

# U.S. Fish and Wildlife Service Region 5 Endangered Species Act Update

July 20, 2015

## General

1) **Initiatives to increase regulatory predictability, increase stakeholder engagement, and improve science and transparency** (All States) – On May 18, 2015, the U.S. Fish and Wildlife Service (Service) and National Marine Fisheries Service (NMFS) announced a suite of actions to improve the effectiveness of the Endangered Species Act (ESA) and demonstrate its flexibility.

- **Revisions to the Regulations for Listing Petitions:** We propose to improve the content of petitions and enhance the efficiency of processing petitions to better support species conservation. Our proposed changes would require petitioners to seek and incorporate information from the State fish and wildlife agencies prior to submitting a petition to us. The proposed revised regulation can be found at <http://www.fws.gov/home/feature/2015/proposed-revised-petition-regulations.pdf>
- **Improve science and increase transparency:** We propose to adopt more rigorous peer review procedures and post on line the science on which we are basing our decisions.
- **Incentivize voluntary conservation efforts:** We propose to simplify the standards of voluntary conservation agreements (Safe Harbor Agreements/Candidate Conservation Agreements with Assurances) and promote conservation banking and advance mitigation tools.
- **Focus resources to achieve more successes:** We propose to streamline ESA section 7 consultation procedures for projects that provide a net benefit to listed species, and revise the Habitat Conservation Planning Handbook to promote more timely and efficient processing of incidental take permits.
- **Engaging the States:** We propose to update our policy regarding the role of state agencies to reflect advancements in collaboration between the Services and the states.

The news release for these initiatives can be found at <http://interior.gov/news/pressreleases/us-fish-and-wildlife-service-and-noaa-propose-actions-to-build-on-successes-of-endangered-species-act.cfm>

## Recovery Planning and Implementation

1) **White-Nose Syndrome** (All States) – As of April 10, 2015, WNS has been confirmed in 25 states and 5 Canadian provinces. Numerous counties were newly confirmed with WNS or the causative fungus (*Pd*) this winter in previously contaminated states, including Michigan, Wisconsin, Kentucky, Illinois, Missouri, Arkansas, and Georgia. Analyses of samples collected for disease surveillance in winter 2014-15 is ongoing and we anticipate additional positive WNS and *Pd* findings in the coming months. For updated maps and other information, visit [www.whitenosesyndrome.org](http://www.whitenosesyndrome.org).

- In 2015, the Service will provide approximately \$3.5 million for WNS research and state response through four funding opportunities. The Service opened a funding opportunity

for the WNS grants to states programs on March 27 and accepted proposals through May 26, 2015 ([www.grants.gov](http://www.grants.gov) Funding Opportunity Number F15AS00155). Over \$2 million will be awarded through three competitive research grant opportunities to Federal and non-Federal researchers. These funding opportunities are expected to open for proposals this month.

- 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 *Pd* 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](mailto: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: Building a Network for Implementation** (VA) – Implementation of the recently finalized Strategy is underway. To coordinate efforts and share information with partners across several states in the Northeast and Southeast regions, the Service is hosting quarterly Webinars. Additionally, the Appalachian Landscape Conservation Cooperative is hosting a Web portal to support communications work flow and tool delivery and exchange of information and alignment across partner programs. Access the portal at <http://applcc.org/projects/trb/resources/imperiled-aquatic-species-conservation-strategy>.
- 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. We expect to publish a Notice of Availability in the Federal Register soliciting public comment later this summer.
- 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 species status assessment as part of 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 in late 2015. Detailed information about the Canada lynx may be found at <http://bit.ly/CanadaLynxUSFWS>.

## **Section 7 Interagency Cooperation**

- 1) **Incidental Take Statements Final Rule** (All States) – On May 11, 2015, the Service published in the Federal Register a final rule amending the incidental take statement

provisions of the implementing regulations for section 7 of the ESA. The two primary purposes of the amendments are to address the use of surrogates to express the amount or extent of anticipated incidental take and to refine the basis for development of incidental take statements for programmatic actions. These changes are intended to improve the clarity and effectiveness of incidental take statements. The final rule can be found at <http://www.gpo.gov/fdsys/pkg/FR-2015-05-11/pdf/2015-10612.pdf>

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

- 1) **The Town of Orleans, Massachusetts HCP (MA)** – On April 16, 2015, the Service issued an incidental take permit to the Town of Orleans for the take of up to four piping plover chicks per year over 3 years (for a total of 12 chicks) 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. The permit, final HCP, and supporting documents can be found at <http://www.fws.gov/newengland>
- 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.
- 3) **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 awarded a section 6 grant to fund work on the HCP.
- 4) **Duke Energy North Allegheny 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.

### **Classification – Candidate Assessment, Petition Finding, Listing, Delisting, Reclassification**

- 1) **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](mailto:tom_chapman@fws.gov).

Kenk's amphipod: Genevieve LaRouche, Supervisor, Chesapeake Bay Field Office [genevieve\\_larouche@fws.gov](mailto:genevieve_larouche@fws.gov).

Hirsts Brothers' panic grass: Eric Schradling, Supervisor, New Jersey Field Office [eric\\_schradling@fws.gov](mailto:eric_schradling@fws.gov).

- 2) **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](http://www.fws.gov/angered/improving_ESA/index.html)
- 3) **Rufa red knot proposed critical habitat determination** (All States) – On January 12, 2015, the Service's final rule to list the rufa red knot as a threatened species throughout its range became effective. 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 developing a critical habitat determination for the red knot; a publication date for this determination has not been set.

- 4) **Northern long-eared bat listing/critical habitat** (All States) – On April 2, 2015, the Service published a final rule to list the northern long-eared bat as threatened and an interim 4(d) rule. The final listing and implementation of the interim 4(d) rule became effective on May 4, 2015. The interim 4(d) rule is very similar to the proposed 4(d) rule published on January 16, 2015, with clarification to some terminology. Because the interim 4(d) rule is not a final action, the Federal Register rule also opened a public comment period until July 1, 2015. A final decision on the interim 4(d) rule is anticipated by the end of 2015.

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

April 2, 2015, final listing rule/interim 4(d) rule:

<http://www.fws.gov/midwest/endangered/mammals/nlba/pdf/FRnlebFinalListing02April2015.pdf>

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

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

October 13, 2013, proposed listing rule:

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

Additional information:

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

When a species is listed as threatened or endangered, the Service is required to consider whether areas essential to the species' conservation should be designated as critical habitat. A publication date for this determination has not been set.

- 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](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.

- 6) **Neosho mucket and rabbitsfoot final listing and critical habitat designation rules** (PA and 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 April 30, 2015, the Service published a final rule to designate critical habitat for the Neosho mucket and rabbitsfoot mussel, which became effective on June 1, 2015. However, this rule affects only Pennsylvania because the rabbitsfoot mussel is considered extirpated in West Virginia and the Neosho mucket does not occur in the Northeast Region. The final rule designates approximately 138 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 15.4 rmi in the Shenango River. The final rule can be found at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-30/pdf/2015-09200.pdf>.

- 7) **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.
- 8) **Eastern cougar proposed delisting rule** (All States) – On June 17, 2015, the Service published in the Federal Register 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 public comment period closes on August 17, 2015. The proposed rule can be found at <http://www.gpo.gov/fdsys/pkg/FR-2015-06-17/pdf/2015-14931.pdf>.

- 9) 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. 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>.
- 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](mailto:jonathan_reichard@fws.gov) and [christina\\_kocer@fws.gov](mailto: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.
- 14) Big Sandy crayfish and Guyandotte River crayfish** (VA, WV, KY) – On April 7, 2015, the Service made a warranted 12-month finding on a petition to list the Big Sandy crayfish, and proposed to list the Big Sandy crayfish (*Cambarus callainus*) and the Guyandotte River crayfish (*C. veteranus*) as endangered. The proposed rule opened a 60-day peer review and public comment period that closed on June 8, 2015. The Big Sandy crayfish is currently

known from a total of four isolated populations in the upper Big Sandy watershed of Kentucky, Virginia, and West Virginia. The Guyandotte River crayfish is currently known from a single site in Pinnacle Creek, West Virginia.

Up until recently, these two crayfishes were thought to be a single species, known as the “Big Sandy crayfish (*C. veteranus*).” Based on genetics, morphological characteristics, and geography, a December 2014 peer-reviewed taxonomic paper in *Zootaxa* split the single species into two separate species: the Big Sandy crayfish and the Guyandotte River crayfish. Questions regarding the proposed rule can be directed to Keith Hastie in the Regional Office at [keith\\_hastie@fws.gov](mailto:keith_hastie@fws.gov).

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

Proposed Rule: <http://www.gpo.gov/fdsys/pkg/FR-2015-04-07/pdf/2015-07625.pdf>

Supporting documentation and comment

Link: <http://www.regulations.gov/#!documentDetail;D=FWS-R5-ES-2015-0015-0001>

Big Sandy and Guyandotte River Crayfish website:

<http://www.fws.gov/northeast/crayfish/>

The Service will evaluate information from the peer review and public comment process and make a final decision (withdraw the proposed rule, finalize as endangered, or finalize as threatened) by the spring of 2016. If either or both of these species are listed, the Service is required to consider whether areas essential to the species’ conservation should be designated as critical habitat.

- 15) Cave Beetle Assessments to Inform 12-month Petition Findings (VA)** – The Virginia Ecological Services Field Office has entered into a cooperative agreement with the Virginia Department of Conservation and Recreation, Division of Natural Heritage to assess populations of 17 globally rare cave beetle species and the threats these organism face. These baseline data are being collected to aid in development of status reviews and 12-month petition findings for these species to fulfill, in part, the Multi-District Litigation (MDL) Stipulated Settlement Agreement between WildEarth Guardians and the Department of the Interior.
- 16) Eastern Massasauga (rattlesnake) status review and listing determination (NY, PA)** – As part of the multi-district litigation settlement agreement, the Service must make a final listing determination for the eastern massasauga rattlesnake 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 eastern massasauga has been a Federal candidate species since 2005. The species’ candidate assessment form can be found at [http://ecos.fws.gov/docs/candidate/assessments/2013/r3/C03P\\_V01.pdf](http://ecos.fws.gov/docs/candidate/assessments/2013/r3/C03P_V01.pdf).
- 17) Spotted turtle, Blanding’s turtle, green salamander, and Weller’s salamander 90-day petition finding (All States)** – On July 1, 2015, the Service published 90-day findings for 31

species, including 1 not substantial finding and 3 substantial findings for species that occur in the Service's Northeast Region and were petitioned for listing in 2012 by the Center for Biological Diversity. A not substantial finding means that the Service will take no further action for the species under the 2012 petition. A substantial finding means the Service is initiating a status review and is seeking the best scientific and commercial data available from all sources. See the table below for which Northeast Region species are included in this Federal Register notice and a link for each finding's supporting documentation and, for the substantial findings, where to submit new information.

Species	Range	Finding	Link to supporting documentation and to submit new information
Spotted turtle ( <i>Clemmys guttata</i> )	CT, DE, FL, GA, IL, ME, MD, MA, MI, PA, NH, NJ, NY, NC, OH, SC, VT, VA, WV	Substantial	<a href="http://www.regulations.gov/#!docketDetail;D=FWS-R5-ES-2015-0064">http://www.regulations.gov/#!docketDetail;D=FWS-R5-ES-2015-0064</a>
Blanding's turtle ( <i>Emydoidea blandingii</i> )	IL, IA, IN, NH, NY, ME, MA, MI, MN, MO, NE, OH, PA, SD, WI; Ontario, Quebec, and Nova Scotia, Canada.	Substantial	<a href="http://www.regulations.gov/#!docketDetail;D=FWS-R3-ES-2015-0041">http://www.regulations.gov/#!docketDetail;D=FWS-R3-ES-2015-0041</a>
Green salamander ( <i>Aneides aeneus</i> )	AL, GA, IN, MD, MI, OH, PA, NC, SC, VA, WV	Substantial	<a href="http://www.regulations.gov/#!docketDetail;D=FWS-R4-ES-2015-0052">http://www.regulations.gov/#!docketDetail;D=FWS-R4-ES-2015-0052</a>
Weller's salamander ( <i>Plethodon welleri</i> )	NC, TN,VA	Not substantial	<a href="http://www.regulations.gov/#!docketDetail;D=FWS-R4-ES-2015-0065">http://www.regulations.gov/#!docketDetail;D=FWS-R4-ES-2015-0065</a>