

U.S. Fish and Wildlife Service

Region 5 ESA Update

April 8, 2014

General News

- 1) **Conserving Aquatic Species (VA)** – For decades, conservation organizations have realized successes in restoring aquatic resources of the Upper Tennessee River Basin, benefitting both the species and people inhabiting the area. However, the long-term likelihood of survival of many aquatic species in this area remains tenuous. Based on our commitment to strategic habitat conservation, managing and conserving resources at the landscape scale, and the use of cooperative efforts to improve efficiency and conservation outcomes in the face of declining budgets, the Service, with facilitation from the U.S. Geological Survey, has drafted an “Imperiled Aquatic Species Conservation Strategy for the Upper Tennessee River Basin.” With the assistance of our partners, we hope this strategy will contribute in a meaningful way to the prioritization of actions targeting the conservation and recovery of federally listed, proposed, and candidate species of fishes and mussels in the Upper Tennessee River Basin. We are in the process of providing the strategy to our conservation partners to review and help us finalize it.

- 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 March 2014 WNS is confirmed in 23 states and 5 Canadian provinces. Evidence of the causative fungus has been found in 3 additional states. Disease surveillance will continue through April, and additional confirmations are anticipated this year. For updated maps and other information, visit: <http://whitenosesyndrome.org/>
 - Considerable bat mortality, similar to that of the Northeast, has been documented this year in Ohio, Indiana, Kentucky, and Tennessee. Hardest hit species in the Midwest and Southeast have been the northern long-eared bat, tri-colored bat, little brown bat, and Indiana bat. There is still no evidence of mortality in gray bats, but unusual movements (apparent relocation of large numbers of bats) have been observed suggesting potential impact of WNS.
 - The National WNS Implementation Plan was approved by the WNS Executive Committee on March 13, 2014. The implementation plan identifies the costs of the actions identified in the National Response Plan, approved in 2011, and will be posted to the Web site soon.
 - A North American bat population monitoring program is in development (a product of the Conservation and Recovery Working Group). A general technical report is being prepared for peer review in 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 scheduled for 2014 as proof of concept. These will be conducted and funded collaboratively by the Service, NPS, USGS, and Idaho Fish and Game Department.

- 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 plans to provide approximately \$5 million for WNS research and state response in FY2014. In March the Service announced \$1.4 million in research grants to Federal agency partners. Through this first of two planned RFPs, Federal and state partners leveraged ~\$1.6 million from their respective agencies to contribute to these projects. Proposals for the second RFP were due March 31, 2014. We anticipate awarding \$2 million in research grants through the second RFP, and awarding \$1.5 million to state wildlife management agencies through annual WNS capacity grants. Priorities for research funding are determined by the national working groups and the needs detailed in the national implementation plan.
- The Service hosted a screening of two WNS films through the Environmental Film Festival in Washington D.C. on March 27, 2014. The films, “Battle for Bats” and “Race to Save Pennsylvania’s Bats” are available to stream online:

The Battle for Bats: Surviving White-Nose Syndrome: <http://vimeo.com/76705033>
The Race to Save Pennsylvania’s
Bats: <http://www.wqed.org/tv/watch/?series=1&id=361>

- 4) **Section 6 Grant FY13 Awards and 2014 RFP (All States)** – On January 8, 2014, the Service announced the FY14 Request for Proposals for Recovery Land Acquisition (RLA), Habitat Conservation Planning Assistance (HCPA), and Habitat Conservation Planning Land Acquisition grants. Proposals were due March 14, 2014. The Region received four RLA proposals and two HCPA proposals. A date for announcement of grant awards has not been set.
- 5) **New Endangered Plant Discovered in Virginia (VA)** – In 2013, Virginia Division of Natural Heritage ecologists discovered a Virginia location for the federally listed endangered Roan Mountain bluet (*Hedyotis purpurea* var. *montana*), a plant previously known from about a dozen sites in the higher Blue Ridge of North Carolina and Tennessee. The plant was found on the cliff top at Listening Rock in Grayson Highlands State Park, elevation ca. 4,600 feet.
- 6) **Atlantic Salmon Recovery Plan (ME)** – The Service has prepared a Draft Revised Recovery Plan for the expanded Gulf of Maine Distinct Population Segment of Atlantic Salmon. The draft plan is now under review by NOAA-Fisheries; after review by NOAA-Fisheries, the plan will be sent to the State and Penobscot Indian Nation for review. A date for publication of a Notice of Availability in the Federal Register soliciting public comment has not been set.

Section 10 Incidental Take Permits (Habitat Conservation Plans)

- 1) **Maine Trapping (ME)** – The 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 working on a supplemental draft environmental assessment for MDIFW’s Incidental Take Plan and plans to reinstate a public comment period in the spring.
- 2) **Criterion Wind (MD)** – On January 29, 2014, the Service issued an incidental take permit to Criterion Power Partners LLC for take of the Indiana bat resulting from operation of the Criterion wind power project. The permit authorizes the take of up to 12 Indiana bats over 20 years.
- 3) **Pennsylvania Forestry HCP (PA)** – The Pennsylvania Game Commission (PGC) and the Department of Conservation and Natural Resources (DCNR) are developing a 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. On April 4, 2014, the Service published a Federal Register notice announcing a reopening of the comment period on the listing proposal and the location and dates of public hearings to be held in North Carolina and Texas. The second public comment period will close on May 19, 2014.

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.

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

Proposed listing rule: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-30/pdf/2013-22700.pdf>.
Additional supporting materials: <http://www.fws.gov/northeast/redknot/>

Notice reopening comment period: <http://www.gpo.gov/fdsys/pkg/FR-2014-04-04/pdf/2014-07411.pdf>

- 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. On December 2, 2013, the Service extended the public comment period to January 2, 2014. Document pertaining to the rulemaking can be found at the following links:

Northern long-eared bat proposed listing rule: <http://www.gpo.gov/fdsys/pkg/FR-2013-10-02/pdf/2013-23753.pdf>.

Additional

information: <http://www.fws.gov/midwest/endangered/mammals/nlba/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 Service obtained independent peer review of the scientific basis for the proposal and received a report from the peer review panel. On February 10, 2014, the Service published a Federal Register notice reopening the comment period on the proposal to solicit further public comment on the proposal in light of the peer review report; the comment period closed on March 27, 2014. A date for a final decision on the proposal has not been set. 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

- 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 comment period was reopened on July 18, 2013, and closed on September 16, 2013.

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.

A date for the final decision has not been set. Documents pertaining to the rulemaking can be found at the following links:

Proposed rule: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-25/pdf/2013-06458.pdf>.

Notice reopening comment period: <http://www.gpo.gov/fdsys/pkg/FR-2013-07-18/pdf/2013-17205.pdf>.

- 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 listing 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. Documents pertaining to the critical habitat designation rulemaking can be found at the following links:

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

First comment period reopening notice: <http://www.gpo.gov/fdsys/pkg/FR-2013-05-09/pdf/2013-10990.pdf>

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

Second comment period reopening notice: <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 initiated 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.
- 16) Tri-colored bat** (All States) – The Service initiated an internal status review of the tri-colored bat. Coordination, data collection, and information gathering began in 2013. We will continue to accept information until the review is complete. We will be requesting updated information on this species from field offices and states in May 2014. Any new information or questions can be sent to Jonathan Reichard and Christina Kocer in the Regional Office at jonathan_reichard@fws.gov and christina_kocer@fws.gov.