

U.S. Fish and Wildlife Service

Region 5 ESA Update

January 9, 2014

General News

- 1) **Endangered Species Act 40th Anniversary** (All States) – In celebration of the 40th anniversary of the ESA on December 28, 2013, the U.S. Fish and Wildlife Service launched a special Web site, and each week throughout 2013 we featured a state-specific endangered species recovery effort. While our 40th Anniversary Web site will be taken down, the stories will continue to live on the Service's endangered species state Web pages: <http://www.fws.gov/endangered/map/index.html>.
- 2) **Improving ESA Implementation** (All States) – Our headquarters office created a Web page devoted to national efforts to improve the Service's implementation of the ESA. The page includes links to proposed policy and regulation changes. http://www.fws.gov/endangered/improving_ESA/index.html
- 3) **White-Nose Syndrome** (All States) – As of October 2013 WNS is confirmed in 22 states and 5 Canadian provinces. Evidence of the causative fungus has been found in 4 additional states. For updated maps and other information, visit: <http://whitenosesyndrome.org/>
 - The national implementation plan was presented to the WNS Executive Committee on 4 December. Approval of the plan is expected when the committee meets in March.
 - A North American bat population monitoring strategy is in development. A fourth and final workshop was held 4-7 November 2013, and a general technical report is anticipated by summer 2014. A bat population database will be maintained at the USGS Fort Collins Science Center that will be compatible with analogous databases in Canada and Mexico. Pilot projects are being planned for 2014 as proof of concept.
 - The Service is working on a formal revision of the 2009 Cave Advisory. The revision will incorporate input from the WNS Stakeholder Committee, and the WNS Steering Committee is considering the option to accept the advisory as national guidance with buy-in from all participating agencies. The Disease Management Working Group is also developing guidance for commercial caves that will address human transmission risks at public and private show caves.
 - The Service allocated ~\$1.4 million in grants and support for WNS in FY2013, including nearly \$951K in grants to state agencies announced in June 2013. We anticipate allocating at least \$3 million for research grants in FY2014, and plan to offer capacity grants to state agencies as well. We are currently reviewing proposals received from Federal partners through the WNS Steering Committee, and plan to release an RFP open to all in the research

community in January. Priorities for research funding are determined largely by the actions and needs detailed in the national implementation plan.

- The U.S. Forest Service and the WNS National Communications Working Group worked to update the “Battle for Bats” video originally produced in 2011. See the new 13.5 min video by going here: <http://whitenosesyndrome.org/news/updated-battle-bats-video-available>

- 4) **Section 6 Grant FY13 Awards and 2014 RFP** (All States) – Announcements for the FY13 nontraditional Section 6 grants were made on July 9, 2013. Out of the \$9.4 million national allocation for the Recovery Land Acquisition Grant program, Region 5 was awarded \$702,500 for three land protection projects for bog turtles in Pennsylvania and New Jersey. On January 8, 2014, the Service announced the FY14 Request for Proposals for Recovery Land Acquisition, Habitat Conservation Planning Assistance, and Habitat Conservation Planning Land Acquisition grants. Proposals are due **March 14** and can be submitted through Grants.gov or directly to our Hadley Regional Office.

Section 10 Incidental Take Permits (Habitat Conservation Plans)

- 1) **Maine Trapping** (ME) – Maine Department of Inland Fisheries and Wildlife (MDIFW) is in the process of applying for a section 10 permit for the incidental take of Canada lynx from Maine’s Trapping Program. The Service is revising the draft environmental assessment for MDIFW’s Incidental Take Plan and plans to reinstate a public comment period in early 2014.
- 2) **Criterion Wind** (MD) – The Service announced receipt of permit application on July 31, 2012, for take of the Indiana bat resulting from operation of the Criterion wind power project. The comment period on the draft Habitat Conservation Plan and draft Environmental Assessment closed on October 1, 2012. The Service is in the process of making a permit issuance decision for this project.
- 3) **Beech Ridge Wind** (WV) – On December 5, 2013, the Service issued an incidental take permit to Beech Ridge Energy LLC for take of the Indiana bats and Virginia big-eared bats resulting from expansion and operation of the Beech Ridge wind power project in Greenbrier and Nicholas Counties, WV. The permit authorizes take of 53 Indiana bats and 14 Virginia big-eared bats over the 25-year permit duration.
- 4) **Pennsylvania Forestry HCP** (PA) – The Pennsylvania Game Commission (PGC) and the Department of Conservation and Natural Resources (DCNR) are developing an Habitat Conservation Plan 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 Service will soon announce a public scoping period in the Federal Register for this project.

Classification

- 1) Rufa red knot proposed listing/critical habitat determination** (All States) – On September 30, 2013, the Service published in the Federal Register a proposed rule to list the rufa red knot as a threatened species throughout its range. The proposed listing rule opened a 60-day public comment period, which closed on November 29, 2013.

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 proposal because rufa red knots have been documented in those states during migration.

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

The red knot proposed listing rule can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-30/pdf/2013-22700.pdf>. Additional supporting materials can be found at <http://www.fws.gov/northeast/redknot/>, or at www.regulations.gov and typing FWS–R5–ES–2013–0097 into the Search box.

- 2) Northern long-eared bat and eastern small-footed bat** (All States) – On October 2, 2013, the Service published in the Federal Register a combined proposed rule and 12-month findings on the Center for Biological Diversity’s 2010 petition to list the northern long-eared bat and eastern small-footed bat. The Service found that listing the northern long-eared bat is warranted and proposed to list it as endangered, and found that listing the eastern small-footed bat is not warranted. The Service also found that designation of critical habitat for the northern long-eared bat is not determinable at this time; with this determination, the Service must publish a proposed rule to designate critical habitat for the species within 1 year. The proposed listing rule opened a 60-day public comment period, which closed on January 2, 2014.

The northern long-eared bat proposed listing rule can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-10-02/pdf/2013-23753.pdf>. Additional information can be found at: <http://www.fws.gov/midwest/endangered/mammals/nlba/pdf/FRpropListNLBA2Oct2013.pdf>

- 3) Canada lynx critical habitat revision** (ME, NH, VT) – On September 26, 2013, the Service published in the Federal Register a proposed rule to revise the critical habitat designation for the contiguous United States distinct population segment (DPS) of the Canada lynx. The Service listed the lynx as threatened under the ESA in 2000, designated critical habitat for the species in 2006, and revised critical habitat in 2009. This new revision was undertaken to address two court orders resulting from litigation over the 2009 critical habitat revision. The Service also proposes to revise the definition of the lynx DPS to ensure that all lynx in the

contiguous United States are protected under the ESA. The Service proposes to designate only critical habitat that was occupied at the time of the species' listing in 2000; therefore, only Maine is included in the proposed revision. An informational meeting was held on Monday, November 4, 2013, in Millinocket, ME. The proposed rule opened a 60-day public comment period, which closed on December 26, 2013. The proposed rule can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-26/pdf/2013-23189.pdf>.

- 4) **Wolf** (MA, ME, NH, NY, VT) – On June 13, 2013, the Service published in the Federal Register a proposed rule to list the Mexican wolf as an endangered subspecies in the Southwest and to delist gray wolves elsewhere. The rule also recognizes the eastern wolf as a separate species, *Canis lycaon*, rather than as a subspecies of the gray wolf. Under this proposal, wolves would not be protected under the ESA in the Northeast, as they have been under the gray wolf listing. Current science continues to show that, in the northeastern United States, there are no resident populations of eastern wolf or any wolf species. On the rare occasion that a true wolf is seen in the northeastern states, it is almost certainly a dispersing individual from a neighboring Great Lakes or Canadian population. The Service is not prepared to make a determination on the conservation status of the eastern wolf at this time. Before we can determine whether the eastern wolf warrants listing as endangered or threatened, we must first address outstanding science and policy questions, such as the treatment of wolf–coyote hybrids in terms of how they affect the identity of *C. lycaon* and whether they contribute to the species' viability. The Service held five public hearings on the proposal (in Albuquerque, NM; Denver, CO; Pinetop, AZ; Sacramento, CA; and Washington D.C.). The comment period on the proposed rule closed on December 17, 2013. The proposed rule can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-06-13/pdf/2013-13982.pdf>
- 5) **Loggerhead sea turtle proposed critical habitat rule** (Atlantic Coast States) – On March 25, 2013, the Service's Southeast Region published in the Federal Register a proposed rule to designate portions of island and mainland coastal beaches in six states along the Atlantic Ocean and the Gulf of Mexico as terrestrial critical habitat for the federally endangered Northwest Atlantic (NWA) population of loggerhead sea turtles. The proposed rule can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-25/pdf/2013-06458.pdf>. The public comment period was reopened on July 18, 2013, and closed on September 16, 2013. The comment period reopening notice can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-07-18/pdf/2013-17205.pdf>.

In total, 90 nesting sites in coastal counties located in North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi are identified for possible designation. The National Marine Fisheries Service will propose marine critical habitat for the NWA population of loggerhead sea turtles in a separate rulemaking.

While the species is federally listed in Virginia and will continue to be protected, Virginia beaches are not included in the proposed designation. Loggerhead sea turtles do nest in Virginia, and this beach habitat is important to the overall conservation of loggerhead sea turtles, but the Virginia beaches did not meet the proposed critical habitat selection criteria.

- 6) **Neosho mucket and rabbitsfoot proposed listing and critical habitat rule** (PA, WV) – On September 17, 2013, the Service finalized 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 historic range. The final rule can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-17/pdf/2013-22245.pdf>.

On August 27, 2013, the Service reopened the comment period on the draft economic analysis for the proposed critical habitat designation for the Neosho mucket and rabbitsfoot mussel. The public comment period closed on October 28, 2013. The proposed rule designates approximately 133 river miles (rmi) of critical habitat for the rabbitsfoot in Crawford, Erie, Mercer, and Venango Counties in Pennsylvania. The proposed designation includes: 74.8 rmi in French Creek, 35.6 rmi in the Allegheny River, 12.5 rmi in Muddy Creek, and 10.1 rmi in the Shenango River. Below are the links to the proposed critical habitat rule, first reopening notice and draft economic analysis, and second reopening notice:

<http://www.gpo.gov/fdsys/pkg/FR-2012-10-16/pdf/2012-24151.pdf>

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-09/pdf/2013-10990.pdf>

http://www.fws.gov/arkansas-es/docs/20130206_dEconomic%20Analysis_NM_RF.pdf

<http://www.gpo.gov/fdsys/pkg/FR-2013-08-27/pdf/2013-20671.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.

The Service has prepared a project plan for completing the status review and has begun coordinating work on the review with Service and non-Service personnel. We will continue to accept information until the status review is completed. Any new information since the February 2007 not warranted petition finding can be sent to Steve Shepard in the Maine Field Office at steven_shephard@fws.gov.

- 8) **Eastern cougar proposed delisting rule** (All States) – The Service is preparing a proposed rule to delist the eastern cougar. The proposal is based on the 5-year review issued on March 2, 2011, that concluded the eastern cougar is extinct and recommended the subspecies be delisted. A publication date for the proposed rule has not been set.
- 9) **Delmarva Peninsula fox squirrel proposed delisting rule** (DE, MD, VA) – The Service is preparing a proposed rule to delist the species. The rule follows the Service’s 5-year review, posted on November 28, 2012, that recommends delisting. A publication date for the proposed rule has not been set.
- 10) **Candidate Notice of Review (CNOR)** (CT, DC, MA, ME, MD, NH, NJ, NY, RI, VA) –

On November 22, 2013, the Service published in the Federal Register the annual CNOR announcing the Service's determinations on continuing candidate status for all candidate species. For the Northeast, this includes Hirst Brothers' panic grass (NJ), Kenk's amphipod (MD, DC), and New England cottontail (CT, MA, ME, NH, NY, RI). The Service proposed the rufa red knot for listing in September, but it is still considered a candidate species until a final rule that either withdraws the proposed listing rule or a final listing rule is published.

- 14) **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.
- 15) **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.