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113TH CONGRESS
2D SESSION

S. 2678

To remove the American burying beetle from the list of endangered species under the Endangered Species Act (16 U.S.C. 1531 et seq.).

IN THE SENATE OF THE UNITED STATES

JULY 29, 2014

Mr. INHOFE (for himself and Mr. COBURN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To remove the American burying beetle from the list of endangered species under the Endangered Species Act (16 U.S.C. 1531 et seq.).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Burying Beetle Relief Act of 2014".

SEC. 2. FINDINGS.

Congress finds that—

(1) in 1989, the United States Fish and Wildlife Service (referred to in this section as "the Serv-

ice'') listed the American burying beetle as an endangered species under the Endangered Species Act (16 U.S.C. 1531 et seq.);

(2) in making the decision to list the American burying beetle as an endangered species, the Service—

(A) stated that the American burying beetle was ''once widely distributed throughout eastern North America''; and

(B) considered possible factors in the population decline of the American burying beetle, but ultimately concluded that ''the cause of the species' decline is unknown'';

(3) as of the date of the decision, there were only 2 known populations of the American burying beetle, 1 located in Eastern Oklahoma and 1 located on an island off the coast of Rhode Island;

(4) at that time, the Rhode Island population was estimated to be around 520 American burying beetles and the Oklahoma population to be fewer than 12 American burying beetles;

(5) the Service has not completed a range-wide population survey of the American burying beetle since 1985;

(6) in 1991, the Service published a recovery plan for the American burying beetle, with the objective of protecting and maintaining the extant population in Rhode Island and the populations in Oklahoma;

(7) in order to reconsider the listing status of the American burying beetle, the Service is required to identify 3 populations of American burying beetle that have been reestablished (or additional populations discovered) within each of 4 broad geographical areas of the historical range of the American burying beetle;

(8) the Service has identified these 4 geographical areas as—

(A) the Midwest region, including Oklahoma and most States between Texas, Louisiana, and Montana;

(B) the Great Lakes region;

(C) the Southeast region; and

(D) the Northeast region, including Rhode Island;

(9) in 2008, the Service performed the first 5-year review of the American burying beetle, which—

(A) determined that—

(i) the criteria for reconsidering the listing of the American burying beetle had been met in the Midwest region, ''where additional occurrences of the American burying beetle have been discovered''; and

(ii) that, ''as a consequence, the total number of American burying beetle in this recovery area is believed to greatly exceed the numerical target'' established under the recovery plan;

(B) stated that ''although one of four geographic recovery areas for the American burying beetle has met the criteria for reclassification, the species presumably remains extirpated in most of its historic range''; and

(C) concluded that the American burying beetle should remain listed as an endangered species;

(10) as of the date of enactment of this Act—

(A) the population of the American burying beetle in Nebraska is estimated to contain over 3,000 American burying beetles, making that one of the largest known populations, although at the time the American burying beetle

was listed in 1989 none were known to live in Nebraska;

(B) the population of the American burying beetle in Oklahoma has grown dramatically from the population numbers in 1989 when the American burying beetle was listed as an endangered species and is believed to be well into the thousands;

(C) the Service believes that the American burying beetle exists in 45 of the 77 counties in Oklahoma, although at the time the Service listed the American burying beetle as endangered in 1989, only 4 counties in Oklahoma had a known American burying beetle population;

(D) Oklahoma State officials are concerned about the lack of mitigation options available to developers relating to the American burying beetle; and

(E) Oklahoma Department of Wildlife Conservation Director Richard Hatcher has not received a response to the request submitted to the Service on April 15, 2013, which asked—

(i) for an update to the recovery plan for the American burying beetle; and

(ii) that the process of delisting the American burying beetle begin;

(11) Service documents published close to the date of enactment of this Act list the States of Arkansas, Kansas, Massachusetts, Missouri, Nebraska, Ohio, Oklahoma, Rhode Island, South Dakota, and Texas as having an American burying beetle population;

(12) the history of the process of the gray wolf being delisted as an endangered species, first in some areas of the United States and then entirely, provides an example that could be used to delist the American burying beetle in the Midwest region;

(13) important points in the history of the gray wolf being delisted include that—

(A) in 2011, the Service decided to remove the gray wolf from the endangered species list in the States of Idaho, Montana, Utah, Washington, and parts of Oregon while leaving the species listed in Wyoming;

(B) this partial delisting was due to the healthy population levels present in those States at that time; and

(C) less than 2 years later, in 2013, the delisting was extended to Wyoming, and the

gray wolf was no longer listed as endangered under the Endangered Species Act (16 U.S.C. 1531 et seq.);

(14) there is support for the American burying beetle being completely delisted, because—

(A) beginning in 2007, the Service promulgated an official policy stating that when the Service evaluates the probability of a species being lost to extinction across the range of that species, the Service does so within the known existing range of that species, not a hypothetical historic range of that species;

(B) using the policy described in subparagraph (A), if the American burying beetle were reconsidered as a candidate for being listed as an endangered species under the Endangered Species Act (16 U.S.C. 1531 et seq.), the American burying beetle likely would not be eligible because the known populations are not in danger of being lost and instead are expanding as of the date of enactment of this Act; and

(C) the historic range of the American burying beetle, described by the Service as being ''ubiquitous'' at some point, is reliant on

data, observations, and studies that are more than 70 years old and are not easy to locate;

(15) there is a lack of information about the extent of the American burying beetle population as of the date of enactment of this Act, although the population appears to have expanded since the American burying beetle was originally listed as an endangered species;

(16) it is not clear whether the increased population count of the American burying beetle is due to the scientific community being more apt at locating these insects or whether the population has actually increased; and

(17) it is clear the American burying beetle has proven much more resilient than the Service originally believed, rendering the decision of the Service to list the American burying beetle as an endangered species under the Endangered Species Act (16 U.S.C. 1531 et seq.) indefensible.

SEC. 3. REMOVAL OF ENDANGERED SPECIES STATUS.

Notwithstanding the final rule of the United States Fish and Wildlife Service entitled ''Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the American Burying Beetle'' (54 Fed. Reg. 29652 (July 13, 1989)), the American burying beetle

shall not be listed as a threatened or endangered species under the Endangered Species Act (16 U.S.C. 1531 et seq.).

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