

**AMENDMENT**

**To The**

**OIL AND GAS INDUSTRY**

**CONSERVATION PLAN**

**Associated with Issuance of**

**Endangered Species Act Section 10(a)(1)(B) Permits**

**for the American Burying Beetle**

**in Oklahoma**

**Prepared by**

**U.S. Fish and Wildlife Service**

**Oklahoma Ecological Services Field Office**

**9014 E. 21<sup>st</sup> St.**

**Tulsa, Oklahoma 74129**

**Amended December 20, 2018**

**COVER SHEET**

## Amended Oil and Gas Industry Conservation Plan

**TITLE:** Amended Oil and Gas Industry Conservation Plan Associated with Issuance of Endangered Species Act section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma (ICP)

**PERMIT(S):** See individual Applicants / Projects

**Individual Project Package(s) (IPPs):** IPPs provide site-specific information on the number of acres to be impacted, whether those impacts are temporary or permanent, and how much mitigation will be required to fully offset those impacts that result in take, see section 7.2.1. of this amendment.

**SPECIES:** American Burying Beetle Re.

**PLANNING AREA:** The Planning Area encompasses the known and potential range of the ABB and its habitat in 45 counties in the state of Oklahoma, 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 counties.

**COOPERATORS:** U.S. Fish and Wildlife Service; Individual Oil and Gas project proponents engaged in exploration, development, extraction, or transport of crude oil, natural gas, and/or petroleum products; Oklahoma Independent Petroleum Association (OIPA) members.

**TAKE:** The Service is using number of acres of occupied ABB habitat disturbed as a surrogate of number of individuals to estimate the amount of take that is likely to occur (section 3.3.1 of the 2014 ICP). Disturbance of up to 32,234 acres of occupied ABB habitat, which is approximately 0.16 percent of all ABB habitat within its range in Oklahoma, may occur within the Planning Area. These impacts may occur in the form of permanent habitat impacts, temporary habitat impacts, and permanent change in cover type (fragmentation) resulting from construction of oil and gas facilities. Additionally, habitat may be affected during operations, maintenance, and emergency response (excluding crude oil spills) during the life of the ICP. We expect some level of effects on any ABBs located within the disturbed areas that rises to the level of take.

**FUNDING PLAN:** Applicants are committed to full implementation of the ICP and will mitigate for all unavoidable impacts according to the Mitigation Strategy for the ABB and the anticipated impacts described in their IPP application. Funding assurances will be provided with their Individual Project Package application (2014 ICP, section 6.0).

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**MONITORING PLAN:** Annual reports are due on March 1 of each year that the Permit is in effect.

**DURATION OF AGREEMENT:** This agreement will be in effect for 25 years from the original signature and date of approval, May 20, 2014 and it, with any issued permits, will expire on May 20, 2039. Applicants may apply for a permit until May 20, 2024, may submit IPPs for approval until May 20, 2027, and all construction related to IPPs must be completed by May 20, 2030. Date-certain limits are provided to simplify permit tracking and reduce confusion.

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## **INTRODUCTION**

We, the U.S. Fish and Wildlife Service (Service) developed the original Oil and Gas Industry Conservation Plan (2014 ICP) to provide a short-term development window and longer-term operations and management period as a mechanism for proponents to meet statutory and regulatory requirements as they are engaged in 1) geophysical exploration (seismic); 2) development, extraction, transport, and/or distribution of crude oil, natural gas, and/or other petroleum products; and 3) maintenance, operation, repair, and decommissioning of oil and gas pipelines and well field infrastructure while promoting conservation of the endangered American burying beetle (*Nicrophorus americanus*; ABB). Although habitat may be affected during operations, maintenance, and emergency response (excluding the actual impact of crude oil spills) during the life of the ICP, and we expect some level of effects on any ABBs located within the disturbed areas, impacts that rise to the level of take resulting from these activities are generally minimal (as described in section 2.2.3 of the 2014 ICP).

The ICP is a habitat conservation plan prepared by the Service for covered activities within the approved Planning Area, in which Federally-listed or protected species are known, or are likely to occur. The original ICP was approved May 21, 2014 and allowed 24 months for construction and operations and maintenance until May 21, 2036. The ICP was amended in 2016 with a three year extension to May 21, 2019. The approved ICP allows individual oil and gas companies to apply for an ESA 10(a)(1)(B) permit for incidental take of the ABB associated with activities covered in the ICP if they agree to comply with the terms and conditions of the ICP and meet permit issuance criteria. In the ICP, the Service has defined incidental take in terms of the number of acres of occupied ABB habitat disturbed by covered activities.

The ICP Planning Area consists of the following 45 counties in Oklahoma: Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Cleveland, Coal, Craig, Creek, Delaware, Garvin, Haskell, Hughes, Johnston, 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. The Planning Area covers approximately 22,858,163 acres (9,250,370 hectares) or 35,716 square miles (92,504 square kilometers).

## **PROPOSED AMENDMENT**

The proposed amendment to the ICP will extend the ICP sign-up period by 5 years. ICP applications must be received by May 20, 2024, but may be approved after that date; applications for Individual Project Plans (IPP) must be received by May 20, 2027; and all construction related to IPPs must be completed by May 20, 2030. It will also provide date-certain deadlines, which will reduce confusion and simplify tracking for both permittees and the Service. All incidental take coverage provided by the proposed amendment to the ICP will end on May 20, 2039, regardless of when permits are issued or IPPs are approved.

## Amended Oil and Gas Industry Conservation Plan

There are no proposed changes to the Federally-listed species or area covered, and no increases in the total amount of incidental take provided through the original ICP that was approved May 21, 2014.

The following sections from the approved ICP are proposed for amendment:

Section 1.4 – ICP and Permit Duration

Section 3.2 – Anticipated Effects on the American Burying Beetle (associated with the amendment, but not for total effects)

Section 3.3 Impacts Analysis and Estimated Incidental Take (associated with the amendment)

### **1.4 – ICP and Permit Duration**

The proposed amended to the ICP will not become effective until a decision is made under NEPA following publication of the *Federal Register* Notice of Availability of the Environmental Assessment on the final amended ICP, a 30-day public comment period, and the Service addresses public comments. If the Service makes a finding of no significant impact (FONSI), the amended ICP will be available for applications for an additional 10 years from its initial effective date, May 21, 2014, or until May 20, 2024.

To reduce confusion and simplify tracking for both permittees and the Service we propose date-certain dates for each phase: ICP applications must be received by May 20, 2024, but may be approved after that date; applications for Individual Project Plans (IPP) must be received by May 20, 2027; and all construction related to IPPs must be completed by May 20, 2030; operation and maintenance activities are authorized until the amended ICP, and any permits issued under the amended ICP, expires on May 20, 2039. Therefore, incidental take authorized under the ICP (original and proposed amendment) may occur for a maximum of 25 years from the original ICP authorization on May 21, 2014 and all incidental take authorization will end on May 20, 2039, regardless of when applications are approved under this proposed amendment.

Permittees with existing ICP permits are bound by the terms and conditions of their existing permits. If they want the extended timeframes or reduced restrictions regarding being completely contained within the ICP Planning Area, they must apply for an amendment to their permit.

### **3.2 – Anticipated Effects on the American Burying Beetle**

Since there are no changes to the Planning Area (covered area), covered activities, covered species, or the amount of disturbance that will result in incidental take under this amendment from the 2014 ICP and the only proposed changes in anticipated effect on ABB is the time frame within which the incidental take can occur. There may be an increase in enrollment, number of permits, under this proposed amendment because oil and gas activity has increased recently; however, we are not authorizing any changes to the overall effects on ABBs that were not anticipated under the original 2014 ICP. Take is expected to occur in the form of injury or death of adults, larvae, and eggs from by crushing or collision, or from limiting available resources, resulting in the loss of breeding, feeding, and sheltering habitat. Activities related to operation and maintenance, reclamation, and decommissioning are also expected to result in take of the ABB.

The estimate of potential impacts to the ABB from industry activities for the approved ICP was based on known impacts at the time of ICP development and industry predictions. The cumulative amount of take authorized under the approved ICP will result from impacts to 32,234 acres of suitable ABB habitat. Extending the same level of take over additional time should reduce the rate of potential impacts to local habitat and ABB populations. Spreading impacts over more years would allow temporary soil disturbance initiated in the first few years to be partially or fully restored before impacts from later projects have begun. The ABB is an annual species and reducing take in any given year should allow more adult beetles to survive into the next year.

### **3.3 – Impacts Analysis and Estimated Incidental Take**

The Service has assessed the potential impacts of the five year extension of the ICP and reviewed the associated biological opinion (BO) for industry related activities within the eastern Oklahoma planning area. Industry activity and impacts have been less than expected due to reduced petroleum prices and market conditions. We have authorized cumulative impacts to 32,234 acres of suitable ABB habitat, but as of December 19, 2018, we have only approved impacts to about 5,225 acres through permit holders' IPPs. The current ICP is only open for new applications through May 20, 2019, and incidental take authorized through the ICP is unlikely to approach the 32,234 acres allowed by that date. The final amendment does not change the total, cumulative amount of incidental take allowed under the ICP.

Incidental take authorized through the proposed amendment to the ICP would not be increased beyond the cumulative 32,234 acres, which is approximately 0.16 percent of the total ABB habitat in Oklahoma (19,612,333 acres (7,936,830 hectares)), and a much smaller percentage of

total ABB habitat range-wide. The section 7 consultation on this amendment is not anticipated to determine that this action will jeopardize the species based upon the determination in the BO for the original agreement, as the action and amount of impact has not increased.

Authorizing the ICP permit application period over 10 years (instead of 2 years) is expected to reduce some impacts to local habitat and ABB populations because impacts could be spread out over more time as the construction window is lengthened. That may provide incentive to permittees to keep some suitable habitat intact for additional time. Allowing additional time for construction should not increase impacts. The amendment to the ICP would not result in additional cumulative impacts. In addition, although few projects would take more than 2 years to construct, allowing for construction until May 20, 2030, will give applicants flexibility in implementing projects that are approved, but possibly delayed due to multiple factors. Extending the ICP by 5 years would also include operations and maintenance related incidental take until May 20, 2039. Applicants must still get IPP approval for all construction or maintenance related take and the amendment will not increase the amount of take that will be authorized.

Some additional species may be listed, delisted, or proposed for listing as threatened or endangered during the extension, but such actions would not be related to the extension. For example, the northern long-eared bat (NLEB) was recently listed as threatened and a new 4(d) rule was finalized on January 14, 2016. The existing ICP does not include incidental take for any species other than the ABB and avoidance measures (provided on our website) for any newly listed species may need to be added or modified. Some additional restrictions or avoidance measures may be required for oil and gas activities to comply with the ICP, but no additional impacts to threatened or endangered species would occur due to the amendment. Our non-jeopardy determination, reasonable and prudent measures for incidental take, and assessment of the effects of the action are not based on timelines. Extending the ICP for an additional 5 years is not anticipated to change the May 21, 2014, BO's determinations, or implementation of the BO.

In addition to the amendments proposed above, the following issues are clarified but do not require any changes relative to the current ICP.

#### **4.2.2.2 - Offsite Habitat Mitigation through Mitigation Lands for Temporary, Permanent Cover Change, and Permanent Impacts**

Due to limited availability of credits at conservation banks at times, ICP permit holders have suggested other mitigation options. All mitigation options can be considered, but as stated in the current ICP, proposals must, to the maximum extent practicable, meet the minimum standards

and other requirements described in *American Burying Beetle Conservation Strategy for the Establishment, Management, and Operations of Mitigation Lands* found at <http://www.fws.gov/southwest/es/oklahoma/ABBICP>.

## **7.0 – Permit Processing and Implementation**

There was one minor change to permit processing and ICP implementation provided in the amended ICP in 2016 and retained in this proposed amendment. The restriction that the entire project had to be completely within the 45-county ICP planning area was removed from the IPP Eligibility Determination form. Therefore, projects that cross the planning area boundaries and meet all other ICP requirements are allowed to seek authorization for incidental take of ABB under the proposed amendment to the ICP. However, the proposed ICP amendment will not cover listed species or evaluate impacts outside the covered area. The Permittees will be responsible for seeking coverage for other listed species, as well as evaluating impacts to the environment on those portions of their projects that fall outside the planning area.

**SIGNATURES**

This Amended Oil and Gas Industry Conservation Plan Associated with Issuance of Endangered Species Act section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma is approved as of the signature date below, and is in effect as of that date.

**Approved:**

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**Regional Director, Southwest Region**

**Date**

**Albuquerque, New Mexico**