

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

January 20, 2016

General

- 1) **Draft Methodology for Prioritizing Status Reviews and Accompanying 12-Month Findings on Petitions for Listing Under the ESA (All States)** – On January 15, 2016, the U.S. Fish and Wildlife Service (Service) published a **Federal Register** notice that announces a 30-day comment period on a draft methodology for prioritizing status reviews and accompanying 12-month findings on petitions for listing species under the Endangered Species Act (ESA). This methodology is designed to ensure that the Service addresses the most imperiled species first, better collaborates with you and our other partners, and provides the greatest level of transparency on when we will complete upcoming ESA listing actions. The comment period will close on February 16, 2016. The draft methodology can be found at: <https://www.gpo.gov/fdsys/pkg/FR-2016-01-15/pdf/2016-00616.pdf>

- 2) **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 January 20, 2016, WNS has been confirmed in 26 states and 5 Canadian provinces. Analyses of samples collected for disease surveillance in winter 2014-15 revealed presence of Pd in Nebraska, marking the western most spread of the fungus in North America. So far in winter 2015-16, no additional locations have been documented with WNS. For updated maps and other information, visit www.whitenosesyndrome.org.
 - In 2015, the Service provided approximately \$3.5 million for WNS research and state response through four funding opportunities. The Service with working group leaders (under the national WNS response plan) are currently identifying priorities for competitive research and management grant opportunities in 2016.
 - The Conservation and Recovery Working Group has released a document describing Acceptable Management Practices for Nuisance Wildlife Control Operators. These guidelines are available for management agencies and private entities to reduce impacts to WNS-affected bats from actions associated with removing bats from structures. The document is available here: <https://www.whitenosesyndrome.org/node/1147>
 - 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.
 - The 2016 White-Nose Syndrome Workshop is likely to be held in early June. Additional details about this meeting will be forthcoming in before the end of the month.
- 2) **Imperiled Aquatic Species Conservation Strategy for the Upper Tennessee River Basin: Building a Network for Implementation (VA)** – Implementation of the Strategy is underway. To coordinate efforts and share information with partners across several states in the Northeast and Southeast regions, the Service has been hosting quarterly webinars, and as prescribed in the Strategy, preparations are underway for the first annual project planning meeting with partners. 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 winter.
- 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,

the Service 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. The Service held an expert elicitation workshop in Minneapolis, Minnesota, October 13-15, 2015, and is now preparing the workshop report. We expect to complete the 5-year review in early 2016. Detailed information about the Canada lynx may be found at <http://bit.ly/CanadaLynxUSFWS>.

- 5) Piping Plover Recovery Workshop (Coastal States)** – On January 12-15, 2016, more than 100 biologists and coastal geologists from Federal and state agencies, conservation organizations, and academic institutions exchanged new information and planned future collaborations to conserve Atlantic Coast piping plovers, least terns, red knots, and other beach-dependent species. Topics included: preliminary results from the Hurricane Sandy Resiliency Projects and feedback to the principal investigators to inform refinements for the 2016 field season; formulation of shared public outreach/communication strategies; discussion of issues and conservation opportunities related to recovery of rufa red knots in habitats that overlap breeding Atlantic Coast piping plovers and least terns; preliminary migration route and behavior findings from 2015 nanotag studies; approaches to assessing habitat carrying capacity; and ongoing and future Habitat Conservation Plans in Massachusetts. In addition to full daytime agendas, optional (but very well-attended) evening activities were held on the 12th, 13th, and 14th. Questions regarding the workshop or other plover conservation issues can be directed to Anne Hecht in the Regional Office at anne_hecht@fws.gov.

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

- 1) 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 awarded a section 6 grant to fund continued work on the HCP.
- 2) Massachusetts Statewide Plover HCP (MA)** – The Massachusetts Division of Fisheries and Wildlife (MADFW) has submitted a section 10 incidental take permit and draft HCP for take of piping plovers associated with recreational activities and beach operations on Massachusetts beaches. The MADFW was awarded a section 6 grant to fund work on the HCP and associated NEPA. On January 21, 2016, the Service published a notice of availability of a draft HCP and draft environmental assessment, which initiates a 30-day public comment period. The documents and comment instructions are available at regulations.gov under docket number FWS–R5–ES–2015–0182.
- 3) Duke Energy North Alleghany Wind HCP (PA)** -- The Service has received an incidental take permit application from North Allegheny Wind, LLC, a wholly owned subsidiary of Duke Energy Generating Services (or Duke Energy Renewables), for take of Indiana bats and northern long-eared bats resulting from operation, maintenance, and decommissioning of its wind facility. The HCP incorporates avoidance, minimization, mitigation, monitoring, and

reporting measures. Later this year, the Service will publish in the Federal Register a notice of receipt of the permit application that will open a public comment period. On November 18, 2014, the Service published in the Federal Register an early scoping notice for the HCP and the Service's National Environmental Policy Act (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 24, 2015, the Service published its fiscal year (FY) 2015 CNOR. For the Service's Northeast Region, the CNOR covers the continuing candidates of Kenk's amphipod and Hirst Brothers' panic grass. 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.

As part of the multi-district litigation settlement agreement, listing determinations for our candidate species will no longer be precluded by specified time frames: 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:

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.

The complete CNOR notice and list of proposed and candidate species as published in the Federal Register can be found at the following link: <https://www.gpo.gov/fdsys/pkg/FR-2015-12-24/pdf/2015-32284.pdf>.

- 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/endangered/improving_ESA/index.html

- 3) **Eastern Massasauga (rattlesnake) proposed listing rule** (NY, PA) – On September 30, 2015, the Service published a proposed rule to list the eastern massasauga as threatened. As part of the proposed listing rule, the Service determined that designating critical habitat for the species is not prudent due to persecution and vandalism concerns. The proposed rule and supporting documents can be found at: <http://www.fws.gov/midwest/angered/reptiles/eama/index.html>

The public comment period closed on November 30, 2015. The Service anticipates making a final decision on the proposed listing rule by September 30, 2016.

- 4) **Delmarva Peninsula fox squirrel proposed delisting rule** (DE, MD, VA) – On November 16, 2015, the Service published in the Federal Register a final rule to delist the species on the basis of recovery. Documents pertaining to the rulemaking can be found at: <https://www.gpo.gov/fdsys/pkg/FR-2015-11-16/pdf/2015-28742.pdf>.

- 5) **Big Sandy crayfish and Guyandotte River crayfish** (VA, WV, KY) – On December 15, 2015, the Service reopened the comment period on the April 7, 2015, proposed rule to list the Big Sandy crayfish (*Cambarus callainus*) and the Guyandotte River crayfish (*C. veteranus*) as endangered. The Service announced the availability of two reports, one on each species, of the agency-paid surveys conducted in the summer and fall of 2015. The reopened comment period ended on January 14, 2016, and we received five new comments (all were supportive and two were substantive).

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 2015 Service-funded surveys generally confirmed the species' previously known distribution. Prior to the 2015 surveys, the Guyandotte River crayfish was known to exist in a single stream (Pinnacle Creek) in West Virginia. In 2015, several new occurrence records for the species were determined in the Clear Fork stream system in West Virginia. The Guyandotte River crayfish was not found in five other streams with historical records of the species.

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.

Questions regarding the proposed rule and comment period reopening notice can be directed to Keith Hastie in the Regional Office at keith_hastie@fws.gov.

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

Reopened comment period notice:

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-15/pdf/2015-31369.pdf>

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 Web site:

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

- 6) **Northern long-eared bat listing/critical habitat** (All States) – On January 14, 2016, the Service published a final 4(d) rule for the threatened northern long-eared bat.

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

January 14, 2016, final 4(d) rule:

<http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/FRnlebFinal4dRule14Jan2016.pdf>

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

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

- 7) **West Indian manatee (MD, VA)** – On Friday, January 8, 2016, the Service's Southeast Region published a proposed rule to reclassify the West Indian manatee (*Trichechus manatus*) from an endangered species to a threatened species under the Endangered Species Act (ESA). The proposed rule opened a 90-day public comment period that will close on April 7, 2016, and the input we expect to receive will help us make a final decision.

The reclassification proposal follows an extensive review of the threats facing the manatee, and the conservation actions put into place to help recover it. The proposal relies on the most recent science and builds on recommendations from the Service's 2007 West Indian Manatee Five-Year Status Review, which can be found

here: http://ecos.fws.gov/docs/five_year_review/doc3771.pdf. It also serves as a 12-month finding in response to a petition filed by the Pacific Legal Foundation and Save Crystal River, Inc.

The species was first listed as endangered in 1967 under the precursor to the ESA. Since then, manatees have experienced steady and significant improvements in their population, habitat conditions, and status due to the recovery efforts of Service biologists and our partners. The data now suggests that there is little chance of the manatee going extinct in the next Century. There are now more than 13,000 manatees throughout its' historical range that includes the southeastern United States from Maryland to Texas, Puerto Rico, Mexico, Central and South Americas, and the Greater and Lesser Antilles.

A link to the proposed rule can be found here: <https://www.gpo.gov/fdsys/pkg/FR-2016-01-08/pdf/2015-32645.pdf>

- 8) **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.
- 9) **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 2015 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.

- 10) 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 closed on August 17, 2015. We expect to publish a final determination on the proposal later 2016. The proposed rule can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2015-06-17/pdf/2015-14931.pdf>.
- 11) 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 is actively seeking new information on the species and will accept new information until completion of the status review.
- 12) 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.
- 13) 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.
- 14) Yellow banded bumble bee** (CT, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV) – On September 15, 2015, the Service received a petition from Defenders of Wildlife to list the yellow banded bumble bee (*Bombus terricola*) as a threatened or endangered species. The Service is evaluating whether or not the petition provides substantial information indicating

the species may warrant listing. If the Service makes a 90-day substantial finding, the agency will initiate a status review and solicit the best available information from all sources. A specific deadline for making the 90-day finding has not yet been set. The petition can be found at: <https://ecos.fws.gov/docs/petitions/92000/681.pdf>