TESTIMONY OF DR. BENJAMIN TUGGLE, REGIONAL DIRECTOR, SOUTHWEST REGION, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE, FIELD HEARING IN TULSA, OKLAHOMA, ENTITLED "A PERSPECTIVE ON THE ENDANGERED SPECIES ACT'S IMPACTS ON THE OIL AND GAS INDUSTRY."

AUGUST 23, 2007

Good afternoon, I am Dr. Benjamin Tuggle, Regional Director of the U.S. Fish and Wildlife Service's (Service) Southwest Region, which includes the states of Texas, New Mexico, Arizona and Oklahoma. Before presenting my testimony, I would like to thank Senator Inhofe for the opportunity to appear here today and participate in this oversight hearing. As Regional Director, I oversee the Service's role in the administration of the Endangered Species Act, as well as a number of our other federal responsibilities related to the Act, in the region.

My statement today will focus on the Southwest Region's role in the conservation and recovery of two federally-listed species: the American burying beetle and Arkansas River shiner, as well as the Service's efforts to streamline Endangered Species Act compliance for these two species in Oklahoma.

American Burying Beetle

The American burying beetle was listed as endangered under the Endangered Species Act in 1989 and the Final Recovery Plan was signed in 1991. Once found throughout the eastern United States, the American burying beetle is now only found in nine States: South Dakota, Nebraska, Michigan, Ohio, Oklahoma, Texas, Arkansas, Rhode Island, and Massachusetts. The beetle's current range represents a 95 percent reduction from its estimated historic range. Within Oklahoma, the species is known or believed to occur in 34 counties in the eastern part of the State.

Numerous American burying beetle surveys have been conducted by private and governmental entities within the eastern third of Oklahoma over the past several years, including a large number of surveys conducted by the oil and gas industry. These surveys vary annually with regard to where they are conducted and during what time of year, but indicate, on average, relative population stability from 1992 to 2006. In contrast, survey population data from other states within the species' historic range vary widely.

In late 2003 and early 2004, the Service worked on and completed a Memorandum of Understanding (MOU) with five major oil and gas companies in eastern Oklahoma operating within the range of the American burying beetle. The MOU provided best management practices for avoiding or minimizing adverse impacts to the beetle from oil and gas-related activities. By signing the MOU, the oil and gas operators voluntarily agreed to implement the best management practices to proactively conserve the beetle.

As a result, the Service does not anticipate their operations will result in take, which is prohibited under section 9 of the Endangered Species Act.

Similarly, we are also finalizing an MOU with a seismic exploration company operating within the range of the American burying beetle in eastern Oklahoma. This MOU provides best management practices for avoiding or minimizing adverse impacts to American burying beetles from non-federal oil and gas seismic activities. Furthermore, we are working with the Oklahoma Corporation Commission to assist operators and the Commission in addressing the American burying beetle during the seismic operations permit application process.

In May 2005, the Service completed a Programmatic Biological Opinion for the American burying beetle with the Environmental Protection Agency (EPA) concerning oil and gas-related activities in eastern Oklahoma that required a Clean Water Act storm water construction permit. The Service's Biological Opinion streamlined the consultation process so that the permits could be issued to oil and gas operators in only seven days. The Energy Policy Act of 2005, however, negated the need for permitting of most oil and gas activities. Consequently, the Biological Opinion is no longer applicable and consultation with the Service in regard to storm water permits for oil and gas activities is rare.

In September 2005, the St. Louis Zoo hosted an American burying beetle conservation conference in St. Louis, Missouri. The conferees identified a need for a species-specific working group, along with a 5-year status review for the species and an updated and revised recovery plan. In May 2007, the Service hosted a follow-up conference in Tahlequah, Oklahoma, to present new research on the American burying beetle and similar species. The event was open to the public and staff from the U.S. Senate Environment and Public Works Committee attended. The 5-year review of the status of the American burying beetle should be finalized in early 2008. After the 5-year review is completed the Service will begin working on the revised recovery plan for the beetle.

The Service is also working with Northeastern State University, the University of Oklahoma, the Oklahoma Department of Wildlife Conservation, and Camp Gruber National Guard Training Center to determine the reproductive habitat preferences of the American burying beetle. The results from this research have the potential to identify specific geographic areas of suitable habitat for American burying beetle reproduction. The Oklahoma Department of Wildlife Conservation plans on using roughly $30,000 of the Cooperative Endangered Species Fund dollars in FY 2008 for an American burying beetle microhabitat reproductive study.

The Service is in the preliminary stages of discussing development of an umbrella Habitat Conservation Plan (HCP) for the American burying beetle within the State of Oklahoma. The goal of this umbrella HCP is to authorize incidental take under the Endangered Species Act and allow both state and private entities to continue their otherwise legal activities while also providing for conservation of the species and its habitat. We will keep Congress apprised of our progress.

Lastly, the Service is also currently working with the Oklahoma Department of Transportation and the Federal Highway Administration on a programmatic Biological Opinion for the American burying beetle in eastern Oklahoma. This programmatic opinion will facilitate implementation of federal, state and county projects, funded by the Federal Highway Administration, by streamlining traditional individual section 7 consultation requirements related to the American burying beetle by condensing it into one consultation. We expect this streamlined process to simplify project scheduling.

Arkansas River Shiner

The Arkansas River shiner has disappeared from more than 80 percent of its estimated historical range and is now almost entirely restricted to about 508 miles of the Canadian River in Oklahoma, Texas, and New Mexico. An extremely small population may also exist in the Cimarron River in Oklahoma and Kansas, based on the collection of 16 individuals from 1985 to 1992. The Arkansas River Basin population of the Arkansas River shiner was listed as a threatened species in 1998 due to habitat loss. A final decision on critical habitat designation was promulgated on April 4, 2001. On April 25, 2002, the New Mexico Cattle Growers Association and 16 other plaintiffs challenged the designation in court. A memorandum opinion from the U.S. District Court for the District of New Mexico was issued in that case. In accordance with the court's opinion, the Service completed a new final rule designating critical habitat for the Arkansas River shiner on October 13, 2005.

The Service has conducted surveys for Arkansas River shiner populations since 2004 and recently implemented a more intensive sampling effort to gather additional information on the status of the species in both the Canadian and Cimarron rivers. Further research on the species is necessary before a number of recovery actions can be designed and implemented. We are currently developing proposals to fill these research gaps, which will likely include additional monitoring, research on competition with other species, effects on the species from changing water quality, and habitat assessments.

Despite these data gaps, the Service continues to conduct proactive species recovery efforts. For example, we are working with the Service's Partners for Fish and Wildlife Program and are implementing a salt cedar task force to address the encroachment of non-native, invasive species which negatively impacts the Arkansas River Shiner by reducing the amount of water for the species to thrive.

In Fiscal Year 2006, the Service awarded a private stewardship grant to the Oklahoma Farm Bureau for over $160,000 for landowners to control invasive salt cedar along portions of the South Canadian River in Oklahoma. The Nature Conservancy also received a grant of $195,000 to benefit the Arkansas River shiner and its habitat, as well as other listed and candidate species.

In addition, we are working with the Oklahoma Farm Bureau to develop a conservation plan for the Arkansas River shiner in Oklahoma, based on a plan developed in 2004 by

the Canadian River Municipal Water Authority in the Texas panhandle. The plan identifies conservation actions that landowners may voluntarily complete for the benefit of the shiner and its habitat. The development and implementation of these two plans will provide an excellent mechanism for landowner involvement in our efforts to conserve the Arkansas River shiner and its habitat.

The Service is also conducting a formal consultation with the Federal Highway Administration and the Oklahoma Department of Transportation on a proposed bridge replacement over the Canadian River. Reasonable and prudent measures to minimize impacts to the Arkansas River shiner, while not significantly impacting bridge construction activities, have been discussed with the Federal Highway Administration and the Oklahoma Department of Transportation. These include re-vegetating impacted areas with native grasses, maintaining flows by using multiple work roads, working outside of the Arkansas River shiner's spawning season, and limiting work within the actual river.

Consultations on oil and gas operations with potential impacts to the Arkansas River shiner have been limited. Typically, the Service recommends directional drilling for pipelines crossing within occupied Arkansas River shiner habitat, as well as implementation of best management practices for spill prevention on new oil and gas operations. As mentioned above, most oil and gas-related activities are now excluded from the need to obtain storm water construction permits. Therefore, we anticipate that the number of informal consultations with the Service related to the Arkansas River shiner and oil and gas-related activities will be lower than in the past.

Conclusion

In closing, the Service remains committed to successfully conserving and recovering endangered and listed species, such as the American burying beetle and Arkansas River shiner. We also remain strongly committed to working cooperatively with our partners and other stakeholders.

Thank you again for the opportunity to participate in the hearing today. This concludes my statement and I would be happy to answer any questions you may have.