

U.S. Fish and Wildlife Service
Region 5 ESA Update
January 20, 2015

Recovery Planning and Implementation

- 1) **White-Nose Syndrome** (All States) – As of 1 January 2015, WNS has been confirmed in 25 states and 5 Canadian provinces. Sites in Michigan and Wisconsin were newly confirmed in 2014. Evidence of the causative fungus has been found in three additional states (Iowa, Minnesota, and Mississippi). Analyses of samples collected for disease surveillance in winter 2013-14 have been completed and winter surveys for 2014-2015 are getting underway. This winter is a survey year for Indiana bat monitoring and WNS surveillance will coincide with these surveys and other hibernaculum counts. For updated maps and other information, visit www.whitenosesyndrome.org.
 - The Service provided approximately \$4.8 million for WNS research and state response in FY2014 through three opportunities. In March the Service announced nearly \$1.6 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. Approximately \$1.3 million was awarded to 30 state wildlife management agencies in 2014 through annual WNS capacity grants. The Service anticipates making approximately \$3 million available in 2015 for research and state response activities.
 - The Diagnostics Working Group (under the national WNS response plan) has revised the case definitions for WNS to include new categories for reporting the detection of *Pseudogymnoascus destructans* (the causative fungus). According to revised case definitions, confirmation of WNS now requires the identification of *P. destructans* by PCR in addition to the identification of the characteristic lesions through histology. See: <https://www.whitenosesyndrome.org/resource/revise-case-definitions-white-nose-syndrome-11252014>
 - The Service continues to host two monthly WNS conference calls, held on the first and third Thursdays of each month, to discuss WNS-related topics with state, Federal, tribal, and nongovernmental partners in the United States and Canada. Please contact Jeremy Coleman, National WNS Coordinator (jeremy_coleman@fws.gov), with requests to be added to the email list.

- 2) **Imperiled Aquatic Species Conservation Strategy for the Upper Tennessee River Basin** (VA) – On December 5, 2014, the Service finalized this strategy, which provides a cost effective approach to guide conservation and management of imperiled freshwater fish and mussel species in the Upper Tennessee River Basin. See the strategy at <http://www.fws.gov/northeast/virginiafield>.

- 3) **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.

- 4) **Canada Lynx Status Assessment and Recovery Plan** (ME, NH, VT) – On June 14, 2014, the U.S. District Court for the District of Montana ordered the Service to complete a recovery plan for the Canada lynx by January 15, 2018, unless the Service finds that such a plan will not promote the conservation of the lynx. Prior to initiation of the recovery planning process, we will complete a 5-year review, which will determine whether the status of the Canada lynx lower 48 distinct population segment has changed since the time of its listing. We expect to complete the 5-year review by June 2015. We have asked that information relevant to the status of the lynx be submitted by February 1, 2015, to Jim Zelenak of the Service's Montana Ecological Services Field Office (the Montana office is the Service's lead for Canada lynx) at: U.S. Fish and Wildlife Service, Montana Ecological Services Field Office, Attn: Jim Zelenak, 585 Shepard Way, Suite 1, Helena, MT 59601. Detailed information about the Canada lynx may be found at <http://bit.ly/CanadaLynxUSFWS>.

Section 10 Incidental Take Permits - Habitat Conservation Plans (HCPs)

- 1) **Maine Trapping** (ME) – On November 4, 2014, the Service issued a section 10(a)(1)(B) incidental take permit to the Maine Department of Inland Fisheries and Wildlife (MDIFW) for the incidental take of Canada lynx resulting from the State's recreational fur trapping, predator management, and animal damage control programs. The permit authorizes the take of up to 195 lynx over a 15-year permit term; the take consists of 183 lynx that may be incidentally captured and released with no or only minor injuries, 9 lynx that may be incidentally captured and released after treatment for more severe injuries, and 3 lynx that may be captured and be either killed or nonreleasable due to the severity of capture-related injuries. In accordance with its incidental take plan, the MDIFW will implement avoidance, minimization, and mitigation measures. Documents pertaining to the incidental take permit can be found at http://www.fws.gov/mainefieldoffice/Canada_lynx.html.
- 2) **The Town of Orleans, Massachusetts HCP** (MA) – On December 19, 2014, the Service published in the Federal Register a notice of receipt of application from the Town of Orleans for an incidental take permit for the take of up to two broods of piping plovers per year for 3 years by self-escorted, over-sand vehicles at Nauset Beach. The Town's HCP describes 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. Comments can be provided at <http://www.regulations.gov> under docket # FWS-R5-ES-2014-0051.
- 3) **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.
- 4) **Massachusetts Programmatic Plover HCP** (MA) – The Massachusetts Division of Fisheries and Wildlife (MADFW) is preparing a programmatic HCP to support a section 10 permit

application for take of piping plovers associated with beach management activities. The MADFW was recently awarded a section 6 grant to fund continued work on the HCP.

- 5) **National Grid HCP (NY)** – On December 18, 2014, the Service, NYS Department of Environmental Conservation, and National Grid announced completion of a 5-acre conservation easement in Queensbury to protect habitat for two rare butterfly species. The easement is part of the company’s 50-year habitat conservation plan, approved by the Service and state in 2012 and the first such plan put forward by a Northeast utility. Additional information is available at <http://www.fws.gov/news/ShowNews.cfm?ID=5D9A50FB-C4DE-6778-BF1A728EE82A7605>.
- 6) **Duke Energy North Alleghany Wind HCP (PA)** -- The Service is working with North Allegheny Wind, LLC, a wholly owned subsidiary of Duke Energy Generating Services (or Duke Energy Renewables) on a habitat conservation plan for operations of their wind facility. The HCP will incorporate avoidance, minimization, mitigation, monitoring, and reporting measures aimed at addressing the impact of the covered activities to Indiana bats and northern long-eared bats. On November 18, 2014, the Service published in the Federal Register an early scoping notice for the HCP and the Service’s NEPA document. Comments can be viewed at <http://www.regulations.gov> under docket # FWS-R5-ES-2014-0047.

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. On October 17, 2014, the Court denied the plaintiff’s motion for a preliminary injunction, effectively lifting the TRO and allowing the project to proceed.

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. A date for publication of a final regulation has not been set.

The proposed rules are posted on the Service’s Improving ESA Implementation Web site: http://www.fws.gov/angered/improving_ESA/index.html

- 2) **Rufa red knot proposed listing/critical habitat determination** (All States) – On December 11, 2014, the Service published in the Federal Register a final rule to list the rufa red knot as a threatened species throughout its range. 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 range because rufa red knots have been documented in those states during migration.

Documents pertaining to the listing rulemaking can be found at the following link:
<http://www.fws.gov/northeast/redknot/>.

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

- 3) **Northern long-eared bat and eastern small-footed bat** (All States) – On January 16, 2015, the Service published a Federal Register notice announcing a reopening of the public comment period on the October 2, 2013, proposed rule to list the northern long-eared bat as endangered. Along with this notice, the Service published a proposed section 4(d) rule that would define prohibited take in the event the Service lists the species as threatened. The comment period closes on March 17, 2015. A final determination on the listing is due by April 2, 2015. Documents pertaining to the rulemaking can be found at the following links:

October 13, 2013, proposed listing rule:

<http://www.gpo.gov/fdsys/pkg/FR-2013-10-02/pdf/2013-23753.pdf>.

January 16, 2015, reopening of the comment period notice:

<http://www.gpo.gov/fdsys/pkg/FR-2014-11-18/pdf/2014-27407.pdf>.

January 16, 2015, proposed section 4(d) rule:

<http://www.fws.gov/midwest/endangered/mammals/nlba/pdf/FRnlebProposed4dRule16Jan2015.pdf>

Additional information:

<http://www.fws.gov/midwest/endangered/mammals/nlba/index.html>

- 4) **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

Also, on December 19, 2014, the United States District Court for the District of Columbia ruled that the Service's December 28, 2011, final rule delisting the Western Great Lakes (WGL) distinct population segment (DPS) of the gray wolf was arbitrary and capricious. The court vacated the final delisting rule and reinstated the rule previously in effect. The effect of the court's decision is that gray wolves in MN are again listed as threatened and gray wolves in the remaining eight states of the WGL DPS are again considered part of the larger gray wolf listed entity within the lower 48 states, which is listed as endangered. Also, critical habitat designation is reinstated in MN and MI.

- 5) 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>

- 6) **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 biological document on which the Service bases its ESA listing determination, along with the applicable ESA policies. The report has been peer reviewed. On October 16, 2014, we held a webinar for the American eel’s range States to provide an overview of the report’s information. Questions concerning the status review can be directed to Steve Shepard in the Maine Field Office at steven_shepard@fws.gov.

- 7) **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. Publication of the proposed rule is expected in late winter/spring.
- 8) **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 closed on November 24, 2014. The Service is now evaluating the public and peer review comments. A final listing determination is due by September 23, 2015. Documents pertaining to the rulemaking can be found at <http://www.gpo.gov/fdsys/pkg/FR-2014-09-23/pdf/2014-22063.pdf>.
- 9) **Candidate Notice of Review (CNOR)** (CT, DC, MA, ME, MD, NH, NJ, NY, RI, VA) – On December 5, 2014, the Service published in the Federal Register its fiscal year (FY) 2014 annual CNOR. For the Service's Northeast Region, Kenk’s amphipod, Hirst Brothers’ panic grass, and the New England cottontail remain on the candidate list. A candidate species is one for which the Service has enough information to indicate listing it under the ESA is warranted, but we are precluded from moving forward with a proposed rulemaking due to other higher priority listing workload. The complete CNOR notice and list of proposed and candidate species as published in the Federal Register can be found at the following link: <http://www.gpo.gov/fdsys/pkg/FR-2014-12-05/pdf/2014-28536.pdf>.

The FY 2014 CNOR publication identifies the rufa red knot as a species proposed for listing because the Service's final rule listing this species was not published until after the CNOR was published. As part of the multi-district litigation settlement agreement, listing determinations for our candidate species will no longer be precluded by specified time frames: the New England cottontail by September 2015, Kenk's amphipod by September 2016, and Hirst Brothers' panic grass by September 2016. This means that if listing is still warranted by these dates, we will publish a proposed listing rule for the species and also propose to designate critical habitat, if it is prudent and determinable to do so.

If you have any questions regarding the Northeast Region's candidate species or have information to share with us regarding the species' distribution, population estimates or trends, or threats, please contact the lead field office identified below:

New England cottontail: Tom Chapman, Supervisor, New England Field Office
tom_chapman@fws.gov.

Kenk's amphipod: Genevieve LaRouche, Supervisor, Chesapeake Bay Field Office
genevieve_larouche@fws.gov.

Hirst Brothers' panic grass: Eric Schradling, Supervisor, New Jersey Field Office
eric_schradling@fws.gov.

- 10) 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.
- 11) 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.
- 12) 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.

- 13) New England cottontail (NEC)** (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 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. On October 20 to 23, 2014, the Service is hosted an NEC Status and Conservation Strategy Performance Review Meeting with the range States, in Hadley, MA. The Service is now evaluating the information collected at this meeting as it develops a listing determination.
- 14) 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 contracted with the species' expert to produce a biological species report, and now we are working on the status review. Questions regarding this status review can be directed to Keith Hastie in the Regional Office at keith_hastie@fws.gov.