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Waters of the U.S.

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Endangered and Threatened Species in Kansas

Joanna Wochner
Research Analyst
785-296-3181
Joanna.Wochner@klrd.ks.gov

Agriculture and Natural Resources

B-2 Endangered and Threatened Species in Kansas

The following explores species conservation in Kansas, including recent developments in the law.

KSA § 32-957, *et. seq.*, is titled the Nongame and Endangered Species Conservation Act (Act). The Act requires the Kansas Department of Wildlife, Parks and Tourism (Department) to adopt rules and regulations that list all species of wildlife indigenous to the state that have been determined to be endangered. The Act likewise requires the Department to list all species determined to be threatened. The following factors are considered in determining if a species is to be listed as either threatened or endangered:

- The present or threatened destruction, modification, or curtailment of its habitat or range;
- The overutilization of such species for commercial, sporting, scientific, educational, or other purposes;
- Disease or predation;
- The inadequacy of existing regulatory mechanisms; and
- The presence of other natural or man-made factors affecting its continued existence within this state.

The Department must make the determinations on the best scientific, commercial, and other data available after consultation with federal agencies, other interested state agencies, and interested persons and organizations. The Department also 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 that may affect the species under consideration.

The Act also requires the Department to adopt rules and regulations that list the species deemed by the Secretary of the agency to be in need of conservation (SINC). SINC classification must be based on information related to population, distribution, habitat needs, limiting factors, and other biological and ecological data concerning species, gathered to determine conservation measures necessary for their continued ability to sustain themselves successfully. A SINC species may not be intentionally taken, but they 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.

The Act requires a review of the listings every five years and for the Department to submit proposed changes to federal and state agencies, local and tribal governments, and all individuals and organizations that have requested notification of such action.

Federal law mandates that any state law or regulation pertaining to a threatened or endangered species may be more restrictive than federal law or regulation, but cannot be less restrictive than federal law or regulation (*i.e.*, a species that is listed as endangered under federal law may not be listed as threatened under state law).

After conducting a preliminary review of several species that are subject to listing changes and holding public informational meetings on the proposed changes, the Department's Commissioners voted in October 2014 to remove the redbelly snake from the threatened species list and to include it on the SINC list. The redbelly snake has no federal protection. SB 281, a bill that would have removed redbelly and smooth earth snakes from the threatened and endangered list was introduced in the 2014 Legislative Session, but died in Senate Committee.

State Sovereignty Over Non-Migratory Wildlife Act

Senate Sub. for Sub. for HB 2051 was passed in the 2014 Legislative Session. The bill establishes the State Sovereignty Over Non-Migratory Wildlife Act.

The bill declares that the State has sole regulatory authority to govern the management, habitats, hunting, and possession of lesser and greater prairie chickens that exist within the state. In addition, the bill establishes that lesser and greater prairie chickens and their habitats existing within the state are not subject to the Endangered Species Act of 1973 (Act) or to any federal regulations or

executive actions related to the Act. Any federal regulation or executive action pertaining to the federal Act that purports to regulate the lesser or greater prairie chickens, their habitats, farming practices that affect these species, or other human activity that affect these species are to have no effect within Kansas. The bill allows the county or district attorney or the Attorney General to seek to enjoin the federal government or its agent from enforcing any regulation pertaining to the greater or lesser prairie chicken.

The bill shall not be construed to infringe on the authority of the U.S. Department of Agriculture, the U.S. Environmental Protection Agency, or state agencies that have delegated authority to administer the federal Water Pollution Prevention and Control Act or the Clean Air Act when the entities are administering conservation programs or engaging in other activities that may apply to the lesser or greater prairie chickens, their habitats, farming practices that affect these species, or other human activity having an impact on these species or their habitats within Kansas.

In addition, the provisions are not to be construed to infringe on the authority of the Kansas Department of Wildlife, Parks and Tourism or any citizen participating in a management plan or a conservation plan pertaining to the lesser prairie chicken that may be developed in conjunction with the U.S. Fish and Wildlife Service and applies to the lesser or greater prairie chickens, their habitats, farming practices that affect these species, or other human activity having an impact on these species or their habitats within Kansas.

Further, the bill includes a severability clause, maintaining the remaining provisions of the bill in the event any of the sections of the bill are found to be invalid.

For further information please contact:

Joanna Wochner, Research Analyst
Joanna.Wochner@klrd.ks.gov

Heather O'Hara, Principal Research Analyst
Heather.OHara@klrd.ks.gov

Mark Skoglund, Fiscal Analyst
Mark.Skoglund@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181
Fax: (785) 296-3824