposed rule: <http://www.gpo.gov/fdsys/pkg/FR-2012-10-16/pdf/2012-24151.pdf>  
First comment period reopening notice: <http://www.gpo.gov/fdsys/pkg/FR-2013-05-09/pdf/2013-10990.pdf>  
Economic analysis: [http://www.fws.gov/arkansas-es/docs/20130206\\_dEconomic%20Analysis\\_NM\\_RF.pdf](http://www.fws.gov/arkansas-es/docs/20130206_dEconomic%20Analysis_NM_RF.pdf)  
Second comment period reopening notice: <http://www.gpo.gov/fdsys/pkg/FR-2013-08-27/pdf/2013-20671.pdf>  
Third comment period reopening notice: <http://www.gpo.gov/fdsys/pkg/FR-2014-05-14/pdf/2014-10944.pdf>

- 9) American eel** (All States) – On April 24, 2013, the U.S. District Court for the District of Columbia approved a Settlement Agreement between the Service and the Council on Environmental Science Accuracy and Reliability (CESAR) (formerly the Council on Endangered Species Act Reliability) regarding the Service’s failure to complete a 12-month petition finding as to whether listing the American eel as endangered or threatened is warranted. The Settlement Agreement requires the Service to submit a 12-month finding to the Federal Register by September 30, 2015.

The Service has initiated the status review and has begun coordinating work on the review with Service and non-Service personnel. We will continue to accept information until the status review is completed. Any new information since the February 2007 not warranted petition finding can be sent to Steve Shepard in the Maine Field Office at [steven\\_shepard@fws.gov](mailto:steven_shepard@fws.gov).

- 10) **Eastern cougar proposed delisting rule** (All States) – The Service has prepared a proposed rule to delist the eastern cougar. The proposal is based on the 5-year review issued on March 2, 2011, which concluded that the eastern cougar is extinct and recommended the subspecies be delisted. The proposed rule is currently being reviewed by the Service’s Headquarters office. A publication date has not yet been set.
- 11) **Delmarva Peninsula fox squirrel proposed delisting rule** (DE, MD, VA) – The Service is processing a proposed rule to delist the species. The rule follows the Service’s 5-year review, posted on November 28, 2012, that recommends delisting on the basis of recovery. Although a specific publication date has not yet been set, we are anticipating publication sometime in late July or early August.
- 12) **Candidate Notice of Review (CNOR)** (CT, DC, MA, ME, MD, NH, NJ, NY, RI, VA) – On November 22, 2013, the Service published in the Federal Register the annual CNOR announcing the Service's determinations on continuing candidate status for all candidate species. For the Northeast, this includes Hirst Brothers' panic grass (NJ), Kenk's amphipod (MD, DC), and New England cottontail (CT, MA, ME, NH, NY, RI). The Service proposed the rufa red knot for listing in September, but it is still considered a candidate species until a final rule that either withdraws the proposed listing rule or a final listing rule is published.
- 14) **Bicknell’s thrush 12-month finding** (ME, VT, NH, NY, MA) – On September 23, 2013, the U.S. District Court in the District of Columbia approved a settlement agreement between the Center for Biological Diversity (CBD) and the Service on CBD’s complaint that the Service failed to complete the 12-month finding on CBD’s petition to list the Bicknell’s thrush and seven other species within the statutory timeline. The settlement agreement specifies that the Service will complete the 12-month finding by September 30, 2017. The Service will accept new information until completion of the status review.
- 15) **Chittenango ovate amber snail petition** (NY) – The Service received a petition dated January 6, 2012, to designate critical habitat for the Chittenango ovate amber snail; adopt a rule to prohibit hydraulic fracturing and related activities within 3,000 feet of the boundaries of critical habitat designated for any federally threatened or endangered species; and adopt a rule requiring any state to consult with the Service prior to issuing any permits for activities that might adversely impact the ecosystem upon which critical habitat is directly dependent for any listed species. These actions are petitionable under the Administrative Procedure Act but not the ESA. On November 9, 2012, we sent a letter to the petitioner stating that we have determined that critical habitat designation would not provide significant conservation benefit to the snail and that, therefore, we will not designate critical habitat for the species. We have not yet responded to the petitioner's second and third rulemaking requests.
- 16) **Tri-colored bat** (All States) – The Service initiated an internal status review of the tri-colored bat. Coordination, data collection, and information gathering began in 2013. We will continue to accept information until the review is complete. We will be requesting updated information on this species from field offices and states this summer. Any new

information or questions can be sent to Jonathan Reichard and Christina Kocer in the Regional Office at [jonathan\\_reichard@fws.gov](mailto:jonathan_reichard@fws.gov) and [christina\\_kocer@fws.gov](mailto:christina_kocer@fws.gov).