



**Billing Code: 4333-15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS-R2-ES-2016-N199; FXES1114020000F2-178-FF02ENEH00]**

**Notice of Intent to Prepare a Draft Environmental Impact Statement for a Proposed Habitat Conservation Plan for the Endangered American Burying Beetle for American Electric Power in Oklahoma, Arkansas, and Texas**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent; announcement of meetings; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are notifying the public that we intend to prepare a draft environmental impact statement (EIS) to evaluate the impacts of alternatives relating to the proposed issuance of an Endangered Species Act (ESA) Incidental Take Permit (ITP) in response to the American Electric Power Habitat Conservation Plan (HCP). The ITP is needed to cover incidental take of the endangered American burying beetle (ABB) from activities associated with construction, operation, and/or maintenance of electric transmission and distribution lines or other associated

infrastructure. American Electric Power (AEP) intends to apply for an ITP under the ESA and agrees to develop and implement the proposed HCP. We also are announcing the initiation of a public scoping process to engage Federal, Tribal, State, and local governments and the public in the identification of issues and concerns, potential impacts, and possible alternatives to the proposed action.

**DATES:** In order to be included in the analysis, all comments must be received or postmarked by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. See **SUPPLEMENTARY INFORMATION** regarding meeting dates.

**ADDRESSES:** Please provide comments in writing, by one of the following methods:

*Email:* OKES\_HCP\_EIS@fws.gov;

*Facsimile:* 918–581–7467, Attn: OKES HCP EIS; or

*U.S. mail:* Field Supervisor, Oklahoma Ecological Services Field Office, U.S.

Fish and Wildlife Service, 9014 E. 21st St., Tulsa, OK 74129.

Please specify that your information request or comments concern the AEP draft EIS/HCP (TE01909C).

See **SUPPLEMENTARY INFORMATION** regarding meeting locations.

**FOR FURTHER INFORMATION CONTACT:** Jonna Polk, by U.S. mail at the U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office, 9014 E. 21st St., Tulsa, OK 74129, or by phone at 918–581–7458. If you use a telecommunications

device for the deaf (TDD), please call the Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We publish this notice in compliance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations (40 CFR 1501.7, 1506.6, and 1508.22), and section 10(c) of the Endangered Species Act of 1973 (the Act), as amended (16 U.S.C. 1539(c)). We intend to gather the information necessary to determine impacts and alternatives to support a decision regarding the potential issuance of an incidental take permit to AEP, and the implementation of the supporting draft habitat conservation plan (HCP).

### **Meeting Information**

We will conduct four public scoping meetings within the 62-county proposed covered area, which includes the ABB range: Tulsa, OK; McAlester, OK; Fort Smith, AR; and Texarkana, TX. Exact meeting locations and times will be announced in local newspapers and on Service websites at least 2 weeks prior to each event (Oklahoma Ecological Services Office website, <http://www.fws.gov/southwest/es/Oklahoma/>; Arkansas Ecological Services Office website, <https://www.fws.gov/arkansas-es/>; and Arlington, Texas, Ecological Services Office website, <https://www.fws.gov/southwest/es/ArlingtonTexas/>). The scoping meetings will provide the public with an opportunity to ask questions and discuss issues with Service staff regarding the EIS and provide written comments.

Persons needing reasonable accommodations in order to attend and participate in a public meeting should contact us at the address listed in **ADDRESSES** no later than 1 week before the relevant public meeting. Information regarding this proposed action is available in alternative formats upon request.

We will accept written comments at each meeting. You may also submit written comments to the Field Supervisor at the email or U.S. mail addresses in **ADDRESSES**.

## **Background**

Section 9 of the ESA prohibits “take” of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1531–1544). Under section 3 of the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term “harm” is further defined by regulation as an act that actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is also further defined in the regulations as an intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Under section 10(a)(1)(B) of the Act, the Secretary of the Interior may authorize the taking of federally listed species if such taking occurs incidental to otherwise legal activities and where a conservation plan has been developed under section 10(a)(2)(A)

that describes: (1) the impact that will likely result from such taking; (2) the steps an applicant will take to minimize and mitigate that take to the maximum extent practicable and the funding that will be available to implement such steps; (3) the alternative actions to such taking that an applicant considered and the reasons why such alternatives are not being utilized; and (4) other measures that the Service may require as being necessary or appropriate for the purposes of the plan. Issuance criteria under section 10(a)(2)(B) for an incidental take permit require the Service to find that: (1) the taking will be incidental to otherwise lawful activities; (2) an applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) an applicant has ensured that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the measures, if any, we require as necessary or appropriate for the purposes of the plan will be met. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

### **Public Scoping**

A primary purpose of the scoping process is to receive suggestions and information on the scope of issues and alternatives to consider when drafting the EIS, and to identify significant issues and reasonable alternatives related to the Service's proposed action (issuance of the ITP under the AEP HCP). In order to ensure that we identify a range of issues and alternatives related to the proposed action, we invite comments and suggestions from all interested parties. We will conduct a review of this project according

to the requirements of NEPA and its regulations, other relevant Federal laws, regulations, policies, and guidance, and our procedures for compliance with applicable regulations.

Once the draft EIS and draft HCP are completed, we will offer further opportunities for public comment on the content of these documents through additional public meetings and a 90-day public comment period.

## **Alternatives**

### ***No-Action Alternative***

Under the no-action alternative, AEP would comply with the Act by avoiding impacts to (take of) the ABB where practicable. If take cannot be avoided and there is Federal involvement in the project (for example, a Federal permit, such as a Corps of Engineers section 404 Clean Water Act permit, authorization, or funding exists), AEP may receive take coverage through a biological opinion issued by the Service to the Federal action agency. If there is no Federal involvement in the project, AEP can apply for an incidental take permit from the Service. This approach is more time consuming and less efficient, because permits would need to be considered and processed one project at a time, which could result in an isolated, independent mitigation approach.

### **Proposed Alternative**

The proposed action is issuance of an incidental take permit for the covered species during construction, operation, and/or maintenance of electric transmission and distribution lines or other associated infrastructure. The proposed HCP, which must meet the requirements in section 10(a)(2)(A) of the Act, would be developed in coordination

with the Service and implemented by AEP. This alternative will allow for a comprehensive mitigation approach for authorized impacts and result in a more efficient and timely permit processing effort for the Service and AEP. Actions covered under the requested incidental take permit may include possible take of covered species associated with activities including, but not limited to, construction, operation, and/or maintenance of electric transmission and distribution lines or other associated infrastructure. The proposed permit submitted by American Energy Power provides coverage for a period of 30 years.

Sixty-two counties are in the proposed permit area, including Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Cleveland, Coal, Craig, Creek, Delaware, Garvin, Haskell, Hughes, Johnston, Kay, Latimer, Le Flore, Lincoln, Logan, Love, Marshall, Mayes, McClain, McCurtain, McIntosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Tulsa, Wagoner, and Washington Counties in Oklahoma; Clark, Crawford, Franklin, Hempstead, Johnson, Little River, Logan, Miller, Sebastian, Scott, and Yell Counties in Arkansas; and Bowie, Fannin, Lamar, and Red River Counties in Texas. The species covered under the requested incidental take permit is the ABB. We will be evaluating whether the covered activities will impact other species and whether they should be included on the permit or if management practices can be implemented that are sufficient to avoid take. These species and their legal status include:

- American alligator (*Alligator mississippiensis*) – Threatened (Similarity of Appearance)

- Arkansas fatmucket (*Lampsilis powellii*) – Threatened
- Arkansas River shiner (*Notropis girardi*) – Threatened, Arkansas R. Basin population, with Critical Habitat
- Gray bat (*Myotis grisescens*) – Endangered
- Harperella (*Ptilimnium nodosum*) – Endangered
- Indiana bat (*Myotis sodalis*) – Endangered
- Least tern (*Sterna antillarum* [now recognized as a subspecies *athalassos*]) – Endangered, interior population
- Leopard darter (*Percina pantherina*) – Threatened with Critical Habitat
- Neosho madtom (*Noturus placidus*) – Threatened
- Neosho mucket (*Lampsilis rafinesqueana*) – Endangered with Critical Habitat
- Northern long-eared bat (*Myotis septentrionalis*) – Threatened
- Ouachita Rock pocketbook (*Arkansia wheeleri*) – Endangered
- Ozark big-eared bat (*Corynorhinus townsendii ingens*) – Endangered
- Ozark cavefish (*Amblyopsis rosae*) – Threatened
- Pink mucket (*Lampsilis abrupta*) – Endangered
- Piping plover (*Charadrius melodus*) – Threatened; except Great Lakes watershed population
- Rabbitsfoot (*Quadrula cylindrica cylindrica*) – Threatened with Critical Habitat
- Red-cockaded woodpecker (*Picoides borealis*) – Endangered
- Scaleshell mussel (*Leptodea leptodon*) – Endangered
- Spectaclecase (*Cumberlandia monodonta*) – Endangered

- Whooping crane (*Grus americana*) – Endangered; except in the experimental population area
- Winged mapleleaf (*Quadrula fragosa*) – Endangered; except where listed as experimental populations

We do not anticipate that covered activities will result in take of all these species, but we seek comments to help inform our evaluation.

We also will evaluate whether covered activities are likely to impact the bald eagle (*Haliaeetus leucocephalus*) and golden eagle (*Aquila chrysaetos*), protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*).

### **Other Alternatives**

We seek information regarding other reasonable alternatives during this scoping period and will evaluate the impacts associated with such alternatives in the draft EIS.

## **Public Availability of Comments**

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we use in preparing the EIS, will be available for public inspection, by appointment, during normal business hours at the Service's Oklahoma Ecological Services Field Office in Tulsa, Oklahoma, (see **ADDRESSES**, above).

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Benjamin N. Tuggle

Regional Director, Southwest Region

U.S. Fish and Wildlife Service.

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