

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 seven new SINC species:
 - Chestnut lamprey, *Ichthyomyzon castaneus*
 - Silverband shiner, *Notropis shumardi*
 - Spring peeper, *Pseudacris crucifer*
 - Redbelly snake, *Storeria occipitomaculata*
 - Longnose snake, *Rhinocheilus lecontei*
 - Smooth earth snake, *Virginia valeriae*
 - Northern long-eared bat, *Myotis septentrionalis*

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 removing the eskimo curlew, black-capped vireo and the many-ribbed salamander from endangered status and removing the chestnut lamprey, silverband shiner, spring peeper, redbelly snake, longnose snake and smooth earth snake from threatened status.

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 2013, the five-year review of Kansas threatened, endangered and species in need of conservation list was initiated with a press release. A “petition for species review” form was made available on the Kansas Department of Wildlife, Parks and Tourism website or sent out to any individual or organization that requested a copy to be returned by July 31, 2013. This initial process provides opportunity for submitting a petition for removal or addition of species to the Kansas list. By July 31, thirty species had been petitioned. State law also provides that petitions may be submitted outside of the five-year review process.

Of the thirty species petitioned, six species were petitioned to be delisted from the endangered category in Kansas. Twenty-two species were petitioned for removal from the threatened list in Kansas. In addition, two species were petitioned to add to the threatened list.

In September 2013, the department completed a preliminary review that determined which petitions were sufficient to warrant further review for a possible listing status change. This preliminary 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 change action is warranted for ten species:

- * Eskimo curlew
- * Black-capped vireo
- * Many-ribbed salamander
- * Chestnut Lamprey
- * Silverband shiner
- * Spring peeper
- * Redbelly snake
- * Smooth earth snake
- * Longnose snake
- * Northern long-eared bat

As a component of the prescribed process, notice was published in the *Kansas Register* on March 20, 2014, 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 five 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 March 27, 2014 statewide news release.

Public informational meetings were held April 11, 2014 in Galena, April 14, 2014 in Shawnee Mission, April 15, 2014 in Topeka; April 22, 2014 in Garden City, and April 23, 2014 in Hays. 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' 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' status. Six public participants attended the meeting in Galena; thirteen public participants attended the meeting in Shawnee Mission; eight public

participants attended the meeting in Topeka; no public participants attended the meeting in Garden City, and twelve public participants attended the meeting in Hays.

In addition to other public notification efforts, information about each species proposed for listing was made available to the public at department offices in Chanute, Wichita, Hays, Dodge City, Emporia, Topeka, and Pratt, and at public meetings of the Wildlife, Parks and Tourism Commission in Winfield on January 9, 2014, in Topeka on March 20, 2014, in Wichita on April 17, 2014 and in Pittsburg on June 19, 2014.

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 to formulate recommendations for the Secretary to consider.

Using this collected information, the scientific task committee finalized recommendations on May 20, 2014, and provided them to department administration. These recommendations were presented to the Wildlife and Parks Commission and to the public at the June 19, 2014 Commission meeting in Pittsburg. 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.

Two 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.

Chestnut lamprey: The chestnut lamprey is proposed to be listed as a SINC species. The species is currently listed as threatened. The current known habitat is the lower Kansas River and may

occur in the Missouri River main stem in northeast 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, other agencies or small businesses is anticipated due to the listing of the Chestnut lamprey 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 chestnut lamprey is roughly estimated at \$10,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Silverband shiner: The Silverband shiner is proposed to be listed as a SINC species. The species is currently listed as threatened. The current known habitat is the Missouri River in northeast Kansas, preferring moderately deep, flowing water along sand or gravel bars. 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, other agencies or small businesses is anticipated due to the listing of the Silverband 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 Silverband shiner is roughly estimated at \$10,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Spring peeper: The Spring peeper is proposed to be listed as a SINC species. The species is currently threatened. The current known habitat is small ponds and wetlands having abundant emergent aquatic vegetation and located within or very near woodlands in 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, other agencies or small businesses is anticipated due to the listing of the Spring peeper 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 spring peeper is roughly estimated at \$10,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Redbelly snake: The Redbelly snake is proposed to be listed as a SINC species. The species is currently threatened. The current known habitat is deeply wooded regions near rivers and lakes, sandstone woods, wooded hillsides, hillsides near streams, steep slopes of forested hills, moist areas, moist woodlands, woodlands with dense leaf litter, lowlands, forest edge, open fields, the vicinity of old dilapidated farm buildings, and woodlands which remain damp throughout the year, all located in 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, other agencies or small businesses is anticipated due to the listing of the redbelly snake 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 Redbelly snake roughly estimated at \$10,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Smooth earth snake: The Smooth earth snake is proposed to be listed as a SINC species. The species is currently threatened. The current known habitat is open sandstone woods, rocky hillsides in moist woodlands, deciduous forests, wooded urban areas, woodland edge situations, open brushy woodlands without a continuous leaf canopy, and abandoned fields 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, other agencies or small businesses is anticipated due to the listing of the Smooth earth snake 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 Smooth earth snake is roughly estimated at \$10,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Longnose snake: The Longnose snake is proposed to be listed as a SINC species. The species is currently threatened. The current known habitat is grassy or brushy, semiarid regions. Open prairies with sandy soils and/or rocky canyons in southwestern counties in Kansas provide suitable habitat. 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, other agencies or small businesses is anticipated due to the listing of the Longnose snake 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 Longnose snake is roughly estimated at \$10,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Northern long-eared bat: The Northern long-eared bat is proposed to be listed as a SINC species. This bat species is currently not listed. Habitat is predominantly woodlands along riparian zones. There is recent evidence of maternity colonies in central 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, other agencies or small businesses is anticipated due to the listing of the Northern long-eared bat 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 Northern long-eared bat is roughly estimated at \$10,000, 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. 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.

Two species proposed for de-listing action are 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.