

DEPARTMENT OF THE INTERIOR  
U.S. FISH AND WILDLIFE SERVICE  
9014 EAST 21<sup>st</sup> STREET  
TULSA, OKLAHOMA 74129

**FINDING OF NO SIGNIFICANT IMPACT**

APPROVAL OF THE AMERICAN BURYING BEETLE  
OIL AND GAS INDUSTRY CONSERVATION PLAN  
AND ISSUANCE OF MULTIPLE SECTION 10(a)(1)(B) PERMITS  
FOR INCIDENTAL TAKE OF THE  
AMERICAN BURYING BEETLE (*Nicrophorus americanus*)  
RESULTING FROM OIL AND GAS ACTIVITIES  
WITHIN THE 45-COUNTY PLAN AREA IN OKLAHOMA

An environmental assessment (EA) and the American Burying Beetle Oil and Gas Industry Conservation Plan (ICP) have been prepared to support the issuance of multiple section 10(a)(1)(B) permits (Permits) for incidental take of the federally listed endangered American burying beetle (*Nicrophorus americanus*, ABB) resulting from geophysical exploration (seismic), development, extraction, or transport of crude oil, natural gas, and/or other petroleum products, and maintenance, operation, repair, and decommissioning of oil and gas pipelines and well field infrastructure. These activities will occur within the approximately 22,858,163-acres (9,250,370 hectares) or 35,716-square miles (92,504 square kilometers) of the 45-county Plan Area in Oklahoma.

Preferred Alternative

The proposed alternative is approval of the ICP as written, subsequent issuance of multiple permits for incidental take of the ABB within the Planning Area during the 22-year term of the ICP, and implementation of the ICP as proposed. Incidental take would be limited to a cumulative total (from all permits issued under the ICP) of 32,234 acres (0.16 percent of the 19,612,333 acres of ABB habitat within the Plan Area) of ABB habitat. Actions covered under the ICP may result in take of Covered Species associated with activities including, but not limited to exploration, development, extraction and transport and/or distribution of crude oil, natural gas, and other petroleum products. The ICP includes the following features:

**INCIDENTAL TAKE**

Authorization of incidental take of ABB under the ICP, through impacts to and loss of habitat, not to exceed a cumulative total from all permits issued under the ICP of 32,234 acres (0.16 percent of the 19,612,333 acres of ABB habitat within the Plan Area) of ABB habitat, under the following conditions:

- The Permittee shall submit Individual Project Plans (IPP) (located on the website at [www.fws.gov/southwest/es/oklahoma/ABBICP](http://www.fws.gov/southwest/es/oklahoma/ABBICP)) for projects that will be covered by the permit.

- Impacts related to a specific IPP may not occur until the Oklahoma ESFO has confirmed approval of the IPP and assigned take to the individual permit.
- The IPP shall provide all information required (in section 7.2.1 of the ICP).
- The Oklahoma ESFO will confirm the portion of the cumulative take authorization that is attributed to each individual permit under the ICP.

## **COVERED AREA (PLAN AREA)**

The permit only authorizes incidental take of the ABB within the approximately 22,858,163-acre (9,250,370 hectares) or 35,716-square mile (92,504 square kilometers) Planning Area, which encompasses the known and potential range of the ABB and its habitat in 45 Oklahoma counties, including: Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Cleveland, Coal, Craig, Creek, Delaware, Garvin, Haskell, Hughes, Johnson, Kay, Latimer, Le Flore, Lincoln, Love, Marshall, Mayes, McClain, McCurtain, McIntosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Tulsa, Wagoner, and Washington. An estimated 37,569 acres (15,204 hectares) of the Planning Area will be directly impacted by covered activities: including an estimated 2,030 miles (3,267 kilometers) of pipeline, 193 miles (311 kilometers) of roads (158 miles (254 kilometers) of permanent roads associated with wells, 30 miles (48 kilometers) of temporary roads associated with wells, and 5 miles (8 kilometers) associated with pipelines) and 3,319 well pads (approximately 4 acres (1.6 hectares) each), and 230 miles (370 kilometers) of electric distribution lines.

## **COVERED ACTIVITIES**

All Covered Activities associated with each project must be fully contained within the ICP Planning Area.

Covered activities are described in section 2.1 and 2.2 of the ICP and include, but are not limited to:

- Geophysical Exploration – also known as seismic exploration
- Construction, operation, and maintenance of new and existing well field infrastructure and decommissioning of obsolete facilities, including:
  - Well pads
  - Drilling and hydraulic fracturing
  - Gas flaring
  - Work and access roads
  - Electrical distribution lines (voltage must be 34.5 kilovolts (kV) or less)
  - Off-site impoundments
  - Communication towers
  - Pipelines located within the boundaries of well pads
- Construction of gathering, transmission, and distribution pipelines
- Construction of associated surface facilities, including:
  - Access roads
  - Booster, compressor, and pump stations
  - Meter stations, mainline valves, pig launchers and receivers, regulator facilities, and other required facilities
  - Natural gas processing and treating facilities

- Communication towers
- Electric distribution lines (voltage must be 34.5 kilovolts (kV) or less)
- Electric substations
- Operation and maintenance of pipeline and surface ancillary facilities
- Decommissioning and reclamation of pipeline and surface ancillary facilities

## MINIMIZATION MEASURES

Many of the industry standards described in Covered Activities (section 2.0 of the ICP) also serve to minimize impacts to the ABB. Permittees agree to implement the following minimization measures:

- Reduce motor vehicle, machinery, or heavy equipment use
- Reduce risk of motor vehicles sparking wildfire
- Increase safety during operation fluid use and storage
- Reduce erosion and increase soil stability
- Provide educational program for construction personnel
- Limit use of artificial lighting
- Limit use of gas flares
- Limit disturbance from mechanical vegetation maintenance
- Limit herbicide use
- Set aside topsoil for replacement following construction

## MITIGATION MEASURES

### Duration of Impacts

- *Temporary impacts* are those that impact ABB habitat for 5 years or less (areas impacted by the project are restored to a condition suitable for ABB use within 5 years of the original impact).
- *Permanent cover change* impacts are defined as impacts that change the successional stage of an area to a different stage (e.g., forest or shrubland to grassland), but do not eliminate ABB habitat.
  - Project proponents will implement the following measures for temporary and permanent cover change project impacts:
    - Replacement of Top Soil
    - Relief of Soil Compaction
    - Re-Establishment of Vegetation
    - Inspection for Invasive Plant Species
- *Permanent* impacts are those that eliminate ABB habitat (e.g., buildings, roads, quarries, strip mines), as well as any impact to habitat that takes more than 5 years to re-establish as suitable for ABB use.

### Habitat Mitigation through Mitigation Lands

Take of ABB through loss of habitat will be offset through conservation and management of ABB habitat in perpetuity (section 4.2.2.2 of the ICP):

- ***Individual- or Permittee-responsible for mitigation lands:*** These consist of mitigation lands established by the Permittee. The Permittee is responsible for ensuring the success of and managing the mitigation land in perpetuity, even if the project is finite in duration (refer to Service guidelines).

- **Conservation Banks:** Conservation banks are mitigation lands that are established by a Bank Sponsor. If a Permittee chooses this option, Permittee must purchase appropriate credits prior to any habitat impacts that could result in take of the ABB. The bank sponsor is responsible for ensuring the success of and managing the mitigation land in perpetuity upon sale of the credits.
- **Third party mitigation lands:** These mitigation lands are usually established for a single project or project proponent rather than multiple projects or proponents as are conservation banks. The mitigation land sponsor (landowner or easement holder) is responsible for ensuring the success of and managing the approved mitigation land in perpetuity.

All mitigation lands should meet the minimum standards and other requirements described in *Southwest Region Guidance for Processing Conservation Bank/Proponent Responsible Mitigation Agreement Documents*.

#### Location of Mitigation

All offsite mitigation provided for the ABB under the ICP must be within an ABB CPA (see Section 3.1.7).

#### Mitigation Ratios

Mitigation ratios are established to provide appropriate mitigation for the type, duration, and location of project-related impacts and related take or effects of take.

### **MONITORING REQUIREMENTS**

Permittees shall monitor the covered activities and ensure appropriate and relevant information on the covered activities is provided to the Service and will monitor compliance with the ICP.

### **REPORTING REQUIREMENTS**

The Permittee will provide an annual report, due on January 31 of each year the permit is in effect, to the Oklahoma ESFO and a copy of the cover letter or e-mail to the Regional Office (section 7.3 of the ICP).

- All permits that include any IPPs with temporary or permanent cover change impacts must also include a report on the status of restoration efforts.
- If the Permittee has more than one IPP under this permit, a separate annual report will be required for each IPP.

### **CHANGED CIRCUMSTANCES**

The ICP provides measures for the following changed circumstances (section 5 of the ICP).

- Assumptions used to develop the ICP are invalid
- Fire, Flood, Drought, and Tornadoes
- Delisting During Permit Term
- Potential Effects to Newly Listed Species or Critical Habitat
- Emergency Repairs Requiring Habitat Clearing
- Covered Species Adversely Affected by Invasive Species
- ABB Range Expansion within the Planning Area

- Permittee Unable to Implement Minimization or Post-Construction Restoration Measures
- New Scientific or Commercial Data Related to Reference Documents

If the Service determines that a changed circumstance has occurred, the following measures will be implemented:

- The Service, in cooperation with the Permittee, will determine the amount of negative impacts that rise to the level of take of the ABB.
- The Service will determine whether, and how much, additional mitigation is needed.
- The Permittee will provide mitigation to adequately cover impacts to ABB habitat.

For all Covered Activities, the Permittee must use the most current reference documents found on the website at <http://www.fws.gov/southwest/es/oklahoma/ABBICP>.

## **FUNDING**

The Permittee may satisfy off-site mitigation by Permittee Responsible Mitigation Lands, Conservation Bank Credits, or Third Party Mitigation Lands.

Funding for Full Implementation of the ICP, Including Changed Circumstances and Post-Construction Restoration may be assured through one of the following options, as described in section 6 of the ICP:

- Financial Test and Corporate Guarantee (self-certification through a statement of how criteria were met and signed by a corporate officer (e.g., CEO or Budget and Finance Officer))
- Letter of Credit
- Trust Fund
- Surety Bond
- Performance Bond
- Insurance

## Other Alternatives Considered

No Action Alternative. Under this alternative the proposed ICP would not be approved and no incidental take permits would be issued. Oil and gas companies in Oklahoma within the range of the ABB would comply with the ESA by avoiding impacts (take) to the Covered Species where practicable. If take could not be avoided and a Federal nexus existed (funded, authorized, or carried out by a Federal agency), an operator or individual would seek take coverage through consultation and a biological opinion issued by the Service to the Federal action agency. If no Federal involvement existed, Applicants or individuals could develop an HCP and apply for incidental take authorization from the Service on a project-by-project basis. Each application would also require independent evaluation under NEPA.

## Background and Public Participation

We developed this document in cooperation with the Oklahoma Independent Petroleum Association (OIPA), its members, and other interested oil and gas companies in an effort to best meet the current and anticipated needs of the industry and the Service's statutory and regulatory requirements.

A Notice of Availability of the draft EA and draft ICP was published in the *Federal Register* on April 16, 2014 (79 FR 21480). The public comment period ended on April 30, 2014.

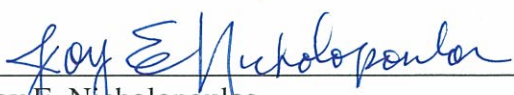
We received 5 sets of comments during the 14-day public comment period: 1) one from Janelle Rieland to inquire about an incorrect website link within the Federal Register Notice, which was corrected the following day; 2) one from Daniel Howard and Carrie Hall (Howard and Hall), professors of biology at Augustana College in Sioux Falls, South Dakota; 3) one from the Oklahoma Department of Wildlife Conservation; 4) one from Devon Energy Corporation; and 5) from the Oklahoma Independent Petroleum Association (OIPA). A summary of the comments we received on the ICP, EA, and associated documents and how we addressed them is included in the final EA.


## Determination

There are several factors the Service takes into consideration when determining whether an EIS should be prepared with respect to issuance of a Permit, including level of controversy and significance of environmental impacts. The Service has determined, based on the type and limited number of comments received during the public comment period that little controversy exists with respect to issuance of permits under the ICP.

The Service recognizes that there will be impacts to the human environment from construction activities permitted by the ICP. However, based upon information contained in the EA, ICP, and supporting data in Service files, we have determined that this action is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102 (2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not warranted.

It is my decision to approve the ICP and, where applicants meet all requirements in the ICP, subsequently issue section 10(a)(1)(B) permits for geophysical exploration (seismic), development, extraction, or transport of crude oil, natural gas, and/or other petroleum products, and maintenance, operation, repair, and decommissioning of oil and gas pipelines and well field infrastructure within ABB habitat in Oklahoma.

  
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Joy E. Nicholopoulos  
Deputy Regional Director  
Southwest Region

  
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Date