

U.S. Fish and Wildlife Service
Region 5 Endangered Species Act Update
October 26, 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. 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>

- **Revisions to the Regulations for Listing Petitions:** The Service published a final rule in the Federal Register on September 27, 2016 (effective October 27) revising our ESA regulations governing petitions for listing, delisting, reclassification, and critical habitat revision. The final revisions to ESA listing petition regulations include:
 - *Improved engagement with state wildlife agencies:* Petitioners will be required to notify the state wildlife agency for each state in which the species occurs at least 30 days before submitting the petition to the Services. This change will provide states an opportunity to submit pertinent information on petitioned species in time to inform our review.
 - *Limit on number of species per petition:* Petitions will be limited to only one species per petition. A petition may still address any members of a single species as defined by the ESA, including the full species and one or more subspecies or varieties. For vertebrate species, this includes one or more distinct population segments (DPSs).

The final regulations can be found at: <https://www.gpo.gov/fdsys/pkg/FR-2016-09-27/pdf/2016-23003.pdf>.

- **Revisions to the Regulations for Candidate Conservation Agreements with Assurances (CCAAs):** The Service published a proposed rule in the Federal Register on May 4, 2016, to revise our regulations governing CCAAs to align the CCAA standard with the net benefit standard of Safe Harbor Agreements. The public comment period closed on July 5, 2016. We expect to issue a final determination on the proposal in late 2016. The proposed regulations and outreach material can be found at: https://www.fws.gov/endangered/improving_ESA/CCA.html
- **Revisions to the U.S. Fish and Wildlife Service Mitigation Policy:** The Service published a Federal Register notice on March 8, 2016, announcing proposed revisions to our 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 comment period closed on June 13, 2016. We expect to release the final policy soon. The proposal can be found at <http://www.regulations.gov> under docket number FWS-HQ-ES-2015-0126.

Recovery Planning and Implementation

- **White-Nose Syndrome (All States)** – As of October 20, 2016, WNS has been confirmed in 29 states and 5 Canadian provinces. The causative fungus has also been detected in three additional states (MI, NE, and OK).
 - Despite being relatively close to the earliest records of WNS in the Northeast, WNS was confirmed for the first time in Rhode Island in winter of 2016. A tri-colored bat hibernating in Newport County was confirmed with the disease. For updated maps and other information, visit <http://www.whitenosesyndrome.org>.
 - In August 2016, the Service awarded ~\$1 million to 34 states and the District of Columbia through the WNS Grants to States program. This annual funding opportunity provides support to state agencies engaged in the national response to WNS.
 - A revised national WNS decontamination protocol was completed and distributed in April 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 was presented to the WNS Executive Committee in March 2016. These recommendations were drafted by representatives of Federal and state agencies as well as stakeholders in the national response to WNS. A subgroup of the WNS Disease Management Working Group is also developing guidance to address human transmission risks at public and private show caves.
 - Little brown bats are persisting, generally in low numbers in the eastern United States, 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 fall in Georgia, Michigan, Missouri, Pennsylvania, Tennessee, 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), with requests to be added to the email list.
 - The 2016 White-Nose Syndrome Workshop was held in Denver in June 2016. Over 150 state, Federal, and provincial agency representatives, researchers, and other partners attended. The 2017 WNS workshop is being planned for May 2017. Additional details about this meeting will be forthcoming soon.

For more information, contact Jeremy Coleman, National White-Nose Syndrome Coordinator, in our Regional Office at jeremy_coleman@fws.gov.

- 2) **Imperiled Aquatic Species Conservation Strategy for the Upper Tennessee River Basin: Moving Forward (VA)** – From efforts to restore aquatic habitat to an increased emphasis on propagation of fish and mussels in the Upper Tennessee River Basin, the Service and its partners continue to implement the Strategy. To coordinate efforts, evaluate success, and share information with partners across several states in the Northeast and Southeast regions, the Service’s Asheville Field Office will host the 2nd annual project planning meeting with partners in 2017. Additionally, a [web portal for the Strategy](#) that supports conservation planning and allows the internal and external exchange of information is available through the [Appalachian Landscape Conservation Cooperative website](#). For more information, contact Cindy Schulz, Field Office Supervisor, in our Virginia Field Office at cindy_schulz@fws.gov.
- 3) **Atlantic Salmon Recovery Plan (ME)** – On May 31, 2016, the public comment for the Draft Recovery Plan for the expanded Gulf of Maine Distinct Population Segment of Atlantic Salmon closed. The Service and National Marine Fisheries Service share jurisdiction of the species and jointly prepared the draft plan, which includes recovery objectives that, when met, would allow us to consider reclassifying the DPS from endangered to threatened and, ultimately, to delist the DPS. We received 12 highly substantive comments on the draft plan. These comments will be considered during preparation of the final recovery plan and incorporated into the plan as appropriate. Completion of the final plan is expected in spring 2017.

The draft plan can be found at

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

For more information, contact Mary Parkin of our Regional Office at mary_parkin@fws.gov.

- 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 U.S. DPS of Canada lynx by January 15, 2018, unless the Service finds that such a plan will not promote the conservation of the lynx. The Service is nearing completion of a species status assessment (SSA) for the DPS, after which we will issue a 5-year review recommendation based upon results of the assessment. We expect to finalize the 5-year review later in 2016. If it is determined that the DPS should remain listed, we will immediately initiate recovery planning, again using the SSA framework as a foundation for proposing recovery criteria and recommended actions.

Detailed information about the Canada lynx may be found at

<http://bit.ly/CanadaLynxUSFWS>

For additional information, contact Mark McCollough in our Maine Field Office at mark_mccollough@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. For more information, contact Pamela Shellenberger of our Pennsylvania Field Office at pamela_shellenberger@fws.gov.
- 2) **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 Service is developing an environmental assessment for the project and anticipates making a permit issuance decision in late 2016. For more information, contact Melinda Turner of our Pennsylvania Field Office at melinda_turner@fws.gov.
- 3) **Slack Chemical Company HCP (NY)** – On July 28, 2016, the Service published a notice of receipt of 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 notice opened a 30-day public comment period, which closed on August 29, 2016. The Service anticipates making a permit decision in late 2016. This will be a low effect HCP. For more information, contact Noelle Rayman of our New York Field Office at noelle_rayman@fws.gov.

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

- 1) **National Listing Workplan (All States)** – On September 1, 2016, the Service announced a 7-year (fiscal year (FY) 2017 to 2023) plan to address our ESA listing workload. The Workplan is based on the July 2016 final ESA Status Review Prioritization Methodology (<https://www.gpo.gov/fdsys/pkg/FR-2016-07-27/pdf/2016-17818.pdf>). The Prioritization Methodology and resulting Workplan allows us to address our current status review backlog in an efficient, predictable, and transparent manner. Under this approach, each status review is assigned to one of five priority categories, according to the urgency of threats, availability of relevant information, and ongoing conservation efforts by states and other stakeholders.

The national Workplan is posted at

https://www.fws.gov/endangered/improving_ESA/index.html

There are three documents:

- a FY 17 plan that shows ongoing carryover actions from FY 16 as well as new actions; this is a more complete picture of the Service’s listing work and helps explain

why, due to workload capacity and conservation priority, there are actions scheduled for other years;

- a FY 17-23 plan that shows only new actions scheduled according to workload capacity and conservation priority;
- and, a list of currently unscheduled actions, mostly for species that lack data.

A list of the prioritized species that occur in the Northeast Region was shared by the field offices with each state office so it was easier to identify which species we will be working with you on, and when those actions are likely to be completed. The Workplan identifies the action's completion date, but depending upon the species' range, other biological complexities, and staffing considerations, we will be actively starting on the action a year or two in advance. If you have information or questions about the species that occur in your areas, we ask that you coordinate with the Field Office Supervisor in the appropriate state. For some of these species, the Service's lead field office is one located in another Service Region. The national workplan will address status reviews for 112 species occurring in Region 5 (69 R5 lead; 43 non-R5 lead). For more information, contact Krishna Gifford in our Regional Office at krishna_gifford@fws.gov.

- 2) Tricolored Bat Petition** (All States) – On June 14, 2016, the Service received a petition from the Defenders of Wildlife and the Center for Wildlife Diversity to list the tricolored bat (*Perimyotis subflavus*) as an endangered or threatened species. We are required to make a substantial or not substantial finding on whether the petitioned information indicates that the petitioned action may be warranted. If we find that the petition is substantial, we will initiate a status review for the species which would be based on evaluating all of the best available information. For more information, contact Krishna Gifford in our Regional Office at krishna_gifford@fws.gov.
- 3) Rusty Patched Bumblebee Proposed Listing Rule** (All States) – On September 22, 2016, the published a 12-month warranted petition finding combined with a proposed rule to list the rusty patched bumble bee (*Bombus affinis*) as an endangered species. The comment period on the proposed rule closes on November 21, 2016. Before the mid- to late 1990s, the rusty patched bumble bee was considered abundant across a broad geographic range that included 28 states, the District of Columbia and two Canadian provinces. Today it is found only in small, isolated populations in 12 states and 1 province: Illinois, Indiana, Maine, Maryland, Massachusetts, Minnesota, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, Wisconsin – and Ontario, Canada. Multiple threats that have likely contributed to the rusty patched bumble bee's dramatic decline include: disease, pesticides, the effects of climate change, habitat loss, and the effects of small population dynamics. It appears that no one single factor is likely responsible, but these threats working together have likely caused the decline.

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

Proposed rule: <https://www.gpo.gov/fdsys/pkg/FR-2016-09-22/pdf/2016-22799.pdf>

Additional information: www.fws.gov/midwest/endangered/insects/rpbb

For more information, contact Mary Parkin of our Regional Office at mary_parkin@fws.gov.

- 4) **Eastern Massasauga (rattlesnake) Final Listing Rule** (NY, PA) – On September 30, 2016, the Service published a final rule to list the eastern massasauga as a threatened species. The rule will become effective on October 31, 2016. The Service had previously determined at the time of the 2015 proposed rule that designating critical habitat for the species was not prudent.

The final rule and supporting documents can be found at <http://www.fws.gov/midwest/endangered/reptiles/eama/index.html>

For more information, contact Sandra Doran in our New York Field Office at sandra_doran@fws.gov.

- 5) **Kenk's amphipod Proposed Listing Rule** (DC, MD, VA) – On September 30, 2016, the Service published a proposed rule to list the Kenk's amphipod (*Stygobromus kenki*) as an endangered species. The comment period on the proposed rule closes on November 29, 2016. Comments can be submitted through www.regulations.gov under docket #FWS-R5-ES-2016-0030.

The Kenk's amphipod is a small (maximum length 5.5 mm), eyeless, unpigmented crustacean inhabiting shallow ground water and associated springs and seeps. Historically, it has been found in a total of six seepage springs in Montgomery County, Maryland and the District of Columbia. Its habitat consists of hillside seepage springs in wooded areas within the watersheds of Rock Creek and the Northwest Branch of the Anacostia River. More recently, the species was also located in four seepage springs on Fort A.P. Hill in Caroline County, Virginia. The best available data indicate that, while the species may have always been represented by small numbers of individuals found at the surface of each seep site, the numbers present are getting smaller. In addition, each of the 10 known seep sites are vulnerable to varying levels of stressors and threats: 1 seep, based on repeated negative survey results combined with documented poor water quality, may be extirpated, and another seep has visible sedimentation issues. The primary threats to the species' viability are poor water quality, habitat degradation, and the effects of small population dynamics.

At this time, the Service has determined that designation of critical habitat for the Kenk's amphipod is prudent but not determinable. We are awaiting the results of hydrology studies that support the species' physical and biological features, and additional surveys in new habitat areas (e.g., accessible areas within steep, sloped, forested habitat overlaying the Calvert formation in Maryland and Virginia), that will help inform a critical habitat designation. For more information, contact Andy Moser in our Chesapeake Bay Field Office at andy_moser@fws.gov.

- 6) **Hirst Brothers' panic grass** (NJ, DE, NC, GA) – On October 6, 2016, the Service published a 12-month not warranted petition finding for the Hirst Brothers' panic grass (*Dichanthelium hirstii*) and nine other species. Upon reanalysis of the best available taxonomic information, the Service concluded that the Hirst Brothers' panic grass is not a listable entity because it is synonymous with *D. dichotomum* subsp. *roanokense* (Ashe). This indicates that the plant the

Service had considered a candidate species is not a valid taxon and is a component of a larger, more widespread species that appears to grow on the coastal plain from Delaware to southeastern Texas and in the West Indies. While there is no formal comment period on the 12-month not warranted finding, we will accept new information about *Dichantheium hirstii* at any time. New information concerning *D. hirstii*'s taxonomy, population status, or threats should be sent to the Service's New Jersey Ecological Services Field Office, 4 E. Jimmie Leeds Road, Suite 4, Galloway, New Jersey 08205. For more information, contact Ron Popowski in our New Jersey Field Office at ron_popowski@fws.gov.

- 7) **Big Sandy Crayfish and Guyandotte River Crayfish Critical Habitat Designation** (VA, WV, KY) – On April 7, 2016, the Service published the final rule to list the Big Sandy crayfish (*Cambarus callainus*) as threatened and the Guyandotte River crayfish (*C. veteranus*) as endangered. The Service is still developing a draft proposed critical habitat designation rule for these crayfishes. In the final listing rule, we also stated that we were looking for suggestions related to actions that may be appropriate for a future 4(d) rule for the Big Sandy crayfish.

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

Final rule:

<https://www.gpo.gov/fdsys/pkg/FR-2016-04-07/pdf/2016-07744.pdf>

Big Sandy and Guyandotte River Crayfishes website:

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

For more information, contact Keith Hastie in our Regional Office at keith_hastie@fws.gov.

- 8) **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) – On March 16, 2016, the Service published a Federal Register notice announcing a substantial 90-day finding for the yellow banded bumblebee petition received in 2015 from the Defenders of Wildlife. 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). A substantial finding means the Service is initiating a status review and is seeking the best scientific and commercial data available from all sources. Information can be sent to Krishna Gifford in our Regional Office at krishna_gifford@fws.gov
- 9) **American Burying Beetle** (AR, KS, OK, MA, NE, OH, RI, SD, TX) – On March 16, 2016, the Service published a Federal Register notice announcing a substantial 90-day finding for the American burying beetle. 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 present then are no longer threatening the species. The Service is undertaking a species status review to evaluate the population trends and distribution and threats impacting the species. Information can be sent to Kevin Stubbs in the Oklahoma Field Office at kevin_stubbs@fws.gov.

10) 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. For more information, contact Krishna Gifford in our Regional Office at krishna_gifford@fws.gov

11) 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

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. For more information, contact Mary Parkin of the Regional Office at mary_parkin@fws.gov.

12) 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. On June 28, 2016, the comment period was reopened for 30-days to obtain comments from peer reviewers. We expect to publish a final determination on the proposal later in 2016.

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

Proposed rule: <http://www.gpo.gov/fdsys/pkg/FR-2015-06-17/pdf/2015-14931.pdf>

Reopening notice: <https://www.gpo.gov/fdsys/pkg/FR-2016-06-28/pdf/2016-15227.pdf>

For more information, contact Mark McCollough in our Maine Field Office at mark_mccollough@fws.gov.

13) 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 seeking new information on the species. For more information, contact Tony Tur in our New England Field Office at anthony_tur@fws.gov.

14) 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. For more information, contact Robyn Niver in our New York Field Office at robyn_niver@fws.gov.

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. For more information, contact Troy Andersen in our Virginia Field Office at troy_andersen@fws.gov.