

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

March 31, 2016

## 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.

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>

- 2) **Interagency Policy Regarding the Role of State Agencies in ESA Activities** - As you may have heard, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (together the Services) have updated a long-standing policy on the role of state fish and wildlife agencies in implementing the Endangered Species Act (ESA). The updated policy (“Interagency Policy Regarding the Role of State Agencies in ESA Activities”), developed in coordination with state fish and wildlife agencies, re-affirms the commitment for engagement and collaboration between the Services and state agencies on many aspects of ESA implementation.

The revised policy, which published in the Federal Register on Monday, February 22, 2016, emphasizes proactive conservation of imperiled species before they require protections of the ESA, expanded opportunities for engaging in listing and recovery activities, and improved planning with state agencies across a species’ range. The policy also updates references to flexible ESA tools like Habitat Conservation Plans (HCPs) and Safe Harbor

Agreements (SHAs) that weren't available when the original 1994 policy was written. The policy can be found at <http://www.fws.gov/policy/library/2016/2016-03541.pdf>

- 3) **Proposed Revisions to the U.S. Fish and Wildlife Service Mitigation Policy** – On March 8, 2016, the U.S. Fish and Wildlife Service (Service) published a **Federal Register** notice that announced a 60-day comment period on proposed revisions to the Service's mitigation policy. The revised policy provides a framework for applying a landscape-scale approach to achieve, through application of the mitigation hierarchy, a net gain in conservation outcomes, or at a minimum, no net loss of resources and their values, services, and functions resulting from proposed actions. The primary intent of the policy is to apply mitigation in a strategic manner that ensures an effective linkage with conservation strategies at appropriate landscape scales. The draft policy is available for review through May 9, 2016, at <http://www.regulations.gov>, under docket number FWS-HQ-ES-2015-0126.

### **Recovery Planning and Implementation**

- 1) **White-Nose Syndrome** (All States) – As of March 31, 2016, WNS has been confirmed in 28 states and 5 Canadian provinces. The causative fungus has also been detected in four additional states (MI, NE, OK, and RI).

- A major jump was announced on March 31, when it was revealed that a western little brown bat was confirmed with WNS from King County, Washington. This represents a significant change to the known distribution of *Pseudogymnoascus destructans* in North America, with considerable potential implications for bat conservation. For updated maps and other information, visit <http://www.whitenosesyndrome.org>.
- A revised national WNS decontamination protocol is in development and expected to be available in spring 2016. The protocol provides the core recommendations for cleaning and disinfection of clothing and equipment that has come in contact with caves, cave soils, and bats or their environments. It also describes preventative restrictions on movement of gear between contaminated and uncontaminated sites. A separate Canadian decontamination protocol is also in development because many products on the U.S. protocol are not available in Canada. See: <http://www.whitenosesyndrome.org/topics/decontamination>
- A national strategy for cave management to reduce risk of human-mediated spread has been completed and will be presented to the WNS Executive Committee on 17 March 2016. These recommendations were drafted by representatives of Federal and state agencies as well as stakeholders in the national response to WNS. A sub-group of the WNS Disease Management Working Group is also developing guidance to address human transmission risks at public and private show caves.
- In February 2016, USGS National Wildlife Health Center revised bat submission guidelines for investigators to diagnose WNS or screen for Pd. See: [http://www.nwhc.usgs.gov/publications/wildlife\\_health\\_bulletins/index.jsp](http://www.nwhc.usgs.gov/publications/wildlife_health_bulletins/index.jsp)
- Little brown bats are persisting, generally in low numbers in the eastern U.S., providing hope that some individuals will survive WNS naturally. Most hibernating populations continue to exhibit declines, however, and similar observations have not been made for tri-colored or northern long-eared bats.

- Several field trials of potential treatments are underway this winter in Georgia, Michigan, Missouri, Pennsylvania, and Wisconsin. Other scientists are looking for new biocontrol agents in Arizona, New Mexico, Minnesota, and British Columbia.
- 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.
- The 2016 White-Nose Syndrome Workshop is likely to be held in early June. Additional details about this meeting will be forthcoming soon.

**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) – On March 31, 2016, the Service published a notice of availability of a Draft Recovery Plan for the expanded Gulf of Maine Distinct Population Segment of Atlantic Salmon. The Service and National Marine Fisheries Service share jurisdiction of the species and jointly prepared the draft plan. The draft plan includes specific recovery objectives and criteria that, when met, would allow us to consider reclassifying the DPS from endangered to threatened and to delist the DPS. The public comment period closes on May 31, 2016.

The notice can be found at <https://federalregister.gov/a/2016-07227>

The draft plan can be found at

<http://atlanticsalmonrestoration.org/resources/documents/atlantic-salmon-recovery-plan-2015>

**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](mailto: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. The Service is developing an environmental impact statement for the project and anticipates making a permit issuance decision in 2017.
- 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, and held a 30-day public comment period. The Service is working to respond to public comments and anticipates making a permit issuance decision in summer 2016.
- 3) **Duke Energy North Allegheny 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 Service is developing an environmental assessment for the project and anticipates making a permit issuance decision in late 2016.
- 4) **Slack Chemical Company HCP (NY)** -- The Service has received an incidental take permit application from the Slack Chemical Company for take of the Karner blue butterfly resulting from construction of a gravel access driveway for expansion of a parking lot for its trucking

fleet. The Service will soon be publishing a notice of receipt of application in the Federal Register, which will initiate a 30-day public comment period. This will be a low effect HCP.

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

- 1) National Listing Workplan (All States)** – The Service is developing a national workplan to address a large backlog of status reviews for species petitioned for listing and species of concern. Each Region prioritized the status reviews for its lead species according to a methodology (<https://www.gpo.gov/fdsys/pkg/FR-2016-01-15/pdf/2016-00616.pdf>) designed to ensure that the most imperiled species are addressed first, and then used these priority assignments to develop a schedule for completing the status reviews. Our Headquarters office compiled these Regional schedules into a draft national workplan, which is now under review by the Regions. We expect the final workplan to be completed this spring or summer.

The national workplan will address status reviews for 111 species occurring in Region 5 (69 R5 lead; 42 non-R5 lead). In Region 5, we assigned priorities for our lead species in coordination with the states and then developed a schedule for completing the status reviews that balances workload across states over time. We are now working to identify information and analysis needs that would benefit these status reviews, and to identify existing and needed strategies for species for which conservation efforts may preclude the need to list.

- 2) 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](mailto:genevieve_larouche@fws.gov).

Hirst Brothers' panic grass: Eric Schradling, Supervisor, New Jersey Field Office  
[eric\\_schradling@fws.gov](mailto: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 <https://www.gpo.gov/fdsys/pkg/FR-2015-12-24/pdf/2015-32284.pdf>.

- 3) **Critical Habitat Proposed Regulations** (All States) – On February 11, 2016, the Service published in the Federal Register three final 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. The rules took effect on March 14, 2016. The news release can be found at <http://www.fws.gov/news/ShowNews.cfm?ref=federal-agencies-finalize-revised-rules-to-improve-implementation-of-the-&ID=35459>.

Frequently asked questions can be found at

[http://www.fws.gov/endangered/improving\\_ESA/pdf/424.12\\_FAQs%20Final.pdf](http://www.fws.gov/endangered/improving_ESA/pdf/424.12_FAQs%20Final.pdf)

[http://www.fws.gov/endangered/improving\\_ESA/pdf/4b2\\_FAQs%20Final.pdf](http://www.fws.gov/endangered/improving_ESA/pdf/4b2_FAQs%20Final.pdf)

[http://www.fws.gov/endangered/improving\\_ESA/pdf/AdMod\\_FAQs%20Final.pdf](http://www.fws.gov/endangered/improving_ESA/pdf/AdMod_FAQs%20Final.pdf)

Federal Register documents can be found at

[http://www.fws.gov/endangered/improving\\_ESA/pdf/Designating\\_Critical\\_Habitat-2016-02680-02112015.pdf](http://www.fws.gov/endangered/improving_ESA/pdf/Designating_Critical_Habitat-2016-02680-02112015.pdf)

[http://www.fws.gov/endangered/improving\\_ESA/pdf/Critical\\_Habitat\\_Exclusions-2016-02677-02112015.pdf](http://www.fws.gov/endangered/improving_ESA/pdf/Critical_Habitat_Exclusions-2016-02677-02112015.pdf)

[http://www.fws.gov/endangered/improving\\_ESA/pdf/Adverse%20Modification-2016-02675-02112015.pdf](http://www.fws.gov/endangered/improving_ESA/pdf/Adverse%20Modification-2016-02675-02112015.pdf)

- 4) **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/endangered/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.

- 5) **Big Sandy crayfish and Guyandotte River crayfish proposed listing rule** (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 April 7, 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](mailto: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 website:

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

- 6) **Northern long-eared bat listing/critical habitat** (All States) – On April 2, 2015, the Service published a final rule listing the northern long-eared bat as a threatened species (<http://www.fws.gov/midwest/endangered/mammals/nlba/pdf/FRnlebFinalListing02April2015.pdf>.) 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 proposed reclassification rule (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 at [http://ecos.fws.gov/docs/five\\_year\\_review/doc3771.pdf](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.

The proposed rule can be found at <https://www.gpo.gov/fdsys/pkg/FR-2016-01-08/pdf/2015-32645.pdf>

- 8) **4 Northeast Petitioned Species (Various states)** - On March 16, 2016, the Service published a Federal Register notice announcing initial ESA petition findings for 31 species. These initial findings include substantial findings for the yellow-banded bumble bee (*Bombus terricola*) and American burying beetle (*Nicrophorus americanus*), and not substantial findings for the Cow Knob salamander (*Plethodon punctatus*), and southern dusky salamander (*Desmognathus auriculatus*), all of which occur in the Service's Northeast Region. The yellow-banded bumble bee was petitioned for listing in 2015 by Defenders of Wildlife, the American burying beetle was petitioned for delisting in 2015 by several entities (American Stewards of Liberty, Independent Petroleum Association of America, Texas Public Policy Foundation and Dr. Steven W. Carothers), the Cow Knob salamander was petitioned for listing in 2012 by the Center for Biological Diversity, and the southern dusky salamander was petitioned for listing in 2015 by the Coastal Plains Institute and Land Conservancy.

A substantial finding means the Service is initiating a status review and is seeking the best scientific and commercial data available from all sources.

- For the **yellow banded bumble bee** (CT, IL, KY, MA, MD, ME, MI, MN, MT, NC, ND, NH, NY, OH, PA, RI, SD, TN, VA, VT, WI, WV, Canada), we found the petition presented substantial evidence for the potential threats to the species from habitat loss, degradation, or modification (agricultural intensification and urban development), disease (*Locustacarus buchneri* and *Nosema bombi*), the inadequacy of existing regulatory mechanisms, and other natural or manmade factors (via climate change, the use of pesticides, and population dynamics and structure). **Contact:** Krishna Gifford, Northeast Regional Office, at [krishna\\_gifford@fws.gov](mailto:krishna_gifford@fws.gov)
- For the **American burying beetle** (AR, KS, OK, MA, NE, OH, RI, SD, TX), we found the petition presented information indicating that the known range of the beetle is significantly larger than at the time of listing, and that the threats that were present then are no longer threatening the species. The Service is undertaking a species status review to evaluate uncertainty surrounding the population trends, distribution and threats impacting the species. **Contact:** Kevin Stubbs, Oklahoma Field Office, at [kevin\\_stubbs@fws.gov](mailto:kevin_stubbs@fws.gov).

A not substantial finding means that the Service will take no further action for the species under the 2012 and 2015 petitions, respectively. However, the Service will reevaluate the

need to protect these species under the ESA if new information becomes available in the future.

- For the *Cow Knob salamander* (VA, WV), the petitioner identified habitat degradation (via forest management practices, forest defoliation due to gypsy moths, and firewood collection), over collection, inadequacy of existing regulatory mechanisms, and loss of hemlock trees by hemlock woolly adelgid (*Adelges tsugae*) to be the factors impacting the species. However, the information presented in the petition, and the references provided were not specific or relevant to the Cow Knob salamander or its habitat. No further information was provided in the petition or supplemental to the petition to demonstrate the likelihood that the identified threats are impacting Cow Knob salamander. **Contact:** Barbara Douglas, West Virginia Field Office, at [barbara\\_douglas@fws.gov](mailto:barbara_douglas@fws.gov)
- For the *southern dusky salamander* (TX, LA, MS, AL, GA, FL, SC, NC, VA), the petitioner identified disease and the inadequacy of existing regulatory mechanisms to be the factors affecting the species. However, the information provided in the petition and the sources cited did not support the petition's claims related to disease and the inadequacy of existing regulatory mechanisms; thus we did not find substantial scientific information that the requested action may be warranted. **Contact:** Andreas Moshogianis, Southeast Regional Office, at [andreas\\_moshogianis@fws.gov](mailto:andreas_moshogianis@fws.gov)

**9) 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 <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.

**10) 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 has not set a date for making a final determination.

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.

**11) 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 in 2016. The proposed rule can be found at <http://www.gpo.gov/fdsys/pkg/FR-2015-06-17/pdf/2015-14931.pdf>.

**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 is actively seeking new information on the species and 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) 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.