



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

# Endangered Species Act/U.S. Fish and Wildlife Service Issues Final Rule: American Burying Beetle Downlisted from Endangered to Threatened

09/09/2020

The United States Fish and Wildlife Service ("Service") issued a September 3rd final rule reclassifying (i.e., downlisting) the American burying beetle ("ABB") from endangered to threatened on the Endangered Species Act ("ESA") Federal List of Endangered and Threatened Wildlife.

The ABB's range includes a portion of the State of Arkansas.

For the Service to downlist a species it is required to determine that threats have been eliminated or controlled. In making this assessment, the Service reviews five factors:

1. Is there a present or threatened destruction, modification, or curtailment of the species' habitat or range?
2. Is the species subject to over-utilization for commercial, recreational, scientific, or educational purposes?
3. Is disease or predation a factor?
4. Are there adequate existing regulatory mechanisms in place, taking into account the initiatives by states and other organizations to protect the species or habitat?
5. Are other natural or manmade factors affecting its continued existence?

The ABB is a beetle that once lived in 35 states. Natural populations are now known to occur in only four states which include:

- Arkansas
- Rhode Island
- Oklahoma
- Nebraska

While the Service states in the final rule that the ABB is no longer in danger of extinction, it is still deemed threatened. The threatened status is stated to be due to continuing current and ongoing threats. These are stated to include increasing temperatures due to change in climate and land use changes associated with urbanization and agricultural activities.

The preamble includes a discussion of the Service's development and implementation of an ABB recovery plan and what it describes as a "comprehensive biological review of the best scientific and commercial data regarding the status of the species (including an assessment of the potential threats)."

The final rule also includes Section 4(d) measures that are deemed advisable to provide for the conservation of the ABB. The rule prohibits all intentional take of the ABB and describes itself as tailoring the incidental take prohibitions and exceptions under Section 9(a)(1) of the ESA as a means to provide protective mechanisms to state and federal partners (as well as private landowners). The stated objective is to allow them to continue with certain activities that are not anticipated to cause direct injury or mortality to the ABB and that will facilitate the conservation and recovery of the species.

The measures are particularly relevant to the oil and gas industry in Oklahoma.

A link to the final rule can be downloaded [here](#).