

AGENDA
KANSAS DEPARTMENT OF WILDLIFE AND PARKS
COMMISSION MEETING AND PUBLIC HEARING
Thursday, June 25, 2009
Morris County 4-H Building, 512 E. Hwy 56
Council Grove, Kansas

Tour Tall Grass Prairie Preserve 8:45 am; lunch at Terwilliger House 12:00 pm

- I. CALL TO ORDER AT 1:30 p.m.**
- II. INTRODUCTION OF COMMISSIONERS AND GUESTS**
- III. ADDITIONS AND DELETIONS TO AGENDA ITEMS**
- IV. APPROVAL OF THE April 16, 2009 MEETING MINUTES**
- V. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS**
- VI. DEPARTMENT REPORT**
 - A. Secretary's Remarks**
 - 1. 2009 Legislature (Chris Tymeson)**
 - 2. Agency and State Fiscal Status (Dick Koerth)**
 - B. General Discussion**
 - 1. Historical Council Grove (TinaRae Scott, Council Grove/Morris County Chamber of Commerce and Tourism)**
 - 2. Trails Update (Frank Meyer)**
 - 3. Results of Bait Users Survey (Jason Goeckler)**
 - 4. Spring Turkey Season (Jim Pitman)**
 - 5. Fee Regulation – Spring Turkey Permits (Mike Miller)**
 - 6. Cabin Fee Regulations (Jerry Hover)**
 - C. Workshop Session**
 - 1. Fishing Regulations (Doug Nygren)**
 - 2. Furbearer Regulations (Matt Peek)**
 - 3. Late Migratory Bird Seasons (Faye McNew)**
- VII. RECESS AT 5:00 p.m.**

VIII. RECONVENE AT 7:00 p.m.

IX. RE-INTRODUCTION OF COMMISSIONERS AND GUESTS

X. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS

XI. DEPARTMENT REPORT

D. Public Hearing

- 1. Early Migratory Birds (Helen Hands and Faye McNew)**
- 2. KAR 115-25-19. Doves; management unit, hunting season, shooting hours, and bag and possession limits (Helen Hands)**
- 3. KAR 115-15-1. Threatened and endangered species; general provisions (Ed Miller)**
- 4. KAR 115-15-2. Nongame species; general provisions (Ed Miller)**
- 5. KAR 115-25-9a. Deer; open season, bag limit, and permits; additional considerations (Lloyd Fox)**
- 6. KAR 115-25-9b. Deer; nonresident limited quota antlered permit application period (Lloyd Fox)**

XII. OLD BUSINESS

XIII. OTHER BUSINESS

A. Future Meeting Locations and Dates

XIV. ADJOURNMENT

If necessary, the Commission will recess on June 25, 2009, to reconvene June 26, 2009, at 9:00 a.m., at the same location to complete their business. Should this occur, time will be made available for public comment.

If notified in advance, the department will have an interpreter available for the hearing impaired. To request an interpreter call the Kansas Commission of Deaf and Hard of Hearing at 1-800-432-0698. Any individual with a disability may request other accommodations by contacting the Commission Secretary at (620) 672-5911.

The next commission meeting is scheduled for Thursday, August 6, 2009 at The Peoples Bank Sunflower Room, 117 S. Main, Medicine Lodge, KS.

**Kansas Department of Wildlife and Parks
Commission Meeting Minutes
Thursday, April 16, 2009
Logan County Courthouse Basement
Oakley, KS**

Subject to
Commission
Approval

Commissioners toured Scott State Park on April 15 and The Nature Conservancy's Smoky Valley Ranch on the morning of April 16.

I. CALL TO ORDER AT 1:30 p. m.

The April 16, 2009 meeting of the Kansas Department of Wildlife and Parks Commission was called to order by Chairman Kelly Johnston at 1:30 p.m. at the Logan County Courthouse, Oakley. Chairman Johnston and Commissioners Gerald Lauber, Frank Meyer, Doug Sebelius, Debra Bolton, Robert Wilson, and Shari Wilson were present.

II. INTRODUCTION OF COMMISSIONERS, STAFF AND GUESTS

The Commissioners and Department staff introduced themselves (Attendance roster - Exhibit A).

III. ADDITIONS AND DELETIONS TO AGENDA ITEMS

Sheila Kemmis – Add Secretary's Orders for Deer to the Public Hearing section this evening.

IV. APPROVAL OF THE MARCH 12, 2009 MEETING MINUTES

Commissioner Frank Meyer moved to approve the minutes, Commissioner Debra Bolton second. *Approved.* (Minutes – Exhibit B).

NOTE: It was brought to my (Sheila Kemmis) attention that on page 12 of the minutes, three-fourths of the way down that Commissioner Robert Wilson was referred to as Chairman. This has been corrected.

V. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS

None

VI. DEPARTMENT REPORT

A. Secretary's Remarks

1. Agency and State Fiscal Status – Dick Koerth, assistant secretary of Administration, gave this report to the Commission (Exhibit C). The 2009 session of Kansas Legislature has

adjourned until April 29. The current approved budget maintains existing FTEs for 2009 and 2010. For FY 2009, the Governor recommended an amount of \$1.45 million for SGF capital improvements, which is a reduction of \$446,331. The reduction eliminated a water line at Perry State Park, as well as development of campgrounds at Sand Hills State Park. The other major reduction was in operation costs when the Legislature advanced savings from benefits funding to FY 2009 from FY 2010 and reduced agency expenditures by 1.25 percent, which was \$956,789. For FY 2010, KDWP is currently approved for an additional \$1 million transferred from KDOT for roads and \$832,100 restored for benefits reductions moved to FY 2009. The Legislature did implement a reduction of \$110,224 from the SGF. A 1 percent COLA for state employees and a longevity bonus payment for eligible employees has been approved, however, no additional funding was authorized for either item and all state agencies must absorb the cost of these two items from other funds, approximately \$450,000. The Legislature did approve and fund the second year of a five-year plan to improve employee salaries by assuring all employees are at market rate and approved the Governor's recommendation to allow agencies to purchase replacement vehicles in FY 2010 without additional funds. For FY 2009, the total revenue through March 2009 is \$135 million less than estimated (\$53 million in March alone) and the amount estimated to be collected from individual income taxes was 25 percent below the estimate. Legislative appropriation committees will begin meeting on April 21, 2009 to determine the Omnibus Appropriation bill which will need to reflect adjustments to SGF expenditures based on April 17 estimates. It is anticipated the Committees will recommend further reductions to state agency budgets. KDWP has reviewed options for additional reductions, and they do not include a reduction in the number of agency personnel or the closing of state parks. We will make every effort to continue the current level of state operations. This will have an impact on the infrastructure of the state parks as capital improvement funds are reduced or deleted.

Commissioner Shari Wilson – What is the Federal Ag fund used for? Koerth – BOR and Corps reservoirs agricultural leases and that money has to stay with that reservoir, so we created a fund for each of the properties that are done that way. Commission Sebelius – Explain the capital improvement item listed for 2010, Cabin Revenue Fund, where does it come from and where does it go? Koerth – Comes from renting cabins; some of the money goes to Wildscape to repay the loan, but the rest comes to us. Some parks don't have Wildscape cabins, for example El Dorado, all of those receipts go into the cabin revenue fund. For FY2010, as we get more cabins, we decided to start using that money for capital improvements to do the infrastructure such as foundations, water lines, and those types of items. Commission Sebelius – So that is set aside to help construct them? Koerth – Not the cabins themselves, but the foundations, etc. Commissioner Shari Wilson – Once we are maxed out on cabins, then will the funding go back into the parks and wildlife areas or haven't we thought that far ahead? Koerth – As we get more cabins, our maintenance costs will go up also because some of our cabins are up to eight years old, so there will be maintenance needs and some of that money will go to that. Also, operating costs will also be increasing so we envision shifting costs to this fund. Chairman Johnston – We have how many cabins already constructed and in use? Mark Stock – We have 69. Chairman Johnston – The plan is for how many? Secretary Hayden – We would like to get to 150. Chairman Johnston – How long will that take? Hayden – We were on a pace to do 18-a-year, which would have been about five years, but that was before the Corrections cut-backs. Now we are on a pace of 12-a-year or seven or eight years before we are maxed out. We hope these cut-backs are temporary and we can increase production again. We are talking to the private sector about picking up some of the slack from Corrections and building some of the

cabins. Koerth – The cabin program is very important to the Department of Corrections, but we have to wait to see what will happen to them with cut-backs. Once the cabins are paid off through Wildscape, it will be time to start replacing some of the early ones. The Wildscape cabins are well built and are 30-year cabins, but some of the earlier cabins are trailers that were brought in and their durability may not be that long, so at some point we will be replacing cabins. Commissioner Bolton – I was noticing some differences in the federal grants, there seems to be more in 2009 than 2008, but quite a bit less in 2010. What are the differences? Koerth – The federal grants fund is a depository for a number of federal grants we get and the amount of money spent may not equal the grant we have in a particular year and the money rolls over to the next year. We didn't spend all the money in 2008, so in 2009 there is a larger number, but in 2010 that is an estimate.

2. 2009 Legislature - Chris Tymeson, chief counsel, gave this report to the Commission (Exhibit D). The Legislature is on break. The conference committee is next week, but they don't officially come back until the end of the month. It has been a slow year for department initiatives and in fact didn't heat up for us until February or March with substantive bills. *SB 51* was a department initiative and deals with blaze orange when hunting deer or elk and primarily on Fort Riley. On the last day of Ag and Natural Resources Committee they did a "gut and go". It came out early in the session, languished in Committee, had a hearing and then was used as a vehicle for annexation, so it is no longer a KDWP bill. Heard legislators from the Fort Riley area are trying to revive that in the veto session. *SB 100* was a sales tax exemption for guided and non-guided hunts and didn't make it out of the Senate and is in the House (*HB 2172*) and it became an Omnibus tax bill so it did pass. *SB 124* deals with fire and police retirement and impacts our law enforcement officers. It did not get a hearing or go anywhere. *SB 189* would have created an outfitters licensing program under the Department of Commerce. It had a hearing early in the session and then didn't move. *SB 286* deals with prairie dogs and would have repealed all of the prairie dog statutes. This is similar to the previous session, introduced every year since 2000. It did not get a hearing. *SB 287* deals with prairie dog management, control and conservation and was designed to allow a landowner to create a management plan to keep prairie dogs on the property if they so desired and it didn't get a hearing or go anywhere. *Senate Concurrent Resolution 1602* is a constitutional amendment which authorizes the legislature to create a different class of taxation for watercraft. In Kansas, watercraft are currently taxed at a high rate and there was an attempt to get that classification changed in 2000 and it failed when it went to the voters; it also included aircraft. It passed out of Senate Tax Committee early in the session and stayed on the calendar and came out of Senate late and expect it to get a hearing, at least on House side, next year. *Senate Concurrent Resolution 1611* is a constitutional amendment on an individual right to bear arms. In Kansas, the rights enumerated by the Constitution have been interpreted by a Kansas Supreme Court case to say that your right to own a firearm is a collective right not an individual right. There was the Heller case in Washington DC last year on firearms ownership where the Supreme Court said that is an individual right. The NRA came back with this constitutional amendment and it has passed both houses and will go to the vote of the people in November of 2010 which would change the Constitution to make it an individual right. The department is following it because firearms are integral to what we do and hunting is listed as one of the reasons for individuals to have that right to own a firearm. *HB 2049*, also an NRA initiative, would have put hunter education in the schools; currently a voluntary program and this would have made it a mandatory program. It had a hearing early in the session and then didn't

move. The concern was that it would be an unfunded mandate on schools which are already competing on other topics within the school system. *HB 2064*, light pollution, would have required Department of Health and Environment (KDHE) to come up with a methodology to reduce light pollution around sensitive areas, and lists state parks and Cheyenne Bottoms and Quivira. The bill had a subcommittee meeting and didn't go anywhere. *HB 2172* we talked about earlier was the new guide tax exemption bill. *HB 2254* dealt with lifetime licenses, particularly for military members, and said if you jumped through a number of hoops, you could get a lifetime license as a member of the military, but in fact if you did those things you would have been a resident so you could have gotten a lifetime license anyway, so the bill didn't go anywhere. *HB 2296* imposition of conservation fees on department permits and licenses and put those proceeds into the State Water Plan Fund which would be a diversion. Had a hearing and bill didn't go anywhere. *HB 2342* had a hearing and a subcommittee hearing which dealt with Shawnee Mission Park and the deer population issues that are occurring there in Johnson County. It would have mandated an archery season in the park. They are working toward some solutions there and the feeling I got was that the Legislative Committee was going to hold off for another year and see if that could be worked out locally. *HB 2346* would have created a sales tax exemption for Hunters Feeding the Hungry. It did not get a hearing. *HB 2362*, the most contentious issue for us this year, would have extended antlerless deer seasons an additional 60 days at the end of current seasons, which could have a significant biological affect on the population. It would have brought back transferable permits and added fees to every deer permit for nonresidents and given that money to Feed the Hungry Fund, which be a diversion of funds and jeopardize \$11 million in federal aid. The bill got a hearing, went to a subcommittee and ultimately there were some compromises that we are trying to work out with the legislator trying to push that bill. We will talk about that tonight with Lloyd. *HB 2385* would have transferred land from Juvenile Justice Department to Wildlife and Parks. That bill did not get a hearing. It is important because our agency has statutory authority to transfer land and some other agencies don't, but it is reference to reduction in budgets in JJA and the ability of the department to manage that piece of property. The bill didn't get a hearing and I don't know the status of that topic. The land was up near Atchison. *House Concurrent Resolutions 5012 and 5013* both deal with reservoirs; 5012 dealt with revamping the Pick-Sloan Act, which is the control reservoir federal legislation and 5013 dealt with extending the productive lives of our reservoirs. *House Concurrent Resolution 5017* is the exact same NRA version of 1611 that we talked about earlier. Introduced late in the session on both sides and the Senate version moved faster. Commissioner Shari Wilson – On *HB 2296*, was that a water conservation fee? Tymeson – They just called it a conservation fee, a \$5 fee that they would have tacked on when you bought your permit and then funded the water plan fund. That would have raised \$985,000, targeted for nonresidents, raised \$1 million, but cost us \$11 million.

B. General Discussion

1. Park Regulations – Jerry Hover, Parks Division Director, presented this report to the Commission. Placed on agenda to open process for public and Commissioner input to make changes. At this time the department has no recommendations for changes, deletions or additions. Commissioner Bolton – Free days at the parks, do we lose money on that or gain people or seen anything from those free days? Hover – We have never done a complete analysis to have statistical information. From theory and what we see happening, we don't lose funds, but

gain new people visiting the park, getting outdoors and partaking in some of the events. Many of our free days are later in the year and many of those who enjoy getting out have already purchased their permits. It is a method where people can bring people to an event who don't normally attend those. It does increase visitation. Chairman Johnston – How do we define state park lands versus public hunting lands around our state parks? Is there a distinction in our regulations? Tymeson – On our lease, statute says the names of the state parks or it is defined by the deed or when we have a park on Corps or BOR lands it is defined by the lease. Chairman Johnston – It relates to rules prohibiting hunting on state parks. We have lots of public hunting grounds that Wildlife and Parks owns around our state parks and reservoirs, but is hunting allowed on state park grounds? Hover – It depends on the park, we have some special hunts, some open hunting, but on an annual basis we analyze the park along with the appropriate biologist from the other divisions as to whether we have a problem with wildlife that has a huntable population and look at safety factors, types of usage during open seasons. One of the highest criteria are whether there are animals destroying their own habitat on the park or adjacent landowners. We take all kinds of things into consideration, plus the amount of land available. There is no hunting in campgrounds or heavily used public areas, but if more remote and not a safety factor we do. Chairman Johnston – Is trapping allowed on state parks? Hover – In some cases, yes. Similar types of criteria are gone through. Primarily trapping within use areas is to control nuisance animals causing problems with people and usually by the use of live traps. We do have areas that are more or less natural and usage is light and we do allow trapping in those areas by permit. We control the types of traps they can use, the animals they can target and where that is done. Chairman Johnston – A special permit or furharvester license? Hover – A special permit issued by the park manager. Commissioner Shari Wilson – You were listing several things you ask on the special permit the park manager gives, are those same questions asked on the regular furharvester license application, in terms of where the trap will be placed and those types of things? Secretary Hayden – No, we don't.

2. Fishing Regulations – Doug Nygren, fisheries section chief, gave this report to the Commission (Exhibit E). This will be brought back for vote in October. The reference document that has the special regulations that are different than the statewide length and creel limits is where most of the changes will be proposed. One thing we have been successful at is establishing blue catfish populations in a lot of the reservoirs where they did not exist and one of those lakes is Perry Reservoir. We have a change for a minimum length limit and a change to 5/day creel limit to help get that population established. It takes about seven years before a blue catfish female is ready to spawn. Douglas SFL currently has a 2/day creel on channel catfish and just reopened to fishing this year and we wanted to take some of the initial pressure and ease the harvest, but next year we are willing to increase that to 5/day creel limit. Kanopolis Reservoir is another lake we are trying to establish blue catfish in and are proposing a 5/day creel limit. On the Kanopolis Seep Stream, also called Sand Creek, we are proposing artificial bait only (lures or fly fishing) at power poles number 9 through number 16; we did a renovation there and had a successful first year in that trout fishery. At the request of Wolf Creek Nuclear Operating Corporation in Coffey County -- they would like to change the slot length limit to 18- to 24- inches on walleye. We have quite a few community lake changes. I won't go through the whole list but at Crawford SFL where we had a problem with largemouth bass virus and we lost a big portion of our bass population and as a result have seen some increased survival and recruitment of carp and other species. We have introduced striped bass to try and help the black bass recover

so we want to put an 18-inch minimum length limit on striped bass. Other possible changes for 2010 would be a way to accommodate people who want to use gizzard shad and other desirable bait fish that are more than 12 inches long; right now bait fish are defined as maximum length of 12 inches so we were looking for language to allow using fish over 12 inches. The last one can be dealt with in regulation summary -- there is some confusion amongst the public on whether you can have floatlines and a trotline and a setline and we want to clarify that you can use one of those three methods, but not a combination of two or more. Commissioner Lauber – From a practical standpoint, is blue catfish going to be easy to extinguish? There are a lot of channel catfish there. Nygren – We put the same length limit at other lakes, primarily where we are trying to control white perch and we have put signs up around the lake that have identification guides and they are also in the fishing regulation summary. With a little education with the local anglers, we can show them how to tell the difference. Chairman Johnston – What is the thought as to why we don't want a single angler to set eight limblines and eight floatlines? Nygren – It has always been that way on trotlines and setlines, you had to make a choice and the concern was to only use one type of passive gear at a time. They are still subject to the daily creel limit on that lake. We could talk about whether we want to allow that, but that does open you up to a potential problem of making them too successful. Chairman Johnston – The primary thought is that it helps control the harvest? Nygren – Because more people don't get the ten anyway, but with that type of gear you could be very successful.

3. Chronic Wasting Disease (CWD) Update – Shane Hesting, wildlife disease coordinator, gave this update to the Commission (Exhibit F; PowerPoint presentation – Exhibit G). I started this position in February, and I am monitoring avian influenza and chronic wasting disease. Chronic wasting disease is in the family of transmissible spongiform encephalopathy (TSE) and is caused by a protease resistant proteinaceous prion. It is not technically alive, it has no nucleic acid, and it is a protein. Protease is a fancy word for enzyme and there is no prions to break them down, so they accumulate. There are different forms of TSEs -- BSE is bovine (mad cow disease); CJDv is the human variant of Crutchfield Jacob Disease (CJD), BSE jumped to humans and CJD occurs naturally in humans and occurs in one out of one million people, but the variant form there were 200 people in Europe who came down with this; TME is in mink; and scrapie is in sheep. (*Showed a USDA photo of a cow with mad cow disease taken in the 1980s and a photo of a mule deer with CWD.*) Shortly before death an animal will stagger, exhibit listlessness and lethargy, have little fear of people, will drool and salivate and have extreme thirst and will appear malnourished and wasting away. All deer killed in Kansas that tested positive appeared to be healthy. The last we heard, Wyoming was starting to see some animals that exhibited clinical symptoms, but we are a long ways from there. Another clinical system is a shaggy, rough-looking coat. Timing of infection is important to determining clinical symptoms because incubation periods may be three years or longer. The oldest deer we test are 3 ½ years, but as soon as an animal dies in the wild predators take care of them and you never see them. Infection comes directly from the animals themselves and from the environment. The prions are very stable; they don't break down and resist environmental degradation so remain in environment even after the animal dies. In 2001, there was an affected elk in Harper County in a captive cervid pen and the herd was depopulated; in 2005, Cheyenne County, one deer was found on the Republican River by Saint Francis; 2006, no CWD positive deer; 2007, three found on Sappa Creek by Oberlin; and in 2008, the endemic area is the northwest part of the state and we had ten last year – one in Cheyenne County, two in Rawlins County near Atwood on Beaver

Creek, five deer in Decatur County with four close together on Sappa Creek and one on North Fork of Solomon River, and Sheridan County with two on South Fork of Solomon River.

Chairman Johnston – I understand it is not appropriate to describe CWD as contagious, but is transmitted from deer to deer. Is it typical to have disease spread in deer population at the rate we are seeing it in these four counties over four years? Is it also typical that it seems to congregate around drainages or is that just where the deer are being shot? Hesting – That is where the deer are being shot. Out here is open country and the deer are going to be in the drainages and that is where the hunting will occur. The biologists from that area could probably give a better explanation of the topography in that landscape. We believe that it transmits from deer to deer and from the soil to the deer. Colorado State did a study where they depopulated a place and put deer back in that area three to four years later and they came down with CWD so that is where we learned we had an environmental problem.

Chairman Johnston – Is this a normal rate at which this disease will spread in geography where it hadn't existed before 2005? Hesting – My personal opinion is yes, but I am not a veterinarian. I am a grant coordinator, so I don't know. Black dots are samples from eight county areas and with red dots included that is 397 samples taken. We are looking for it. We try to detect it at one percent prevalence or infection rate with 99 percent confidence that we are going to find it if it is out there at one percent. We look for it statewide and currently CWD is not transmittable to people, and there is no evidence for or against it, but we have a lot to learn about it. The graph represents \$235,000, a grant provided by USDA so we can do the monitoring of this disease. Map shows 1,500 of 2,700 samples we took, the other ones was county only so I couldn't put an exact dot on the map, but we had several other samples not shown. USDA requires us to report counties, not exact locations.

Chairman Johnston – Are any of these sites where animals were tested in captive herds? Hesting – No, only wild herds.

Chairman Johnston – Is the grant the department is using to do this, does it include any captive herds? Hesting - Not right now, unless the owner gives us one and asks us to test it.

Chairman Johnston – Does USDA test captive herds? Hesting – They do, but I don't know how they do that. There are some facilities that are CWD free. There is a CWD voluntary program for captive herds, and there are 31 enrolled and 91 that are not certified or in the program. We took 2,696 samples, including 21 elk. Kansas has a regulation that says that all elk taken are tested for CWD and all of the elk were negative. All the positive deer were white-tailed deer; 57 percent of all samples come from hunters; 33 percent from taxidermy, to get older animals; vehicle and sick represent 10 percent because if the deer is sick there is a chance it might get hit on the road or you might get closer to it with archery or muzzleloader. One of the ten positives was road kill; and three were killed before rifle season. Sample characteristics: 21 elk; 2,675 deer; deer 80.4 percent were older than 2.5 years-old; 86 percent white-tailed deer; 14 percent mule deer; 77 percent male; and 23 percent female. There was a paper out that said that CWD was more prevalent in males than females, but research is ongoing. 2009 sampling goals, we have a disease assessment zone in the northwest consisting of 12 counties and we are going to try and get 500 to 1,000 samples. Last year we got 496 in the 12 counties. We want 2,300 to 2,800 samples this next season. What can we do? We cannot stop it! No vaccine, no cure. There are no enzymes we can put on the soil to counter the bad prions. If deer is taken from endemic area, we can 1) bone out meat and leave carcasses in the infected counties or take carcass to cooperating landfills; 2) avoid bringing carcasses in from other states' infected areas; and 3) avoid transporting captive cervid without CWD-free certification.

Commissioner Bolton – What about the elk in Harper County, was that captive? Was it brought there? Hesting – Yes, it was brought in from Colorado. They depopulated the herd and payments were made for each elk killed.

Chairman Johnston –

The three watersheds in northwest Kansas, there is a possibility the soil and watersheds will be contaminated? Hesting – There will be prions on the ground. They think the prions are shed through the gut, saliva and placenta. Commissioner Meyer – Is there a shelf life? Hesting – Lasts for years. It will gradually increase until we find a cure or vaccine. Right now we are showing one percent prevalence. In my opinion, 30-40 years down the road that could increase as Wyoming has, 30 percent to 40 percent prevalence. Commissioner Lauber – If the deer were carriers or tested positive is the presumption that if they were not harvested in two to three years from the date they were shot they probably would have developed the wasted appearance and the clinical symptoms. Hesting – Absolutely, it is progressive. Commissioner Lauber – You can't be a carrier and not develop symptoms? Hesting – Not that I am aware of. This isn't a bacteria or a virus, this is an accumulation of a prion (or protein) and it will accumulate in the spinal cord, the brain and lymphoid tissues to the point you get a sponge-like appearance in the brain. It is progressive and always fatal. Commissioner Lauber – Is there a reason why it appears at this point to attack mule deer differently. Hesting – Possibly they can fight this off internally or biologically. All cervid are susceptible to this, moose, elk, and deer species.

Paul Babcock, Hoxie – He brought up several points in regard to what we could do to reduce the incidents of the disease, but to me something equally as big of cause is baiting deer for reasons usually to get them close to where you are hunting from. People are using bait and more than one deer is going to feed from that and its another way the disease is going to spread and I think we should do all we can and eliminate baiting and make it illegal in Kansas. I am sure there are reasons not to, but I feel we are obligated. I did a survey of fellow hunters, and we have a lot of individuals who agree with me that it is time to end baiting because of this. It is in my backyard in Sheridan County and I did find one of the positive deer. Chairman Johnston – Are you aware of the experience of other states and their attempts? Have they eliminated baiting and does it have any affect? Hesting – I think Wisconsin did away with baiting. I worked in Nebraska in 2000 and that is when I first became involved in CWD. We went on a deer cull to reduce population, so I have experience, but not in the research or technical end of it, more in field work. Nebraska had twenty-two this year, mostly in the northwest corner and I asked them what they were doing and they said they are just monitoring it like we are doing. There is nothing you can really do, it is too expensive to go out and do agency culls. You have to rely on your hunters. Chairman Johnston – So it has been done in at least one state? Hesting - I am sure it has been brought up in every state that has this disease. Wisconsin tried to eradicate it with depopulation of areas and they couldn't do it. Tymeson – Wisconsin did a partial ban in an endemic area. Chairman Johnston – Mr. Babcock we have discussed baiting rules within the last year and maybe Lloyd has other information to add to this discussion? Fox – Half of the states allow baiting, those with and without the disease. Hesting – There are also a lot of haystacks out there and small foodplots and you would have to determine what is important or not. It is a good idea to talk about these things. Chairman Johnston – We should continue to talk about this as we continue to see results. Babcock – Would it be appropriate to ban baiting in the unit where it is now and where it continues to spread? Chairman Johnston – That is a question our biologists and Shane will continue to discuss. Speaking for myself I would like to be aware of some information from other states that shows that it has an affect. If the disease is in the soil of these areas where they have been found in Kansas, I am not sure eliminating baiting will solve the problem. We need our biologists to advise us.

Drew McCartney – Did restriction of baiting make any difference in Wisconsin? Hesting – I don't think they saw a difference, but it hasn't been long term yet as it was only passed a year or two ago. So there hasn't been enough time to evaluate that. McCartney – I think there are just as many people in the state in favor of baiting as those who are against.

Lynn Marshall, Grinnell – I also have a concern about the baiting. There are places in the state where you see dense populations of deer. I like to go watch wildlife at dusk at Norton State Park and at any time you will see 20 to 50 deer in a group. Would it help to disperse those herds?

Hesting – Yes, it makes sense if it is density dependent. We don't know, but it could be a density independent disease, but we think it is density dependent which means it transfers deer to deer. We are working with private land and public land biologists, and we don't allow some hunting on some areas of public lands. There may be a need in the future to allow hunting in some of those areas. You need to understand that deer disperse 40 to 50 miles, so if you scare them out of there where are they going to go? You could possibly make the problem worse if you have CWD there. We don't want to change regulations yet.

Babcock – In the most recent edition of the *Field and Stream* magazine one of their writers had an article in regards to this. They pointed out that this is occurring where baiting is allowed and found that when they stopped baiting there wasn't really any change. Baiting doesn't make you more successful. Chairman Johnston – It is a separate debate, baiting from an ethical standpoint versus control of CWD.

Commissioner Lauber – When you have a deer herd with high prevalence of percentages, 30 percent, what does that look like? Do you have a lot of sick animals, younger animals that are positive or what? What happens in those areas, will it run its course and the healthy population remains? Hesting – I don't think we know. CWD was first found in 1967, but didn't know what it was until 1981. There is nothing these agencies are doing to stop it, but they are trying to control it or slow it enough so if research or breakthrough is made and there is something we can use. On 30 to 40 percent in Wyoming, sick animals are starting to show up now because there are so many out there. CWD is believed to eventually change the dynamics of a population to younger population and a few papers are out there that point to extinction, which could be 100 years from now if you lose your social order.

4. Horsethief Reservoir Update – Mark Sexson, Region 3 Public Lands supervisor, gave this update to the Commission (Exhibit H; PowerPoint Presentation – Exhibit I). HorseThief Reservoir is located 8 miles west of Jetmore. The project is a joint project between the Pawnee Watershed District and the HorseThief Reservoir Benefit District (HTRBD), which is a new organization. The Pawnee Watershed District project replaced five planned structures with this one; were the ones who purchased the 1,500 acres for the reservoir; and is leasing to HTRBD for \$1/year; were the ones who took the initiative to go to the legislature to create the Benefit District; and are responsible for building and maintaining the dam. HTRBD was created by the Kansas legislature and has the ability to call a vote, and if successful, issue bonds, which we did several years ago. We successfully received approval from the voters in Finney, Gray, Ford and Hodgeman Counties, to get 1/15th of one percent sales tax (the campaign was a nickel on a pizza) to build the reservoir and park using sales tax. HTRBD is responsible for most of the funding for the dam and recreational facilities; and responsible for all the recreational facility development and operation. The seat that I hold is the Secretary's seat on the HTRBD Board of Directors. KDWP has been involved across the department. The Parks Division has been very helpful. They sent teams of park managers to help with the development and to come up with plans. Law Enforcement Division will have a new position located in Jetmore with sites on the HorseThief

Reservoir. From Fish and Wildlife division, fisheries biologist Lowell Aberson has been working on the pre-fish habitat for when it fills up and Steve Price is the grant coordinator for the boat ramp facility that I will show you. Administration has been involved also. The dam is going to be 7,210 feet long, 86 feet high, and over 2.5 million cubic yards of soil will be moved. Total surface acres when full will be 452 acres, and according to three hydrology studies, 80 percent of the time it will be 260 surface acres. Studies indicate it will take five years to fill. The current budget is \$17.5 million for dam construction and \$2.5 million for park facilities. Part of the \$17.5 million has contingencies, but we are hoping we don't have to use those. We are out of the hole, done with concrete and dirt work from now on to the dam, so we hope we will get those contingencies back to the park part of the development. *Showed photos on work done so far and explained them.* On the equestrian trail, the department provided a \$41,000 grant to help with development, and KDWP has funded nearly half (\$150,000) of Stage 1 development (total \$321,000) of boat ramps and has a motorboat access grant application for next year to help with Stage 2. We have a bottom boat ramp and before it gets to the outlet gate this will have a 50 surface acre lake, which for southwest Kansas is large. Knowing it could be five years, we are holding off on a lot of the buildings, but there is a desire to hire a manager, start installing main water line, main road into park from Highway 156, electric trunk line, and a small number of campsites. Working on putting main electric trunk line underground. www.horsethiefres.com

Commissioner Meyer – You said you were replacing five watershed dams, so this is part of a Watershed District and you should be able to get some funding from them? Mark Sexson – The Watershed District bought all 1,500 acres and they are leaving that on the table and have also done several other things like getting power run to water well on west end and they are in charge of building the dam and keeping it going, but Horsethief has all the money.

5. Late Migratory Bird Seasons – Faye McNew, waterfowl research biologist, gave the report on teal (Exhibit J). Late season bird seasons include duck seasons excluding early teal and goose seasons. The frameworks are controlled by the U.S. Fish and Wildlife Service (Service) and the states have to work within these frameworks. The frameworks are published around August 15, and based on May Breeding Duck Survey and recommendations from the Flyway Councils, we don't anticipate changes in the frameworks for geese and we expect 107 days again. Also, expect to be working within the Adaptive Harvest Management system for ducks which provides three packages based on mallard population and Canadian May pond counts. The liberal package includes a 74-day Low Plains season; moderate package, a 60-day season; and restrictive allows 39 days. The 2008/09 hunting season was the last year of the three-year Hunter's Choice Experiment. We are currently analyzing that date and expect to have preliminary results in July. We don't know if we will continue with Hunter's Choice or go back to the original frameworks. If Hunter's Choice becomes operational it will continue with the five ducks: two scaup or redhead; three wood duck; and only one duck from the following group: hen mallard, mottled duck, pintail or canvasback. Within the restrictive package it would be three ducks: two scaup, redhead and wood duck; and only one duck from the following group: hen mallard, mottled duck, pintail, and canvasback. The possession limit shall be twice the daily bag under all regulatory alternatives. If Hunter's Choice is not operational, we will go to six ducks again. Commissioner Lauber – The whole purpose for Hunter's Choice was to reduce the number of pintails by stopping the harvest of mallard hens? McNew – It was to prevent, right now we would have a season within a season for certain years for pintails and canvasbacks, so on a 74-day season we would only be able to hunt pintails or canvasbacks for 30 days. On Hunter's

Choice we are looking at as an alternative you can hunt those species for the entire hunting season but still restrict the harvest of those species. Lauber – Without Hunter’s Choice you would be able to have six, but only a brief period of time when you could harvest any pintail? McNew – Correct. Secretary Hayden – What does the treaty say about possession limit on geese? McNew – It is twice the daily bag, but I am not sure what the actual treaty language says. In the past we have asked for it to be changed and been refused mostly due to a law enforcement issue so I think the treaty may allow higher possession limits. I can look into that for you.

Break

C. Workshop Session

1. Early Migratory Birds – Faye McNew, waterfowl research biologist, gave the report on teal (Exhibit K). The hunting season framework is September 1 and September 30, 2009; not to exceed: 1) sixteen days if the blue-winged teal breeding population is above 4.7 million; or 2) nine days if the breeding population is between 3.3 and 4.6 million. Bag limit is 4 and possession limit is 8. Last year’s blue-winged teal breeding population was 6.6 million and we won’t know the 2009 population until June. The season dates we are recommending are: a nine-day season for the High Plains zone running September 19 through September 27, 2009 or a 16-day season running September 12 through September 27, 2009; or an eight-day season, given a liberal duck season running September 19 through September 26, 2009. In the Low Plains Zone we are recommending a nine-day season running September 19 through September 27, 2009; or a 16-day season running September 12 through September 27, 2009. Shooting hours are expected to be a half hour before sunrise to sunset.

Helen Hands, wildlife biologist, gave the report on doves (Exhibit K). For the past 25 years the federal frameworks for mourning doves have provided an option of either a 60-day season and a 15-bird bag limit; or a 70-day season and a 12-bird bag limit. Kansas has opted for the 60-day, 15-bird bag limit for at least 20 years. During the past several years, the three dove technical committees have been developing a mourning dove harvest strategy. We have three management units for mourning doves based on their migration patterns instead of the four flyways for ducks. We are in Central Management Unit, thereby we have a Central Management Unit Technical Committee. For the past several years, the three dove technical committees have been developing a mourning dove harvest strategy which outlines the decision-making criteria for the federal frameworks. Based on an analysis of the harvest information program data for mourning doves, changes in the bag limit have more of an affect in harvest than changes in season length. For consistency the Harvest Strategy has set the season length at 70 days and based on the population trend they may or may not change the bag limits. The harvest strategy goes into affect in 2009 and the current population of mourning doves is high enough for us to be in the moderate package with a 15-bird bag limit. That strategy goes into affect so we can implement a 70-day season with the bag limit set by the harvest strategy which is most likely to be 15. Currently our regulation says the season is 60 days. The recommendation is that the first segment will run from September 1 through October 30, and the second segment will open on the first Saturday of November and remain open for nine days. We considered two alternatives for allocating the remaining nine days. The first was to open the season on the first Saturday in November and the second option was to open the second segment on the second Saturday in November. We selected the first option because it would allow dove hunting during the opening weekend of the

upland bird season and allow the second segment to close before the exotic dove season opens on November 20. If the dove season overlapped with the exotic dove season, it would unnecessarily complicate the regulations and enforcement because a HIP stamp is not required during the exotic dove season.

2. Furbearer Regulations – Mike Mitchener, Wildlife Section chief, gave this report to the Commission (Exhibit L). Matt Peek is in Kentucky at the Midwest Furbearer Work Group meeting. Recommended changes for KAR 115-5-1, in regard to live trap terminology we would like to change “live trap” to “cage trap” and “colony trap” needs to be added. This is for clarification and to provide a more accurate description of the equipment that may be used. The second one is terminology describing where snares may be set in relation to a public roadway. This needs clarification. The current language can be confusing and interpreted in different ways, plus is more restrictive if a fence is not present. For example, 50 feet is usually further than five feet from the fence. By indicating a snare may not be set within five feet of a public road right-of-way or fence bordering a public road right-of-way, the location would be clarified and consistent whether there is a fence or not. KAR 115-5-2 deals with possession periods and disposal of pelts. Our recommendation is to eliminate possession periods. Possession periods were intended to discourage out-of-season harvest and provide some aid to law enforcement prosecuting those who harvested fur out of season. Most of the furbearers are of little value outside of current possession periods and this regulation can be problematic for people who legally harvest fur at times. We have multiple possession periods and inadvertent violations can occur because of confusion or misunderstanding of the regulation. Possession periods also create some degree of hardship for several furharvesters because of an increasing number of furharvesters who ship their furs out of state or out of the country for auctions and those holding onto fur for taxidermy purposes. The other one is to eliminate the requirement to skin furbearers within 48 hours of the close of the season. The original intent was to aid law enforcement in prosecuting those who harvested fur out-of-season, but the level of deterrent this regulation presents to those who may harvest out-of-season is questionable and has become an unnecessary hardship for legal furharvesters who freeze furbearers whole and skin and put the fur up after the season. This regulation has also resulted in inadvertent violation of otherwise legal furharvesters due to the confusion of possession periods or oversight of the regulation. KAR 115-6-1 deals with fur dealers licenses and some of this is just clean up; in subsection (5)(b) it deals with expiration date of fur dealer licenses and originally when this regulation was put together there were dates of 1990 and 1991 in that regulation. The fur dealers who bought a license in 1990, it would not expire until June 30, 1991. We are passed that, and we need to clean that up and remove those dates. Dealer licenses do expire on June 30 of each year. Also, in subsection (f) which deals with tagging requirements for certain species it specifically states bobcat in there, and we want to add swift fox because they also need to be tagged in the state. In KAR 115 25-11, the open season and bag limits we recommend no change and in KAR 115 25-12, coyote seasons, we also recommend no change. Secretary Hayden – At the last meeting there was a fur buyer that said other states distribute bobcat tags outside the agency and allow designated representatives, such as fur buyers, to do the tagging. Have we looked into that any further since that meeting? Mitchener – Matt is looking into that and also there may be a change coming in the CITES Act that would remove the requirement for tagging bobcats so we are waiting to see how that comes out. Legally we could allow fur dealers to do have bobcat tags and tag the animals so it wouldn't be a regulatory situation if we decide to do that. Commissioner Lauber – Is there a

law enforcement reason why we haven't done that? Or just not enough harvested to warrant it? Mitchener – Actually there is quite a number of bobcats harvested every year and actually it has been increasing. It is just something the department has always done. I don't believe there is any really good reason, because there is accountability for pelt tags anyway, know number and have reports that have to be filled out. Commissioner Lauber – I think it would be more convenient to allow fur buyers to do that. Commissioner Meyer – While we are in this area I would like to thank Kevin for the information he gave us last time on coyotes and how they relate to furbearers.

3. State T&E Review Status – Ken Brunson, environmental services nongame biologist, gave this report to the Commission (Exhibit M). You have had about three workshops on this and I realize this is familiar territory for you. We are getting toward the end of the five-year review of threatened and endangered (T&E) species in Kansas. The final decision will be made at the June meeting. We started the process with a six member Task Force made up of members of the agency and also experts from outside the agency that asked for petitions. Reviewing 21 petitions, the Task Committee recommended nine changes. The proposed changes were a couple that were going to be taken off the list completely - the bald eagle and peregrine falcon; one species, broadhead skink that is going to remain as threatened; the American eel remaining unlisted; the shoal chub being listed as threatened; bigeye shiner and redbfin darter listed as species-in-need-of-conservation (SINC), which is our watch list; plains minnow recommended for threatened category; and delta hydrobe snail recommended for threatened status. You will see a summary in the one sheet that has all the species that were petitioned along with the final recommendations. Commissioner Meyer – It is great to see some species come off the list. Jill Hanson, Logan County – The prairie dog as threatened species, can you address that? Brunson – Currently the black-tailed prairie dog is not on any list of protected status. Hanson – But KDWP and the U.S. Fish and Wildlife Service (USFWS) is looking into that? Brunson – The black-tailed prairie dog was considered a few years ago for federal listing, and was warranted but precluded at time, but since then has been totally delisted, so there is no official listing at this time. Hanson – Isn't there a time period that KDWP is looking into that this year by mandate? Tymeson – The USFWS has again been petitioned by a group to list the black-tailed prairie dog as a threatened species. We are in the 12-month finding period and will come up in November when they will make an announcement on that. It is the USFWS not our department, however they have come out for comments from the public and interested agencies and folks within our agency did comment as part of the Western Association of Fish and Wildlife Agencies. Hanson – Can someone tell us what those comments are? Numbers from what the last count was? Mitchener – We provided comments to USFWS, numbers of prairie dogs are actually up from what they were previously. Hanson – What year was that? Mitchener – We did a survey in 2007, only in the northwest quarter of the state, not the entire state and we extrapolated those numbers for the entire range in Kansas and our population level was higher this past year than when we did the original survey in 2000 and 2001. We provided those comments. We had a plan as part of the original work with the other 11 states that have black-tailed prairie dogs that we would have a goal in Kansas, a goal of 130,000 acres of prairie dogs. If it was possible we would increase to 150,000 acres of prairie dogs in the state. We are at about 170,000 acres so we are far above what that goal we set for our state's contribution to the range-wide population of prairie dogs. Hanson – The comment I would like to make is even with our state law that requires eradication and control, which is so controversial, our numbers are up from before.

Brian Sowers – I would like to know who called for the petition for this study? Mitchener – It was a group called Wild Earth Guardians out of New Mexico. Commissioner Lauber – Our agency has not been active in attempting to get any listing done on these, we provided comment only. In fact, we would rather not have it listed. Chairman Johnston – Mr. Tymeson, when you were doing your legislative review you mentioned two items of legislation that were introduced to change or modify these regulations as it relates to County Commission powers to regulate prairie dog populations. Do we know who introduced those? Were those KDWP proposals? Tymeson – No, they were not. Commissioner Lauber – I think, in general there is confusion when the USFWS is being asked to conduct a study within their powers and what KDWP is doing. They are two separate, distinct agencies, one federal, one state and is completely different. While we try to work with them when it affects Kansas, but is outside the jurisdiction of this agency.

4. KAR 115-25-9a. Deer; open season, bag limit, and permits; additional considerations
- Lloyd Fox, big game wildlife research biologist, gave this report to the Commission (Exhibit N). This will be brought forward for public hearing at the June Commission meeting. This regulation does four different things after we pass 115-25-9, which we will go over later tonight. It will have season dates for Fort Riley, which they have requested that we review those season dates later in the year than we normally set our seasons; it will have archery season dates for Fort Riley, we establish antlerless-only deer permits for units where we will allow the harvest of mule deer doe under the antlerless permit system and we like to enact that after people have obtained their antlered deer permit; and the special extended season which came up a couple of years ago in areas where additional deer hunting was desired, especially by local citizens and legislators, to add an additional week of antlerless season. As discussed before, originally that was in the northern parts of DMUs 7 and 8, and the department would recommend that we stick with whole DMUs as opposed to subsections of them. Our original intent was to just go with 7 and 8, but we have been contacted by people, especially out of the Wichita area in Unit 15, and we would like to include DMU 15. We would have DMUs 7, 8 and 15. The other aspect of that is that this particular year the regular extended season would have only been three days, January 1, 2 and 3, and considerable input came in and recommendation to go for two weekends and run it from January 1 through January 10. That would change when this special extended season would be and the recommendation will be to go from January 10 through January 17. This draft of this regulation has already been submitted to the Attorney General and we will need to introduce a possible amendment when we do bring this back for action. The amendment will be for different units and different season dates than are currently in there. Chairman Johnston – With respect to these special extended deer season units, I noticed in connection with the allocation of nonresident deer permits in 2009, that the percentage increase in permits for Units 7 and 8, one of them is the highest increase over 2008, and Unit 7 is fairly high, but Unit 15 is fairly low in comparison. What is it about Unit 15 that warrants a special extended deer season, but only a 17 percent increase in nonresident deer permits over 2008? Fox – These are two separate issues; one is the that last year we attempted to provide sufficient nonresident whitetail either sex deer permits to meet hunter nonresident demand in much of the state, especially east of here. Unit 16 was one particular unit of great concern and in doing, it was difficult to determine what the actual demand was for permits because items like archery permits were going to multiple units and we had to redistribute those. To be honest I think I missed the estimate on how many people wanted to hunt in DMU 7 and last year DMU 7 was one of the units that we had intended to meet

demand, but it was the one unit where we did not meet demand. On the other hand, DMU 16, we increased the number of permits to that unit and we substantially exceeded demand in that unit. So we tried to make an administrative adjustment to those numbers to get us more inline to where we should have been last year. In DMU 7, all of my indices look great as far as what that deer herd is doing and the desire for deer permits from landowners; deer/vehicle accidents and all of these factors say we should increase deer permits. We did a little extra to that to be sure we did meet the demand. We reduced permits in Unit 16 to get us back in line to where we should have been previous year.

Fox - I have one other point to bring up. We have discussed this once before and we will be changing our nonresident application period, not this year, but next year and would like to bring a regulation back to you as soon as our June meeting. That will probably come in as regulation 115-25-9b (Exhibit O). I wanted to let you know because we will probably bring that back without a workshop, it will go right to public hearing. Chairman Johnston – That will be moving the application opening period up 30 days or something? Fox – Right, it will open it earlier and close April 30 instead of May 30. We do need to notify nonresidents that this is going to happen well in advance before it occurs.

VII. RECESS AT 4:05 p. m.

VIII. RECONVENE AT 7:00 p. m.

IX. RE-INTRODUCTION OF COMMISSIONERS AND GUESTS

Secretary Hayden and Chairman Johnston presented Keith Sexson with his 40-year service award.

X. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS

Jill Hanson, Wallace (Logan County) – One of landowners/ranchers that borders the ferret release site. For the past two years we have been involved in a study conducted by Charlie Lee, wildlife specialist from KSU. The study is funded by USFWS and involves seeing if a vegetative border contains the prairie dogs or they cross it. The study is almost finished and since August 2008 KDWP has funded one-third of control on some of the bordering landowners. My concern is that KDWP understand that a prairie dog management plan year must be year-round, not seasonal. KDWP also needs to understand that until the core where the prairie dogs come from is controlled the financial consequences and the landowner consequences in and around the release will continue to have damaged land, loss of grazing and loss of gain for livestock year-round. A prairie dog, or any wild animal, does not recognize a border. Is KDWP willing to increase funding for the landowners who are now out of the study? Keith Sexson – We are in the first year of the study portion and there are three partners: USFWS, KDWP and The Nature Conservancy and we are working with USDA-APHIS who does the work. It is a five-year project so we are not sure with one year where it might be going. I can promise we are into it for five years and will continue to evaluate what impacts we are having in terms of controlling on the borders and on the neighbors. We know it is a challenge, but it is an effort we are trying to make to see what can be done as it relates to border control in that particular area. As time goes on we will be evaluating and adjusting as necessary. At the end of the five-years we may have some more solid recommendations what we can do on a long-term solution. There are a lot of

issues that come into this and you have visited with and dealt with Charlie Lee and we are cooperating with his efforts and Extension efforts as well. Hanson – I would like to ask the Commission and KDWP to look into Charlie Lee’s study and allow him to show the scientific findings that he has found with that vegetative border and the constant eradication and counting each month afterwards on the neighboring landowners. Within three months time after a poisoning we are up over 110 percent return. We had a neighbor who spent \$23,000 in January through this study, one month of poison and control and if the study shows like it did last year and they return by 110 percent that is a lot of taxpayers’ money that goes for that program. I would ask, if KDWP wants to be involved in the ferret program, why has it not chosen a more economically-friendly program and more friendly to the nonparticipating landowner? We have continued loss of grain and grazing, the devaluation caused by the damaged land, not conserving the land (land erosion). And again I ask the Commission as soon as they are allowed to see the other release site that they go and see that because I believe a picture is worth more than a thousand words and that you will understand where we are coming from when you see that. The vegetative border in short grass prairie is not very tall. Release site participants can have all the prairie dogs and ferrets they want, but it affects the neighboring landowners and that is our problem. Why has it chosen not to be a friendly program? Commissioner Lauber – We are not a participant in the reintroduction effort. Keith Sexson – That is true, the USFWS ferret reintroduction program they have implemented under an experimental permit, so for the duration of that program it is strictly USFWS and we are not a player in the ferret release aspects. Where we have come in as partner is in trying to determine if there are ways to control prairie dogs because we know that in order to have prairie dogs in the state you have to be able to control them, as well. So we are on the control side and the USFWS is responsible for the ferret release sites and what goes on within the ferret release program. It gets really cloudy and very unclear to a lot of folks that there is a difference between the ferret release program and others’ efforts to try and determine if there are ways we can control prairie dogs. Irregardless of whether we had a ferret release program or not, if we had landowners who wanted to maintain prairie dogs we know that you have to have some techniques to maintain them within those property boundaries. To a certain extent, what Charlie has been doing in this cooperative effort is to see if there is a way to control the movement of prairie dogs from one area to another either through vegetation control, through the use of rodenticides or any of those other types of techniques that have been tried. Our involvement in what goes on in the properties where the ferrets have been released is out of our purview as it relates to the ferrets. Hanson – But as a partner, you are participating in part of that control and we are saying that within that control we have a return of over 110 percent in just a few months. So the next question is, are there attempts to do away with Kansas state laws that deal with eradication in spite of the concern with the word eradicate, you heard from Mr. Mitchener today that prairie dogs have increased in numbers since the year 2000. This is why farmers and ranchers support the law that has been on the books for over 100 years because it is working. Even though we continue to control the prairie dog, they are returning. What would your stance be on repealing the state law concerning prairie dog control, such as 286 or 287? Chairman Johnston – Mr. Tymeson would you respond to that. Tymeson – Our position has been, and continues to be, that the laws that are currently on the books are onerous to private property rights. When you repeal those laws, if you have some sort of replacement or modernization which has some sort of balance which is what is trying to be struck in TNC’s case and seems to be working for them and may, or may not be working in your instance. Our position in 2000 and each time this has come up in the legislature (the version of 286) that has

come up and in 2004 (version 287 now) that we tried, in cooperation with Farm Bureau and KLA, to get something passed. You understand that the USFWS has been petitioned to list the black-tailed prairie dog as a threatened species and there are a number of factors that they look at and one of them happens to be what the state law is in relation to prairie dogs and ours are very onerous to prairie dogs. That doesn't mean if you repeal the statutes that you couldn't still eradicate prairie dogs, it just means you couldn't force private landowners to eradicate.

Commissioner Lauber – Would another way to say that be that the current laws that are in affect enhance the prairie dog protector's efforts to get the prairie dogs listed? Tymeson – Yes, I would agree with that. Commissioner Lauber – I am under the assumption that this law has been rarely used, but the very nature of it causes people who are not in this area to probably recoil and give momentum to an effort to list the prairie dog, which frankly we oppose. Tymeson – That is correct. Chairman Johnston – If black-tailed prairie dogs would be listed it would limit available options to all of us to effectively control the situation in a manner that is in the best interests of our local communities. I agree with Mr. Lauber that we are not in favor of black-tailed prairie dogs being listed either. We need to continue with this study to determine reasonable, but effective, ways of controlling these populations and getting techniques developed that will be able to be used to respect property lines and interior population control to keep the tendency of prairie dogs to spread, redirecting the movements so it spreads towards the interior. That is what this study is designed to accomplish. Commissioner Lauber – At a previous meeting someone from the USFWS was talking about the public comments they received and they received 20,000 emails and letters in support and 200 against, and most of those were in prairie dog country. I think the current law, while well-intended, is very similar to laws in the eastern part of the state to protect neighbors from seriza lespedeza and other noxious weeds. I think if it could be modified consistent with livestock producer's goals, I think it would be helpful to not have the black-tailed prairie dog listed and I personally I would like to see a modification to where this could get off the front page of the New York Times and other newspapers and see if it couldn't be resolved. Hanson – I have read 286 and 287 and I do not see within those that they are rancher/livestock/farmer-friendly whatsoever and the word control has just opened the door for continual damage and expense. So if that is the route KDWP is going to go then it will be a continued front page. I understand what you are saying about if it gets listed, but the science behind it getting listed here in Kansas is nil. Chairman Johnston – Unfortunately, it not just Kansans who will determine that resolution, it is a federal action. Secretary Hayden – It is just like the whooping crane, they come through here, they don't live here, but they migrate through here and are a federally endangered species, so that has a huge impact when they come through. So the population of prairie dogs in Kansas might be stable or increasing, but over it's range, in 11 states, obviously there is a lot of data that shows that this species is close to being threatened or endangered to extinction and if that happens then we have to live by those laws and rules even though our population might be increasing, because we are just one small piece of this puzzle. We don't want to see it listed and every time this debate comes up they point to the Kansas law which is a law of confiscation and eradication and does not reflect the modern paradigm and doesn't reflect what we know biologically and we need to move to a law of management and control. We agree with you entirely that prairie dogs must me controlled, but they don't have to be controlled through a confiscation law, which is what we have now. Hanson – The control that has been the ferret release complex is not control, or the word control is so broad that the surrounding landowners pay the price and it is not right. It is not friendly. Secretary Hayden – We don't disagree with that. Commissioner Meyer – The black-footed ferret is a predator of

prairie dogs and are part of the management and control of prairie dogs. We have found there is very little scientific evidence or research that has been done in the past and we are cutting new ground when it comes to managing prairie dogs and controlling them. One of the uppermost goals of the people we have working on this prairie dog stuff is to be good friendly neighbors to the adjoining people and find a way we can manage the prairie dogs to those folks who want the prairie dogs to give them the help and information they need to manage the colonies so they don't spread on to adjoining neighbors. Repeatedly we hear about the importance of our research to help folks who have prairie dogs be friendly neighbors to the folks who don't want prairie dogs. The black-footed ferrets are predators, so be thankful they are bringing them back. Hanson – I understand that, but the complex that we border the numbers of prairie dogs are so high compared to what one ferret will eat per week. There is no balance on that release site, in fact the grass is so gone that when the wind blows the dirt blows and Kansas has been one of the states that has tried for land conservation within the government means and then we have another government entity coming in and doing the opposite. Again, I encourage the Commissioners to go see the land. Commissioner Meyer – I would encourage the USFWS to control the blowing of dirt. Hanson – But then they would have to control the core and the USFWS has not been willing to enforce the landowner that participates in the release project, control. Commissioner Sebelius – I appreciate your situation and understand what you are struggling with. My problem with the current law is that it leaves the finding in the hands of three individuals who probably don't have the background that they should have to make that kind of decision to go and impose their will over someone else's land. I know that may not be perceived as onerous as the situation you are experiencing in that you believe that your neighbors are doing the same to you. The law, if left as it is, puts that in such a capricious position for those people to be able to do that and that is not where we are in what we know today as opposed to 100 years ago. We can't continue to say that this species doesn't deserve to exist at the whim of three individuals in a given county. So that is the problem I have with it. I agree with you that maybe we should find a solution, maybe as a permit system with the people who are charged with responsibility of conserving, which as Assistant Secretary Sexson said, control is part of the way we can serve for the future. Chairman Johnston – I think all of us on the Commission have learned enough about this subject that while a lot of the public discussion is focused on the property rights of the people who have the land where the problem exists, your property rights are also being affected. We understand that so you don't have to convince us. Commissioner Meyer – We appreciate the fact that you are the folks that feed the wildlife that we control. Hanson – Oh, you know that do you? Commissioner Meyer – We realize it is a financial burden on you because wildlife eats a lot of stuff.

Sheila Ellis, Logan County landowners who neighbor of TNC - TNC is doing a much better job than the Haverfield complex on not invading the neighbors, but we still continually treat prairie dog infestations and have damage. We understand what you are saying about not wanting the prairie dogs listed, but saying it is harming their rights as a property owner by not letting them keep a rodent is the same as if you wanted to allow someone in an apartment building to maintain an infestation of rats because they didn't have a problem with rats. Prairie dogs can carry every disease a rat can carry. They can carry bubonic plague; rabies; and any tick-borne disease. A lot of times it is stated that we are being fear mongers when we talk about the plague and I would like to read from a lab manual that the Park Service put out on what diseases you can get with black-tailed prairie dog. "Disease transmission, prairie dogs and other animals - prairie dogs can carry disease organisms that are harmful to humans and other prairie dogs. The

most common disease affecting both humans and prairie dogs is plague which is caused by the bacteria *Yersinia pestis*. In humans the disease is called bubonic plague. In mid-eval times it was called the black death. In prairie dogs the disease is called sylvatic plague. Plague is transmitted to humans by fleas that have been infected by rodents that carry the disease. Humans can get plague by being exposed to infected tissue. In prairie dogs it is thought that the disease is introduced by another mammalian host via fleas that infect the colony. Precautions that need to be taken by people handling prairie dogs are to wear clothing that covers most of the body and use flea and tick repellent. One should also have a valid tetanus vaccine. One also runs the risk of getting tick-borne diseases such as Rocky Mountain spotted fever, Lyme disease, for many mammals including the prairie dog. Tularemia also can be transmitted by ticks as well as deer flies and handling infected animals. Hantavirus, a several potentially lethal disease has the potential to be carried by all rodents including the prairie dog. One may become infected by breathing or ingesting the virus from areas where contaminated rodent urine, droppings and saliva are found. Being bitten by an infected rodent is also a source. Do not overlook the possibility of rabies, any mammal can be affected. Avoid animals exhibiting abnormal behavior.” I talk about this is because they say we are a plague-free population, they said South Dakota was a plague-free area and they let the prairie dog population go unchecked and the neighboring landowners are fighting the same thing we are. In 2004 they got plague, then in 2005 and big-time last May and they lost about one-third of their population and about one-third of their ferrets. Our concern is also the safety of our families, because you can bring it in on your pets and farm dogs. We already have plague in Cimarron National Grassland, which is 145 miles from here. Plague can be carried in by birds so by letting a rodent infestation go uncontrolled you are not only damaging our land you are putting our families at risk of disease. Any time a rodent is left to propagate as it will you get disease and once you get it in the area you fight it. Jill talked to you about the economics of the situation, it is a repeated huge cost to everybody, besides the costs of the study and what you guys are partnering, over \$400,000 has been spent on treatment over past three years (2006, 2007 and 2008) by private property owners in Logan County. That doesn’t include labor, fuel, or applicator expenses, it is just bait. I believe it was Ms. Wilson I read in earlier minutes, that wondered if there was anything that showed a loss to the livestock (gave a report to Commissioner Shari Wilson that showed a Colorado study that said if there was a 60 percent infestation you lose 14 percent of your gain – so on every \$10 we should make on that head of cattle, we will lose \$1.40 and our margins aren’t that big on our crops and livestock and that can really hurt us. Our property rights seem to be way less important than the property rights of those that want to keep a rodent there. These are also like termites, you can’t have a house with termites in it and tell the termite to get them all except for the ones in the kitchen because those are my favorite, but get all the rest, because they are going to move back out. You cannot keep things like this that spread confined, they even have difficulties in zoos. Like Jill, I hope you can go look at Haverfield complex and the land. A month ago, every time we had winds like we had yesterday it would put to reminiscent of the dirty 30s. The rain has helped some. *Showed some photos of vegetative barrier and landowner photos.* One of the places APHIS poisoned was the vegetative barrier, but it is not working, we are short grass. Commissioner Meyer – Can you give me the legal description of this area? Ludolph – One of the pictures is mine, 2-15-35. Ellis – In looking at the photo of the vegetative barrier you can’t see any difference in vegetation between the fences and beyond the fences, so vegetative barrier is nothing but a name, the prairie dogs don’t see a difference. Back to the plague, at Cimarron National Grasslands, they are still encouraging us to come as visitors, but it come with this

caveat “Plague is present on the Cimarron National Grassland prairie dog colonies, we are currently experiencing a plague outbreak event, visitors should continue to enjoy the Grasslands by taking the following precautions: avoid contact with the prairie dogs; do not dead prairie dogs after shooting, predators and coyotes such as raptors feed on the shot prairie dogs; keep domestic animals away from prairie dogs and prairie dog colonies.” So if they need to keep their domestic animals away from these prairie dog colonies, if we get plague in Logan County do we have to start chaining our animals to protect our families? If you go to the USFWS when they talk about the Canata Basin, it says pets should not be allowed to roam free in infected prairie dog colonies. There has been human plague in four states. They had a death in Colorado that wasn't related to a prairie dog, but 13 cases were attributed to prairie dogs. “The 2004 plague season was unusual for the considerable activity being observed in late fall and early winter, activity was observed practically year round from March and April through November and December. Cats and prairie dogs accounted for 48 percent of the positive specimens. Flea pools 14 percent; and squirrels, rabbits and lynx comprised the remaining 17 percent.” This is about health and safety of the community and economic health.

James Ludolph – I own land in the middle of this property, I am surrounded by it. *Showed photo of property.* Photo shows 99.7 holes per acre, and I have had to reduce the cow herd on that to nine head which is totally unacceptable. I am hearing about vegetative barrier, but neither Parks and Wildlife or USFWS or any other partners have built a fence. There is supposed to be a 90 foot fence around that property, so I get infested immediately. They were totally killed out in 2007 and 2008 and I was totally reinfested with 588 new holes. There is 124 acres in that pasture so it is basically useless, because no one can afford to run just nine head in there. Also, they are getting into the plowed ground, if I plant that into wheat, they are going to be there. It has been setting for 4 years because someone was going to get the dogs back far enough that it wouldn't affect me, especially when wheat was at \$10 a bushel and that ground probably 35-40 bushel, there is 114-115 acres. These guys say it makes no difference, but if you are in the middle of it there is a big difference. Sheila (Ellis) addressed part of this, but at one of the meetings I was at they said plague was basically spread by mammals, such as coyote, etc. I have a document from the Veterinary Association that says birds of prey can spread plague, either by fleas or by moving the animal. The more dogs, the more predators, raptors and eagles you get and the chances of getting plague increases. It is significantly higher than it ever has been. The reason Kansas hasn't had a lot of plague is because the prairie dogs have been kept down to a minimal amount. I was watching a show on National Geographic and they were talking about condors in Arizona, and about where they released them in the Grand Canyon. Apparently condors can attract bubonic plague, because one of the researchers died of bubonic plague in 2007 and the condor actually died of lead poisoning. With the influx of eagles and hawks we are going to come up with it. Like the deal in Canata Basin, they were saying a coyote brought it from the west over the mountains and I find that highly improbable. My assumption is that it came in by eagle or hawk. The other thing that comes into play is that condors are susceptible to lead poisoning and people are shooting varmints the condors are scavenging them and they are dying of lead poisoning. Sooner or later you will have enough eagles, hawks or other birds that will eat enough prairie dogs to die of lead poisoning. One thing is shooting them is highly inefficient and two, you are contaminating things with lead. The only way to get rid of them is eliminate them. This is costing us thousands of dollars. This year they are paying for the poison, but next year the experiment concludes and it is going to turn into a bigger mess. If you go up into South Dakota

and talk to those ranchers they have a half mile boundary, but they are still getting flooded because the core is so heavy they have to go someplace. This needs to be addressed.

Brian Sowers – I bought property next to Haverfield complex in 2003 and I had about 5 acres of prairie dogs. I have been controlling my prairie dogs at my own expense and I have no idea how much money I have put into but expect \$30,000 to \$40,000. In 2008, I decided I was going to use APHIS, and I appreciate the money they put in. I feel they did a good job on killing the prairie dogs, but the damage to property is still there, we haven't got rid of the holes and we haven't grown the grass back, which takes many years to do. We still have mounds to do away with because you can't drive or ride across those things. In the near future the prairie dogs will be migrating back to this same spot. I have done this since 2003 and every year they just keep getting worse. I am asking why we can't enact state statutes to control these prairie dogs. The Commissioners have the authority to do their needed jobs in each county and they are elected officials, I don't think they would go out and abuse somebody's property and do away with somebody's privileges, I think they would do their best to keep all of community and neighbors in happy standings. I would invite any of you to join me on my property to show this investigation of the problem I am having. I have approximately 3,500 acres right beside this infestation. Chairman Johnston – I understand what you are telling us. Linda Sowers – I know that as far as expenses, we started out with a minimal expense of \$3,500 and it was up to over \$10,000 last year and this year APHIS spent over \$20,000 to eradicate the prairie dogs. We have to run fewer cattle because there is less grass and it continues to get worse. I am even amazed when I go out there. Right now we have a pretty good kill, but we know that they will be migrating in the next month. Brian Sowers – In Colby we had to demolish two houses in the last two months because of rat infestation and when you go to sell houses in town you have to have an inspection done. The same situation is going to happen on my property if I decide I have to sell it, there will have to be an inspection and my banker has already told me it has devalued my property by 50 percent to 60 percent. I would appreciate some type of action being taken. Commissioner Meyer – I think we could direct the Secretary to relay these concerns to APHIS and USFWS and those doing these control measures and encourage them to try something more effective.

Hanson – The study I was telling you about between USFWS, KDWP and TNC, \$23,000 in the month of January (*showed map of Edwards land*) and this is through Charlie Lee's study through KSU and shows the four counts, one from each month where the poison occurred. Also, map that shows ferret release site, which has bordering landowners on it (Exhibits P, Q).

Patrick Porch, Oakley – On ferret release, is it working or not working at all? In the case, it is how long will we go in this direction before we change directions somehow? Chairman Johnston – I don't have enough information to answer your question. It is my understanding there is a five-year study going on. Porch – And we just completed the first year? Chairman Johnston – That is my understanding, so it is early to draw conclusions.

Ludolph – I have two documents you might want to examine, one from Natural Resources on a grazing study and one from K-State showing their findings of the 99.7 holes (Exhibit R – received later).

Ellis – You keep talking about the five-year thing, but all the data I’ve got on it says it is not a study, it is a treatment plan that TNC, USFWS, KDWP are sharing the cost of. It equals \$100,000 which goes to salary and administration and \$19,050 goes to poison, bait and applicator and this year they had to purchase the three-wheeler for the applicator to do his work on. It was estimated that \$12,000 was going to be available to buy bait. Private property owners within Logan County spent \$130,000 and \$150,000 on bait this year and your five-year partnership put \$19,000 for poisoning. That doesn’t go very far and it isn’t a study unless there is something else out there we haven’t been made aware of. APHIS has been hired to administer the control. The only study I am aware of is Charlie Lee’s and it ends this year. For those of you who don’t deal with acreage on a regular basis, if you want to visualize what we are talking about, if your home sits on a lot 100x140, that is approximately one-third of an acre, if your property looks like some of ours does you would have 35 to 40 holes with mounds of dirt in your yard. It would eat up ten percent of your yard just in holes and dirt mounds, or 90 yards of a football field would have 100 to 112 holes it.

XI. DEPARTMENT REPORT

D. Public Hearing

Notice and Submission Forms (Exhibit S); Kansas Legislative Research Department letter (Exhibit T).

1. KAR-115-8-1. Hunting, Furharvesting, and discharge of firearms (on public lands) - Brad Simpson, Public Lands Section chief, gave this report to the Commission (Exhibit U). This is in reference to posted notices on our state fishing lakes and wildlife areas. In this regulation we will adapt the reference document that has all of those posted notices and special restrictions on those. The reference document that has been in the briefing book has those changes implemented.

Commissioner Gerald Lauber moved to bring KAR 115-8-1 before the Commission. Commissioner Robert Wilson seconded.

The roll call vote on KAR 115-8-1 as recommended was as follows (Exhibit V):

Commissioner Bolton	Yes
Commissioner Lauber	Yes
Commissioner Meyer	Yes
Commissioner Sebelius	Yes
Commissioner R. Wilson	Yes
Commissioner S. Wilson	Yes
Commissioner Johnston	Yes

The motion as presented KAR 115-8-1 passed 7-0.

2. KAR 115-25-7. Antelope; open season, bag limit and permits – Mike Mitchener, wildlife section chief, gave this report to the Commission (Exhibit W). The archery season will be September 19 through September 27, 2009 and October 10 through October 31, 2009; authorized for Unit 2, Unit 17 and Unit 18; with unlimited archery permits for residents and

nonresidents. Firearms season will October 2 through October 5, 2009; authorized for Unit 2, 94 resident firearm permits; and Unit 17, 36 resident firearm permits. Muzzleloader season dates are September 28 through October 5, 2009; shall also be valid in unit for which permit is authorized during established firearm season; the number of permits for muzzleloader season authorized in Unit 2, 24 resident muzzleloader permits; Unit 17, 12 muzzleloader permits; and Unit 18, 12 resident muzzleloader permits. The bag limit for each muzzleloader and firearm permit shall be one antelope of either sex. Applications for resident firearm muzzleloader permits shall be accepted at the Pratt office at the earliest date the applications are available through June 12, 2009. Applications for resident and nonresident archery permits shall be accepted at the earliest date the applications are available through October 30, 2009. If there are any unfilled permits after all applications have been considered the application period may be extended by the Secretary. Any applicant unsuccessful in obtaining a permit through the drawing may apply for any of those permits made available through an extended application period or other permit that is available on an unlimited basis.

Commissioner Debra Bolton moved to bring KAR 115-25-7 before the Commission. Commissioner Shari Wilson seconded.

The roll call vote on KAR 115-25-7 as recommended was as follows (Exhibit X):

Commissioner Bolton	Yes
Commissioner Lauber	Yes
Commissioner Meyer	Yes
Commissioner Sebelius	Yes
Commissioner R. Wilson	Yes
Commissioner S. Wilson	Yes
Commissioner Johnston	Yes

The motion as presented KAR 115-25-7 passed 7-0.

3. KAR 115-25-8. Elk; open season, bag limit and permits – Mike Mitchener, wildlife section chief, gave this report to the Commission (Exhibit Y). The archery season shall be statewide, except for Fort Riley, subunit 8a and Morton County, a portion of Unit 18. The dates will be September 21 through December 31, 2009; at Fort Riley, subunit 8a the dates shall be September 1 through October 4, 2009. Firearms season shall be statewide, except for Fort Riley, subunit 8a and Morton County, a portion of Unit 18. Firearms season dates shall be December 2 through December 13, 2009 and January 1 through March 15, 2010. On Fort Riley, subunit 8a, the first segment will be October 1 through October 31, 2009; second segment - November 1 through November 30, 2009; and third segment - December 1 through December 31, 2009. Muzzleloader season is statewide, except for Fort Riley, subunit 8a and Morton County, a portion of Unit 18. Muzzleloader season dates shall be September 1 through October 4, 2009; on Fort Riley, subunit 8a, will be September 1 through October 4, 2009. Any elk permit shall be valid during any season using equipment authorized for that season and we are proposing is eight any-elk permits. An antlerless-only permit shall be valid during any season using equipment authorized for that season, except that an antlerless-only elk permit shall be valid on Fort Riley, subunit 8a only as follows: first segment antlerless-only elk permit shall be valid on Fort Riley only during the first segment and five antlerless-only permits shall be authorized; second segment valid on Fort Riley only during the second segment and five antlerless-only permits shall be authorized; and third segment valid on Fort Riley only during the third segment and five

antlerless-only permits shall be authorized. All antlerless-only elk permits shall be valid on Fort Riley during the September 1 through October 4 archery and muzzleloader season. Bag limit is one elk as specified on the permit issued to the permittee. Antlerless-only and any elk permits shall be awarded from a pool of applicants who are Fort Riley military personnel and applicants who are not Fort Riley military personnel. Unlimited number of hunt-on-your-own-land (HOL) permits shall be authorized statewide, except for Morton County. The HOL permits shall be valid during any open season. Bag limit for HOL elk permits shall be one antlerless elk. Applications for HOL shall be accepted at Pratt office at the earliest date the applications are available through March 14, 2009. Applications for antlerless-only and any elk permits accepted at designated locations from earliest date the applications are available through July 10, 2009. If there are any leftover elk permits or any elk permits after all the permits are drawn then the Secretary may authorize leftovers permits drawn and issued on a daily basis until gone. Each permit holder, upon harvest of an elk, contact designated department staff within two calendar days to arrange for collection of biological data and tissue samples, our CWD samples.

Commissioner Shari Wilson moved to bring KAR 115-25-8 before the Commission. Commissioner Frank Meyer seconded.

The roll call vote on KAR 115-25-8 as recommended was as follows (Exhibit Z):

Commissioner Bolton	Yes
Commissioner Lauber	Yes
Commissioner Meyer	Yes
Commissioner Sebelius	Yes
Commissioner R. Wilson	Yes
Commissioner S. Wilson	Yes
Commissioner Johnston	Yes

The motion as presented KAR 115-25-8 passed 7-0.

4. KAR 115-4-11. Big game permit applications – Lloyd Fox, big game research biologist, presented this report to the Commission (Exhibits AA, BB). We have received additional input since our last Commission meeting. We have before us the regulation as it was approved by the Department of Administration and the Attorney General, with two changes from the previous year’s regulation. One is in section (a)(1) where we are adding the word “antlered,” and I will come back to this section at the end because this is where we have a proposed amendment for your consideration. The other part of this regulation is on page 3, in section (d)(3). This is a new proposal to create a preference, or way of rewarding individuals who have applied many times for an elk permit. They will be allowed to enter into the drawing once for each preference point, or each time they had applied in the past and not received a permit. Then it goes through with additional clarification on what happens if they receive a permit, how they receive these bonus points and how often they have to apply to keep their system up if they fail to make at least one application or purchase a bonus point in five consecutive years, they are basically dropped out of the system. That will clear our books out if someone stops applying. Since then we have reworked the section on the application, section (a)(1), and added, where we added “antlered” we added “or horned” big game or wild turkey permit for each big game species or wild turkey. This will cover pronghorn as well as deer. Then we are adding an additional item to that to clarify a point that we have run into, “except when the individual is unsuccessful in a limited quota drawing and alternative permits for the species are available at

the time of subsequent application.” This allows someone to apply for a permit, and if they are unsuccessful in that application they can still apply for, in this case most often another deer permit, if that is available at the time of subsequent application. Where this really comes in is our any-deer or either-species drawing. If an individual is unsuccessful, they may go through and apply for a HOL or an archery permit or one of the whitetail either-sex permits. This basically is a clarification of a system that we were using in the past. We have a regulation before you and a recommendation for an amendment to that regulation.

Commissioner Shari Wilson moved to bring KAR 115-4-11 before the Commission. Commissioner Debra Bolton seconded.

Commissioner Gerald Lauber moved to amend KAR 115-4-11. Commissioner Shari Wilson seconded.

The roll call vote on KAR 115-4-11 to amend was as follows (Exhibit CC):

Commissioner Bolton	Yes
Commissioner Lauber	Yes
Commissioner Meyer	Yes
Commissioner Sebelius	Yes
Commissioner R. Wilson	Yes
Commissioner S. Wilson	Yes
Commissioner Johnston	Yes

The motion as presented KAR 115-4-11 passed 7-0.

The roll call vote on KAR 115-4-11 as amended was as follows (Exhibit CC):

Commissioner Bolton	Yes
Commissioner Lauber	Yes
Commissioner Meyer	Yes
Commissioner Sebelius	Yes
Commissioner R. Wilson	Yes
Commissioner S. Wilson	Yes
Commissioner Johnston	Yes

The motion as presented KAR 115-4-11 passed 7-0.

Chris Tymeson – Before we move on, it has come to my attention that if we could possibly reopen 25-8 there is a typo in there. Chairman Johnston I need a motion to reopen 115-25-8.

Commissioner Shari Wilson moved to reopen KAR 115-25-8. Commissioner Gerald Lauber seconded.

The roll call vote to reconsider KAR 115-25-8 was as follows (Exhibit Z):

Commissioner Bolton	Yes
Commissioner Lauber	Yes
Commissioner Meyer	Yes
Commissioner Sebelius	Yes
Commissioner R. Wilson	Yes

Commissioner S. Wilson	Yes
Commissioner Johnston	Yes

The motion as presented KAR 115-25-8 passed 7-0.

Chris Tymeson – On the top of page 3, the very first line should read: “March 14, 2010” as the application deadline for hunt-on-your-own-land permits.

Commissioner Gerald Lauber moved to amend the error on KAR 115-25-8. Commissioner Shari Wilson seconded.

The roll call vote on KAR 115-25-8 to amend was as follows (Exhibit Z):

Commissioner Bolton	Yes
Commissioner Lauber	Yes
Commissioner Meyer	Yes
Commissioner Sebelius	Yes
Commissioner R. Wilson	Yes
Commissioner S. Wilson	Yes
Commissioner Johnston	Yes

The motion as presented KAR 115-25-8 passed 7-0.

Commissioner Debra Bolton moved to vote on KAR 115-25-8 as amended. Commissioner Kelly Johnston seconded.

The roll call vote on KAR 115-25-8 as amended was as follows (Exhibit Z):

Commissioner Bolton	Yes
Commissioner Lauber	Yes
Commissioner Meyer	Yes
Commissioner Sebelius	Yes
Commissioner R. Wilson	Yes
Commissioner S. Wilson	Yes
Commissioner Johnston	Yes

The motion as presented KAR 115-25-8 passed 7-0.

5. KAR 115-25-9. Deer; open season, bag limit and permits - Lloyd Fox, big game wildlife research biologist, gave this report to the Commission (Exhibits DD, EE). This is an exempt regulation that establishes the hunting bag limits, application periods and season dates for 2009/2010 firearm, muzzleloader and archery deer seasons. The season dates have been adjusted to coincide with the current year’s calendar and the extended firearms season for antlerless whitetail deer is expanded to include two additional units from what we had in the previous year. We also have two possible amendments proposed. The archery season dates are September 21, 2009 through December 31, 2009. The regular firearm season dates in all other deer management units shall be December 2, 2009 through December 13, 2009. Also, an urban firearm deer season will be October 10, 2009 through October 18, 2009. The muzzleloader season in all deer management units will be September 21, 2009 through October 4, 2009. On Page 4, section (5)(A) we have included DMUs 4 and 5, new for this year and we will propose a

change in the extended firearm season beginning on January 1, 2010 and we had it extending through January 3, 2010, but our proposal is for an amendment changing that to January 10, 2010. That is the first recommended amendment. We also have added a section on Page 5, section (d)(1), which is similar to the amendment we just made with 4-11. The amendment would be on applications: “Any individual may apply for or obtain no more than one deer permit that allows the taking of an antlered deer except when the individual is unsuccessful in a limited quota drawing and alternative permits for antlered deer are available at the time of subsequent application”. This is clarifying what we had previously done in 4-11.

Commissioner Doug Sebelius moved to bring KAR 115-25-9 before the Commission. Commissioner Kelly Johnston seconded.

Commissioner Shari Wilson moved to amend KAR 115-25-9. Commissioner Doug Sebelius seconded.

The roll call vote on KAR 115-25-9 to amend was as follows (Exhibit FF):

Commissioner Bolton	Yes
Commissioner Lauber	Yes
Commissioner Meyer	Yes
Commissioner Sebelius	Yes
Commissioner R. Wilson	Yes
Commissioner S. Wilson	Yes
Commissioner Johnston	Yes

The motion as presented KAR 115-25-9 passed 7-0.

Commissioner Shari Wilson moved KAR 115-25-9 as amended. Commissioner Kelly Johnston seconded.

The roll call vote on KAR 115-25-9 as amended was as follows (Exhibit FF):

Commissioner Bolton	Yes
Commissioner Lauber	Yes
Commissioner Meyer	Yes
Commissioner Sebelius	Yes
Commissioner R. Wilson	Yes
Commissioner S. Wilson	Yes
Commissioner Johnston	Yes

The motion as presented KAR 115-25-9 passed 7-0.

Chairman Johnston - We are going to consider an item six that was added at the beginning of the meeting, “Secretary’s Orders for Deer”.

6. Secretary’s Orders for Deer - Lloyd Fox, big game wildlife research biologist, gave this report to the Commission (Exhibit GG). This is for your information. We have gone through our process and the Secretary’s Order’s are the same as last year as far as what a resident can obtain as far as permits. There is a drawing for firearms permits that will allow a hunter to take either species, either sex. We also have 100 permits that will be either species antlerless-only in DMU

3. The western mule deer units are DMUs 1,2,17 and 18 and we are proposing 1,290 firearms permits for either species, either sex. The eastern mule deer units are DMUs 3, 4, 5, 7 and 16 and we are proposing 1,200 permits for firearm either species, either sex. Muzzleloader permits for either species, either sex are open availability as are statewide archery permits for either species, either sex for residents of the state. The muzzleloader permits are valid in one of the two greater western mule deer units (either the four units or the five units depending on whether it is east or west). For the number of permits for nonresidents we went with our new system to try to allocate nonresident deer permits based on seven biological and social factors: 1) Trends in deer populations, using trends in deer/vehicle accidents per billion miles, looking at the trend line since 1997 and what the deer population was doing over that time period until the current year, we took those trend lines and developed a management factor from 0.5 to 1.5. All management factors are from 0.5 to 1.5 for each of seven factors and at the end we take a mean of those seven factors, so each one is weighed equally. 2) We considered the number of deer/vehicle accidents per billion miles. Not only are we looking at which direction it is going, but even if it is way up high and it is headed down. If it is very high, we would consider that to try and bring the population lower even though it might be trending lower right now. So we had a procedure that looked at it in that case. 3) We looked at age structure, specifically the percent of antlered deer taken by hunters that are yearling deer and we're using samples from CWD testing and averaging for each of our 18 DMUs. We compared our age structure for our antlered deer which is excellent for most hunters' desires for animals in older age groups. Yearlings make up less than 25 percent of the harvest in comparison -- if you were hunting in Georgia or Pennsylvania or some of the other states where 85 percent of the antlered deer would be yearling deer. 4) Comes from our landowner survey and is the question on deer damage to crops, and we looked at the portion of landowners reporting damage and we came up with a management factor based on the percent of the landowners that were experiencing crop damage. 5) Also, using that survey, one of the questions to the landowners was on their desires for "more, the same, or fewer permits going to nonresident deer hunters," and we looked at the difference in the percent that wanted more, versus the percent that wanted less and developed a factor and used that factor in our system. 6) We also did a survey of general public non-hunters and non-landowners on their desires for the deer population. 7) The final factor was on the health of the herd and habitat condition. This was professional input to that. When we ran all of those factors through, if the average was one, then the number of permits we would recommend for the next year would be the same as the number of permits we had the previous year. The closer that approached 1.5, the higher the potential increase in permits; and the closer to 0.5 the fewer permits would be available for nonresident deer hunters. We ran through that whole process then after we developed our list of new numbers we looked at those in relation to the number of nonresidents that had applied for permits in that unit in the past and we did a second adjustment. In one case, DMU 16, we dramatically decreased the number of permits we recommended for authorization. We actually have it lower than in 2008. All of the other units we had an increase from last year. Of the 1,200 permits that we took out of DMU 16, we added back 500 in DMUs 1,3,7, 17 and 18, some to each. For a final determination, this adjusted the level of permits for the 18 DMUs. We are recommending 20,910 permits for nonresidents for 2009. Also, that our mule deer stamp for nonresidents are available for nonresidents who receive a muzzleloader or archery in one of the nine western units. They may choose to go into an additional draw for a stamp that would allow them to take a mule deer or whitetail deer. We are leaving that number at the same level authorized in 2008: 50 in DMU 1; 40 in DMU 2; 44 in DMU 3; 14 DMU in 4, 5, and 7; 30 in DMU 16; 50 in DMU 17; and 30 in DMU 18. Chairman Johnston – At some point when it is convenient, I would be interested in seeing all of the mathematics that goes into two or three

selected units, not all 18, so we have some idea of how the decisions are made. Fox – I will also mention that we threw in some other factors that we considered, which I ran with the seven factors that we had recommended to the Legislature. We threw in some additional factors, such as: fawns per 100 does; bucks per 100 does; and some deer density information as well in order to bring it back and double check.

XII. Old Business

Commissioner Shari Wilson – For several meetings we have been talking about an executive order that was presented to the Governor, with the request that she establish the Kansas Coalition on Children in Nature, which would identify barriers and increase opportunities to get kids outside. She did sign that executive order on Monday, and it take effect immediately and will incorporate already-existing efforts that various groups are already undertaking across the state, including the Kansas Children’s Outdoor Bill of Rights, some efforts the Kansas Wildlife Federation is undertaking and other organizations are already doing. There will be five working groups established to take different pieces of this project and complete them and give a report to Legislature by January 2011. I think it is exciting that this has happened and was the work of a lot of different organizations including the Department of Wildlife and Parks, other state agencies, non-profit conservation groups and education organizations in the state. It is really important to start looking at some of these barriers and opportunities because these kids are our next generation of constituents for this agency and the work that we do. We know it’s important to their physical health and their productivity in school. A lot of our kids do get outside a lot, but there is a lot who don’t, and we are starting to see some negative effects, both social and physical from that. I wanted to report that this was accomplished and thank the Governor for her support in that effort.

XIII. Other Business

A. Future Meeting Locations and Dates

June 25, 2009 - 4-H Building, Fairgrounds, 612 E Hwy 56, Council Grove

August 6, 2009 - The Peoples Bank, Sunflower Room, 117 S Main, Medicine Lodge.

October 15, 2009 - VFW, 610 Walnut, Sedan.

XIV. ADJOURNMENT

The meeting adjourned at 8:38 p.m.

(Exhibits and/or Transcript available upon request)

Secretary's Remarks

2009 Legislative Update

51*	Clothing requirements while hunting deer or elk; Annexation	Gut and Go- no longer KDWP
100*	Sales tax exemption for fees for guided and non-guided hunts and fishing expeditions and sale of game birds for hunting	SGO-below
124*	Affiliation with Kansas police and firemen's retirement system (KP&F) by the Kansas department of wildlife and parks for membership of certain officers and employees	None
189*	Creating an outfitter license	None
286*	Repealing statutes that authorize the destruction of prairie dogs by certain townships	None
287*	Prairie dog management, control and conservation	None
1602*	Constitutional amendment authorizing legislature to provide for the classification and taxation of watercraft	Passed Senate
1611*	Constitutional amendment concerning individual right to bear arms	Passed both Houses
2049*	Hunter safety orientation programs in schools	None
2064*	Light pollution; night sky protection act	None
2172*	New Guide tax exemption bill-amended into	Veto by Gov
2254*	Wildlife and parks, relating to lifetime licenses	None
2296*	Imposition of conservation fee on certain department of wildlife and parks licenses and permits and depositing proceeds in the state water plan fund	None
2342*	Establishing a special season for archery for taking of deer within Shawnee Mission park	None
2346*	Sales tax exemption for Kansas hunters feeding the hungry, inc.	None
2362*	Extending season to take deer, fees for certain licenses and permits issued by the secretary of wildlife and parks, feed the hungry fund	None
2385*	Commissioner of juvenile justice to convey certain land to the Kansas department of wildlife and parks	None
5012*	A review of the Pick-Sloan Act	Passed House
5013*	Protection, preservation and extension of the productive lives of reservoirs in Kansas	Passed House
5017*	Right to bear arms; hunting	HGO-below

TO: Commission on Wildlife and Parks

FROM: J. Michael Hayden, Secretary of Kansas Department of Wildlife and Parks (KDWP)

SUBJECT: Agency and State Fiscal Status

DATE: June 25, 2009

The 2009 Session of the Kansas Legislature is completed for this year. The last act of the session that impacted KDWP was the passage of the Omnibus Appropriation bill. This bill included several major amendments to the appropriations previously approved and provided to the Commission. Attached are the approved amounts for FY 2010 at the current time.

As mentioned at the last Commission meeting, the major area of reductions for the KDWP for FY 2010 is in capital improvements at the state parks. For FY 2010, The Governor had recommended an amount of \$680,186 for State General Fund (SGF) Park capital improvements. The Department had requested \$1,687,134. The amount approved after action included in the Omnibus Appropriation bill was \$579,496. This amount provides for repayment of a special assessment to the City of Topeka, \$187,314, and \$392,182 for other projects. Attached is a table with the FY 2010 capital improvement projects.

The Omnibus Appropriation bill also included several other provisions which impact the KDWP. The amount for Parks Division capital outlay items was reduced by \$590,134, leaving an amount of \$197,566 for equipment replacement in FY 2010. The Legislature deleted any authority for a cost of living increase in FY 2010 but did approve the second year of the five-year plan to improve employee salaries to market level. The funds provided allow increases of 2.5 percent to 10 percent for four office administrative classes. The Legislature authorized the payment of longevity bonuses to employees but deleted the funding, which will require the KDWP to finance from remaining funds.

The status of the SGF is still unstable. The receipts to the SGF in May, 2009, were \$101 million below the estimate developed the previous month. The concern is that actual revenue to the SGF will continue to decrease, resulting in further reductions to the FY 2010 budget currently approved. Due to state laws on maintaining an adequate balance in the SGF, Governor Parkinson may need to resort to additional expenditure reductions through an allotment process. This process would reduce the KDWP approved budget and restrict expenditures to a defined amount. The reductions would be effective upon implementation of the allotments.

The KDWP has initiated the development of the FY 2011 budget for the Department. The request for capital improvements is due on July 1, 2009. At this time the request will not include any new major initiatives and will include a SGF request of \$1,500,000. The KDWP has not yet received the FY 2011 SGF allocation from the State Division of the Budget.

The KDWP will make every effort to minimize the impact to state operations. This will have an impact on the infrastructure of the state parks as capital improvement funds are reduced or deleted. However, adjustments to capital improvement funding are considered a better

alternative than reductions in operations. If the Commission has any questions, please advise.
Thank you.

Attachment (2)

LEG

Wildlife Conserv Fund	Wildlife Fee Fund	Wildlife Fee Fund - Federal	Water Plan Fund	Roads and Bridges Funds	Boating Fee Fund	ELARF	Other Funds***	TOTAL
0	0	0	0	0	0	0	595,000	987,182
401,732	950,000	0	0	0	0	0	0	1,351,732
0	0	0	0	0	0	0	250,000	250,000
0	0	0	0	0	0	0	266,800	266,800
0	0	0	0	0	0	0	0	187,314
0	150,000	0	0	0	0	0	0	150,000
0	0	0	0	0	70,000	0	0	70,000
0	0	650,000	0	0	0	0	0	650,000
0	0	0	0	0	0	0	421,000	421,000
0	0	0	0	1,617,470	0	0	0	1,617,470
0	0	0	0	200,000	0	0	0	200,000
350,000	750,000	0	0	0	0	0	0	1,100,000
0	27,600	0	0	0	1,200	0	11,200	40,000
0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0
751,732	1,877,600	650,000	0	1,817,470	71,200	0	1,544,000	7,291,498

	FY 2008 Actuals	FY 2009 Leg Appvd	FY 2010 Leg Appvd
Programs:			
Administration	10,801,361	11,781,209	11,402,519
Grants-in-Aid	2,209,224	1,790,000	1,405,000
Law Enforcement	6,292,620	6,141,716	6,444,729
Parks	10,757,746	10,919,278	11,253,185
Fisheries and Wildlife	18,788,941	18,467,595	19,082,499
Capital Improvements	9,415,963	15,849,109	7,291,498
TOTAL	58,265,855	64,948,907	56,879,430

Expenditure Groups:

Salaries and Wages	26,190,730	26,694,730	28,175,849
Contractual Services	12,623,168	12,432,868	12,624,449
Commodities	6,123,806	6,035,134	6,139,987
Capital Outlay	1,647,187	2,147,066	1,242,647
Aid/Other Assistance	2,262,132	1,790,000	1,405,000
Non-expense Items	2,869	-	-
Capital Improvements	9,415,963	15,849,109	7,291,498
TOTAL	58,265,855	64,948,907	56,879,430

Funding:

Operating Expenditures:

State General Fund	6,925,891	7,018,710	5,259,898
Department Road Access Fund	-	-	997,553
Nonrestricted Fund	234,073	200,000	190,000
Park Fee Fund	4,389,140	5,044,521	5,688,141
Boating Fee Fund	1,071,464	1,180,937	918,431

Boating Fee Fund – Federal	493,800	380,667	684,057
Wildlife Fee Fund	24,549,455	20,127,279	21,030,822
Wildlife Fee Fund – Federal	5,928,769	11,260,493	10,581,946
Federal Ag Fund	1,084,249	748,436	1,279,391
Land and Water Conservation Fund	44,075	500,000	115,000
Federal Grants Fund	2,249,692	1,719,450	1,687,528
Wildlife Conservation Fund	197,035	180,000	183,000
Wildlife Conservaton Fund - Federal	367,411	-	-
Water Plan Fund	40,001	32,000	28,800
Nongame Fund	330,248	215,000	125,000
Other Funds	944,589	492,305	818,365
	48,849,892	49,099,798	49,587,932
<i>Capital Improvements</i>			
State General Fund	1,246,074	446,311	579,496
Water Plan Fund	1,000,000	-	-
Bridges Fund	216,120	315,977	200,000
Roads Fund	2,478,410	3,472,180	1,617,470
Wildlife Conservation Fund	869,084	425,417	401,732
Wildlife Conservation Fund – Federal	745,700	1,349,465	350,000
Park Fee Fund	2,152	506,016	11,200
Boating Fee Fund	76,152	380,330	71,200
Boating Fee Fund – Federal	93,715	95,285	-
Wildlife Fee Fund	1,035,954	4,194,432	1,877,600
Wildlife Fee Fund – Federal	936,055	829,672	650,000
Migratory Waterfowl Fund	-	180,692	266,800
Land and Water Conservation Fund	133,623	2,130,700	595,000
Federal Grants Fund	581,775	1,255,582	421,000
Tuttle Creek Mitigation	-	233,050	-
ELARF	-	-	-

Other Funding Sources	1,149	34,000	-
Cabin Revenue Fund	-	-	250,000
	9,415,963	15,849,109	7,291,498
TOTAL	58,265,855	64,948,907	56,879,430
FTE	410.5	416.5	416.5
	yes	yes	yes
	yes	yes	yes

General Discussion

1. Historical Council Grove – Handouts at meeting only.

RAIL-TRAILS AND RAIL-TRAIL PROJECTS

Name	RR	Miles	Year Railbanked/ Abandoned	Comments	Entity Contact
Prairie Spirit Trail <i>Ottawa-lola</i>	SF	51.9	1992	KDWP completed final phase in 2008. Crushed limestone in rural areas, asphalt in cities. 0.2 mi. on northern end to trailhead at SF Depot Museum in Ottawa railbanked later. Links up with Flint Hills Nature Trail in Ottawa. City of lola received a TE grant to develop a 1.5-mile section in the city limits. Could connect with lola-Humbolt Trail. Most scenic sections north and south of Garnett. First long-distance rail-trail in Kansas.	KDWP Trent McCown 785/448-6767
****Haskell Rail-Trail <i>Lawrence</i>	SF	1.0	1988	First known fully developed rail-trail in Kansas (1991). Crushed limestone. City of Lawrence received TE grant to extend trail in 2009 two miles north and re-name it Burroughs Creek Trail. Additional extensions planned and then will possibly be renamed Two Rivers Trail or River to River Trail (Kaw River to Wakarusa River). <u>Local group needed to promote extensions to rivers.</u>	City Mark Hecker 785/832-3450
Whistle Stop Park <i>Elkhart</i>	SF	1.8	1994	First Rails <i>with</i> Trails project in Kansas. Whistle Stop Park Committee. Asphalt surface. South of Cimarron Nat'l Grasslands which has Santa Fe National Historic Trail ruts and Point of Rocks.	WSPC Steve Hayward 316/697-2101

Manhattan Linear Park <i>Manhattan</i>	RI	2.0	1983	Linear park trail uses 2 miles of abandoned rail corridor. City of Manhattan acquired ROW from adjacents (willing sellers). Crushed limestone. Connects with the Wam-Sag-Man Trail being built to Wamego and Quad States Trails Network trail north to Marysville.	City	Debbie Dugan 785/587-2757
****Landon Nature Trail <i>Topeka-Lomax</i>	MP	38.2	1989	Other portions railbanked in '95 and '96. Under development by Kanza Rail-Trails Conservancy & City of Topeka (4.65 miles). Developed from Topeka to Clinton Wildlife Area and from 15 th Street to 25 th St. in Topeka. One mile gap at Overbrook. Links up with Flint Hills Nature Trail at Lomax west of town of Pomona. Crushed limestone. Two waterfalls, and Kansas first bike roundabout where it intersects with the Shunga Trail. The Capitol to University Trail (Topeka-Lawrence) will utilize the Landon Trail to the Clinton WA. Part of the Quad States Trail Network. <u>Local group needed for Overbrook area.</u>	KRTC/ City	John Purvis 785-608-8221
****Wagon Wheel Trail* <i>Wichita-Clonmel</i>	SF	12.3	1989	KDOT let salvager remove bridges and then expanded Hwy K-42 into ROW. It has failed to develop trail contrary to Nat'l Trails Act. <u>Local group needed to push KDOT to build trail</u>	KDOT	Becky Pepper 785/296-0346
****Flint Hills Nature Trail <i>Osawatomie-Herington</i>	MP	117. 2	1995	Under development by Kanza Rail-Trails Conservancy. Four sections fully developed: seven miles at Vassar, 10 miles bt. Bushong and Allen; 10 mil bt. Osawatomie and 4 mi. east Ottawa; 3.5 mi. from Council Grove to 168-acre Al-Le-Ga-Wa-Ho Park (Kaw Heritage Park). City of Osage City	KRTC	John Purvis 620-608-8221

developing one mile. City of Ottawa may develop section. Crushed limestone in rural areas. American Discovery Trail southern route. The western section follows general route of Santa Fe National Historic Trail. Eastern section follows scenic wooded Marais des Cygnes River Valley with bluffs, tree canopy. Ten-mile side trail could link it up with Tallgrass Prairie Nat'l Preserve trails. Help needed in each division, esp. Osage County, Maries Des Cygnes, Neosho Valley.

El Dorado Bike Trail <i>El Dorado</i>	MP	4.0	1994	This concrete path was built in two phases, partly on an old railroad bed. First phase completed in 1999. Goes from East Park to El Dorado Lake and State Park. Two tunnels. Crosses scenic Walnut River.	City John Scanlan 316-322-7400
****Short Grass Prairie Trail <i>Protection-Englewood</i>	CK	30.3	1997	Under development by Short Grass Prairie Trail, Inc. East of 1,800-acre Big Basin Preserve, a nat'l natural landmark with bison herd. Crosses proposed Coronado Nat'l Hist. Trail, Ft. Dodge-Ft. Supply Military Trail and 1878 Dull Knife Indian Raid Path. West of the Red Hills, Cimarron Breaks. <u>Help needed to get this group re-activated.</u>	SGPT Richard Stein 620-408-9109
*****Meadowlark Trail <i>McPherson-Lindsborg</i>	UP	12.6	1997	Under development by Central Kansas Conservancy, Inc. Links up with Valkommen Trail in Lindsborg, Sunflower Santa Fe Trail in McPherson and proposed Smoky Hill Recreational Trail to Marquette. Northern Terminus 3 mi. from Coronado Heights (mt. bike trails). <u>This group needs help.</u>	CKC Brenda Becker 620-241-4687

****Sunflower Santa Fe Trail <i>McPherson-Marion</i>	CK	33.4	1997	Under development by Central Kansas Conservancy, Inc. City of Marion has developed one mile and may extend it to Marion Res. South of 2,500-acre Maxwell Wildlife Refuge (bison herd). Follows general route of Santa Fe Nat'l Hist. Trail. Intersects with Meadowlark Trail in McPherson. <u>This group needs help.</u>	CKC	Brenda Becker 620-241-4687
****Iron Horse Trail* <i>Andover-Augusta</i>	KE	10.6	2005	Butler County returned line to railroad. Andover and Augusta may be interested in assuming railbanking custodianship of part of line. <u>Need local group to push this project.</u>	KE	
Prairie Sunset Trail <i>Goddard-Garden Plain</i>	CK	7.5	2003	7.5 miles under development by Prairie Travelers, Inc. City of Goddard leased a .5-mile section and developed it in 2007 using TE grant. Kansas' first covered bridge on a rail-trail being built. Airstrip overpass. Railbanking may still be retained by railroad for 8 miles from Goddard to Wichita. Follows general route of Cannonball Stage Line (1876-)	PTI	Cecile Kellenbarger 316-681-3674
Ozark Wildlife Trail <i>SE Kansas</i>	KCS	9.5	1994	RTC transferred to Ozark Regional Land Trust in 1997. Preserved as wildlife habitat corridor. Local use only. No development planned.	ORLT	417-358-0852
Blue River Rail- Trail/Homestead Trail <i>Marysville-Neb. State Line</i>	UP	12.5	2001/ 2005	Originally railbanked by the Nebraska Trails Foundation but now controlled by Marshall County Connections. MCC plans to develop 2 mi. in 2009. 54 miles of Homestead Trail in Nebraska, soon to be all developed. City of Marysville plans to develop the former main line through town which was abandoned due to re-routing. Could become part of Quad State Trails Network trail to Manhattan. Links up with Oregon-Cal. Nat'l Hist. Trail and the Pony Express Trail. <u>This group</u>	MCC	Steve O'Neal 785-562-2328

can use help.

Ninnescah Trail* <i>Kingman</i>	KSW	1.51	2000	Certificate of Interim Trail Use (CITU) issued to City of Kingman. Unclear if Interim Trail Use Agreement (ITUA) which consummates railbanking was entered into.	City	Darryl Gruenke 620-532-2761
****Sassafras Trail* <i>Pittsburg-Cherokee</i>	SKO	6.0	2000	City of Pittsburg received a NITU and asked for extensions to negotiate railbanking agreement but railroad failed to sign agreement. Apparently too late to railbank now under current STB rules but railroad may be willing to help buy back ROW. <u>Local group needed to push this.</u>		
****Wildcat Creek Trail* <i>Manhattan-Clay Center</i>	RI	34.0	1983	Abandoned but US Gov't (Ft. Riley) owns 15 miles and Clay Co. owns 6 miles. Bridges out but corridor still could be converted into a rail-trail. Ft. Riley currently not interested in trail because of nearby firing range. Follows Wildcat Creek and tallgrass prairie on south side along Ft. Riley. Cut through hillside could be turned into tunnel. <u>Need local group to push project.</u>	USA	785-239-3467
Yellow Brick Road* <i>Desoto-Sunflower</i>	N/A	5.0	2000	Once owned by US Gov't (Sunflower Ammo Plant). Jo Co Parks & Rec Dist. may be interested. Status unknown.	N/A	Bill Maasen 913-438-7275

Pretty Prairie Trail <i>Pretty Prairie</i>	CK	0.5	2001	Abandoned and reverted to adjacents in 2001. City is in the process of purchasing ROW from adjacents. Development status unknown.	City	Patti Brace 620-459-6392
Frontier Fort Trail* <i>Ft. Leavenworth</i>	US	1.0	19--	Two abandoned spurs could form trail at Ft. Leavenworth. Route is along wooded hillsides, overlooking Missouri River.	USA	913-684-5121
Shagbark Trail* <i>Leavenworth</i>	SF	3.0	1988	Abandoned but City is/was interested in turning into rail-trail. <u>Need local group to push project if still feasible.</u>	City	Bill Katzenberger 913-651-2203
*****AT&SF Trail* <i>Valley Falls</i>	SF	5.0	1998	Historic portion of AT&SF line bt. Atchison and Topeka abandoned but 5 miles in Perry Wildlife Area owned by Corps of Engineers and could be converted into a rail-trail. Glacial Hills RC & D Office once expressed an interest. <u>Need local group to jump-start project.</u>	USA	Gary Satter 785/945-6292
Valkommen Trail <i>Lindsborg</i>	UP	2.4	2001?	A north-south concrete path linking Bethany College with the Meadowlark Trail. Opened in 2006. Will link up with Smoky River Rec Trail along old K-4 ROW to Marquette and links up with Meadowlark Trail to McPherson.	City	Thad Morrical 785-227-3355
*****Coffeyville <i>Coffeyville</i>	SKO?	3.0	1993?	City deeded rail corridor by railroad to develop a trail partly using an abandoned line north of US 166 but trail never built. City still holds title. <u>Need local group to push project.</u>	City	Scott Massen 620-252-6127

Hutchinson* <i>South Hutchinson</i>	BNSF	2.9	2004?	Railbanked by the City of Hutchinson. Trail corridor stretches from near the Ark River to W. Morgan Ave. Trail is developed.	City	620-694-1900
*****Quivira Trail* <i>Lyons-Beaver</i>	CK	37.4	2002	Railbanked by the Iowa Trails Council. Looking for local group to take it over. <u>A local group is needed to assume railbanking custodianship and develop trail.</u>	ITC	Tom Neenan 319-849-1844
Boothill Trail* <i>Willroads-Bucklin</i>	BW	15.8	2005	Railbanked by Boothill & Western RR. Tracks removed. Could be a <i>Rails with Trails</i> project.	BW	Thos. Willis 620-227-8611
Redbud Trail <i>Wichita-Andover</i>	BNS F	9.83	2005	Railbanked by the City of Wichita from Hydraulic Ave. to Butler County Line just west of Andover. City reluctant to begin development.	City	Doug Kupper 316-352-4854
****Smoky Hill Rec Trail <i>Marquette-Lindsborg</i>	CK	10.0	2001	Two miles railbanked by the City of Marquette. Development of a new trail in 8-mile old K-4 ROW could connect trails and also ink up with Valkommen Trail and Meadowlark Trail in Lindsborg. <u>Fred Peterson needs the support of a local group with this project.</u>	Cities	Fred Peterson 785-546-2205 (M) 785-227-3355 (L)
Red Hills Trail* <i>Sun City-Medicine Lodge</i>	CK	20.0	2003	ATA relinquished railbanking to V and S Railway, except for one mile near Medicine Lodge.	CK	

Delano Trail* <i>Wichita</i>	CK?	0.5	2002?	City received TE grant in 2005 to construct short rail-trail in Delano industrial district near downtown. Status unknown.	City	Doug Kupper 316-352-4854
Big Blue River Trail* <i>Marysville-GP Gypsum Plant</i>	KOC H	10.3		Spur owned by Blue Rapids Railroad (Georgia Pacific), now subsidiary of Koch Industries. Could be Rails <i>with</i> Trails project. Passes near Alcove Spring Park. Could connect with Blue River Rail-Trail/Homestead Trail on north and props. Big Cottonwood Trail (Rails <i>with</i> Trails) near Blue Rapids. Could become part of Quad States Trails Network to Manhattan.	Koch	785-363-7767
Big Cottonwood Trail* <i>Waterville-Big Blue River</i>	UP	11.9	2001	Potential to be Rails <i>with</i> Trails Project. Excursion railroad owned by Marshall Co. Railroad Society. Begins at Washington Co line and ends at 12 th Road east of Big Blue River Bridge.	MCR S	785-363-2515
Wild West Trail* <i>Abilene-Woodbine</i>	ASV	18.0	1995	Owned by Abilene and Smoky Valley RR excursion railroad. Could be Rails <i>with</i> Trails project. Steam engine. Crosses historic Chisholm Trail.	ASV	785-263-1077
No Name Trail* <i>Sherwin-Faulkner</i>	SKO	5.2	2000?	ATA has returned railbanked corridor to railroad.	SKO	
Midtown Bike Path <i>Wichita</i>	MP	1.5	2004?	Wichita & Central to 15 th at N. Broadway. Completed in April, 2009 with TE funds. 10-foot-wide concrete with Victorian-style pedestrian lighting, brick columns and steel archways, a plaza in Otis Park in the form of a railroad turntable; sunken planning beds (rain gardens).	City	
Prairie Spirit North	MR	11.1		Owned by Midland Railway, an excursion railroad. Could be	MR	800-651-0388

Extension*

<i>Ottawa-Baldwin City</i> **** Wam-Sag-Man Trail <i>Wamego-Manhattan</i>	MP	16.0	200_	Rails <i>with</i> Trails project. Would link up with Flint Hills Nature Trail and Prairie Spirit Trail in Ottawa. Uses old highway ROW and active rail line ROW (rails with trails project). Will link up with Manhattan Linear Park and be part of Quad States Trails Network. <u>Group can use help.</u>	785-456-9776
Redbud Trail* <i>Chautaugua County</i>	N/A	N/A	200__	Abandoned and reverted to adjoiners. Used as pathway for equestrians and horse-drawn wagons. Located in scenic Chautaugua Hills.	Adja- cents

**Not official name--working, proposed or made-up name.
Updated 4-09*

HOUSE BILL No. 2432

AN ACT concerning real property; relating to recreational trails; liability of adjacent property owners; amending K.S.A. 58-3214 and 58-3215 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 58-3214 is hereby amended to read as follows: 58-3214. An adjacent property owner has no duty of care to: (a) Any person using a recreational trail, except that this ~~section~~ subsection shall not relieve an adjacent property owner from liability for injury to another that is a direct result of such property owner's gross negligence or willful or wanton misconduct; or (b) any person entering such adjacent property owner's land by way of the recreational trail without implied or expressed permission or consent of the adjacent property owner, except that this subsection shall not relieve an adjacent property owner from liability for injury to another that is a direct result of an intentional or unlawful act of the adjacent property owner.

Sec. 2. K.S.A. 58-3215 is hereby amended to read as follows: 58-3215. ~~A city or county may institute procedures for recourse against the responsible party pursuant to 16 U.S.C. 1247 (1983) and 49 C.F.R. 1152.29 (1986) upon the failure of the responsible party to comply with the provisions of this act. If the responsible party fails to comply with the provisions of this act, any adjacent property owner, city or county aggrieved by the noncompliance may bring an action in the district court to enforce the provisions of this act. Upon a finding that the responsible party has failed to comply with the provisions of this act, the court may enter an order requiring the responsible party to comply with the provisions of this act.~~

Sec. 3. K.S.A. 58-3214 and 58-3215 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in _____
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.

Results of Bait Users Survey

The mission of the Kansas Department of Wildlife and Parks (KDWP) is to conserve and enhance Kansas' natural heritage, its wildlife, and its habitats. KDWP's underlying philosophy is to manage natural systems properly by striking a balance between natural resource integrity and human benefits. As a natural resource agency, KDWP is greatly concerned with the risk aquatic nuisance species (ANS) pose to the natural environment. A major concern of the agency is the movement of ANS via angler transport of wild-caught baitfish. It is well known that problems arise when undesirable fish, invertebrates, plants, or pathogens are introduced. The discovery of an aquatic species in waters where it was previously absent has been attributed to bait bucket transfer on several occasions. Kansas's aquatic ecosystems have already been invaded by ANS such as zebra mussels, white perch, Asian carp, hydrilla, Eurasian watermilfoil, and purple loosestrife, most of which could be further spread by sportfishing activities.

To protect the natural resources of Kansas and to prevent the spread of ANS through public uses of these resources, KDWP is interested in addressing the spread of ANS by recreational boaters and baitfish collection, transport, and use. In an effort to better understand the public's values associated with baitfish collection, transport, and use, acceptance of KDWP action to prevent ANS spread, and to inform future decision making and planning by the Department, a human dimension project was initiated in 2007. A total of 5,000 randomly - selected 2006 Kansas licensed anglers, stratified by resident and nonresident license type, were contacted to participate in a survey. Twenty-one percent (N=1,065) of the anglers solicited responded to the request. Of that total, 1,033 surveys were complete and used in the analysis. The study provides information that specifically describes:

- The percentage of anglers who use live fish as bait.
- The percentage of anglers who use wild-caught fish as bait and the location where anglers most often obtain their baitfish.
- Methods of baitfish collection.
- Species most often used as baitfish.
- The destination of unused baitfish.
- Recognition of KS baitfish, ANS species, and listed species.
- Angler opinion of the risk of ANS spread via released bait.
- Angler perception of department actions to prevent the spread of ANS

Major results:

Survey results indicate 61 percent (n=635) of respondents use live fish as bait. Of those respondents who used live baitfish, only 29 percent (n=185) frequently collected it from the wild. Respondents were more likely to fish reservoirs (n=555, 54 percent) over Kansas rivers and streams (n=463, 45 percent) or state fishing lakes (n=455, 44 percent). 96 percent of reservoir anglers (n=533) used live baitfish but few collected it locally (n=163, 31 percent). Respondents that fished state fishing lakes (n=455) were slightly more likely to use locally collected baitfish (n=129, 28 percent) compared to the river and stream anglers (n=125, 27 percent). Despite the existence of K.A.R. 115-8-12 (prohibition of the release of wildlife) 68 percent (n=431) of respondents who use live fish for bait indicated that they release their baitfish into the water where fishing at the end of the trip. When asked about the acceptability of a restriction on the use of wild-caught baitfish to the water where collected, 59 percent (N=607) of respondents indicated that the aforementioned restriction is acceptable. When asked their opinion about the

likelihood that collection of baitfish from the wild would cause the accidental movement of ANS, 63 percent (n=653) of survey respondents indicated some likelihood of spread. When asked their opinion about the likelihood that draining water from boats and other equipment after use in zebra mussel infested waters would prevent zebra mussel spread, 70 percent (n=722) of respondents indicated some likelihood that the prevention of zebra mussel spread could be attained through the draining of water.

These data suggest that the majority of anglers use live fish as bait and purchase their baitfish from a commercial dealer. When anglers choose to collect baitfish from the wild, a majority of anglers transport their baitfish to their fishing destination and are apt to release those fish at the end of the fishing trip. Even though these results indicate that wild-caught bait is most often transported to a destination other than location of capture, the majority of anglers would accept a restriction on the transport of baitfish.

A second component of this survey was an optional fish identification exercise. Pictures of 20 species of Kansas fish were presented and the respondents were asked to match the picture with the correct common name. 443 people opted to complete the exercise. Results indicate that Kansas anglers have a difficult time identifying common Kansas fish with an approximate error rate of 25 percent.

K.A.R. 115-25-6

Turkey; spring season, bag limit, permits, and game tags

Background

At present time, there are four turkey hunting units (Figure 1) in Kansas and an initial turkey permit can be purchased over-the-counter for all units except Unit 4 (southwest Kansas). In addition to the initial spring turkey permit, a second turkey game tag has been offered for certain hunting units since 1990. Hunters can currently purchase a game tag for use only in Unit 2 (eastern Kansas) or Unit 3 (central Kansas). A total of 325 permits are now issued for Unit 4 through a pre-season drawing, of which 125 permits are designated for general residents, 125 for landowner/tenants, and 75 for youth age 16 or younger.

The department sold 62,375 permits (43,072 initial permits & 19,303 game tags) for the spring 2008 season. That total was down approximately 2,000 from the previous year and marked the first decline after 11 consecutive years with record permit sales. An estimated 40,992 hunters actively pursued turkeys and harvested more than 35,000 birds during the 2008 season. Approximately 65 percent of active hunters harvested at least 1 bird. Only 21.2 percent of all active hunters (8,690) filled both their initial permit and a game tag during the spring 2008 season. Preliminary figures for 2009 indicate that the permit sales were similar to the 2008 numbers. Results from the 2009 spring turkey harvest survey won't be available until early August.

Survey results for the eastern half of the state indicate that the turkey population has been declining since 2004. This decline is due primarily to four consecutive years of average (2006) or poor (2005, 2007, & 2008) production. The decline in turkey numbers has been the most dramatic in southeast Kansas. Heavy rain and flooding occurred across southeast Kansas during each of the last two summers. At the time of these weather events, many hens were still incubating nests and many recently-hatched poult were still incapable of flight and regulation of their body temperature. Undoubtedly, the flooding destroyed many nests and numerous poult likely drowned or died from exposure. As a result of the wet weather, turkey production indices in southeast Kansas were at all-time lows in 2007. Production in 2008 was only slightly better and was the second worst productivity on record for the region. Hunting in southeast Kansas was reported to be difficult in 2008 and even worse this past spring. The number of mature gobblers available to hunters will remain low for 2010. Turkey numbers in other parts of the state are either slowly increasing or beginning to stabilize.

Discussion

At this time the department is not considering any changes to spring bag limits or season dates. The recent population declines in eastern Kansas have been due to terrible production as a result of unusually wet summer weather. The number of hunters and harvest in the affected area has already declined in proportion to the population. When hunting becomes difficult, fewer people participate and because of this behavior the hunters actually somewhat regulate harvest themselves. The department is concerned about the severe declines, but at this time we don't believe any changes to regulations would help to alleviate the problem. The population will recover on its own given a couple of years of favorable summer weather.

The department is considering a change to permitting for Unit 4. We have been gradually increasing the quota in Unit 4 for the last several years and we have been concurrently monitoring harvest rates using banded and radio-marked birds. For spring 2009, we received 510 applicants for the 325 permits that were available (Table 1). There were 27 youth, 19 landowner/tenants, and 139 general residents that did not draw permits this spring. We believe that we can meet more of the demand because harvest rates have remained low across most of the unit. We are considering a recommendation that would make youth permits available over-the-counter for Unit 4. This change would allow us to meet demand for landowner/tenant permits too and result in about 100 more hunters in Unit 4 assuming the number of applicants remains relatively constant. We would likely still have some general residents (less than 100) who would not be able to draw a permit.

Figure 1. Current spring wild turkey hunting units in Kansas. The initial permit is valid within Units 1, 2, and 3, can be purchased over-the-counter. A pre-season drawing is used to issue the 325 permits allocated for Unit 4. An additional spring game tag can be purchased over-the-counter, and it is valid only within Units 2 & 3.

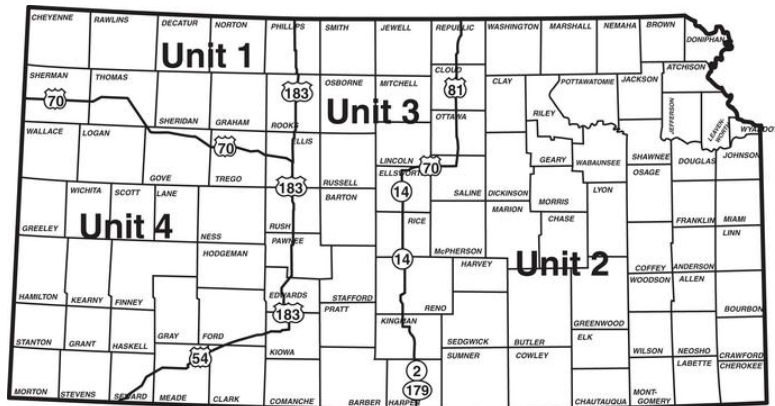


Table 1. Hunt unit 4 permit allocation for Kansas' spring 2009 turkey season.

Permit Type	Applicants	Available Permits	Unsuccessful Applicants
General Resident	264	125	139
Landowner/Tenant	142	125	19
Youth	102	75	27
Total	510	325	185

Fee Regulation – Spring Turkey Permits

The KDWP Marketing Task Force has recommended incentive-based differential permit pricing for the 2010 spring turkey season. Analysis of the KOALs data has shown that a large number of turkey hunters purchase a permit just once every three years. It's evident that many hunters wait until the last minute to purchase a permit, and some may not purchase one at all if they get busy, the weather is poor, or time just gets away from them. This past spring, post cards were mailed to lapsed turkey hunters reminding them to purchase their permits to reduce this churn. For 2010, the task force recommends establishing an incentive to encourage early purchase. The incentive would be a price break for purchasing a turkey permit/turkey game tag package before March 16. For example, a general resident could purchase the two-permit package for \$25 rather than the \$30 it would normally cost, as long as it was purchased before March 16. A nonresident would pay \$45 instead of \$50.

Game tag sales will need to increase by 5 percent to 10 percent to eclipse the money lost by giving people a \$5 discount. An examination of 2009 sales show that it's possible bring in an additional \$10,000-\$15,000 – not a huge increase in revenue, but it may encourage a few people to hunt a little longer chasing a second bird. The spring turkey season appears to be ideal for this experiment because even in the worst-case scenario, it will be unlikely to cost the department more than a few thousand dollars. If the price break does increase game tag sales and reduce churn rates, then the same logic could be applied to other permit combinations that are much more widely purchased. Additional value-added combinations such as deer/fall turkey, spring/fall turkey, and others will be considered by the marketing task force.

2009 Spring Turkey Permit Facts:

- Only 17,408 of 41,550 (41.9 percent) turkey hunters purchased both permits through May 20. Those percentages were 44.8 percent, 45.7 percent, and 43.9 percent for 2008, 2007, and 2006, respectively.
- Only 9,821 of 29,786 (33.0 percent) resident hunters bought both permits. Those other 20,000 hunters are the low hanging fruit that a price break might influence to buy 2 permits.
- Of the 11,764 nonresident hunters, 7,586 (64.5 percent) bought both permits. Potential for revenue with nonresidents is minimal even if all of them bought two permits because with the price break, only about \$80,000 of additional revenue would be raised, and that doesn't account for the money lost by giving some of them discounts.
- 17,408 hunters purchased both permits and 15,906 (91.4 percent) bought both on the same day.
- 9,821 residents bought both permits and 8,729 (88.9 percent) bought them on the same day
- 7,586 nonresidents bought both permits, and 7,177 (94.6 percent) bought them on the same day.
- 1,034 (5.9 percent) of those purchasing two permits purchased them both prior to March 16.

Amending K.A.R. 115-2-3a Cabin Camping Permit Fees

Description: This regulation establishes fees by locations for cabin camping within Kansas state parks, state fishing lakes, and wildlife areas. Consumer demand for cabins on KDWP controlled lands continues to increase annually. Overnight cabin camping fees are based on location, amenities, quality, demand and local area prices for comparable facilities. As additional cabins come on line, cabin camping fees require adjustments to remain comparable to private business and to achieve desired occupancy rates. KDWP should not substantially undercut private business located within a reasonable distance to the KDWP property, nor should fees be excessively high.

The proposed amendment may adjust a few cabin rental fees as a result of adding additional services to specific cabins such as internet and television connections, re-assessment of comparables and occupancy rates, and will add additional cabins planned in the near future.

The amendment will be workshopped during the August, 2009 Commission meeting and prepared for a public hearing and Commission action during the October, 2009 Commission meeting. Assuming the amendment is approved in October, the regulation would become effective January 1, 2010.

Action requested: Commission consensus to proceed with preparing the proposed amendment, invite further public comment, and prepare for the August workshop portion of the Commission meeting.

Workshop Session

2010 Reference Document Proposed Changes for Special Length and Creel Limits:

- Perry Reservoir - add 35-inch minimum length limit and change to 5/day creel limit on blue catfish.
- Douglas SFL - change to 5/day creel limit on channel catfish.
- Kanopolis Reservoir - change to 5/day creel limit on blue catfish.
- Kanopolis Seep Stream (Sand Creek) – Artificial bait only (lures or fly fishing) at power poles number 9 through number 16.
- Coffey County Lake - change to 18-inch to 24-inch slot length limit on walleye.
- Prescott City Lake - change to 5/day creel limit on channel catfish.
- Uniontown School Pond - add 18-inch minimum length limit and 2/day creel limit on largemouth bass and add 15-inch minimum length limit and 2/day creel limit on channel catfish.
- Carbondale East Lake, Blue Mound City Lake, Bourbon Co. Cedar Creek, Bourbon Co. Elm Creek Lake, Fort Scott-Lake Ft. Scott, Fort Scott Community College Lakes, Linn Co. Strip Pits, Mound City Lake, Parker City Lake, and Richmond City Lake - remove the 10-inch minimum length limit and the 10/day creel limit on crappie.
- Crawford SFL - add 18-inch minimum length limit on striped bass.
- Pittsburg - Lincoln Park Pond, and Wilderness Pond - add 15-inch minimum length limit and 2/day creel limit on channel catfish and largemouth bass.
- Pittsburg-Lakeside Park Lake - add 15-inch minimum length limit on channel catfish, change to 2/day creel limit on channel catfish, and change to 2/day creel limit on largemouth bass.
- Hutchinson-Carey Park Lagoon & Pond - change to 5/day creel limit on channel catfish.

Other 2010 Fishing Regulation Changes under consideration.

Changes to 115-7-3 to accommodate the use of some baitfish species, gizzard shad and goldeye, for example, greater than 12 inches in size.

Allowing bow fishing as a legal method of take for channel catfish. We are still working on details of how we will deal with identification issues between catfish species, length and creel limits, and locations where this method of take would be allowed.

Changes to paddlefish snagging locations - We are looking at the possibility of expanding snagging opportunities to the Neosho River at Iola and to the Marais des Cygnes River on the Marais des Cygnes WA. This change would require a slight modification to the reference document that deals with Kansas Special Size Limits, Creel Limits, and Bait Restriction Tables.

Changes to existing paddlefish snagging regulations - The State of Oklahoma is worried about overharvest of paddlefish on the Neosho River drainage. To help address those concerns, the

following paddlefish regulations are being considered at our Burlington and Chetopa snagging sites on the Neosho River.

- Continue with 6 tags per permit.
- Creel of 2 fish/day.
- Catch and release is allowed, but once a fish is on the stringer it is part of the creel (no culling).
- Must stop fishing once daily creel is kept.
- Use barbless hooks (or barbs can be broken off or crimped down).

The following changes are being considered for the Osawatomie Dam snagging site on the Marias des Cygnes River.

- Add a 34-inch minimum length limit, measuring from the eye to middle of the fork in the tail.
- Omit the reference to Old KC Road as being the downstream boundary and insert as posted by KDWP, to allow staff a chance to expand opportunity and legal access to this stretch of the river.
- No changes needed concerning barbless hooks or creel and possession limits.

The current paddlefish regulations covering the Kansas-Missouri River boundary waters, which includes the Browning Oxbow will not change.

Furbearer Regulations

115-5-Series. Furbearers; and, KAR 115-25-11.

Furbearers; open seasons and bag limits.

Background:

Just over 6,500 furharvester licenses were sold in 2008. This is the most permits sold since 1988, but participation is still far below what it was in the late 1970s and early 1980s, when more than 10,000 trapping licenses alone were being sold annually (furbearers could be hunted at that time with just a hunting license). About 75 percent to 80 percent of license buyers are active in a given season. This would include approximately 2,900 trappers and 3,300 hunters, with some doing both. Trappers accounted for over 115,000 user days in 2007-08 and hunters accounted more than 60,000 user-days.

Furbearer regulations were last considered by the Commission in 2002. At that time, eastern and western furharvesting units were eliminated, and the eastern season closing date (for all harvestable furbearers except beaver) of February 15 was adopted statewide. Opening dates were slightly modified at that time as well. Bobcat was also added to species that may be legally pursued during the running season, and minor terminology updates were made as well.

Discussion and Recommendations:

(a) The following revisions are recommended for K.A.R. 115-5-1. Furbearers and coyotes; legal equipment, taking methods, and general provisions.

- Terminology used to describe trapping equipment needs to be modified so that “live trap” is replaced by “cage trap” and “colony trap” needs to be added.

Discussion: This would clarify and more accurately describe which equipment may be used.

(b) The following revisions are recommended for K.A.R. 115-5-2. Furbearers and coyotes; possession, disposal, and general provisions.

- Eliminate possession periods.

Discussion: Possession periods were intended to discourage out-of-season harvest and to aid law enforcement in prosecuting those who harvested fur out of season. However, most furbearers are of little value outside current possession periods so there is little incentive to harvest fur outside of them. Possession periods also create some degree of hardship for the increasing number of furharvesters who ship fur to out of state auctions, or those holding onto fur for taxidermy or tanning.

- Eliminate the requirement to skin furbearers within 48 hours of the close of the season.

Discussion: This regulation was intended to aid law enforcement in prosecuting those who harvested fur out of season. However, the level of deterrent this regulation presents to those who may harvest out of season is questionable, such that this regulation has become an unnecessary hardship for legal furharvesters who freeze furbearers whole and put up fur after the season or those wishing to maintain furbearers for taxidermy. Elimination of this regulation would simplify furharvesting regulations and help eliminate confusion that has occurred between dates required for skinning, pelt tagging, and possession for the different species.

K.A.R. 115-6-1. Fur dealers license; application, authority, possession of furs, records and revocation.

- Eliminate expiration years - 1990 and 1991.
- Include swift fox along with bobcat in reference to requiring these species to be tagged in order for a fur dealer to purchase or acquire.

K.A.R. 115-25-11. Furbearers; open seasons and bag limits. No change.

K.A.R. 115-25-12. Coyotes; season. No change.

2009 LATE MIGRATORY BIRD SEASONS

Background

Late season waterfowl frameworks (maximum bag, possession limits and season length, and earliest opening and latest closing dates) are established annually by the U.S. Fish and Wildlife Service (Service). These frameworks establish the limits which states must operate within when establishing waterfowl seasons. These frameworks are published around August 15, after results from the May Breeding Duck Survey and recommendations from Flyway Councils are available.

Discussion

We do not anticipate major changes in the frameworks for geese. We anticipate that the season length for Canada geese will be again be 107 days, the maximum allowed by Migratory Bird Treaty Act.

At this time there is little information upon which to base speculation concerning the duck season frameworks for 2009. The results of the May Breeding Duck Survey, which provides duck abundance as well as pond numbers, will not be available until late July.

The three current Adaptive Harvest Management regulatory packages include the following:

Liberal package – 74-day Low Plains Season, 97-day High Plains Season, (package selected since 1997)

Moderate package – 60-day Low Plains Season, 83-day High Plains Season

Restrictive package – 39-day Low Plains Season, 51-day High Plains Season

The 2008 hunting season was the third year of the 3-year Hunter's Choice Experiment in the Central Flyway. The analysis of the study will not be completed until July. We will not know if Hunter's Choice will be operational for the 2009-10 season until August.

If Hunter's Choice becomes operational, **the daily bag limit for the liberal and moderate alternatives shall be 5 ducks, with species and sex restrictions as follows:**

**scaup, redhead – 2
wood duck - 3**

only 1 duck from the following group – hen mallard, mottled duck, pintail, canvasback.

Within the Restrictive regulatory alternative, **the daily bag limit shall be 3 ducks, with species and sex restrictions as follows:**

scaup, redhead and wood duck – 2

only 1 duck from the following group – hen mallard, mottled duck, pintail, canvasback.

The possession limit shall be twice the daily bag under all regulatory alternatives.

If Hunter's Choice does not become operational the bag limits will revert to the federal frameworks.

In summary, goose frameworks and resulting recommended regulations are expected to change little from last year. It is too early to predict which regular season duck regulatory package will be included in the frameworks, although we are hopeful that the liberal package will again be adopted.

Public Hearing

Document No. _____

KANSAS REGISTER
SUBMISSION FORM

Agency Number -- 710-01

Agency Name -- Kansas Department of Wildlife and Parks

Agency Address - 1020 S. Kansas Ave., Suite 200

Topeka, Kansas 66612-1233

Title of Document -- Public Hearing

Desired Date of Publication - March 12, 2009

ITEMS SUBMITTED IN DUPLICATE

CERTIFICATION

I hereby certify that I have reviewed the attached documents, and that they conform to all applicable Kansas Register publication guidelines and to the requirements of K.S.A. 75-431, as amended. I further certify that submission of these items for publication is a proper and lawful action of this agency, that funds are available to pay the publication fees and that such fees will be paid by this agency on receipt of billing.

Christopher J. Tymeson
Liaison officer's typed name

Liaison officer's signature

Department Attorney
Title

(785) 296-2281
Phone

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Wildlife and Parks Commission

Notice of Hearing of Proposed Administrative Regulations

A public hearing will be conducted by the Wildlife and Parks Commission at 7:00 p.m., Thursday, June 25, 2009 at the Morris County Community Center, 612 E Hwy 56, Council Grove, Kansas, to consider the approval and adoption of proposed administrative regulations of the Kansas Department of Wildlife and Parks.

A workshop meeting on business of the Wildlife and Parks Commission will begin at 1:30 p.m., June 25, at the location listed above. The meeting will recess at 5:30 p.m. then resume at 7:00 p.m. at the same location for the regulatory hearing. There will be public comment periods at the beginning of the afternoon and evening meetings for any issues not on the agenda and additional comment periods will be available during the meeting on agenda items. Old and new business may also be discussed at this time. If necessary to complete the hearing or other business matters, the commission will reconvene at 9:00 a.m. June 26 at the location listed above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Sheila Kemmis, Commission secretary, at (620) 672-5911. Persons with a hearing impairment may call the Kansas Commission of Deaf and Hard Hearing at 1-800-432-0698 to request special accommodations.

This 90-day notice period prior to the hearing constitutes a public comment period for the purpose of receiving written public comments on proposed administrative regulations.

All interested parties may submit written comments prior to the hearing to the Chairman of the Commission, Kansas Department of Wildlife and Parks, 1020 S. Kansas Ave, Suite 200, Topeka, KS 66612 or to sheilak@wp.state.ks.us if electronically. All interested parties will be given a reasonable opportunity at the hearing to express their views orally in regard to the adoption of the proposed regulations. During the hearing, all written and oral comments submitted by interested parties will be considered by the commission as a basis for approving, amending and approving, or rejecting the proposed regulations.

The regulations that will be heard during the regulatory hearing portion of the meeting are as follows:

K.A.R. 115-15-1. This permanent regulation designates the endangered and threatened species within the boundaries of the state. The proposed amendments would remove one endangered species, the Peregrine falcon, remove one threatened species, the Bald eagle and add three threatened species, the Delta hydrobe, the Plains minnow and the Shoal chub, from the list of species designated.

Economic Impact Summary: The economic impact of the proposed amendments is expected to be minimal due to a number of factors, including the current existence of other species in the same habitat that are already listed as threatened or endangered (concerning the Shoal chub and Plains minnow) and the limited geographic area (concerning the Delta hydrobe). To the extent the proposed amendments would lead to additional review of projects that would impact one of this species or its habitat, the economic impact would be anticipated to be small. State law requires a permit of such a project only if publicly funded or if a state or federal permit is already required. Of approximately 1000 to 1500 projects reviewed annually, only 20-30 require a permit, and less than 5 percent are required to perform additional mitigation. The proposed amendments would impose some cost on the department for the development and implementation of a recovery plan for the species being listed. However, the plan would be developed based on a priority list of all listed species. No other economic impact on the public or other state agencies is anticipated.

K.A.R. 115-15-2. This permanent regulation designates species in need of conservation (SINC species) within the boundaries of the state. SINC species do not receive the same level of protection as threatened or endangered species. The proposed amendments would add the Bigeye shiner, Redfin darter, Lake sturgeon, Striped shiner, Common shiner, Southern redbelly dace, Cardinal shiner, and Johnny darter and remove the Delta hydrobe and the Plains minnow from the list of SINC species.

Economic Impact Summary: Listing a species as a SINC species provides no special protection or permit requirements other than a prohibition on the intentional taking of such species. Therefore, the proposed amendments would not be anticipated to have an economic impact of the public or other state agencies. Adding a new SINC species would create some cost to the department for the development of a recovery plan for that species.

K.A.R. 115-25-9a. This exempt regulation establishes open season, bag limit and permits for deer. The proposed version would add an extended season in all of units 7 and 8, whereas the previous season only included a portion of units 7 and 8.

Economic Impact Summary: The proposed amendments are not anticipated to have any appreciable negative economic impact on the department, other agencies, small businesses or the public.

Copies of the complete text of the regulations and their respective economic impact statements may be obtained by writing the chairman of the Commission at the address above, electronically on the department's website at www.kdwp.state.ks.us, or by calling (785) 296-2281.

Kelly Johnston, Chairman

Document No. _____

KANSAS REGISTER
SUBMISSION FORM

Agency Number -- 710-01

Agency Name -- Kansas Department of Wildlife and Parks

Agency Address - 1020 S. Kansas Ave., Suite 200

Topeka, Kansas 66612-1233

Title of Document -- Public Hearing

Desired Date of Publication - May 14, 2009

ITEMS SUBMITTED IN DUPLICATE

CERTIFICATION

I hereby certify that I have reviewed the attached documents, and that they conform to all applicable Kansas Register publication guidelines and to the requirements of K.S.A. 75-431, as amended. I further certify that submission of these items for publication is a proper and lawful action of this agency, that funds are available to pay the publication fees and that such fees will be paid by this agency on receipt of billing.

Christopher J. Tymeson
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Liaison officer's signature

Department Attorney
Title

(785) 296-2281
Phone

This space for Register office use only

Wildlife and Parks Commission

Notice of Hearing of Proposed
Administrative Regulations

A public hearing will be conducted by the Wildlife and Parks Commission at 7:00 p.m., Thursday, June 25, 2009 at the Morris County Community Center, 612 E Hwy 56, Council Grove, Kansas, to consider the approval and adoption of proposed administrative regulations of the Kansas Department of Wildlife and Parks.

A workshop meeting on business of the Wildlife and Parks Commission will begin at 1:30 p.m., June 25, at the location listed above. The meeting will recess at 5:30 p.m. then resume at 7:00 p.m. at the same location for the regulatory hearing. There will be public comment periods at the beginning of the afternoon and evening meetings for any issues not on the agenda and additional comment periods will be available during the meeting on agenda items. Old and new business may also be discussed at this time. If necessary to complete the hearing or other business matters, the commission will reconvene at 9:00 a.m. June 26 at the location listed above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Sheila Kemmis, Commission secretary, at (620) 672-5911. Persons with a hearing impairment may call the Kansas Commission of Deaf and Hard Hearing at 1-800-432-0698 to request special accommodations.

This 30-day notice period prior to the hearing constitutes a public comment period for the purpose of receiving written public comments on proposed administrative regulations.

All interested parties may submit written comments prior to the hearing to the Chairman of the Commission, Kansas Department of Wildlife and Parks, 1020 S. Kansas Ave, Suite 200, Topeka, KS 66612 or to sheilak@wp.state.ks.us if electronically. All interested parties will be given a reasonable opportunity at the hearing to express their views orally in regard to the adoption of the proposed regulations. During the hearing, all written and oral comments submitted by interested parties will be considered by the commission as a basis for approving, amending and approving, or rejecting the proposed regulations.

The regulations, in addition to those previously published, that will be heard during the regulatory hearing portion of the meeting are as follows:

K.A.R. 115-25-19. This exempt regulation designates the management unit, hunting season, shooting hours, bag and possession limits for hunting doves. The proposed version would differ from previous seasons by adding additional days to the first season and opening the second season on the first Saturday in November rather than November first.

Economic Impact Summary: The proposed amendments are not anticipated to have any appreciable negative economic impact on the department, other agencies, small businesses or the public.

K.A.R. 115-25-9b. This new exempt regulation establishes the nonresident limited-quota antlered deer permit application period. The proposed regulation would open the application period on April 1, 2010 for the 2010-2011 season.

Economic Impact Summary: The proposed amendments are not anticipated to have any appreciable negative economic impact on the department, other agencies, small businesses or the public.

Copies of the complete text of the regulations and their respective economic impact statements may be obtained by writing the chairman of the Commission at the address above, electronically on the department's website at www.kdwp.state.ks.us, or by calling (785) 296-2281.

Kelly Johnston, Chairman



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

STEVE SIX
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

April 27, 2009

Chris Tymeson, Legal Counsel
Kansas Department of Wildlife and Parks
1020 S Kansas Avenue, Suite 200
Topeka, Kansas 66612

Re: **K.A.R. 115-25-9b and 115-25-19**

Dear Mr. Tymeson:

We have reviewed the above-referenced regulations for legality pursuant K.S.A. 77-420, and have approved finding no issues of concern, have approved them.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
STEVE SIX


Camille Nohe
Assistant Attorney General

CN:cn

Enclosure: Original document

cc: Rep. Carl Holmes, Chair, Joint Committee on Rules and Regulations
Senator Vicki Schmidt, Vice Chair, Joint Committee on Rules and Regulations
Rep. Janice L. Pauls, Ranking Minority Member, Joint Committee on Rules and Regulations
Raney Gilliland, Legislative Research

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STATE OF KANSAS

ALAN D. CONROY
Director
RANEY L. GILLILAND
Assistant Director for Research
J.G. SCOTT
Chief Fiscal Analyst
MARY K. GALLIGAN
Assistant Director for Information Management



STAFF
LEGISLATIVE COORDINATING COUNCIL
INTERIM COMMITTEES
STANDING COMMITTEES
LEGISLATIVE INQUIRIES

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 010-West — State Capitol Building — 300 SW Tenth Avenue — Topeka, Kansas 66612-1504
PHONE (785) 296-3181 ♦ FAX (785) 296-3824 ♦ TTY (785) 296-3677
INTERNET: <http://www.kslegislature.org/kird> E-MAIL: kslegres@kird.state.ks.us

May 22, 2009

Michael Hayden, Secretary
Kansas Department of Wildlife and Parks
1020 S. Kansas Avenue
BUILDING MAIL

Dear Secretary Hayden:

At its meeting on May 18, 2009, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning deer, nonresident limited-quota antlered permit application period; and doves, management unit, hunting season, shooting hours, and bag and possession limits (exempt regulations). After discussion, the Committee had no comment.

Prior to filing with the Secretary of State, review the history sections of the rules and regulations to update them to the most recent statutory citations, making certain the citations for authorizing and implementing statutes are correct and complete. Please indicate your agency's website address in the filing notice where proposed regulations can be located. In addition, if your agency accepts written comments by e-mail include this information in the public notice. Further, e-mail requests for public accommodation should be included as a part of the notice. Finally, verify that the adoption by reference of any materials included in the regulations is properly completed as prescribed in the *Policy and Procedure Manual for the Adoption of Kansas Administrative Regulations*.

Please make this letter a part of the public record on these regulations. The Committee will review the regulations, which the agency ultimately adopts, and reserves any expression of legislative concern to that review.

To assist in that final review:

- Please inform the Joint Committee and me, in writing, at the time the rules and regulations are adopted and filed with the Secretary of State, of any and all changes which have been made following the public hearing.
- Please notify the Joint Committee and me, in writing, when your agency has adopted the regulations as permanent; delayed implementation of the regulations; or decided not to adopt any of the regulations.

Secretary Hayden

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- Also, please indicate separately to the Joint Committee and me, any changes made to the proposed regulations reviewed by the Committee.

Based upon direction from the Committee, failure to respond to each and every comment contained in this letter may result in the request that a spokesperson from your agency appear before the Committee to explain the agency's failure to reply.

Sincerely,



Raney L. Gilliland
Assistant Director for Research

RLG/jl

RECOMMENDATIONS FOR 2009 "EARLY" MIGRATORY BIRD SEASONS

EARLY TEAL SEASON:

Framework - Hunting season between September 1 and September 30, 2009, not exceeding: 1) sixteen days if the blue-winged teal breeding population is above 4.7 million, or 2) nine days if the breeding population is between 3.3 and 4.6 million, with a daily bag and possession limit of 4 and 8 teal, respectively. Last year's (2008) blue-winged teal breeding population was 6.6 million. The 2009 blue-winged teal breeding population total will not be known until June.

It is possible that only eight days will be available for the Early Teal Season in the High Plains zone. This potential restriction on the High Plains Early Teal Season is due to the 107-day annual limit (by treaty) on hunting of any one species. A regular High Plains zone duck season of 97 days allowed under the regular season liberal package, plus 2 days of youth hunting leaves only eight days to reach the 107-day total.

Recommendation:

High Plains Zone - A bag and possession limit of 4 and 8, respectively, with the following season date possibilities:

A 9-day season running September 19 through September 27, 2009,

or a 16-day season running September 12 through September 27, 2009,

or an 8-day season running September 19 through September 26, 2009

Low Plains Zones - A bag and possession limit of 4 and 8, respectively, with the following season date possibilities:

A 9-day season running September 19 through September 27, 2009,

or a 16-day season running September 12 through September 27, 2009.

SHOOTING HOURS FOR ALL EARLY SEASONS:

Framework - Shooting hours frameworks are expected to be ½ hour before sunrise to sunset for all seasons.

Recommendation-Adopt maximum shooting hours allowed in the frameworks, probably ½ hour before sunrise to sunset.

115-25-19. Doves; management unit, hunting season, shooting hours, and bag and

possession limits. (a) The first segment of open season for the taking of doves shall begin on the first day of September and shall continue for 61 days, including the opening day. The second segment of open season shall begin on the first Saturday of November and shall continue for nine days, including the opening day. The third segment of open season shall begin on November 20 and shall continue through February 28 of the following year. The first and second segments of open season shall be for the taking of migratory and exotic doves. The third segment of open season shall be only for the taking of exotic doves.

(b) The entire state shall be open for the taking of doves during the dove season.

(c) Shooting hours shall be from one-half hour before sunrise until sunset.

(d) The aggregate daily bag limit for migratory doves during the first and second segments of open season shall be 15 migratory doves.

(e) The aggregate possession limit for migratory doves during the first and second segments of open season shall be 30 migratory doves.

(f) There shall be no aggregate daily bag limit or aggregate possession limit for exotic doves during any open season, except as provided in this regulation.

(g) Each exotic dove possessed in excess of the aggregate daily bag limit or aggregate possession limit for migratory doves during the first or second open segment shall retain a fully feathered wing.

(h) Each exotic dove possessed during the third open segment shall retain a fully feathered wing.

(i) For the purpose of this regulation, “migratory dove” shall mean any mourning dove or white-winged dove, and “exotic dove” shall mean a Eurasian collared-dove or ringed turtledove. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807 and K.S.A. 2008 Supp. 32-1002.)

ECONOMIC IMPACT STATEMENT

K.A.R. 115-25-19. Doves; management unit, hunting season, shooting hours, bag and possession limits.

DESCRIPTION: This exempt regulation establishes requirements for hunting doves. The proposed changes to the regulation would add additional hunting days to the first segment of the open seasons and open the second segment on the first Saturday in November for nine days rather than opening on November 1.

FEDERAL MANDATES: None.

ECONOMIC IMPACT: The proposed amendments are not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

ALTERNATIVES CONSIDERED: Other than to not adopt the proposed amendments, no other alternatives were considered.

115-15-1. Threatened and endangered species; general provisions. (a) The following species shall be designated endangered within the boundaries of the state of Kansas.

(1) Invertebrates

Flat floater mussel, *Anodonta suborbiculata* (Say, 1831)

Rabbitsfoot mussel, *Quadrula cylindrica* (Say, 1817)

Western fanshell mussel, *Cyprogenia aberti* (Conrad, 1850)

Neosho mucket mussel, *Lampsilis rafinesqueana* (Frierson, 1927)

Elktoe mussel, *Alasmidonta marginata* (Say, 1818)

Ellipse mussel, *Venustaconcha ellipsiformis* (Conrad, 1836)

Slender walker snail, *Pomatiopsis lapidaria* (Say, 1817)

Scott optioservus riffle beetle, *Optioservus phaeus* (White, 1978)

American burying beetle, *Nicrophorus americanus* (Olivier, 1890)

Mucket, *Actinonaias ligamentina* (Lamarck, 1819)

(2) Fish

Arkansas River shiner, *Notropis girardi* (Hubbs and Ortenburger, 1929)

Pallid sturgeon, *Scaphirhynchus albus* (Forbes and Richardson, 1905)

Sicklefin chub, *Macrhybopsis meeki* (Jordan and Evermann, 1896)

Arkansas River speckled chub, *Macrhybopsis tetranema* (Gilbert, 1886)

Silver chub, *Macrhybopsis storeriana* (Kirtland, 1845)

(3) Amphibians

Cave salamander, *Eurycea lucifuga* (Rafinesque, 1822)

Many-ribbed salamander, *Eurycea multiplicata* (Cope, 1869)

Grotto salamander, ~~*Typhlotriton spelaeus*~~ *Eurycea spelaea* (Stejneger, 1893 1892)

(4) Birds

Black-capped vireo, *Vireo atricapilla* (Woodhouse, 1852)

Eskimo curlew, *Numenius borealis* (Forster, 1772)

Least tern, *Sterna antillarum* (Lesson, 1847)

Peregrine falcon, ~~*Falco peregrinus*~~ (Tunstall, 1771)

Whooping crane, *Grus americana* (Linnaeus, 1758)

(5) Mammals

Black-footed ferret, *Mustela nigripes* (Audubon and Bachman, 1851)

Gray myotis, *Myotis grisescens* (A.H. Howell, 1909)

(b) The following species shall be designated threatened within the boundaries of the state of Kansas.

(1) Invertebrates

Rock pocketbook mussel, *Arcidens confragosus* (Say, 1829)

Flutedshell mussel, *Lasmigona costata* (Rafinesque, 1820)

Butterfly mussel, *Ellipsaria lineolata* (Rafinesque, 1820)

Ouachita kidneyshell mussel, *Ptychobranhus occidentalis* (Conrad, 1836)

Sharp hornsnail, *Pleurocera acuta* (Rafinesque, 1831)

Delta hydrobe, *Probythinella emarginata* (Kuster, 1852)

(2) Fish

Arkansas darter, *Etheostoma cragini* (Gilbert, 1885)

Chestnut lamprey, *Ichthyomyzon castaneus* (Girard, 1858)
Flathead chub, *Platygobio gracilis* (Richardson, 1836)
Hornyhead chub, *Nocomis biguttatus* (Kirtland, 1840)
Neosho madtom, *Noturus placidus* (Taylor, 1969)
Redspot chub, *Nocomis asper* (Lachner and Jenkins, 1971)
Silverband shiner, *Notropis shumardi* (Girard, 1856)
Blackside darter, *Percina maculata* (Girard, 1859)
Sturgeon chub, *Macrhybopsis gelida* (Girard, 1856)
Western silvery minnow, *Hybognathus argyritis* (Girard, 1856)
Topeka shiner, *Notropis topeka* (Gilbert, 1884)
Shoal chub, *Macrhybopsis hyostoma* (Gilbert, 1884)
Plains minnow, *Hybognathus placitus* (Girard, 1856)

(3) Amphibians

Eastern newt, *Notophthalmus viridescens* (Rafinesque, 1820)
Longtail salamander, *Eurycea longicauda* (Green, 1818)
Eastern narrowmouth toad, *Gastrophryne carolinensis* (Holbrook, 1836)
Green frog, *Rana clamitans* (Latreille, 1801)
Spring peeper, *Pseudacris crucifer* (Wied-Neuwied, 1838)
Strecker's chorus frog, *Pseudacris streckeri* (Wright and Wright, 1933)
Green toad, *Bufo debilis* (Girard, 1854)

(4) Reptiles

Broadhead skink, *Eumeces laticeps* (Schneider, 1801)

Checkered garter snake, *Thamnophis marcianus* (Baird and Girard, 1853)

~~Common map turtle, *Graptemys geographica* (Le Sueur, 1817)~~

Texas blind snake, *Leptotyphlops dulcis* (Baird and Girard, 1853)

Redbelly snake, *Storeria occipitomaculata* (Storer, 1839)

Longnose snake, *Rhinocheilus lecontei* (Baird and Girard, 1853)

Smooth earth snake, *Virginia valeriae* (Baird and Girard, 1853)

(5) Birds

Piping plover, *Charadrius melodus* (Ord, 1824)

Snowy plover, *Charadrius alexandrinus* (Linnaeus, 1758)

~~Bald eagle, *Haliaeetus leucocephalus* (Linnaeus, 1766)~~

(6) Mammals

Spotted skunk, *Spilogale putorius* (Linnaeus, 1758)

(7) Turtles

Common map turtle, *Graptemys geographica* (Le Sueur, 1817)

(c) A threatened or endangered species taken during established trapping seasons, authorized commercial wildlife operations, fishing by hook and line, bait fish seining, or other lawful activity shall not be unlawfully taken if immediately released.

(d) Any threatened or endangered species in possession before the effective date of this regulation and not prohibited by any previous regulation of the department or national listings may be retained in possession if either of the following conditions is met:

(1) An application of affidavit to that effect has been filed with and approved by the

secretary before January 1, 1990 that states the circumstances of how the species came into possession.

(2) Possession of the animal has been previously approved by the department. (Authorized by K.S.A. 32-960 and K.S.A. 32-963; implementing K.S.A. 32-960, K.S.A. 32-961, K.S.A. 32-963, K.S.A. 32-1010, and K.S.A. 32-1011; effective Oct. 30, 1989; amended Aug. 31, 1992; amended Nov. 29, 1999; amended Feb. 18, 2005; amended P-_____.)

ECONOMIC IMPACT STATEMENT

K.A.R. 115-15-1. Threatened and endangered species; general provisions.

REGULATION DESCRIPTION: This permanent regulation designates species classified as endangered and threatened in Kansas. The proposed amendments to the regulation are as follows:

- | Remove one endangered species: Peregrine Falcon, *Falco peregrinus*
- | Remove one threatened species: Bald eagle, *Haliaeetus leucocephalus*
- * Add three threatened species: Shoal chub, *Macrhybopsis hyostoma*
Plains minnow, *Hybognathus placitus*
Delta hydrobe, *Probythinella emarginata*

In conjunction with these proposed amendments, the department is also proposing amendments to K.A.R. 115-15-2, which designated species in need of conservation in Kansas (or SINC species). Proposed amendments to that regulation include the addition of the Bigeye shiner, Redfin darter, Lake sturgeon, Striped shiner, Common shiner, Southern redbelly dace, Cardinal shiner, and the Johnny darter to the list of SINC species, and the removal of the Plains minnow and the Delta hydrobe from the list of SINC species.

The Kansas Nongame and Endangered Species Act, K.S.A. 32-957 et seq., requires the department to adopt rules and regulations which contain a list of all species of wildlife indigenous to this state which have been determined to be endangered species . . . and a list of all such species which have been determined to be threatened (K.S.A. 32-960(c)(1)). In making this determination, a species may be threatened or endangered because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) the overutilization of such species for commercial, sporting, scientific, educational, or other purposes;
- (3) disease or predation;
- (4) the inadequacy of existing regulatory mechanisms; or
- (5) the presence of other natural or man-made factors affecting its continued existence within this state.

K.S.A. 32-960(a). The law stipulates that the secretary make the above determinations on the basis of the best scientific, commercial, and other data available to the secretary after consultation, as appropriate, with federal agencies, other interested state agencies and interested persons and organizations. In addition, the secretary is required to take into consideration those actions, if any, being carried out or about to be carried out by the federal government, by other

states, by other agencies of this state or political subdivisions thereof, or by nongovernmental persons or organizations which may affect the species under consideration.

BACKGROUND: K.S.A. 32-960(d) requires that every five years the secretary shall conduct a review of the species listed . . . and shall submit any proposed changes in the listings . . . to federal and state agencies and local and tribal governments and to all individuals and organizations that have requested notification of departmental action. In February of 2008, the five-year review of Kansas threatened, endangered and species in need of conservation list was initiated. Approximately 450 individuals and organizations were mailed a petition for species review form to be returned by May 31, 2008. This initial process provides opportunity for submitting a petition for removal or addition of species to the Kansas list. By May 31, twenty-one species had been petitioned. State law also provides that petitions may be submitted outside of the five-year review process.

Of the twenty-one species petitioned, twelve species were petitioned to be listed as endangered or threatened in Kansas. In addition, two species were petitioned for removal from the threatened list in Kansas, one species was petitioned for removal from the endangered list and three species were petitioned for removal from the SINC species list.

In June 2008, the department began to review possible state threatened and endangered listing and delisting actions for the proposed species. The review was conducted by a scientific task committee composed of personnel from the U.S. Fish and Wildlife service, universities, the Kansas Biological Survey, and the department. The scientific task committee determined that sufficient data existed to further consider whether a listing action is warranted for nine species:

- | Bald eagle
- | Peregrine falcon
- | roadhead skink
- | American eel
- * Shoal chub
- * Bigeye shiner
- * Redfin darter
- * Plains minnow
- * Delta hydrobe

As a component of the prescribed process, notice was published in the *Kansas Register* on September 4, 2008, informing the public that these species were being considered for listing actions, and that the department was obtaining a scientific review of these species's status from sources outside the agency. The notice also informed the public of four public meetings, to be conducted 90 days before submission of any proposed listing to the Wildlife and Parks

Commission. Similar information was sent to federal and state agencies and local governments that may be affected by the proposed listings actions, as well as to individuals and organizations that had requested notification of proposed listing actions. Finally, this information was included in a news release sent to local newspapers and radio stations, as well as in the department's September 11, 2008 statewide news release.

Public informational meetings were held October 2, 2008 in Topeka; October 7, 2008 in Wichita; October 9, 2008 in Parsons; and October 30, 2008 in Pittsburg. These locations were selected based on their proximity to areas that may be affected by the proposed listing actions. At each meeting, department staff discussed the laws and procedures for listing a species as threatened or endangered, and reviewed each species's description, distribution, life history, and habitat. Staff emphasized that this was merely the beginning of the listing process, and that the public was invited to submit information for scientific review regarding each species's status. Four public participants attended the meeting in Topeka; four public participants attended the meeting in Wichita; nineteen public participants attended the meeting in Parsons; and thirty-one public participants attended the meeting in Pittsburg.

In addition to other public notification efforts, information about each species proposed for listing was made available to the public at department offices in Emporia, Topeka, and Pratt, and at public meetings of the Wildlife and Parks Commission in Tonganoxie on October 23, 2008 and in Emporia on January 8, 2009.

Finally, the scientific task committee sent information concerning the proposed listings to individuals and organizations believed to have knowledge and scientific information about one or more of the species in question. These individuals and organizations were asked to rate the species from zero (species in no danger) to ten (species near extirpation) for 17 different categories, using the Species Evaluation Categories endorsed by the Commission in the fall of 1997. These numerical evaluations, along with any other biological and scientific information submitted by the public, were collected by the scientific task committee over the 90 day public comment period.

Using this collected information, the scientific task committee finalized recommendations on January 6, 2009, and provided them to department administration. These recommendations were presented to the Wildlife and Parks Commission and to the public at the January 8, 2009 Commission meeting in Emporia. Taking into consideration the feedback received at that meeting, the department has proceeded to develop regulatory actions, as discussed below.

FEDERAL MANDATE: State law or regulation respecting a threatened or endangered species may be more restrictive, but cannot be less restrictive than federal law or regulation (16 U.S.C.A. 1535(f)). The Secretary of Interior may enter into cooperative agreements with a state, provided that state establishes and maintains an adequate and active program for the conservation of endangered and threatened species (16 U.S.C.A. 1535(c)). With such cooperative agreements come substantial financial assistance to the state to develop conservation programs. The cost sharing for such programs has 75% of the cost being borne by the federal government. Therefore, a determination by the Secretary of Interior that a state was not maintaining an

adequate or active program could place in potential jeopardy substantial federal assistance to the state.

None of the species proposed for listing actions are currently listed as threatened or endangered under federal law.

ECONOMIC IMPACT: The anticipated economic impacts from the proposed listing action of each species are discussed below.

Peregrine falcon: Most Peregrine falcons in Kansas are passage birds and are seen during migration in fall or spring. The population was severely limited by organo-chlorine insecticides that were banned in 1972. It took the population decades to recover and it is now considered robust. This falcon commonly is seen near mudflats and reservoirs where there is an abundance of shorebirds or ducks during migration. Pairs will roost together and hunt cooperatively. This bird has worldwide distribution. Because the Peregrine falcon is being proposed for delisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the delisting.

Bald eagle: The Bald eagle is a North American bird of prey that primarily feeds on waterfowl, fish, mammals, and carrion. It typically nests near water in a large tree and will continue to add material to the nest and use it in subsequent years. Usually, 2 eggs are laid and it takes the young 4-5 years to develop adult plumage. Long-term pair bonds form and aerial courtship displays with talon locking and tumbling have been observed. Because the Bald eagle is being proposed for delisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the delisting.

Shoal chub: The Shoal chub inhabits large low-gradient streams where shallow riffles of shifting sand occur. This fish is adapted to waters of high turbidity and dissolved solids. The Shoal chub is relatively small (2 ¾ inches) and has a short life. Few live longer than two years so most reproduction is from year-old fish. The spawning season is long (May – August) and occurs after rainfall events increase flow. The eggs develop as they drift downstream. The Shoal chub was previously listed and protected as an endangered fish when it was called the Speckled chub. The range is now limited to the Republican River and the lower Kansas River with notable declines in distribution in the last 50 years. Possible impacts through permit requirements or other limitations on habitat impacts would be minimized, since the species is only found infrequently. Consequently, no significant economic impacts on the public or other state agencies are anticipated from the listing of the Shoal chub as a threatened species.

The department is required to develop a recovery plan for each species listed as threatened or endangered, based on the priority list developed pursuant to K.A.R. 115-15-4. The

cost to the department to establish a recovery plan for the Shoal chub is roughly estimated at \$5,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Plains minnow: The Plains minnow grows to 5 inches long and is partly herbivorous. It feeds in schools near the bottom where sediments accumulate in sandy substrates. High flows during the summer trigger spawning and the semi-buoyant eggs hatch as they are carried downstream where flow is more reliable. Few of these minnows live longer than 2 years. Evidence concludes that this species has declined greatly whereas it was a dominant species in the 1950's. It is considered a minor component of the fish fauna in the Republican, Smoky Hill and Arkansas river basins and still a significant portion of the fish fauna in the Cimarron River. Possible impacts through permit requirements or other limitations on habitat impacts would be minimized, since the species is only found infrequently. Consequently, no significant economic impacts on the public or other state agencies are anticipated from the listing of the Plains minnow as a threatened species.

The department is required to develop a recovery plan for each species listed as threatened or endangered, based on the priority list developed pursuant to K.A.R. 115-15-4. The cost to the department to establish a recovery plan for the Plains minnow is roughly estimated at \$5,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Delta hydrobe: The Delta hydrobe is a small (<5mm long) aquatic snail. Its flattened apex and small size make it distinctive. This snail is one of only five gill-breathing species (Prosobranchia) that occur in Kansas. In general, gill-breathing snails are less tolerant of pollution and resultant low dissolved oxygen level than the more numerous pulmonate snails that are also considered aquatic. Aquatic snails occupy a central position in the food web by grazing on periphyton and providing a food source for predators. The rare and isolated population in Cedar Creek is the only known occurrence in Kansas. This species needs high water quality and constant flow from spring-fed streams. Possible impacts through permit requirements or other limitations on habitat impacts would be minimized, since the species is very localized in occurrence. Consequently, no significant economic impacts on the public or other state agencies are anticipated from the listing of the Delta hydrobe as a threatened species.

The department is required to develop a recovery plan for each species listed as threatened or endangered, based on the priority list developed pursuant to K.A.R. 115-15-4. The cost to the department to establish a recovery plan for the Delta hydrobe is roughly estimated at \$5,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

CAPITAL AND ANNUAL COSTS: At the present time, it is not possible to identify the specific capital and annual costs of compliance with the proposed regulation. Actual costs will be dependent upon the specific project and the extent of involvement by the Department of Wildlife and Parks during the early planning stages of project development. Projects which may

affect the species proposed for listing would be reviewed on a case-by-case basis, with site specific mitigation options developed. Nonetheless, as described above, the capital and annual costs due to these proposed listing actions would be expected to be minimal, due to a number of factors including the current existence of other species in the same habitat that are already listed as threatened or endangered, the fact that the listing action would upgrade the species' status, or the current listing status under federal law.

INITIAL AND ANNUAL COSTS OF IMPLEMENTATION AND ENFORCEMENT:

Initial and annual implementation costs will be borne entirely by the department. There exist several state and federal environmental protection laws that require project sponsors to conduct impact assessments and enter into consultation with the department to determine short- and long-term impacts their projects may have on wildlife resources, including threatened and endangered species. The Environmental Services Section (ESS) is responsible for providing departmental input to projects covered by such environmental laws. ESS staff reviews approximately 1,000-1,500 projects annually. Of these, approximately 20-30 projects require a permit to protect threatened and endangered species or their habitats, and less than 0.5% are required to perform mitigation involving compensation. Because the project is likely to already be affecting a currently-listed species, most projects that would affect a species proposed for listing at this time would not require an additional permit or more stringent conditions, unless there is a site-specific concern directly affecting a documented population of the newly listed species. Based on current knowledge, it is expected that the proposed listing actions might involve issuance of approximately 2 additional permits per year at an estimated cost of \$500. All permitting and enforcement activity will be incorporated into existing Department operations and require no additional funding.

Regulatory review provided through K.A.R. 115-15-1 is predicated on the need for a permit from another state agency or the involvement of public funding. The final determination of whether a permit is issued stands independent of the authorities of other state agencies. As such, there will be no negative impact, including increased funding requirements or workload, upon other state laws, regulations, or agencies.

Development of recovery plans for listed species will also be borne by the department. Estimates for these costs are provided above, in consideration of economic impacts of the proposed listing actions.

COSTS WHICH WOULD ACCRUE WITHOUT REGULATION: As noted above, federal law requires that the state establish and maintain an adequate and active program for the conservation of endangered and threatened species, and requires that the state program be at least as restrictive as the federal program. Listing a federally-listed species at the state threatened level meets this requirement. However, no species proposed for listing at this time are listed on

the federal level. Therefore, costs which would likely accrue if the proposed regulation is not adopted are not readily identifiable.

COST ESTIMATE METHODOLOGY: Costs associated with work by Department employees are based on current state civil service salary plan. Costs estimates for the development of species' recovery plans are based on contract costs for development of recovery plans for other species.

ENVIRONMENTAL BENEFIT STATEMENT

K.A.R. 115-15-1. Threatened and endangered species; general provisions.

REGULATION DESCRIPTION: This permanent regulation designates species classified as threatened and endangered in Kansas (“T&E species”). An environmental benefit statement is required by law when amending an environmental rule or regulation. A regulation adopted by the Secretary of Wildlife and Parks concerning threatened or endangered species of wildlife is defined as an environmental rule or regulation. Consequently, this environmental benefit statement has been prepared. The proposed amendments to the regulation are as follows:

- | Remove one endangered species: Peregrine falcon, *Falco peregrinus*

- | Remove one threatened species: Bald eagle, *Haliaeetus leucocephalus*

- * Add three threatened species:
 - Shoal chub, *Macrhybopsis hyostoma*
 - Plains minnow, *Hybognathus placitus*
 - Delta hydrobe, *Probythinella emarginata*

In conjunction with these proposed amendments, the department is also proposing amendments to K.A.R. 115-15-2, which includes the lists of species in need of conservation in Kansas. Proposed amendments to that regulation include the addition of the Bigeye shiner, Redfin darter, Lake sturgeon, Striped shiner, Common shiner, Southern redbelly dace, Cardinal shiner, and the Johnny darter to the list of SINC species, and the removal of the Plains minnow and the Delta hydrobe from the list of SINC species.

The Kansas Nongame and Endangered Species Act, K.S.A. 32-957 et seq., requires the department to adopt rules and regulations “which contain a list of all species of wildlife indigenous to this state which have been determined to be endangered species . . . and a list of all such species which have been determined to be threatened...” (K.S.A. 32-959(c)(1)). In making this determination, a species may be threatened or endangered because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) the overutilization of such species for commercial, sporting, scientific, educational, or other purposes;
- (3) disease or predation;
- (4) the inadequacy of existing regulatory mechanisms; or

- (5) the presence of other natural or man-made factors affecting its continued existence within this state.

The current proposed amendments stem from petitions for listing actions received by the department by May 31, 2008, as well as federal threatened and endangered species listings. Since that time, the department has held various public meetings, collected data, and received official recommendations from a task force composed of personnel from the U.S. Fish and Wildlife Service, universities, the Kansas Biological Survey, and the department. In making its recommendation to the department, that task force collected numerical ratings from individuals and companies believed to have knowledge and scientific information about one or more of the species in question, over a 90-day public comment period.

Taking into consideration response from the Wildlife and Parks Commission, the general public, and the task force recommendations, the department has developed these proposed regulatory amendments. A description of the species and related information, as well as a description of the risk or threat to the species and the need for the regulatory amendment, is included for each of the species in question.

Peregrine falcon (*Falco peregrinus*)

- Federal Status: None
- Current Kansas Listing Status: Endangered
- Proposed Listing Action: De-list the species
- Description: It is a large, crow-sized falcon, with a blue-gray back, barred white underparts, and a black head and "moustache".
- Size: Adults grow to about 13-20 inch length in body with a 31-47 inch wingspan.
- Habitat: Distributed worldwide and nests rarely in Kansas.
- Reproduction: Breeding occurs in February and March in the Northern Hemisphere.
- Food: While its diet consists almost exclusively of medium-sized birds, the Peregrine falcon will occasionally hunt small mammals, small reptiles or even insects.

Threat to the species and need for the regulatory amendment: Peregrine Falcons are passage birds through Kansas but the population, severe decline in the 1960's and early 1970's, has recovered and is now considered robust. The bird was removed from the federal list in 1999.

Bald eagle (*Haliaeetus leucocephalus*)

- Federal Status: none
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: De-list the species
- Description: The adult Bald Eagle has a brown body with a white head and tail, and bright yellow irises, taloned feet, and a hooked beak; juveniles are completely brown except for the yellow feet. Males and females are identical in plumage coloration
- Size: Adults grow to a body length of 28-42 inches with a wingspan of 72-96 inches.
- Habitat: The Bald Eagle requires old-growth and mature stands of coniferous or hardwood trees for perching, roosting, and nesting
- Reproduction: The Bald Eagle produces 1-3 eggs per year with a 35 day incubation period.
- Food: The Bald Eagle's diet is opportunistic and varied, but most feed mainly on fish.

Threat to the species and need for the regulatory amendment: The Bald Eagle is proposed for delisting due to an increase in document nest occurrences from 1989 through 2008 and winter sightings are now common. The bird was removed from the federal threatened list in 2007.

Shoal chub (*Macrhybopsis hyostoma*)

- Federal Status: None
- Current Kansas Listing Status:
- Proposed Listing Action: List the species as threatened.
- Description: Sides of the body are light tan or silvery with numerous black pepper-like spots with a white belly and clear fins.
- Size: The species is 2 and ¾ inches long.
- Habitat: The Republican River and lower Kansas River.
- Reproduction: Spawning season is from May through August.
- Food: Eats mostly immature aquatic insects.

Threat to the species and need for the regulatory amendment: Notable declines in distribution and abundance have been documented in the last 50 years. Streamflow modifications (dewatering, reduction in peak flows, and elevation of base flows), compaction of sand substrates, sediment deposition, and establishment of sight-feeding predators and competitors are all mentioned as risks for several minnow species adapted to large rivers in Kansas.

Plains Minnow (*Hybognathus placitus*)

- Federal Status: None
- Current Kansas Listing Status: SINC
- Proposed Listing Action: List the species as threatened.
- Description: Silvery, terete minnow with a small head, small subterminal mouth, and small knob on the inside tip of the lower jaw and it is tan to brown or olive dorsally, silver laterally, and white ventrally with colorless fins.
- Size: The species is 5 inches long.
- Habitat: The Republican, Smoky Hill and Arkansas river basins as well as the Cimarron River.
- Reproduction: Spawning season is from May through August.
- Food: Herbivorous.

Threat to the species and need for the regulatory amendment: Notable declines in distribution and abundance have been documented in the last 50 years. Streamflow modifications (dewatering, reduction in peak flows, and elevation of base flows), compaction of sand substrates, sediment deposition, and establishment of sight-feeding predators and competitors are all mentioned as risks for several minnow species adapted to large rivers in Kansas.

Delta hydrobe (*Probythinella emarginata*)

- Federal Status: None
- Current Kansas Listing Status: SINC
- Proposed Listing Action: List as a threatened in Kansas

- Description: The Delta hydrobe is a gill-breathing aquatic snail. There are 5 species of gill-breathing snails in Kansas, all of which are sensitive to pollution.
- Size: Adults grow shells to 0.1 inches in length.
- Habitat: The species in Kansas had only been documented as fossil specimens from the Pleistocene era until the discovery of a relic population in Cedar Creek in Chase County, attributed to the high quality of this spring-fed stream.
- Reproduction: Unknown.
- Food: Periphyton.

Threat to the species and need for the regulatory amendment: The Delta hydrobe is maintaining an isolated population in Cedar Creek. Developments that would affect the hydrology of the stream could be a detriment. A large impoundment on Cedar Creek has been proposed in the past by the Army Corps of Engineers. Dams on the mainstem of Cedar Creek would be a threat to this population. In addition, stream channelization and gravel dredging could make the substrates unstable and also threaten the established population. If bridge, pipeline and tree removal occurs at or very near the site of the established population, then a severe reduction in population could occur. Dewatering of Cedar Creek for irrigation purposes could be considered a threat during periods of drought. Listing of the species as a threatened species would provide it more protection and would help raise awareness. In addition, if listed species are used in targeting USDA programs to conserve soil, grassland, and enhance riparian zone vegetation, then this listing could help maintain or improve the excellent water quality already found on Cedar Creek.

TAKINGS ASSESSMENT STATEMENT

K.A.R. 115-15-1. Threatened and endangered species; general provisions.

K.A.R. 115-15-2. Nongame species; general provisions.

BACKGROUND: The Private Property Protection Act, K.S.A. 77-701 *et seq.*, requires state agencies to evaluate certain governmental actions to determine whether such actions may constitute a taking, and to make the resulting written report available for public inspection. Guidelines to evaluate such governmental actions were established by the Attorney General and published in the Kansas Register on December 21, 1995. Before a state agency initiates a governmental action, it shall prepare a written report, following the Attorney General's guidelines, and make the report available for public inspection. Two regulations affecting species receiving some level of protected status based on their need for conservation, K.A.R. 115-15-1 and K.A.R. 115-15-2, are jointly assessed in this statement.

ANALYSIS: The analysis used follows the sequence and the scope of the questions from the "Takings Checklist" contained in the Attorney General's Guidelines.

1. Does the government action result in a permanent or temporary physical occupation or invasion of private property?
2. Does the governmental action deny or abrogate a fundamental property right?
3. Does the governmental action deprive the owner of all economically viable uses of the property?
4. Does the governmental action substantially further a legitimate interest?
5. Are the proscribed uses or physical occupation part of a preexisting limitation on the landowner's title?

K.A.R. 115-15-1 identifies species classified as endangered or threatened in Kansas, as required by, and according to the factors listed in K.S.A. 32-960. K.S.A. 32-960 requires the agency secretary to determine whether any species of indigenous wildlife is a threatened or endangered species because of any of the statutorily imposed factors:

- (1) the present or threatened destruction, modification or curtailment of its habitat or range;
- (2) the over utilization of such species for commercial, sporting, scientific, educational or other purposes;

- (3) disease or predation;
- (4) the inadequacy of existing regulatory mechanisms; or
- (5) the presence of other natural or man-made factors affecting its continued existence within this state.

The secretary's determination is to be made on the basis of the best scientific, commercial and other data available to the secretary, and after consultation, as appropriate, with federal agencies, other interested state agencies and interested persons and organizations.

K.A.R. 115-15-2 identifies species in need of conservation, as required by, and according to the factors in K.S.A. 32-959(a). The law stipulates that this determination shall be on the basis of information related to population, distribution, habitat needs, limiting factors and other biological and ecological data concerning nongame species, gathered to determine conservation measures necessary for their continued ability to sustain themselves successfully. Species listed in this classification are not considered to be at the level of danger of threatened or endangered species, and do not receive the same level of legal protection.

1. Do the proposed amendments result in a permanent or temporary physical occupation or invasion of private property?

The listing of a species as threatened, endangered, or in need of conservation does not require an "occupation or invasion" of private property. Investigations surveying for the presence, or absence, of a species are among the statutorily available and authorized activities available to the agency pursuant to K.S.A. 32-959, and that activity does not rise to a level constituting an occupation or invasion. Typically, agency personnel seek consent of the landowner, or manager prior to conducting an inspection. If such consent is withheld, then the agency endeavors to work through a third party intermediary (such as a watershed district or a NRCS representative) to explain to the property owner the relevancy of such inspection to activities beneficial to the property owner. If those efforts fail to generate consent, then the agency typically relies on other scientific data.

2. Do the proposed amendments deny or abrogate a fundamental property right?

Protected fundamental property interests include the right to possess property, the right to exclude others from the property and the right to dispose of the property. By state law, ownership of all wildlife is declared to be in the state, regardless of whether it is listed or not (K.S.A. 32-703). Consequently, the listing of a species as threatened or endangered does not dispose or otherwise impair a property owner's continuing existing use of private property.

Listing a species as threatened or endangered (but not as a species in need of conservation) could have certain indirect effects on the use of a person's property, if a proposed use of the property would result in the alteration of the listed species' habitat or destruction of individuals of the species. Any person sponsoring or responsible for a publicly funded action of this sort, or an action requiring a permit from another state or federal permit from another state or federal government agency, must apply for a permit from the department, pursuant to K.A.R.

115-15-3. However, this permit is not required for normal farming and ranching practices, or for development of residential and commercial property on privately-owned property financed with private, nonpublic funds, unless a permit is required by another state or federal agency, or unless the action would involve an intentional taking (defined as an act or attempt that is willful and done for the purpose of taking a threatened or endangered species). Pursuant to K.A.R. 115-15-3(d), the secretary is obligated to issue a permit for which a timely and complete application has been submitted, if the proposed action meets with two conditions. First, the application must describe in the action plan sufficient mitigating or compensating measures to ensure protection of critical habitats and listed species, and assurances that such measures will remain in effect. Second, the proposed activity must comply with all federal laws protecting listed species.

The mere listing of a species as threatened, endangered or in need of conservation does not require any action by a property owner. Only if the property owner elects to undertake publicly funded activity that could result in the taking of a threatened or endangered species would a permit be required. In addition, these permits are not required for certain actions, and department regulation states that, in any case, law enforcement action would only be taken in cases involving intentional takings.

3. Do the proposed amendments deprive the owner of all economically viable uses of the property?

The listing of a species as threatened, endangered, or in need of conservation does not, itself, have any impact on the use of property. However, as noted above, a permit may be required if a proposed use would result in the alteration of a threatened or endangered species' habitat or the destruction of an individual of the species. Again, management of private property for normal farming or ranching uses would not be impaired by the listing of a threatened or endangered species, even if such practices were publicly funded or state or federally assisted, unless an intentional taking were involved. In addition, development of residential or commercial property would not be impaired unless publicly funded or an intentional taking were involved.

In addition, no use of private property could ever be restricted under these regulations unless it were publicly funded, state or federally assisted, or destroyed individuals of any listed species. All other economically viable uses of the property not within these categories are still available to the landowner. Furthermore, any use proposed action that would fall within these categories will still receive a permit to proceed, as long as sufficient mitigating or compensating measures are incorporated within the proposed action. Therefore, even in such cases, the regulation would not deprive a property of all economically viable use.

4. Do the proposed amendments substantially further a legitimate state interest?

The general governmental purposes for listing of any threatened or endangered species have been articulated in the Congressional findings and declaration of policies in the Federal Endangered Species Act of 1973 (16 U.S.C.A. 1531). Congress found that “various species of fish, wildlife and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation,” and that “other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction,” and such species are of “esthetic, ecological, educational, historical, recreational and scientific value to the Nation and its people.” Such findings adopted at a national level have equal applicability at the state level.

State statute makes determination of threatened or endangered species by the secretary obligatory, and not merely optional. See K.S.A. 32-960(a) (the secretary shall determine whether any species of wildlife indigenous to the state is a threatened species...) (emphasis added). The Kansas Legislature by statutorily adopting these obligatory requirements and imposing them upon the secretary evidenced that such conservation and protection provisions furthered a legitimate state interest.

A further legitimate state interest is served because federal agencies are directed by statutory federal policy (16 U.S.C.A. 1531(c)) to use their authority in furtherance of the stated federal policy of conserving ecosystems of threatened and endangered species. State law or regulation respecting a threatened species may be more restrictive, but can not be less restrictive than federal law or regulation (16 U.S.C.A. 1535(f)). The Secretary of Interior may enter into cooperative agreements with a state, provided that state “establishes and maintains an adequate and active program for the conservation of endangered and threatened species” (16 U.S.C.A. 1535(c)). With such cooperative agreements come substantial financial assistance to the state to develop conservation programs. The cost sharing for such programs has 75% of the cost being borne by the federal government. Therefore, a determination by the Secretary of Interior that a state was not maintaining an “adequate or active” program could place in potential jeopardy substantial federal assistance to the state.

5. Are any proscribed uses or physical occupation from the proposed amendments part of a preexisting limitation on the landowner’s title?

As described above, the listing of a threatened or endangered species does not result in a permanent or temporary physical occupation on private property without consent of the landowner or manager. Second, as described above, the regulations do not deprive an owner of all economically viable uses of the property.

Even if limited proscriptions would exist, however (due to the involvement of public funding, for example), they may be part of a preexisting limitation on the landowner’s title. For example, to the extent a landowner is also within a watershed district, and such district wishes to use federal assistance for construction of watershed structures (dams or impoundments), then the statutory rights of the watershed district may be pre-existing limitations that limit the impact of a listing of a species as threatened or endangered. Specifically, K.S.A. 24-1209 vests in an

incorporated watershed district the power “where the construction, improvement or operation of such works causes the substantial displacement of a wildlife habitat and when required by the soil conservation service of the United States department of agriculture as a condition precedent of the release of federal funds for such works, to acquire land for the purpose of restoring such wildlife habitat.” The watershed district authorizing statutes contemplate that conservation or protection of wildlife habitat may be a factor in the siting and design of structures or impoundments and further, that certain mitigating conditions may have to be developed to gain approval by a federal funding source. Therefore, even if the listing of a threatened or endangered species were to create some limitations on the use of the property, it might not necessarily impose more of a burden for property already within a watershed district.

Also, watershed developments fall within the existing scope of the Kansas Water Projects Environmental Coordination Act (K.S.A. 82a-325, *et seq.*). Such Coordination Act requires the consideration of the environmental effects of any water development project. By statutory definition, the department is an environmental review agency, to whom watershed development projects must be submitted for review and comment. K.S.A. 82a-326(b)(1) and 82a-327. Permissible consideration for such review include:

- (a) beneficial and adverse environmental effects of proposed project on fish and wildlife;
- (b) means and methods to reduce adverse environmental effects; and
- (c) alternatives to a proposed project with significant adverse environmental effects.

Therefore, construction of a watershed dam could require the district to file an application for and obtain a permit if a threatened or endangered species were present, but due to the existing limitation under the Kansas Water Projects Environmental Coordination Act, the impact of such listing is reduced in this context.

Finally, any possible limitation would only occur if the proposed use of the property would impact a listed species. If another listed species already exists in the same habitat as the newly listed species, restrictions on the use of the property, if any, would be pre-existing. For certain of the proposed species for listing (e.g. the Shoal chub, in the Kansas River), that would normally be the case.

CONCLUSION: Based on the foregoing analysis, the agency believes that the proposed amendments to K.A.R. 115-15-1 and to K.A.R. 115-15-2 do not constitute a taking of private property.

115-15-2. Nongame species; general provisions. (a) The following species shall be designated nongame species in need of conservation within the boundaries of the state of Kansas.

(1) Invertebrates

Cylindrical papershell mussel, *Anodontoides ferussacianus* (I. Lea, 1834)

Snuffbox mussel, *Epioblasma triquetra* (Rafinesque, 1820)

Wartyback mussel, *Quadrula nodulata* (Rafinesque, 1820)

Spike mussel, *Elliptio dilatata* (Rafinesque, 1820)

Wabash pigtoe mussel, *Fusconaia flava* (Rafinesque, 1820)

Fatmucket mussel, *Lampsilis siliquoidea* (Barnes, 1823)

Yellow sandshell mussel, *Lampsilis teres* (Rafinesque, 1820)

Washboard mussel, *Megaloniais nervosa* (Rafinesque, 1820)

Round pigtoe mussel, *Pleurobema sintoxia* (Conrad, 1834)

Creeper mussel, *Strophitus undulatus* (Say, 1817)

Fawnsfoot mussel, *Truncilla donaciformis* (I. Lea, 1828)

Deertoe mussel, *Truncilla truncata* (Rafinesque, 1820)

Ozark emerald dragonfly, *Somatochlora ozarkensis* (Bird, 1833)

Gray petaltail dragonfly, *Tachopteryx thoreyi* (Hagen in Selys, 1857)

Prairie mole cricket, *Gryllotalpa major* (Saussure, 1874)

Neosho midget crayfish, *Orconectes macrus* (Williams, 1952)

~~Delta hydrobe, *Probythinella emarginata* (Kuster, 1852)~~

(2) Fish

Banded darter, *Etheostoma zonale* (Cope, 1868)

Banded sculpin, *Cottus carolinae* (Gill, 1861)

Black redhorse, *Moxostoma duquesnei* (Lesueur, 1817)

Blue sucker, *Cycleptus elongatus* (Lesueur, 1817)

Blacknose dace, *Rhinichthys atratulus* (Hermann, 1804)

Bluntnose darter, *Etheostoma chlorosoma* (Hay, 1881)

Brassy minnow, *Hybognathus hankinsoni* (Hubbs, 1929)

Gravel chub, *Erimystax x-punctatus* (Hubbs and Crowe, 1956)

Greenside darter, *Etheostoma blennioides* (Rafinesque, 1819)

Highfin carpsucker, *Carpionodes velifer* (Rafinesque, 1820)

Northern hog sucker, *Hypentelium nigricans* (Lesueur, 1817)

Ozark minnow, *Notropis nubilus* (Forbes, 1878)

Plains minnow, ~~*Hybognathus placitus* (Girard, 1856)~~

River darter, *Percina shumardi* (Girard, 1859)

River redhorse, *Moxostoma carinatum* (Cope, 1870)

River shiner, *Notropis blennius* (Girard, 1856)

Slough darter, *Etheostoma gracile* (Girard, 1859)

Speckled darter, *Etheostoma stigmaeum* (Jordan, 1877)

Spotfin shiner, *Cyprinella spiloptera* (Cope, 1868)

Spotted sucker, *Minytrema melanops* (Rafinesque, 1820)

Stippled darter, *Etheostoma punctulatum* (Agassiz, 1854)

Tadpole madtom, *Noturus gyrinus* (Mitchill, 1817)

Brindled madtom, *Noturus miurus* (Jordan, 1877)

Bigeye shiner, *Notropis boops* (Gilbert, 1884)

Redfin darter, *Etheostoma whipplei* (Girard, 1859)

Lake Sturgeon, *Acipenser fulvescens* (Rafinesque, 1817)

Striped shiner, *Luxilus chrysocephalus* (Rafinesque, 1820)

Common shiner, *Luxilus cornutus* (Mitchill, 1817)

Southern Redbelly Dace, *Phoxinus erythrogaster* (Rafinesque, 1820)

Cardinal Shiner, *Luxilus cardinalis* (Mayden, 1988)

Johnny Darter, *Etheostoma nigrum* (Rafinesque, 1820)

(3) Amphibians

Red-spotted toad, *Bufo punctatus* (Baird and Girard, 1852)

Crawfish frog, *Rana areolata* (Baird and Girard, 1852)

(4) Reptiles

~~Alligator snapping turtle, *Macrochelys temminckii* (Troost, in Harlan, 1835)~~

Rough earth snake, *Virginia striatula* (Linnaeus, 1766)

Western hognose snake, *Heterodon nasicus* (Baird and Girard, 1852)

Timber rattlesnake, *Crotalus horridus* (Linnaeus, 1758)

Eastern hognose snake, *Heterodon platirhinos* (Latreille, 1801)

Glossy snake, *Arizona elegans* (Kennicott, 1859)

Chihuahuan night snake, *Hypsiglena torquata* (Gunther, 1860 ~~Duges, 1865~~)

(5) Birds

Bobolink, *Dolichonyx oryzivorus* (Linnaeus, 1758)

Cerulean warbler, *Dendroica cerulea* (Wilson, 1810)

Curve-billed thrasher, *Toxostoma curvirostre* (Swainson, 1827)

Ferruginous hawk, *Buteo regalis* (Gray, 1844)

Golden eagle, *Aquila chrysaetos* (Linnaeus, 1758)

Short-eared owl, *Asio flammeus* (Pontoppidan, 1763)

Henslow's sparrow, *Ammodramus henslowii* (Audubon, 1829)

Ladder-backed woodpecker, *Picoides scalaris* (Wagler, 1829)

Long-billed curlew, *Numenius americanus* (Bechstein, 1812)

Mountain plover, *Charadrius montanus* (Townsend, 1837)

Chihuahuan raven, *Corvus cryptoleucus* (Couch, 1854)

Black tern, *Chlidonias niger* (Linnaeus, 1758)

Black rail, *Laterallus jamaicensis* (Gmelin, 1789)

Whip-poor-will, *Caprimulgus vociferus* (Wilson, 1812)

Yellow-throated warbler, *Dendroica dominica* (Linnaeus, 1776)

(6) Mammals

Franklin's ground squirrel, *Spermophilus franklinii* (Sabine, 1822)

Pallid bat, *Antrozous pallidus* (LeConte, 1856)

Southern bog lemming, *Synaptomys cooperi* (Baird, 1858)

Southern flying squirrel, *Glaucomys volans* (Linnaeus, 1758)

Texas mouse, *Peromyscus attwateri* (J.A. Allen, 1895)

Townsend's big-eared bat, *Corynorhinus townsendii* (Cooper, 1837)

(7) Turtles

Alligator snapping turtle, *Macrochelys temminckii* (Troost, in Harlan, 1835)

(b) Any nongame species in need of conservation taken during established trapping seasons, authorized commercial wildlife operations, fishing by hook and line, bait fish seining, or other lawful activity shall not be unlawfully taken if immediately released.

(c) Any nongame species in need of conservation in possession before the effective date of this regulation and not prohibited by any previous regulation of the department or national listings may be retained in possession if either of the following conditions is met:

(1) An application of affidavit to that effect has been filed with and approved by the secretary before January 1, 1990, that states the circumstances of how the species came into possession.

(2) Possession of the animal has been previously approved by the department. (Authorized by K.S.A. 32-959 and K.S.A. 32-963; implementing K.S.A. 32-959 and K.S.A. ~~2003~~ 2008 Supp. 32-1009; effective Oct. 30, 1989; amended Aug. 31, 1992; amended Nov. 29, 1999; amended Feb. 18, 2005; amended P-
_____.)

ECONOMIC IMPACT STATEMENT

K.A.R. 115-15-2. Nongame species; general provisions.

REGULATION DESCRIPTION: This permanent regulation designates species classified as species in need of conservation in Kansas (“SINC species”). The proposed amendments to the regulation are as follows:

- Add eight new SINC species:
 - Bigeye shiner, *Notropis boops*
 - Redfin darter, *Etheostoma whipplei*
 - Lake sturgeon, *Acipenser fulvescens*
 - Striped shiner, *Luxilus chrysocephalus*
 - Common shiner, *Luxilus cornutus*
 - Southern redbelly dace, *Phoxinus erythrogaster*
 - Cardinal shiner, *Luxilus cardinalis*
 - Johnny darter, *Etheostoma nigrum*
- Remove two SINC species:
 - Delta hydrobe, *Probythinella emarginata*
 - Plains minnow, *Hybognathus placitus*

In conjunction with these proposed amendments, the department is also proposing amendments to K.A.R. 115-15-1, which includes the lists of threatened and endangered species in Kansas. Proposed amendments to that regulation include the addition of the Shoal chub, Plains minnow, and Delta hydrobe to the list of threatened species as well as removing the Peregrine falcon from the endangered species list and Bald eagle from the list of threatened species.

The Kansas Nongame and Endangered Species Act, K.S.A. 32-957 et seq., requires the department to adopt rules and regulations “which contain a list of the nongame species deemed by the secretary to be in need of conservation . . .” (K.S.A. 32-959(a)). The law stipulates that this determination shall be on the basis of information related to population, distribution, habitat needs, limiting factors and other biological and ecological data concerning nongame species, gathered to determine conservation measures necessary for their continued ability to sustain themselves successfully.

BACKGROUND: K.S.A. 32-960(d) requires that “every five years the secretary shall conduct a review of the species listed . . . and shall submit any proposed changes in the listings . . .” to federal and state agencies and local and tribal governments, and to all individuals and organizations that have requested notification of departmental action. In February of 2008, the five-year review of Kansas threatened, endangered and species in need of conservation list was initiated. Approximately 450 individuals and organizations were mailed a “petition for species

review” form to be returned by May 31, 2008. This initial process provides opportunity for submitting a petition for removal or addition of species to the Kansas list. By May 31, twenty-one species had been petitioned. State law also provides that petitions may be submitted outside of the five-year review process.

Of the twenty-one species petitioned, twelve species were petitioned to be listed as endangered or threatened in Kansas. In addition, two species were petitioned for removal from the threatened list in Kansas, one species was petitioned for removal from the endangered list and three species were petitioned for removal from the SINC species list.

In June 2008, the department began to review possible state threatened and endangered listing and delisting actions for the proposed species. The review was conducted by a scientific task committee composed of personnel from the U.S. Fish and Wildlife service, universities, the Kansas Biological Survey, and the department. The scientific task committee determined that sufficient data existed to consider whether a listing action is warranted for nine species:

- | Bald eagle
- | Peregrine falcon
- | Broadhead skink
- | American eel
- * Shoal chub
- * Bigeye shiner
- * Redfin darter
- * Plains minnow
- * Delta hydrobe

As a component of the prescribed process, notice was published in the *Kansas Register* on September 4, 2008, informing the public that these species were being considered for listing actions, and that the department was obtaining a scientific review of these species’ status from sources outside the agency. The notice also informed the public of four public meetings, to be conducted 90 days before submission of any proposed listing to the Wildlife and Parks Commission. Similar information was sent to federal and state agencies and local governments that may be affected by the proposed listings actions, as well as to individuals and organizations that had requested notification of proposed listing actions. Finally, this information was included in a news release sent to local newspapers and radio stations, as well as in the department’s September 11, 2008 statewide news release.

Public informational meetings were held October 2, 2008 in Topeka; October 7, 2008 in Wichita; October 9, 2008 in Parsons; and October 30, 2008 in Pittsburg. These locations were selected based on their proximity to areas that may be affected by the proposed listing actions. At each meeting, department staff discussed the laws and procedures for listing a species as threatened or endangered, and reviewed each species’s description, distribution, life history, and habitat. Staff emphasized that this was merely the beginning of the listing process, and that the public was invited to submit information for scientific review regarding each species’s status. Four public participants attended the meeting in Topeka; four public participants attended the meeting in Wichita; nineteen public participants attended the meeting in Parsons; and thirty-one public participants attended the meeting in Pittsburg.

In addition to other public notification efforts, information about each species proposed for listing was made available to the public at department offices in Emporia, Topeka, and Pratt, and at public meetings of the Wildlife and Parks Commission in Tonganoxie on October 23, 2008 and in Emporia on January 8, 2009.

Finally, the scientific task committee sent information concerning the proposed listings to individuals and companies believed to have knowledge and scientific information about one or more of the species in question. These individuals and companies were asked to rate the species from “zero” (species in no danger) to “ten” (species near extirpation) for 17 different categories, using the Species Evaluation Categories endorsed by the Commission in the fall of 1997. These numerical evaluations, along with any other biological and scientific information submitted by the public, were collected by the Task Force over the 90 day public comment period.

Using this collected information, the scientific task committee finalized recommendations on January 6, 2009, and provided them to department administration. These recommendations were presented to the Wildlife and Parks Commission and to the public at the January 8, 2009 Commission meeting in Emporia. Taking into consideration the feedback received at that meeting, the department has proceeded to develop regulatory actions, as discussed below.

FEDERAL MANDATE: State law or regulation respecting a threatened or endangered species may be more restrictive, but can not be less restrictive than federal law or regulation (16 U.S.C.A. 1535(f)). The Secretary of Interior may enter into cooperative agreements with a state, provided that state “establishes and maintains an adequate and active program for the conservation of endangered and threatened species” (16 U.S.C.A. 1535(c)). With such cooperative agreements come substantial financial assistance to the state to develop conservation programs. The cost sharing for such programs has 75% of the cost being borne by the federal government. Therefore, a determination by the Secretary of Interior that a state was not maintaining an “adequate or active” program could place in potential jeopardy substantial federal assistance to the state.

None of the species proposed for listing actions are currently listed as threatened or endangered under federal law.

ECONOMIC IMPACT: The anticipated economic impacts from the proposed listing action of each species are discussed below.

Bigeye shiner: The Bigeye shiner is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is clean streams in quiet pools in the southern tier of counties in southeast Kansas. The intentional taking of a SINC species is prohibited.

However, SINC species do not receive the same level of protection as threatened or endangered species, and no specific review or permit requirement applies to private or public projects that may affect a SINC species or its habitat. Consequently, no economic impact on the general public is anticipated due to the listing of the Bigeye shiner as a SINC species.

The department is required to develop a recovery plan for each SINC species, based on the priority list developed pursuant to K.A.R. 115-15-4. The cost to the department to establish a recovery plan for the Bigeye shiner is roughly estimated at \$5,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Redfin darter: The Redfin darter is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is gentle stream riffles with gravel substrate in the southern tier of counties in southeast Kansas. The intentional taking of a SINC species is prohibited. However, SINC species do not receive the same level of protection as threatened or endangered species, and no specific review or permit requirement applies to private or public projects that may affect a SINC species or its habitat. Consequently, no economic impact on the general public is anticipated due to the listing of the Redfin darter as a SINC species.

The department is required to develop a recovery plan for each SINC species, based on the priority list developed pursuant to K.A.R. 115-15-4. The cost to the department to establish a recovery plan for the Redfin darter is roughly estimated at \$5,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Lake sturgeon: The Lake sturgeon is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is large rivers, primarily the Kansas River and the Missouri River. The intentional taking of a SINC species is prohibited. However, SINC species do not receive the same level of protection as threatened or endangered species, and no specific review or permit requirement applies to private or public projects that may affect a SINC species or its habitat. Consequently, no economic impact on the general public is anticipated due to the listing of the Lake sturgeon as a SINC species.

The department is required to develop a recovery plan for each SINC species, based on the priority list developed pursuant to K.A.R. 115-15-4. The cost to the department to establish a recovery plan for the Lake sturgeon is roughly estimated at \$5,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Striped shiner: The Striped shiner is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is the Spring River drainage in extreme southeast Kansas. The intentional taking of a SINC species is prohibited. However, SINC species do not receive the same level of protection as threatened or endangered species, and no specific review or permit requirement applies to private or public projects that may affect a SINC species or its

habitat. Consequently, no economic impact on the general public is anticipated due to the listing of the Striped shiner as a SINC species.

The department is required to develop a recovery plan for each SINC species, based on the priority list developed pursuant to K.A.R. 115-15-4. The cost to the department to establish a recovery plan for the Striped shiner roughly estimated at \$5,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Common shiner: The Common shiner is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is 47 streams in 13 Kansas counties. The intentional taking of a SINC species is prohibited. However, SINC species do not receive the same level of protection as threatened or endangered species, and no specific review or permit requirement applies to private or public projects that may affect a SINC species or its habitat. Consequently, no economic impact on the general public is anticipated due to the listing of the Common shiner as a SINC species.

The department is required to develop a recovery plan for each SINC species, based on the priority list developed pursuant to K.A.R. 115-15-4. The cost to the department to establish a recovery plan for the Common shiner is roughly estimated at \$5,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Southern redbelly dace: The Southern redbelly dace is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is the Kansas River drainage. The intentional taking of a SINC species is prohibited. However, SINC species do not receive the same level of protection as threatened or endangered species, and no specific review or permit requirement applies to private or public projects that may affect a SINC species or its habitat. Consequently, no economic impact on the general public is anticipated due to the listing of the Southern redbelly dace as a SINC species.

The department is required to develop a recovery plan for each SINC species, based on the priority list developed pursuant to K.A.R. 115-15-4. The cost to the department to establish a recovery plan for the Southern redbelly dace is roughly estimated at \$5,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Cardinal shiner: The Cardinal shiner is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is rocky runs and riffles in the Upper Neosho River and Arkansas River drainage. The intentional taking of a SINC species is prohibited.

However, SINC species do not receive the same level of protection as threatened or endangered species, and no specific review or permit requirement applies to private or public projects that may affect a SINC species or its habitat. Consequently, no economic impact on the general public is anticipated due to the listing of the Cardinal shiner as a SINC species.

The department is required to develop a recovery plan for each SINC species, based on the priority list developed pursuant to K.A.R. 115-15-4. The cost to the department to establish a recovery plan for the Cardinal shiner is roughly estimated at \$5,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Johnny darter: The Johnny darter is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is in sandy and muddy, sometimes rocky, pools of headwaters, creeks, and small to medium rivers of eastern Kansas. The intentional taking of a SINC species is prohibited. However, SINC species do not receive the same level of protection as threatened or endangered species, and no specific review or permit requirement applies to private or public projects that may affect a SINC species or its habitat. Consequently, no economic impact on the general public is anticipated due to the listing of the Johnny darter as a SINC species.

The department is required to develop a recovery plan for each SINC species, based on the priority list developed pursuant to K.A.R. 115-15-4. The cost to the department to establish a recovery plan for the Johnny darter is roughly estimated at \$5,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Delta hydrobe: The Delta hydrobe is currently listed as a species in need of conservation and is proposed to be delisted as a SINC species and listed as a threatened species. The species currently occurs primarily in Cedar Creek, in Chase County. Consequently, no economic impact of de-listing the species is expected to the department or the public, as delisting the species eliminates the need for a recovery plan and provides an economic savings to the department.

Plains minnow: The Plains minnow is currently listed as a species in need of conservation and is proposed to be delisted as a SINC species and listed as a threatened species. The species currently occurs primarily the Republican, Smoky Hill and Arkansas River basins as well as the Cimarron River. Consequently, no economic impact of delisting the species is expected to the department or the public, as delisting the species eliminates the need for a recovery plan and provides an economic savings to the department.

CAPITAL AND ANNUAL COSTS: At the present time, it is not possible to identify the specific capital and annual costs of compliance with the proposed regulation. Nonetheless, as described above, the capital and annual costs due to these proposed listing actions would be expected to be minimal.

INITIAL AND ANNUAL COSTS OF IMPLEMENTATION AND ENFORCEMENT:

Initial and annual implementation costs will be borne entirely by the department, and would be expected to be minimal. As noted above, SINC species do not require the same review of projects that may affect the species' habitat or status as do threatened or endangered species. Consequently, no additional permitting or enforcement activity would be anticipated.

Development of recovery plans for listed species will also be borne by the department.

COSTS WHICH WOULD ACCRUE WITHOUT REGULATION: As noted above, federal law requires that the state establish and maintain an adequate and active program for the conservation of endangered and threatened species, and requires that the state program be at least as restrictive as the federal program. Listing a federally-listed species at the state threatened level meets this requirement. Funding received as a direct result of threatened and endangered species programming currently totals approximately \$25-40,000 annually. Otherwise, costs which would likely accrue if the proposed regulation is not adopted are not readily identifiable.

Again, no species proposed for listing or de-listing action is listed on the federal level.

COST ESTIMATE METHODOLOGY: Costs associated with work by Department employees are based on current state civil service salary plan. Costs estimates for the development of species' recovery plans are based on contract costs for development of recovery plans for other species.

ENVIRONMENTAL BENEFIT STATEMENT

K.A.R. 115-15-2. Nongame species; general provisions.

REGULATION DESCRIPTION: This permanent regulation designates species classified as species in need of conservation in Kansas (“SINC species”). An environmental benefit statement is required by law when amending an environmental rule or regulation. A regulation adopted by the Secretary of Wildlife and Parks concerning threatened or endangered species of wildlife is defined as an environmental rule or regulation. Although a SINC species is not a threatened or endangered species, and does not receive the same protections from other regulations requiring permit review for actions that affect threatened or endangered species, the list may be considered one that concerns threatened or endangered wildlife. Consequently, this environmental benefit statement has been prepared. The proposed amendments to the regulation are as follows:

- Add eight new SINC species:
 - Bigeye shiner, *Notropis boops*
 - Redfin darter, *Etheostoma whipplei*
 - Lake sturgeon, *Acipenser fulvescens*
 - Striped shiner, *Luxilus chrysocephalus*
 - Common shiner, *Luxilus cornutus*
 - Southern redbelly dace, *Phoxinus erythrogaster*
 - Cardinal shiner, *Luxilus cardinalis*
 - Johnny darter, *Etheostoma nigrum*

- Remove two SINC species:
 - Delta hydrobe, *Probythinella emarginata*
 - Plains minnow, *Hybognathus placitus*

In conjunction with these proposed amendments, the department is also proposing amendments to K.A.R. 115-15-1, which includes the lists of threatened and endangered species in Kansas. Proposed amendments to that regulation include the addition of the Shoal chub, Delta hydrobe and Plains minnow to the list of threatened species as well as the removal of the Peregrine falcon from the list of endangered species and the Bald Eagle from the list of threatened species, and therefore relate to this proposed regulatory amendment.

The Kansas Nongame and Endangered Species Act, K.S.A. 32-957 et seq., requires the department to adopt rules and regulations “which contain a list of the nongame species deemed by the secretary to be in need of conservation . . .” (K.S.A. 32-959(a)). The law stipulates that this determination shall be on the basis of information related to population, distribution, habitat needs, limiting factors and other biological and ecological data concerning nongame species, gathered to determine conservation measures necessary for their continued ability to sustain themselves successfully.

The current proposed amendments stem from petitions for listing actions received by the department by May 31, 2008, as well as federal threatened and endangered species listings. Since that time, the department has held various public meetings, collected data, and received official recommendations from a task force composed of personnel from the U.S. Fish and Wildlife Service, universities, the Kansas Biological Survey, and the department. In making its

recommendation to the department, that task force collected numerical ratings from individuals and companies believed to have knowledge and scientific information about one or more of the species in question, over a 90-day public comment period.

Taking into consideration response from the Wildlife and Parks Commission, the general public, and the task force recommendations, the department has developed these proposed regulatory amendments. A description of the species and related information, as well as a description of the risk or threat to the species and the need for the regulatory amendment, is included for each of the species in question.

Delta hydrobe (*Probythinella emarginata*)

- Federal Status: None
- Current Kansas Listing Status: SINC
- Proposed Listing Action: List as threatened in Kansas
- Description: The Delta hydrobe is a gill-breathing aquatic snail. There are 5 species of gill-breathing snails in Kansas, all of which are sensitive to pollution.
- Size: Adults grow shells to 0.1 inches in length.
- Habitat: The species in Kansas had only been documented as fossil specimens from the Pleistocene era until the discovery of a relic population in Cedar Creek in Chase County, attributed to the high quality of this spring-fed stream.
- Reproduction: Unknown.
- Food: Unknown.

Threat to the species and need for the regulatory amendment: The Delta hydrobe is maintaining an isolated population in Cedar Creek. Developments that would affect the hydrology of the stream could be a detriment. A large impoundment on Cedar Creek has been proposed in the past by the Army Corps of Engineers. Dams on the mainstem of Cedar Creek would be a threat to this population. In addition, stream channelization and gravel dredging could make the substrates unstable and also threaten the established population. If bridge, pipeline and tree removal occurs at or very near the site of the established population, then a severe reduction in population could occur. Dewatering of Cedar Creek for irrigation purposes could be considered a threat during periods of drought. Listing of the species as a SINC species would provide it some protection and would help raise awareness. In addition, if listed species are used in targeting USDA programs to conserve soil, grassland, and enhance riparian zone vegetation, then this listing could help maintain or improve the excellent water quality already found on Cedar Creek. The species is proposed for listing as a threatened species and therefore would no longer be a SINC species.

Plains minnow (*Hybognathus placitus*)

- Federal Status: None
- Current Kansas Listing Status: SINC

- Proposed Listing Action: List the species as threatened.
- Description: Silvery, terete minnow with a small head, small subterminal mouth, and small knob on the inside tip of the lower jaw and it is tan to brown or olive dorsally, silver laterally, and white ventrally with colorless fins.
- Size: The species is 5 inches long.
- Habitat: The Republican, Smoky Hill and Arkansas river basins as well as the Cimarron River.
- Reproduction: Spawning season is from May through August.
- Food: Herbivorous.

Threat to the species and need for the regulatory amendment: Notable declines in distribution and abundance have been documented in the last 50 years. Streamflow modifications (dewatering, reduction in peak flows, and elevation of base flows), compaction of sand substrates, sediment deposition, and establishment of sight-feeding predators and competitors are all mentioned as risks for several minnow species adapted to large rivers in Kansas. The species is proposed for listing as a threatened species and therefore would no longer be a SINC species.

Bigeye shiner (*Notropis boops*)

- Federal Status: None
- Current Kansas Listing Status: None
- Proposed Listing Action: List as a species in need of conservation in Kansas.
- Description: A deep-bodied somewhat compressed minnow with large eyes. The large, oblique mouth is at the end of the snout, while the end of the upper jaw extends past the front of the eye. The back is typically olive yellow, and the sides are silvery. The lateral band is dark and continues around the snout, touching the tip of the lower jaw.
- Size: Adults may grow to just over 1 to 3 inches in length.
- Habitat: Clean streams in quiet pools in the southern tier of counties in southeast Kansas.
- Reproduction: Spawning occurs April-August.
- Food: Insects.

Threat to the species and need for the regulatory amendment: The Bigeye shiner feeds on small insects near and above the water surface. Water clarity, urbanization, sedimentation and impoundments are all threats to this species. Listing of the species as a SINC species would provide it some protection and would help raise awareness. In addition, if listed species are used in targeting USDA programs to conserve soil, grassland, and enhance riparian zone vegetation, then this listing could help maintain or improve the water quality at the sites in Kansas where this species is found.

Redfin darter, (*Etheostoma whipplei*)

- Federal Status: None
- Current Kansas Listing Status: None
- Proposed Listing Action: List as a species in need of conservation in Kansas.
- Description: Individuals have a broad frenum on the upper lip and a small pointed head. The back and sides of the body are a mottled light olive; the lower head, breast, and gill membrane areas are white. The sides of breeding males are adorned with various sizes of distinctive large red dots
- Size: Adults may grow to just over 1.8 to 3.7 inches in length.
- Habitat: Gentle stream riffles with gravel substrate in the southern tier of counties in southeast Kansas.
- Reproduction: Spawning occurs April.
- Food: Aquatic insects.

Threat to the species and need for the regulatory amendment: Urbanization, sedimentation and impoundments are all threats to this species. Listing of the species as a SINC species would provide it some protection and would help raise awareness. In addition, if listed species are used in targeting USDA programs to conserve soil, grassland, and enhance riparian zone vegetation, then this listing could help maintain or improve the water quality at the sites in Kansas where this species is found.

Lake sturgeon (*Acipenser fulvescens*)

- Federal Status: None
- Current Kansas Listing Status: None
- Proposed Listing Action: List as a species in need of conservation in Kansas.
- Description: This species is an evolutionarily ancient bottomfeeder with a partly cartilaginous skeleton and skin bearing rows of bony plates. The fish uses its elongated, spadelike snout to stir up the sand and silt on the beds of rivers and lakes while feeding. The coloration is olive-brown to grey on back and sides, with white belly.
- Size: Adults may grow to just over three feet to five feet in length.
- Habitat: Large rivers, primarily the Kansas River and the Missouri River.
- Reproduction: Spawning occurs April-June.
- Food: The diet consists of insect larvae, worms (including leeches), small fish and other small, primarily metazoan organisms it finds in the mud.

Threat to the species and need for the regulatory amendment: Overharvest, long sexual maturity period, damming and pollution are all threats to this species. Listing of the species as a SINC species would provide it some protection and would help raise awareness. Most of the individuals caught in Kansas are the result of a stocking program effort by the Missouri Department of Conservation. In addition, if listed species are used in targeting USDA programs to conserve soil, grassland, and enhance riparian zone vegetation, then this listing could help maintain or improve the water quality at the sites in Kansas where this species is found.

Striped shiner (*Luxilus chrysocephalus*)

- Federal Status: None
- Current Kansas Listing Status: None
- Proposed Listing Action: List as a species in need of conservation in Kansas.
- Description: Green or blue olive dorsally, sides blue silver, belly white silver. Prominent mid-dorsal, broad and slate colored stripe.
- Size: Adults may grow to just over two inches to four inches in length.
- Habitat: Spring River drainage in extreme southeast Kansas.
- Reproduction: Spawning occurs May-June.
- Food: Aquatic insects and plant material.

Threat to the species and need for the regulatory amendment: This species is considered common in Missouri but rarely captured in Kansas and there is no evidence of reproduction in Kansas. Listing of the species as a SINC species would provide it some protection and would help raise awareness. In addition, if listed species are used in targeting USDA programs to conserve soil, grassland, and enhance riparian zone vegetation, then this listing could help maintain or improve the water quality at the sites in Kansas where this species is found.

Common shiner (*Luxilus cornutus*)

- Federal Status: None
- Current Kansas Listing Status: None
- Proposed Listing Action: List as a species in need of conservation in Kansas.
- Description: Silvery colored (sometimes bronze) and has an olive back with a dark dorsal stripe.
- Size: Adults may grow to just over two and one-half inches to four inches in length.
- Habitat: 47 streams in 13 Kansas counties.
- Reproduction: Spawning occurs May-July.
- Food: Terrestrial and aquatic insects and plant material.

Threat to the species and need for the regulatory amendment: Listing of the species as a SINC species would provide it some protection and would help raise awareness. The western Kansas range reduction occurred at least 50 years ago. In addition, if listed species are used in targeting USDA programs to conserve soil, grassland, and enhance riparian zone vegetation, then this listing could help maintain or improve the water quality at the sites in Kansas where this species is found.

Southern redbelly dace (*Phoxinus erythrogaster*)

- Federal Status: None
- Current Kansas Listing Status: None
- Proposed Listing Action: List as a species in need of conservation in Kansas.
- Description: Cream colored lateral band is layered between dark bands on the sides, top dark band starts at the edge of the gill cover and turns into a series of spots at the base of the tail, lower band encircles the snout and ends in the tail.
- Size: Adults may grow to just over three inches in length.
- Habitat: 3 areas in Kansas and high numbers at several sites, Kansas River drainage.
- Reproduction: Spawning occurs May-June.
- Food: Southern redbelly dace are listed as herbivores feeding primarily on algae and small invertebrates in the drift.

Threat to the species and need for the regulatory amendment: Listing of the species as a SINC species would provide it some protection and would help raise awareness. In addition, if listed species are used in targeting USDA programs to conserve soil, grassland, and enhance riparian zone vegetation, then this listing could help maintain or improve the water quality at the sites in Kansas where this species is found.

Cardinal shiner (*Luxilus cardinalis*)

- Federal Status: None
- Current Kansas Listing Status: None
- Proposed Listing Action: List as a species in need of conservation in Kansas.
- Description: large shiner, silvery colored with a red stripe

- Size: Adults may grow to just over three inches in length.
- Habitat: Rocky runs and riffles, Upper Neosho River, Arkansas River drainage.
- Reproduction: Spawning occurs May-June
- Food: Aquatic insects and plant material

Threat to the species and need for the regulatory amendment: Listing of the species as a SINC species would provide it some protection and would help raise awareness. In addition, if listed species are used in targeting USDA programs to conserve soil, grassland, and enhance riparian zone vegetation, then this listing could help maintain or improve the water quality at the sites in Kansas where this species is found.

Johnny darter (*Etheostoma nigrum*)

- Federal Status: None
- Current Kansas Listing Status: None
- Proposed Listing Action: List as a species in need of conservation in Kansas.
- Description: Olive in color with numerous "w-shaped" markings along the sides.
- Size: Adults may grow to just over 2 and 1/2 inches in length.
- Habitat: Occurs in sandy and muddy, sometimes rocky, pools of headwaters, creeks, and small to medium rivers of eastern Kansas.
 - Reproduction: Spawning occurs May-June.
- Food: small, bottom-dwelling invertebrates.

Threat to the species and need for the regulatory amendment: Listing of the species as a SINC species would provide it some protection and would help raise awareness. In addition, if listed species are used in targeting USDA programs to conserve soil, grassland, and enhance riparian zone vegetation, then this listing could help maintain or improve the water quality at the sites in Kansas where this species is found.

TAKINGS ASSESSMENT STATEMENT

K.A.R. 115-15-1. Threatened and endangered species; general provisions.

K.A.R. 115-15-2. Nongame species; general provisions.

BACKGROUND: The Private Property Protection Act, K.S.A. 77-701 *et seq.*, requires state agencies to evaluate certain governmental actions to determine whether such actions may constitute a taking, and to make the resulting written report available for public inspection. Guidelines to evaluate such governmental actions were established by the Attorney General and published in the Kansas Register on December 21, 1995. Before a state agency initiates a governmental action, it shall prepare a written report, following the Attorney General's guidelines, and make the report available for public inspection. Two regulations affecting species receiving some level of protected status based on their need for conservation, K.A.R. 115-15-1 and K.A.R. 115-15-2, are jointly assessed in this statement.

ANALYSIS: The analysis used follows the sequence and the scope of the questions from the "Takings Checklist" contained in the Attorney General's Guidelines.

1. Does the government action result in a permanent or temporary physical occupation or invasion of private property?
2. Does the governmental action deny or abrogate a fundamental property right?
3. Does the governmental action deprive the owner of all economically viable uses of the property?
4. Does the governmental action substantially further a legitimate interest?
5. Are the proscribed uses or physical occupation part of a preexisting limitation on the landowner's title?

K.A.R. 115-15-1 identifies species classified as endangered or threatened in Kansas, as required by, and according to the factors listed in K.S.A. 32-960. K.S.A. 32-960 requires the agency secretary to determine whether any species of indigenous wildlife is a threatened or endangered species because of any of the statutorily imposed factors:

- (1) the present or threatened destruction, modification or curtailment of its habitat or range;
- (2) the over utilization of such species for commercial, sporting, scientific, educational or other purposes;
- (3) disease or predation;
- (4) the inadequacy of existing regulatory mechanisms; or
- (5) the presence of other natural or man-made factors affecting its continued existence within this state.

The secretary's determination is to be made on the basis of the best scientific, commercial and other data available to the secretary, and after consultation, as appropriate, with federal agencies, other interested state agencies and interested persons and organizations.

K.A.R. 115-15-2 identifies species in need of conservation, as required by, and according to the factors in K.S.A. 32-959(a). The law stipulates that this determination shall be on the basis of information related to population, distribution, habitat needs, limiting factors and other biological and ecological data concerning nongame species, gathered to determine conservation measures necessary for their continued ability to sustain themselves successfully. Species listed in this classification are not considered to be at the level of danger of threatened or endangered species, and do not receive the same level of legal protection.

1. Do the proposed amendments result in a permanent or temporary physical occupation or invasion of private property?

The listing of a species as threatened, endangered, or in need of conservation does not require an "occupation or invasion" of private property. Investigations surveying for the presence, or absence, of a species are among the statutorily available and authorized activities available to the agency pursuant to K.S.A. 32-959, and that activity does not rise to a level constituting an occupation or invasion. Typically, agency personnel seek consent of the landowner, or manager prior to conducting an inspection. If such consent is withheld, then the agency endeavors to work through a third party intermediary (such as a watershed district or a NRCS representative) to explain to the property owner the relevancy of such inspection to activities beneficial to the property owner. If those efforts fail to generate consent, then the agency typically relies on other scientific data.

2. Do the proposed amendments deny or abrogate a fundamental property right?

Protected fundamental property interests include the right to possess property, the right to exclude others from the property and the right to dispose of the property. By state law, ownership of all wildlife is declared to be in the state, regardless of whether it is listed or not (K.S.A. 32-703). Consequently, the listing of a species as threatened or endangered does not dispose or otherwise impair a property owner's continuing existing use of private property.

Listing a species as threatened or endangered (but not as a species in need of conservation) could have certain indirect effects on the use of a person's property, if a proposed use of the property would result in the alteration of the listed species' habitat or destruction of individuals of the species. Any person sponsoring or responsible for a publicly funded action of this sort, or an action requiring a permit from another state or federal permit from another state or federal government agency, must apply for a permit from the department, pursuant to K.A.R.

115-15-3. However, this permit is not required for normal farming and ranching practices, or for development of residential and commercial property on privately-owned property financed with private, nonpublic funds, unless a permit is required by another state or federal agency, or unless the action would involve an intentional taking (defined as an act or attempt that is willful and done for the purpose of taking a threatened or endangered species). Pursuant to K.A.R. 115-15-3(d), the secretary is obligated to issue a permit for which a timely and complete application has been submitted, if the proposed action meets with two conditions. First, the application must describe in the action plan sufficient mitigating or compensating measures to ensure protection of critical habitats and listed species, and assurances that such measures will remain in effect. Second, the proposed activity must comply with all federal laws protecting listed species.

The mere listing of a species as threatened, endangered or in need of conservation does not require any action by a property owner. Only if the property owner elects to undertake publicly funded activity that could result in the taking of a threatened or endangered species would a permit be required. In addition, these permits are not required for certain actions, and department regulation states that, in any case, law enforcement action would only be taken in cases involving intentional takings.

3. Do the proposed amendments deprive the owner of all economically viable uses of the property?

The listing of a species as threatened, endangered, or in need of conservation does not, itself, have any impact on the use of property. However, as noted above, a permit may be required if a proposed use would result in the alteration of a threatened or endangered species' habitat or the destruction of an individual of the species. Again, management of private property for normal farming or ranching uses would not be impaired by the listing of a threatened or endangered species, even if such practices were publicly funded or state or federally assisted, unless an intentional taking were involved. In addition, development of residential or commercial property would not be impaired unless publicly funded or an intentional taking were involved.

In addition, no use of private property could ever be restricted under these regulations unless it were publicly funded, state or federally assisted, or destroyed individuals of any listed species. All other economically viable uses of the property not within these categories are still available to the landowner. Furthermore, any use proposed action that would fall within these categories will still receive a permit to proceed, as long as sufficient mitigating or compensating measures are incorporated within the proposed action. Therefore, even in such cases, the regulation would not deprive a property of all economically viable use.

4. Do the proposed amendments substantially further a legitimate state interest?

The general governmental purposes for listing of any threatened or endangered species have been articulated in the Congressional findings and declaration of policies in the Federal Endangered Species Act of 1973 (16 U.S.C.A. 1531). Congress found that "various species of fish, wildlife and plants in the United States have been rendered extinct as a consequence of

economic growth and development untempered by adequate concern and conservation,” and that “other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction,” and such species are of “esthetic, ecological, educational, historical, recreational and scientific value to the Nation and its people.” Such findings adopted at a national level have equal applicability at the state level.

State statute makes determination of threatened or endangered species by the secretary obligatory, and not merely optional. See K.S.A. 32-960(a) (the secretary shall determine whether any species of wildlife indigenous to the state is a threatened species...) (emphasis added). The Kansas Legislature by statutorily adopting these obligatory requirements and imposing them upon the secretary evidenced that such conservation and protection provisions furthered a legitimate state interest.

A further legitimate state interest is served because federal agencies are directed by statutory federal policy (16 U.S.C.A. 1531(c)) to use their authority in furtherance of the stated federal policy of conserving ecosystems of threatened and endangered species. State law or regulation respecting a threatened species may be more restrictive, but can not be less restrictive than federal law or regulation (16 U.S.C.A. 1535(f)). The Secretary of Interior may enter into cooperative agreements with a state, provided that state “establishes and maintains an adequate and active program for the conservation of endangered and threatened species” (16 U.S.C.A. 1535(c)). With such cooperative agreements come substantial financial assistance to the state to develop conservation programs. The cost sharing for such programs has 75% of the cost being borne by the federal government. Therefore, a determination by the Secretary of Interior that a state was not maintaining an “adequate or active” program could place in potential jeopardy substantial federal assistance to the state.

5. Are any proscribed uses or physical occupation from the proposed amendments part of a preexisting limitation on the landowner’s title?

As described above, the listing of a threatened or endangered species does not result in a permanent or temporary physical occupation on private property without consent of the landowner or manager. Second, as described above, the regulations do not deprive an owner of all economically viable uses of the property.

Even if limited proscriptions would exist, however (due to the involvement of public funding, for example), they may be part of a preexisting limitation on the landowner’s title. For example, to the extent a landowner is also within a watershed district, and such district wishes to use federal assistance for construction of watershed structures (dams or impoundments), then the statutory rights of the watershed district may be pre-existing limitations that limit the impact of a listing of a species as threatened or endangered. Specifically, K.S.A. 24-1209 vests in an

incorporated watershed district the power “where the construction, improvement or operation of such works causes the substantial displacement of a wildlife habitat and when required by the soil conservation service of the United States department of agriculture as a condition precedent of the release of federal funds for such works, to acquire land for the purpose of restoring such wildlife habitat.” The watershed district authorizing statutes contemplate that conservation or protection of wildlife habitat may be a factor in the siting and design of structures or impoundments and further, that certain mitigating conditions may have to be developed to gain approval by a federal funding source. Therefore, even if the listing of a threatened or endangered species were to create some limitations on the use of the property, it might not necessarily impose more of a burden for property already within a watershed district.

Also, watershed developments fall within the existing scope of the Kansas Water Projects Environmental Coordination Act (K.S.A. 82a-325, *et seq.*). Such Coordination Act requires the consideration of the environmental effects of any water development project. By statutory definition, the department is an environmental review agency, to whom watershed development projects must be submitted for review and comment. K.S.A. 82a-326(b)(1) and 82a-327. Permissible consideration for such review include:

- (a) beneficial and adverse environmental effects of proposed project on fish and wildlife;
- (b) means and methods to reduce adverse environmental effects; and
- (c) alternatives to a proposed project with significant adverse environmental effects.

Therefore, construction of a watershed dam could require the district to file an application for and obtain a permit if a threatened or endangered species were present, but due to the existing limitation under the Kansas Water Projects Environmental Coordination Act, the impact of such listing is reduced in this context.

Finally, any possible limitation would only occur if the proposed use of the property would impact a listed species. If another listed species already exists in the same habitat as the newly listed species, restrictions on the use of the property, if any, would be pre-existing. For certain of the proposed species for listing (e.g. the Shoal chub, in the Kansas River), that would normally be the case.

CONCLUSION: Based on the foregoing analysis, the agency believes that the proposed amendments to K.A.R. 115-15-1 and to K.A.R. 115-15-2 do not constitute a taking of private property.

115-25-9a. Deer; open season, bag limit, and permits; additional considerations. (a) In addition to the firearm seasons specified in K.A.R. 115-25-9, the open firearm season for the taking of deer in the Fort Riley subunit shall be November 27, 2009 through November 29, 2009, December 18, 2009 through December 22, 2009, and December 26, 2009 through December 29, 2009. In addition to the archery seasons specified in K.A.R. 115-25-9, the open archery season for the taking of deer in the Fort Riley subunit shall be September 1, 2009 through September 20, 2009.

(b) In addition to any other permits authorized by K.A.R. 115-25-9, any individual may obtain an antlerless-only either-species deer permit valid in unit 3, subject to the number of antlerless-only permits authorized for the unit.

(c) Any unfilled deer permit valid in units 7 and 8 shall be valid in a special extended firearm antlerless-only season in units 7 and 8. The special extended firearm season shall be January 4, 2010 through January 10, 2010. The bag limit shall be one antlerless deer per permit for the species of deer as specified on the permit.

(d) This regulation shall be effective on and after July 1, 2009, and shall have no force and effect on and after March 1, 2010. (Authorized by K.S.A. 32-807 and K.S.A. 2008 Supp. 32-937; implementing K.S.A. 32-807, K.S.A. 2008 Supp. 32-937, and K.S.A. 2008 Supp. 32-1002.)

ECONOMIC IMPACT STATEMENT

K.A.R. 115-25-9a. Deer; open season, bag limit, and permits; additional considerations.

DESCRIPTION: This exempt regulation establishes additional considerations for the 2009-2010 firearm, muzzleloader and archery deer seasons. There are three main items in the regulation. First, the setting of Fort Riley firearms seasons occurs in the proposed regulation in order to better accommodate the changing training mission at Fort Riley. Second, the regulation allows for the issuance of antlerless either-species deer permits for select units where additional harvest is warranted. The regulation authorizes a special extended firearms season in north-central Kansas in January 2010 and also creates a special archery season on Fort Riley beginning September 1 and continuing up to the beginning of the regular archery season.

FEDERAL MANDATES: None

ECONOMIC IMPACT: No significant economic impact to the department, state agencies, or the public is anticipated.

ALTERNATIVES CONSIDERED: None.

K.A.R. 115-25-9a.
Deer; open season, bag limit, and permits; additional considerations.
POSSIBLE AMENDMENT

As a result of internal department comment and legislative comment on the proposed regulation K.A.R. 115-25-9a, concerning additional considerations for the open season, bag limit and permits for deer, the department suggests that the following amendment be made to the version of the regulation submitted for public comment.

K.A.R. 115-25-9a. Deer; open season, bag limit, and permits; additional considerations.

1. Amend proposed subsection (c) to read as follows:

(c) Any unfilled deer permit valid in units ~~7, and 8,~~ and 15 shall be valid in a special extended firearm antlerless-only season in units ~~7, and 8,~~ and 15. The special extended firearm season shall be January 4 11, 2010 through January ~~17~~, 2010. The bag limit shall be one antlerless deer per permit for the species of deer as specified on the permit.

115-25-9b. Deer; nonresident limited-quota antlered permit application period. (a)

Applications for nonresident limited-quota antlered deer permits for the 2010-2011 deer hunting seasons shall be accepted in the Pratt office from the earliest date that applications are available through April 30, 2010. Applications with a postmark date of not later than April 30, 2010 shall also be accepted.

(b) This regulation shall be effective on and after January 1, 2010, and shall have no force and effect on and after June 1, 2010. (Authorized by K.S.A. 32-807 and K.S.A. 2008 Supp. 32-937; implementing K.S.A. 32-807, K.S.A. 2008 Supp. 32-937, and K.S.A. 2008 Supp. 32-1002.)

ECONOMIC IMPACT STATEMENT

K.A.R. 115-25-9b. Deer; nonresident limited quota antlered permit application period.

DESCRIPTION: This new exempt regulation establishes nonresident limited quota permit application periods. There has been considerable interest in moving back the nonresident deer permit application period to better accommodate nonresident hunters when planning to hunt in Kansas. Previously this application deadline was set in a different regulation but in order to set the application deadline in a timely manner for the next season, a separate regulation is necessary.

FEDERAL MANDATES: None

ECONOMIC IMPACT: No significant economic impact to the department, state agencies, or the public is anticipated.

ALTERNATIVES CONSIDERED: None.