

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

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.).

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Burying
5 Beetle Relief Act of 2014”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) in 1989, the United States Fish and Wild-
9 life Service (referred to in this section as “the Serv-

1 ice”) listed the American burying beetle as an en-
2 dangered species under the Endangered Species Act
3 (16 U.S.C. 1531 et seq.);

4 (2) in making the decision to list the American
5 burying beetle as an endangered species, the Serv-
6 ice—

7 (A) stated that the American burying bee-
8 tle was “once widely distributed throughout
9 eastern North America”; and

10 (B) considered possible factors in the pop-
11 ulation decline of the American burying beetle,
12 but ultimately concluded that “the cause of the
13 species’ decline is unknown”;

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

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

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

1 (6) in 1991, the Service published a recovery
2 plan for the American burying beetle, with the objec-
3 tive of protecting and maintaining the extant popu-
4 lation in Rhode Island and the populations in Okla-
5 homa;

6 (7) in order to reconsider the listing status of
7 the American burying beetle, the Service is required
8 to identify 3 populations of American burying beetle
9 that have been reestablished (or additional popu-
10 lations discovered) within each of 4 broad geo-
11 graphical areas of the historical range of the Amer-
12 ican burying beetle;

13 (8) the Service has identified these 4 geo-
14 graphical areas as—

15 (A) the Midwest region, including Okla-
16 homa and most States between Texas, Lou-
17 isiana, and Montana;

18 (B) the Great Lakes region;

19 (C) the Southeast region; and

20 (D) the Northeast region, including Rhode
21 Island;

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

24 (A) determined that—

1 (i) the criteria for reconsidering the
2 listing of the American burying beetle had
3 been met in the Midwest region, “where
4 additional occurrences of the American
5 burying beetle have been discovered”; and

6 (ii) that, “as a consequence, the total
7 number of American burying beetle in this
8 recovery area is believed to greatly exceed
9 the numerical target” established under
10 the recovery plan;

11 (B) stated that “although one of four geo-
12 graphic recovery areas for the American bury-
13 ing beetle has met the criteria for reclassifica-
14 tion, the species presumably remains extirpated
15 in most of its historic range”; and

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

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

20 (A) the population of the American bury-
21 ing beetle in Nebraska is estimated to contain
22 over 3,000 American burying beetles, making
23 that one of the largest known populations, al-
24 though at the time the American burying beetle

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

3 (B) the population of the American burying
4 beetle in Oklahoma has grown dramatically
5 from the population numbers in 1989 when the
6 American burying beetle was listed as an en-
7 dangered species and is believed to be well into
8 the thousands;

9 (C) the Service believes that the American
10 burying beetle exists in 45 of the 77 counties in
11 Oklahoma, although at the time the Service list-
12 ed the American burying beetle as endangered
13 in 1989, only 4 counties in Oklahoma had a
14 known American burying beetle population;

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

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

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

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

3 (11) Service documents published close to the
4 date of enactment of this Act list the States of Ar-
5 kansas, Kansas, Massachusetts, Missouri, Nebraska,
6 Ohio, Oklahoma, Rhode Island, South Dakota, and
7 Texas as having an American burying beetle popu-
8 lation;

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

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

16 (A) in 2011, the Service decided to remove
17 the gray wolf from the endangered species list
18 in the States of Idaho, Montana, Utah, Wash-
19 ington, and parts of Oregon while leaving the
20 species listed in Wyoming;

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

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

1 gray wolf was no longer listed as endangered
2 under the Endangered Species Act (16 U.S.C.
3 1531 et seq.);

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

6 (A) beginning in 2007, the Service promul-
7 gated an official policy stating that when the
8 Service evaluates the probability of a species
9 being lost to extinction across the range of that
10 species, the Service does so within the known
11 existing range of that species, not a hypo-
12 theoretical historic range of that species;

13 (B) using the policy described in subpara-
14 graph (A), if the American burying beetle were
15 reconsidered as a candidate for being listed as
16 an endangered species under the Endangered
17 Species Act (16 U.S.C. 1531 et seq.), the
18 American burying beetle likely would not be eli-
19 gible because the known populations are not in
20 danger of being lost and instead are expanding
21 as of the date of enactment of this Act; and

22 (C) the historic range of the American
23 burying beetle, described by the Service as
24 being “ubiquitous” at some point, is reliant on

1 data, observations, and studies that are more
2 than 70 years old and are not easy to locate;
3 (15) there is a lack of information about the ex-
4 tent of the American burying beetle population as of
5 the date of enactment of this Act, although the pop-
6 ulation appears to have expanded since the Amer-
7 ican burying beetle was originally listed as an endan-
8 gered species;

9 (16) it is not clear whether the increased popu-
10 lation count of the American burying beetle is due
11 to the scientific community being more apt at locat-
12 ing these insects or whether the population has actu-
13 ally increased; and

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

20 **SEC. 3. REMOVAL OF ENDANGERED SPECIES STATUS.**

21 Notwithstanding the final rule of the United States
22 Fish and Wildlife Service entitled “Endangered and
23 Threatened Wildlife and Plants; Determination of Endan-
24 gered Status for the American Burying Beetle” (54 Fed.
25 Reg. 29652 (July 13, 1989)), the American burying beetle

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

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