

## Summary of Comments and U.S. Fish and Wildlife Service Response

### Notice of Availability and Request for Comments:

Environmental Assessment and Amended Oil and Gas Industry Conservation Plan for the American Burying Beetle in Oklahoma

81 FR 12113

The U.S. Fish and Wildlife Service (Service) received one comment during the 30-day comment period, starting March 8, 2016. Comments were provided on March 22, 2016 by Hydration Engineering on the Draft Amended Oil and Gas Industry Conservation Plan (ICP) for the American Burying Beetle in Oklahoma" and to the "90-Day Finding on a Petition to Delist the American Burying Beetle (ABB)". Only comments related to the Amended ICP are addressed in this document.

*Comment* - Except for high cost, high exposure, projects Section 10 permit opportunities are ignored.

*Service Response* – The Service is not aware of any Section 10 habitat conservation plan (HCP) requests that have been ignored. Upon receiving a permit application and conservation plan, the Service must consider issuance criteria described in section 10(a)(2)(B) of the Endangered Species Act (ESA) in determining whether to issue the permit. None of these criteria are based on exposure or cost of a project.

The Service developed the ICP, which is a general conservation plan, or type of HCP developed and written by the Service, to streamline Endangered Species Act compliance for the oil and gas industry. The ICP provides a streamlined process to receive authorization for take associated with oil and gas activities. The Service could develop similar plans for other industries, but anyone can apply for a Section 10 permit by developing their own HCP for their specific project or projects as long as issuance criteria are met. Entities that need incidental take authorization for their activities are responsible for developing their own HCP as part of their application for a Section 10 permit.

*Comment* - The statement in the Draft Amended OIL AND GAS INDUSTRY CONSERVATION PLAN that the Oklahoma Independent Petroleum Association (OIPA) members were "COOPERATORS" is deliberately misleading can be confirmed by reading the comments of the OIPA on the original draft Oil and Gas ICP.

*Service Response* – The oil and gas industry asked the Service to provide a more streamlined permitting process for their actions within the ABB range in Oklahoma. The Service met with oil and gas industry representatives multiple times during the development of the ICP. OIPA represented the oil and gas industry and was used to contact and coordinate with the Service and industry. OIPA worked with oil and gas industry companies to provide

descriptions of proposed actions and estimates of the quantity of oil and gas activities that could be expected over the term of the ICP. OIPA also provided input and comments during the development of the ICP. The Service considers OIPA's actions cooperation, although we realize that OIPA did not agree with everything in the ICP and not all industry representatives would consider themselves cooperators. The Service did not intentionally use this language to mislead anyone.

*Comment* - Project specific presence/absence surveys do not prove or disprove the potential for harm to the ABB.

*Service Response* – We agree, presence /absence surveys for ABBs are conducted to determine if the species is present at the survey site. The potential for ABB take is determined by considering the proposed action, the presence or likelihood of ABB presence at the site, the suitability of the habitat at the site and time of year the action is proposed. The ICP describes the potential take related to oil and gas industry activities.

*Comment* - The cost of Conservation Bank credits is excessive and modest alternative investments would be much more useful.

*Service Response* – The Service has no control over the cost of conservation bank credits. Conservation banks are approved by the Service, but the banks and marketing of credits are a private enterprise and costs are determined by, or negotiated with, the bank. The use of conservation banks is just one of the mitigation options available to permittees through the ICP. The Service will consider any mitigation options that provide mitigation commensurate with the impacts. Permittees may choose to do their own mitigation or have a third party provide the mitigation for them if they are looking at other options to reduce costs. Most oil and gas companies are choosing to use conservation banks, but it is not required by the ICP. Conservation banks can be used to provide mitigation for incidental take related to actions addressed through Section 7 and Section 10 of the ESA and are not exclusively used for the ICP.

*Comment* - The use of Conservation Banks is not an appropriate strategy for restoration of the ABB to its former range.

*Service Response* – Conservation banks are not currently being used to restore the ABB to its former range. Conservation banking can be part of a recovery strategy and contribute towards restoration of habitat or populations, but are not currently included in any reintroduction efforts. The two existing ABB conservation banks are within the species' current range in Oklahoma. The Service provides guidance for the location of conservation banks and the current guidance (and banking market conditions) would favor conservation banks in priority areas with existing populations.

*Comment* - The Osage Agency and the Oklahoma Field Office should complete Section 7 consultations with the full participation of the Osage Mineral Estate per Secretarial Order 3206.

*Service Response* – A programmatic formal Section 7 consultation is in progress with the Bureau of Indian Affairs (BIA) in Osage County. The Service believes that the ICP is relevant to the needs of the ABB and the oil and gas industry in Osage County. Most oil and gas activities in Osage County would have the option of using Section 7 or Section 10 of the ESA to address potential take. The formal Section 7 consultation will cover all BIA regulated oil and gas activities in Osage County, but oil and gas companies that have operations in Osage and other counties could use the ICP to cover incidental take for all of their actions. Some proposed projects, like some pipelines, may not be regulated by BIA and may choose to use the ICP or a habitat conservation plan (HCP) to address potential incidental take associated with the project.