

U.S. Fish and Wildlife Service
Region 5 ESA Update
October 15, 2014

General News

- 1) **Species Distribution Habitat Modeling** (NY, VA) – The Service’s Virginia and New York Field Offices and Northeast Regional Office are funding the Natural Heritage Programs in Virginia and New York to develop regionwide species distribution habitat models. These predictive models are based on field data and biological expertise and will use the Random Forest model. They will then be uploaded into IPaC to help biologists and project proponents identify when additional site-specific assessments and/or surveys will be needed. This approach will provide consistency across the Region and help streamline the consultation process. Both the Virginia and New York Natural Heritage programs have completed predictive habitat models for plant species.

- 2) **Proposed Policy Regarding Voluntary Prelisting Conservation Actions** (All States) – On July 22, 2014, the Service published in the Federal Register a proposed policy on crediting voluntary conservation actions taken for species prior to their listing under the ESA. The proposed policy seeks to give landowners, government agencies, and others incentives to carry out voluntary conservation actions for nonlisted species by allowing the benefits to the species from a voluntary conservation action undertaken prior to listing under the ESA to be used, either by the person who undertook such action or by a third party, to mitigate or to serve as a compensatory measure for the detrimental effects of another action undertaken after listing. The public comment period closed on September 22, 2014. For more information about this policy, see the Service's Web site on improving ESA implementation (http://www.fws.gov/endangered/improving_ESA/prelisting-conservation.html) and the Federal Register notice (<http://www.gpo.gov/fdsys/pkg/FR-2014-07-22/pdf/2014-17022.pdf>).

- 3) **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

- 4) **White-Nose Syndrome** (All States) – As of September 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 three 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. Numbers of Virginia big-eared bats have increased at many WNS-

infected hibernacula. The causative fungus has been detected on two additional species in Tennessee, the eastern red bat and Rafinesque's big-eared bat.

- The Service provided approximately \$4.6 million for WNS research and state response in FY2014 through three different opportunities. In March the Service announced nearly \$1.4 million in research grants to Federal agency partners in support of nine projects, which leveraged about \$1.6 million in matching funds from these partners. Awards totaling almost \$1.9 million for nine additional research projects were announced in June. Lastly, in August approximately \$1.3 million was awarded to 30 state wildlife management agencies through annual WNS capacity grants. Nine Region 5 states received awards for a total of \$335,678. Priorities for research funding were determined by the national working groups and the needs detailed in the national implementation plan.
- The annual WNS Workshop was held in St. Louis, Missouri, on September 9 to 12, 2014. About 145 people attended in person and 70 via webinar. Presentations, panel discussions and working sessions covered topics in epidemiology, conservation, disease surveillance and diagnostics, disease treatments, population monitoring, and communications.

5) Section 6 Grant FY14 Awards (All States) – On September 9, 2014, the Service announced the FY14 Awards for Recovery Land Acquisition (RLA), Habitat Conservation Planning Assistance (HCPA), and Habitat Conservation Planning Land Acquisition grants. Four Region 5 grants totaling \$1.5 million were awarded to purchase land in Maryland and Virginia and support conservation planning in Massachusetts and Pennsylvania.

- The Pennsylvania Game Commission and Department of Conservation and Natural Resources will receive \$675,000 to continue development of a habitat conservation plan that addresses the effects to endangered Indiana bats and northern long-eared bats, a species proposed for listing as endangered, from forest management activities on 3.8 million acres of state lands.
- The Massachusetts Division of Fisheries and Wildlife will receive \$188,694 to continue working with towns and private conservation organizations to develop an umbrella conservation plan that incentivizes landowners, beach managers, and the public for sound management of threatened piping plover nesting beaches, allows management flexibility under specific conditions, and promotes the long-term conservation of the species.
- The Virginia Department of Game and Inland Fisheries, working with The Nature Conservancy and the Virginia Department of Conservation and Recreation, will receive \$479,250 to acquire and protect about 300 acres across three properties with caves and streams vital to the recovery of the Lee County cave isopod.
- The Maryland Department of Natural Resources will receive \$153,231 to support the purchase of 20 acres in Harford County that will protect significant bog turtle habitat and ensure the turtles have a long-term connection to other wetland sites in the area.

6) Atlantic Salmon Recovery Plan (ME) – The Service and NOAA-Fisheries are preparing a Draft Revised Recovery Plan for the expanded Gulf of Maine Distinct Population Segment of Atlantic Salmon. 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 (HCPs))

- 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. On August 5, 2014, the Service published a notice of availability in the Federal Register of a revised draft environmental assessment for MDIFW’s revised Incidental Take Plan. The public comment period ended on September 5, 2014. The Service expects to make a permit decision in October. Documents pertaining to the incidental take permit application can be found at: http://www.fws.gov/mainefieldoffice/Canada_lynx.html.
- 2) **Pennsylvania Forestry HCP (PA)** – The Pennsylvania Game Commission (PGC) and the Department of Conservation and Natural Resources (DCNR) are developing an HCP 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. The PGC and DCNR were recently awarded a section 6 grant to fund continued work on the HCP (see above).
- 3) **Massachusetts Programmatic Plover HCP (MA)** – The Massachusetts Division of Fisheries and Wildlife (MDIFW) is preparing a programmatic HCP to support a section 10 permit application for take of piping plovers associated with beach management activities. The MDIFW was recently awarded a section 6 grant to fund continued work on the HCP (see above).
- 4) **The Town of Orleans, Massachusetts (MA)** – The Town is preparing to submit an HCP and application for an incidental take permit for take of up to two broods of piping plovers per year for 3 years by self-escorted, over-sand vehicles at Nauset Beach. The HCP will include avoidance, minimization, and mitigation measures, including annual contributions to a conservation fund administered by the MDIFW for offsite predator management and a predator management education campaign.

Section 7 Interagency Cooperation

- 1) **Fire Island Inlet to Moriches Inlet Stabilization (FIMI) Project (NY)** – On September 12, 2014, the U.S. District Court for the Eastern District of New York granted the National Audubon Society’s request for a temporary restraining order (TRO) against the U.S. Army Corps of Engineers and the Service regarding the FIMI project. The National Audubon Society also filed a complaint challenging, pursuant to the Administrative Procedure Act, the Service’s Biological Opinion under section 7(a)(2) of the ESA and the Corps’ Environmental Assessment and Finding of No Significant Impact under the National Environmental Policy Act. A ruling on the request for a preliminary injunction is scheduled for October 8, 2014.

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.

- 2) **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. During the more than 130 days of public comment periods and 3 public hearings, we received more than 17,400 comments. The Service previously agreed to publish a final listing determination by the end of September 2014 through a settlement agreement with WildEarth Guardians and the Center for Biological Diversity. We requested and were granted a 2-month extension from the U.S. District Court of D.C. We are now scheduled to make a final listing determination by November 28, 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>

- 3) **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>

- 4) **Canada lynx critical habitat revision** (ME, NH, VT) – On September 12, 2014, the Service’s Mountain-Prairie Region published in the Federal Register a final 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 revised the definition of the lynx DPS to ensure that all lynx in the contiguous United States are protected under the ESA. The Service designated only critical habitat that was occupied at the time of the species’ listing in 2000; therefore, only Maine is included in the revised final rule.

Documents pertaining to the rulemaking can be found at the following link: <http://www.fws.gov/mountain-prairie/species/mammals/lynx/>

- 5) **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

- 6) Loggerhead sea turtle proposed critical habitat final rule** (Atlantic Coast States) – On July 10, 2014, the Service’s Southeast Region published in the Federal Register a final 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 National Marine Fisheries Service also finalized 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 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 critical habitat selection criteria.

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

FWS (terrestrial): <http://www.gpo.gov/fdsys/pkg/FR-2014-07-10/pdf/2014-15725.pdf>

NMFS (marine): <http://www.gpo.gov/fdsys/pkg/FR-2014-07-10/pdf/2014-15748.pdf>

- 7) 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

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>

- 8) 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 is working on the status review with Service and NMFS personnel. We have drafted a biological species report, which updates the ESA’s previous 2007 status review and not warranted petition finding with new information about the species, its habitat, and potential threats. The biological species report will be the primary document on which the Service bases its ESA listing determination. We will be sending the report out for peer review and intend to hold a webinar for the American eel’s range States to provide an overview of the report’s information. While we will continue to accept information until the status review is completed, information received before the end of October 2014 would be of the most help. Any new information since the February 2007 not warranted petition finding can be sent to Steve Shepard in the Maine Field Office at steven_shephard@fws.gov.

- 9) 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.

- 10) Delmarva Peninsula fox squirrel proposed delisting rule** (DE, MD, VA) – On September 23, 2014, the Service published in the Federal Register a proposed rule to delist the species on the basis of recovery. The public comment period closes on November 24, 2014. Documents pertaining to the rulemaking can be found at the following link: http://www.gpo.gov/fdsys/html/FR/todays_toc.html

- 11) 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.

- 12) 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.
- 13) 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.
- 14) Tri-colored bat** (All States) – The Service initiated an internal status review of the tri-colored bat. Coordination, data collection, and information gathering continues. 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 fall. Any new information or questions can be sent to Jonathan Reichard and Christina Kocer in the Regional Office at jonathan_reichard@fws.gov and christina_kocer@fws.gov.
- 15) New England cottontail** (CT, MA, ME, NH, NY, RI) – As part of the multi-district litigation settlement agreement, the Service must make a final listing determination for the New England cottontail (NEC) by September 30, 2015. The listing determination will be either the species no longer warrants listing and will be removed from the candidate list, or the species warrants listing and we will publish a proposed rule with proposed critical habitat, if designating critical habitat is found to be prudent and determinable. The Service is hosting a Status and Conservation Strategy Performance Review Meeting with the range States on October 20 to 23, 2014, in Hadley, MA.
- 16) Big Sandy crayfish** (VA, WV, KY) – The Service must make a 12-month finding on a petition to list the Big Sandy crayfish (*Cambarus veteranus*) by April 1, 2015. The Service was petitioned to list the crayfish and 403 other aquatic species in 2010 by the Center for Biological Diversity. We made a substantial 90-day finding on September 27, 2011, and initiated a status review. The species is known historically from the Big Sandy watershed in KY, VA, and WV, and the Guyandotte watershed in WV. We continue to work on the status review and contracted with the species' expert to produce a biological species report. We are

seeking any additional information on the species, its habitat, or potential threats. Although we will continue to accept new information until the status review is complete, information received before the end of October 2014 will be of the most help. Relevant information can be sent to Keith Hastie in the Regional Office at keith_hastie@fws.gov.