American Burying Beetle/Endangered Species Act: Center for Biological Diversity Notice of Intent to Sue U.S. Fish and Wildlife Service Regarding Downlisting Rule

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01/13/2021

The Center for Biological Diversity ("CBD") sent the United States Fish and Wildlife Service ("Service") a January 10th Notice of Intent to Sue ("Notice") for alleged violations of the Endangered Species Act ("ESA").

The Notice challenges the Service's decision to reclassify the American Burying Beetle ("ABB") as threatened as opposed to endangered.

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 Services 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 initiative 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 only in four states, which include:

- Arkansas
- Rhode Island
- Oklahoma
- Nebraska

The Service determined in a September 3, 2020, rule that the ABB is no longer in danger of extinction. It did, however, find it is still threatened.

CBD argues in its January 12th Notice that the Service has violated Section 4 of the ESA. Section 4 requires the Service to make listing determinations, including reclassifications, solely on the basis of the best scientific and commercial data available. It argues that remnant populations of ABB face existential threats from climate change and habitat loss and fragmentation. It further states:

The 2019 Service's Species Status Assessment (SSA) for the American burying beetle found that due to climate change, extinction of the beetle in 59% of its current range is inevitable within the next twenty to forty years, and by the end of this century all but one small population of this once ubiquitous beetle will be lost. Without the protections that accompany the ESA's endangered status, the American burying beetle will soon join the multitude of species driven to extinction by humans.

Specific arguments articulated by CBD include:

1. The Reclassification is Contrary to the Best Available Science
2. ABB is Endangered in a Significant Portion of its Range
3. The Recovery Criteria and Objectives for the American Burying Beetle Have Not Been Met
4. The Service's 4(d) Rule Fails to Provide for the Conservation of the American Burying Beetle

A copy of the Notice can be downloaded here.