

U.S. Fish and Wildlife Service

Region 5 ESA Update

October 28, 2013

General News

- 1) **Join us in celebrating the 40th anniversary of the Endangered Species Act (All States)** – As we lead up to the 40th anniversary of the ESA on December 28, 2013, the U.S. Fish and Wildlife Service invites you to join us in paying special recognition to this landmark legislation and critical safety net for wildlife. The Service has launched a special Web site for the ESA 40th anniversary: <http://www.fws.gov/angered/ESA40/index.html>. Each week throughout this year, a state-specific effort will be featured in the center of the page. We are working with staff across the region to craft stories that will cycle through the ESA 40th Web site and live on the Service's endangered species state pages: <http://www.fws.gov/angered/map/index.html>. We invite you to take a look at your state's page and let us know if you have any additional story ideas. Thank you for joining us in celebrating four decades of endangered and threatened species conservation!
- 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/angered/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.
 - A recent paper has suggested an alternate genus for the fungus that causes WNS, resulting in the new name *Pseudogymnoascus destructans* (formerly *Geomyces destructans*; see: Minnis and Linder. 2013. *Fungal Biology*)
 - Approval of the national implementation plan is on the agenda for the next meeting of the WNS Executive Committee, anticipated in mid-November.
 - A Canadian WNS response plan has been developed that mirrors the U.S. plan. A Canadian WNS coordinator was hired on 26 August, located in Prince Edward Island.
 - A North American bat population monitoring strategy is in development. The final workshop is planned for 4-7 November 2013. 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.
 - The Annual WNS Workshop was held in Boise, ID, 3-6 September. Over 200 people participated, including those who tuned in via webcast.

- 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 \$2 million for research grants in FY2014, and plan to release an RFP in mid-winter. Priorities for research funding are determined largely by the actions and needs detailed in the national implementation plan.
- 4) **Section 6 Grant Awards** (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.

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) – The Service announced receipt of permit application on August 24, 2012, for take of the Indiana bat and Virginia big-eared bat resulting from expansion and operation of the Beech Ridge wind power project. The comment period on the draft Habitat Conservation Plan and draft Environmental Impact Statement closed on October 23, 2012. The waiting period for the final HCP and final Environmental Impact Statement closed on October 16, 2013. The Service is in the process of making a permit issuance decision for this project.
- 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) Diamond darter final determination on proposed listing and critical habitat (WV)** – On July 26, 2013, the Service published in the Federal Register a final rule listing the diamond darter as endangered, and on August 22, 2013, the Service published the final rule designating critical habitat for the species. A total of 122.5 river miles of critical habitat is designated in Kanawha and Clay Counties, WV and Edmondson, Hart, and Green Counties, KY. The final rules can be found at:
<http://www.gpo.gov/fdsys/pkg/FR-2013-07-26/pdf/2013-17938.pdf>
<http://www.gpo.gov/fdsys/pkg/FR-2013-08-22/pdf/2013-20449.pdf>
- 2) Rufa red knot 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 opens a 60-day public comment period, which closes 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.

- 3) 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. Comments on the proposed listing rule for the northern long-eared bat are being accepted through December 2, 2013. The proposed 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>.

- 4) **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 will be held on Monday, November 4, 2013 from 7:00 to 9:00 PM at the George W. Stearns High School auditorium at 199 State Street, Millinocket, ME. The Service is accepting public comment on this action until December 26, 2013. The proposed rule can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-26/pdf/2013-23189.pdf>.
- 5) **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 scheduled four public hearings on the proposal (in Albuquerque, Denver, Sacramento, and Washington D.C.); however, due to the Federal government shutdown, only the Washington D.C. hearing was held as planned (on September 30). On October 28, 2013, the Service published a Federal Register notice announcing the extension of the comment period until December 17, 2013, the rescheduling of the three public hearings precluded by the government shutdown, and scheduling an additional public hearing in Pinetop, Arizona. The proposed rule can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-06-13/pdf/2013-13982.pdf>; the comment period extension notice can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-10-28/pdf/2013-25390.pdf>.
- 6) **Initiation of 5-Year Reviews of Nine Northeast Species** (CT, MA, MD, NH, NJ, NY, PA, RI, VA, VT, WV) – On August 19, 2013, the Service published a Federal Register notice announcing the initiation of 5-year reviews for the endangered Peter's Mountain mallow, Jesup's milk-vetch, James spinymussel, sandplain gerardia, harperella, American chaffseed,

and rough rabbitsfoot, as well as the threatened northeastern beach tiger beetle and Virginia spiraea. The Endangered Species Act requires the Service to conduct these reviews to ensure that our classification of each species on the Lists of Endangered and Threatened Wildlife and Plants as threatened or endangered is accurate. We are requesting any information that has become available since our original listing of each of these species. The notice can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-08-19/pdf/2013-17328.pdf> .

- 7) **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 original public comment period closed on May 24, 2013, but was reopened on July 18, 2013, along with an announcement making the draft economic analysis available for public comment. The 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.

- 8) **Slabside pearlymussel and fluted kidneyshell proposed critical habitat** (VA) – On September 26, 2013, the Service finalized the listing determination and critical habitat designation for the fluted kidneyshell and slabside pearlymussel. Both species are listed as endangered and approximately 2,218 kilometers (km) (1,380 miles (mi)) of stream channel in Alabama, Kentucky, Mississippi, Tennessee, and Virginia are designated as critical habitat. Specifically in Virginia, approximately 1,899 km (1,181 mi) for the fluted kidneyshell and 1,562 km (970 mi) for the slabside pearlymussel are being designated. There is some overlap of the critical habitat units for these species. In addition, approximately 1.1 miles of Virginia State lands are within or adjacent to critical habitat units.

Here are the links to the final listing and critical habitat rules: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-26/pdf/2013-23356.pdf>, <http://www.gpo.gov/fdsys/pkg/FR-2013-09-26/pdf/2013-23357.pdf>.

- 9) **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 and 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 closes 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>

- 10) 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 we will begin coordinating work on the review with Service and non-Service personnel this month. We will continue to accept information until the status review is completed.
- 11) 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.
- 12) 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.
- 13) Candidate Notice of Review (CNOR) (CT, DC, MA, ME, MD, NH, NJ, NY, RI, VA)** – The Service is preparing the annual CNOR. Federal Register publication will likely be by the end of November. This notice will announce 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, we do not update the information in the candidate forms via the CNOR.

- 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.
- 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.