

Proposed

Wildlife, Parks, and Tourism Commission

Notice of Public Hearing

A public hearing will be conducted by the Wildlife, Parks, and Tourism Commission at 6:30 p.m., Thursday, October 16, 2014 at the Martinelli's Restaurant Meeting Room, 158 S Santa Fe Ave, Salina, Kansas, to consider the approval and adoption of proposed regulations of the Kansas Department of Wildlife, Parks, and Tourism.

A general discussion and workshop meeting on business of the Wildlife, Parks, and Tourism Commission will begin at 1:00 p.m., October 16 at the location listed above. The meeting will recess at approximately 5:00 p.m. then resume at 6:30 p.m. at the same location for the regulatory hearing and more business. There will be public comment periods at the beginning of the afternoon and evening meeting 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 business matters, the Commission will reconvene at 9:00 a.m. October 17 at the location listed above.

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

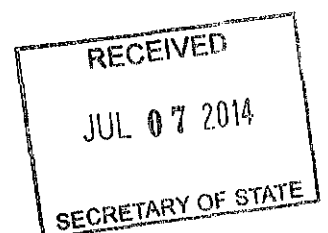
This 90-day notice period prior to the hearing constitutes a public comment period for the purpose of receiving written public comments on proposed administrative regulations.

All interested parties may submit written comments prior to the hearing to the Chairman of the Commission, Kansas Department of Wildlife, Parks, and Tourism, 1020 S. Kansas Ave, Suite 200, Topeka, KS 66612 or to sheila.kemmis@ksoutdoors.com 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. 115-2-1. This permanent regulation establishes the amount of fees for certain issues of the department. The proposed amendment would remove the floatline fishing permit from the list of available issues in conjunction with the revocation of K.A.R. 115-18-21.

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



K.A.R. 115-18-21. This permanent regulation establishes floatline fishing permit requirements, restrictions and permit duration. The regulation is proposed for revocation.

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

K.A.R. 115-7-3. This permanent regulation establishes taking and use of baitfish or minnows. The proposed amendment would allow the use of larger mesh size for dip and cast nets to accommodate anglers on restricted bait waters.

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

K.A.R. 115-25-14. This exempt regulation establishes creel limits, size limits, possession limits and the open season for fishing. The proposed version of the regulation would add one new trout location and update the reference document.

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

K.A.R. 115-2-3. This permanent regulation establishes camping, utility and other fees. The proposed amendment would add Sand Hills State Park to the list of locations for seasonal RV camping.

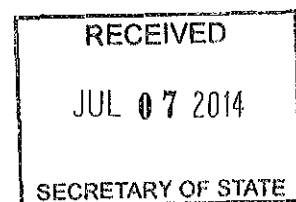
Economic Impact Summary: The proposed amendment to the regulation is not anticipated to have any appreciable negative economic impact on the department, other agencies, small businesses or the public.

K.A.R. 115-15-1. This permanent regulation establishes general provisions for threatened and endangered species. The proposed amendments would remove three endangered species and six threatened species from the threatened and endangered species lists.

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

K.A.R. 115-15-2. This permanent regulation establishes general provisions for nongame species. The proposed amendment would add seven species to the list of species in need of conservation.

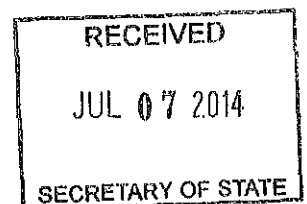
Economic Impact Summary: The proposed amendment to the regulation is not anticipated to have any appreciable negative economic impact on the department, other agencies, small businesses or the public.



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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.kdwpt.state.ks.us, or by calling (785) 296-2281.

Gerald Lauber, Chairman



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115-2-1. Amount of fees. The following fees shall be in effect for the following licenses, permits, and other issues of the department: (a) Hunting licenses and permits.

Resident hunting license	\$18.00
Resident senior hunting license (annual purchase, 65 years of age through 74 years of age)	9.00
Resident hunting license (one-time purchase, valid from 16 years of age through 20 years of age).....	40.00
Nonresident hunting license	70.00
Nonresident junior hunting license (under 16 years of age)	35.00
Resident big game hunting permit:	
General resident: either-sex elk permit.....	250.00
General resident: antlerless-only elk permit	100.00
General resident youth (under 16 years of age): either-sex elk permit.....	125.00
General resident youth (under 16 years of age): antlerless-only elk permit.....	50.00
Landowner/tenant: either-sex elk permit	125.00
Landowner/tenant: antlerless-only elk permit	50.00
Hunt-on-your-own-land: either-sex elk permit.....	125.00
Hunt-on-your-own-land: antlerless-only elk permit.....	50.00
General resident: deer permit	30.00
General resident youth (under 16 years of age): deer permit	10.00
General resident: antlerless-only deer permit	15.00

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General resident youth (under 16 years of age): antlerless-only deer permit	7.50
Landowner/tenant: deer permit.....	15.00
Hunt-on-your-own-land: deer permit	15.00
Special hunt-on-your-own-land: deer permit	30.00
General resident: antelope permit	40.00
General resident youth (under 16 years of age): antelope permit	10.00
Landowner/tenant: antelope permit	20.00
Hunt-on-your-own-land: antelope permit.....	20.00
Antelope preference point service charge	5.00
Any-deer preference point service charge	5.00
Application fee for elk permit.....	5.00

Wild turkey permit:

General resident: turkey permit (1-bird limit)	20.00
General resident youth (under 16 years of age): turkey permit (1-bird limit)	5.00
Landowner/tenant: turkey permit (1-bird limit)	10.00
Nonresident: turkey permit (1-bird limit)	30.00
Nonresident youth (under 16 years of age): turkey permit (1-bird limit).....	10.00
Resident: turkey preference point service charge	5.00

Wild turkey game tag:

Resident: turkey game tag (1-bird limit)	10.00
Resident youth (under 16 years of age): turkey game tag (1-bird limit)	5.00

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Nonresident: turkey game tag (1-bird limit)	20.00
Nonresident youth (under 16 years of age): turkey game tag (1-bird limit)	10.00
Spring wild turkey permit and game tag combination (2-bird limit, must be purchased before April 1 of year of use):	
General resident: turkey permit and game tag combination (2-bird limit)	25.00
General resident youth (under 16 years of age): turkey permit and game tag combination (2-bird limit)	10.00
Landowner/tenant: turkey permit and game tag combination (2-bird limit)	15.00
Nonresident: turkey permit and game tag combination (2-bird limit)	45.00
Nonresident youth (under 16 years of age): turkey permit and game tag combination (2-bird limit)	20.00
Nonresident big game hunting permit:	
Nonresident hunt-on-your-own-land: deer permit	75.00
Nonresident: deer permit (antlered deer)	300.00
Nonresident youth (under 16 years of age): deer permit (antlered deer)	75.00
Nonresident: deer permit (antlerless only)	50.00
Nonresident: combination 2-deer permit (antlered deer and antlerless white-tailed deer).....	315.00
Nonresident youth (under 16 years of age): combination 2-deer permit (antlered deer and antlerless white-tailed deer).....	90.00
Nonresident: antelope permit (archery only).....	200.00

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Nonresident youth (under 16 years of age): antelope (archery only)	100.00
Nonresident: deer permit application fee.....	20.00
Nonresident: mule deer stamp	100.00
48-hour waterfowl hunting permit	25.00
Field trial permit: game birds	20.00
Lifetime hunting license	440.00
or eight quarterly installment payments of	60.00
Migratory waterfowl habitat stamp	5.00
Special dark goose hunting permit	5.00
Sandhill crane hunting permit: validation fee	5.00
Disabled person hunt-from-a-vehicle permit	0
(b) Fishing licenses and permits.	
Resident fishing license	18.00
Resident senior fishing license (annual purchase, 65 years of age through 74 years of age)	9.00
Resident fishing license (one-time purchase, valid from 16 years of age through 20 years of age).....	40.00
Nonresident fishing license	40.00
24-hour fishing license	3.00
Three-pole permit	4.00
Tournament bass pass.....	10.00

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Paddlefish permit (six carcass tags).....	10.00
Paddlefish permit youth (under 16 years of age) (six carcass tags).....	5.00
Hand fishing permit	25.00
Floatline fishing permit.....	0
Lifetime fishing license	440.00
or eight quarterly installment payments of	60.00
Five-day nonresident fishing license	20.00
Institutional group fishing license	100.00
Special nonprofit group fishing license	50.00
Trout permit	10.00
(c) Combination hunting and fishing licenses and permits.	
Resident combination hunting and fishing license	36.00
Resident senior combination hunting and fishing license (annual purchase, 65 years of age through 74 years of age)	18.00
Resident combination hunting and fishing license (one-time purchase, valid from 16 years of age through 20 years of age).....	70.00
Resident lifetime combination hunting and fishing license	880.00
or eight quarterly installment payments of	120.00
Resident senior lifetime combination hunting and fishing license (one-time purchase, valid 65 years of age and older).....	40.00
Nonresident combination hunting and fishing license	110.00

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(d) Furharvester licenses.

Resident furharvester license	18.00
Resident junior furharvester license	10.00
Lifetime furharvester license	440.00
or eight quarterly installment payments of	60.00
Nonresident furharvester license	250.00
Nonresident bobcat permit (1-bobcat limit per permit)	100.00
Resident fur dealer license	100.00
Nonresident fur dealer license	400.00
Field trial permit: furbearing animals	20.00

(e) Commercial licenses and permits.

Controlled shooting area hunting license	15.00
Resident mussel fishing license	75.00
Nonresident mussel fishing license	1,000.00
Mussel dealer permit	200.00
Missouri river fishing permit	25.00
Game breeder permit	10.00
Controlled shooting area operator license	200.00
Commercial dog training permit	20.00
Commercial fish bait permit	20.00
Commercial prairie rattlesnake harvest permit (without a valid Kansas hunting license)	20.00

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Commercial prairie rattlesnake harvest permit (with a valid Kansas hunting license or exempt from this license requirement)	5.00
Commercial prairie rattlesnake dealer permit.....	50.00
Prairie rattlesnake round-up event permit	25.00
(f) Collection, scientific, importation, rehabilitation, and damage-control permits.	
Scientific, educational, or exhibition permit	10.00
Raptor propagation permit	0
Rehabilitation permit	0
Wildlife damage-control permit	0
Wildlife importation permit	10.00
Threatened or endangered species: special permits	0
(g) Falconry.	
Apprentice permit	75.00
General permit	75.00
Master permit	75.00
Testing fee	50.00
(h) Miscellaneous fees.	
Duplicate license, permit, stamp, and other issues of the department.....	10.00
Special departmental services, materials, or supplies	At cost
Vendor bond	
For bond amounts of \$5,000.00 and less	50.00

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For bond amounts of more than \$5,000.00.....50.00
plus \$6.00 per additional \$1,000.00 coverage or any fraction thereof.

This regulation shall be effective on and after January 1, 2015. (Authorized by K.S.A. 2012
2013 Supp. 32-807 and K.S.A. 2012 2013 Supp. 32-988; implementing K.S.A. 2012 2013 Supp. 32-807,
K.S.A. 2012 2013 Supp. 32-988, and K.S.A. 2012 2013 Supp. 32-9,100; effective Dec. 4, 1989;
amended Sept. 10, 1990; amended Jan. 1, 1991; amended June 8, 1992; amended Oct. 12, 1992;
amended April 11, 1994; amended Aug. 29, 1994; amended June 5, 1995; amended Aug. 21, 1995;
amended Feb. 28, 1997; amended July 30, 1999; amended Jan. 2, 2002; amended Jan. 1, 2003; amended
Jan. 1, 2004; amended Feb. 18, 2005; amended Jan. 1, 2006; amended May 1, 2006; amended Jan. 1,
2007; amended Jan. 1, 2008; amended Jan. 1, 2009; amended Jan. 1, 2010; amended Aug. 1, 2010;
amended Jan. 1, 2011; amended Jan. 1, 2013; amended April 19, 2013; amended Nov. 15, 2013;
amended P-_____.)

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ECONOMIC IMPACT STATEMENT

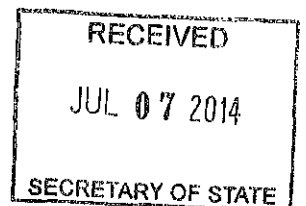
K.A.R. 115-2-1. Amount of fees.

DESCRIPTION: This permanent regulation establishes fish and wildlife-related license and permit fees. The proposed amendment would remove the floatline permit from the list of possible permits with fees.

FEDERAL MANDATE: None.

ECONOMIC IMPACT: Because the permit is a no-cost permit, no negative economic impact is anticipated for the department, other agencies, small businesses, or the public.

ALTERNATIVES CONSIDERED: None.



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115-2-3. Camping, utility, and other fees. (a) Each overnight camping permit shall be valid only for the state park for which it is purchased and shall expire at 2:00 p.m. on the day following its effective date.

(b) Any annual camping permit may be used in any state park for unlimited overnight camping, subject to other laws and regulations of the secretary. This permit shall expire on December 31 of the year for which it is issued.

(c) Any 14-night camping permit may be used in any state park. This permit shall expire when the permit has been used a total of 14 nights, or on December 31 of the year for which it is issued, whichever is first.

(d) Camping permits shall not be transferable.

(e) The fee for a designated prime camping area permit shall be in addition to the overnight, annual, 14-night, or other camping permit fee, and shall apply on a nightly basis.

(f) Fees shall be due at the time of campsite occupancy and by noon of any subsequent days of campsite occupancy.

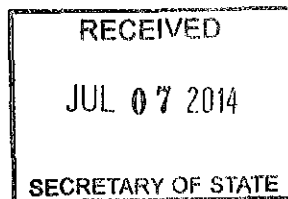
(g) Fees set by this regulation shall be in addition to any required motor vehicle permit fee specified in K.A.R. 115-2-2.

(h) The following fees shall be in effect for state parks and for other designated areas for which camping and utility fees are required:

Camping--per camping unit (April 1 through September 30):

Annual camping permit.....\$ 200.00

Overnight camping permit..... 7.00



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14-night camping permit.....	99.00
Prime camping area permit.....	2.00
Camping--per camping unit (October 1 through March 31):	
Annual camping permit	150.00
Overnight camping permit.....	6.00
14-night camping permit.....	85.00
Overflow primitive camping permit, per night.....	5.00
Recreational vehicle seasonal camping permit, except for El Dorado, Milford, <u>Sand Hills</u> , and Tuttle Creek State Parks (includes utilities)--per month, per unit (annual camping permit and annual vehicle permit required):	
One utility	270.50
Two utilities	330.50
Three utilities	390.50
Recreational vehicle seasonal camping permit for El Dorado, Milford, <u>Sand Hills</u> , and Tuttle Creek State Parks (includes utilities)--per month, per unit (annual camping permit and annual vehicle permit required):	
One utility	310.50
Two utilities	370.50
Three utilities	430.50
Recreational vehicle short-term parking--per month.....	50.00

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Utilities--electricity, water, and sewer hookup per night, per unit:

One utility	9.00
Two utilities	11.00
Three utilities	12.00
Youth group camping permit in designated areas, per camping unit--per night	2.50
Group camping permit in designated areas, per person--per night	1.50
Reservation fee, per reservation (camping, special use, or day use)	10.00
Rent-a-camp: equipment rental per camping unit--per night.....	15.00
Duplicate permit.....	10.00
Special event permit negotiated based on event type, required services, and lost revenue—maximum.....	200.00

This regulation shall be effective on and after January 1, 2015. (Authorized by and implementing K.S.A. 2013 Supp. 32-807 and 32-988; effective Jan. 22, 1990; amended Jan. 28, 1991; amended June 8, 1992; amended Oct. 12, 1992; amended Aug. 21, 1995; amended Sept. 19, 1997; amended Jan. 1, 1999; amended Jan. 1, 2001; amended Jan. 1, 2003; amended Jan. 1, 2005; amended Jan. 1, 2009; amended Jan. 1, 2011; amended April 8, 2011; amended Jan. 1, 2012; amended May 24, 2013; amended Feb. 7, 2014; amended P-_____.)

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ECONOMIC IMPACT STATEMENT

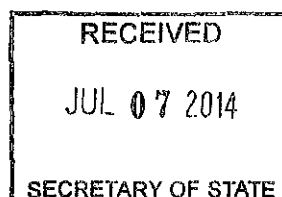
K.A.R. 115-2-3. Camping, utility, and other fees.

DESCRIPTION: This regulation establishes the overnight and annual camping permit prices, fees for utility connections, and related fees within state parks. This is a user fee regulation and the proposed amendments would add Sand Hills state park to the higher priced list of parks for monthly recreational vehicle camping.

FEDERAL MANDATE: None.

ECONOMIC IMPACT: Because this amendment to the regulation is adding a new facility, any amount generated would be purely speculative at this point but it would all be borne from user fees. Otherwise, the proposed amendments are not anticipated to have any appreciable economic impact on the department, small businesses, other agencies, or the public.

ALTERNATIVES CONSIDERED: None.




115-7-3. Fish; taking and use of baitfish or minnows. (a) Baitfish may be taken for noncommercial purposes by any of the following means:

- (1) A seine not longer than 15 feet and four feet deep with mesh not larger than 1/4 inch;
 - (2) a fish trap with mesh not larger than 1/4 inch and a throat not larger than one inch in diameter;
 - (3) a dip or cast net with mesh not larger than ~~3/8~~ 1/2 inch; or
 - (4) a fishing line.
- (b) Each fish trap shall be tagged with the operator's name and address when the fish trap is in use.
- (c) Baitfish taken, except gizzard shad, shall not exceed 12 inches in total length.
- (d) The possession limit shall be 500 baitfish.
- (e) Live baitfish, except for bluegill and green sunfish from non-designated aquatic nuisance waters and baitfish from designated aquatic nuisance waters, may be caught and used as live bait only within the common drainage where caught. However, live baitfish shall not be transported and used above any upstream dam or barrier that prohibits the normal passage of fish. Bluegill and green sunfish collected from non-designated aquatic nuisance waters may be possessed or used as live bait anywhere in the state. Live baitfish collected from designated aquatic nuisance waters shall be possessed or used as live bait only while on that water and shall not be transported from the water alive.
- (f) No person shall import live baitfish that does not meet the requirements of K.A.R. 115-17-2 and K.A.R. 115-17-2a.

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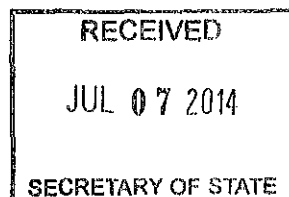
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K.A.R. 115-7-3

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This regulation shall be effective on and after January 1, ~~2013~~ 2015. (Authorized by and implementing K.S.A. 2013 Supp. 32-807, ~~as amended by L. 2012, Ch. 47, Sec. 25~~; effective Sept. 10, 1990; amended Nov. 20, 2009; amended Jan. 1, 2012; amended Jan. 1, 2013; amended P-_____.)



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ECONOMIC IMPACT STATEMENT

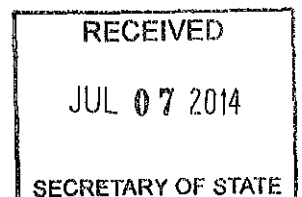
K.A.R. 115-7-3. Fish; taking of bait fish or minnows.

DESCRIPTION: This permanent regulation establishes provisions applicable to taking and use of bait fish in Kansas. The proposed amendment would increase cast net and dip net mesh size to ½ inch to offset restrictions on bait movement.

FEDERAL MANDATE: None.

ECONOMIC IMPACT: The proposed amendments are not anticipated to have any substantive economic impact to the department, other state agencies, small businesses, or the public.

ALTERNATIVES CONSIDERED: No alternative amendments are being considered at this time.



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~~ Peppered 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, *Eurycea spelaea* (Stejneger, 1892)

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(4) Birds

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

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

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

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, *Ptychobranthus 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)

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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 Lithobates clamitans* (Latreille, 1801)

Spring peeper, *Pseudacris crucifer* (Wied-Neuwied, 1838)

Strecker's chorus frog, *Pseudacris streckeri* (Wright and Wright, 1933)

Green toad, *Bufo Anaxyrus debilis* (Girard, 1854)

(4) Reptiles

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

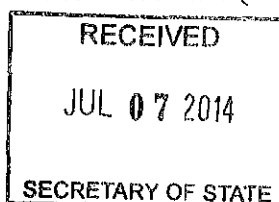
Checkered garter snake, *Thamnophis marcianus* (Baird and Girard, 1853)

Texas blind snake, *Leptotyphlops duleis* (Baird and Girard, 1853) New Mexico

Threadsnake, *Rena dissectus* (Cope, 1896)

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

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



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

(5) Birds

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

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

(6) Mammals

Eastern spotted skunk, *Spilogale putorius* (Linnaeus, 1758)

(7) Turtles

~~Common~~ Northern 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 July 24, 2009; amended P-
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Proposed

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 three endangered species: Black-capped vireo, *Vireo atricapilla*
Eskimo curlew, *Numenius borealis*
Many-ribbed salamander, *Eurycea multiplicata*

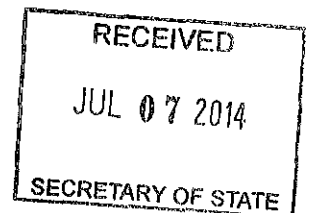
- * Remove six threatened species: Chestnut lamprey, *Ichthyomyzon castaneus*
Silverband shiner, *Notropis shumardi*
Spring peeper, *Pseudacris crucifer*
Redbelly snake, *Storeria occipitomaculata*
Longnose snake, *Rhinocheilus lecontei*
Smooth earth snake, *Virginia valeriae*

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 Chestnut Lamprey, Silverband shiner, Spring peeper, Redbelly snake, Longnose snake, Smooth earth snake and the Northern long-eared bat to 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.

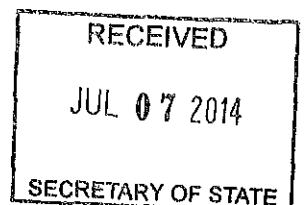
BACKGROUND: K.S.A. 32-960(d) requires that every five years the secretary shall conduct a review of the species listed . . . and shall submit any proposed changes in the listings . . . to federal and state agencies and local and tribal governments and to all individuals and organizations that have requested notification of departmental action. In February of 2013, the five-year review of Kansas threatened, endangered and species in need of conservation list was initiated. Following a statewide news release, the blank petitions were made available on the Kansas Department of Wildlife, Parks and Tourism website. Completed petitions were requested 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.

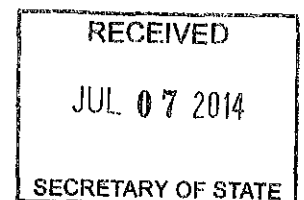
Public informational meetings were held April 11, 2014 in Galena, April 14, 2014 in Shawnee Mission, April 15, 2014 in Topeka; April 22, 2014 in Garden City, and April 23, 2014 in Hays. These locations were selected based on their proximity to areas that may be affected by the proposed listing actions. 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 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 to formulate recommendations to the Secretary.

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 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.

Two of the species proposed for listing actions are currently listed as threatened or endangered under federal law.

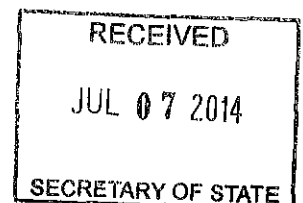
ECONOMIC IMPACT: The anticipated economic impacts from the proposed listing action of each species are discussed below.

Eskimo curlew: Because this species is probably extinct or near extinction and is no longer a migrant bird that passes through Kansas, the delisting of this species was determined to be appropriate because it is no longer a viable component of the Kansas fauna. Because the Eskimo curlew is being proposed for delisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the delisting.

Black-capped vireo: This bird was documented nesting in Comanche County in the 1880's. However, no records have been documented in Kansas since and sufficient survey efforts to document this bird in Kansas have occurred. Once a summer resident of the Red Hills in south-central Kansas, it is now a vagrant, if it occurs at all. Because of the lack of evidence that this bird is a viable component of the Kansas fauna, delisting is appropriate. Because the Black-capped vireo is being proposed for delisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the delisting.

Many-ribbed salamander: The documentation of this species from a 1967 collection from Cherokee County was later identified as the Oklahoma salamander. Subsequent surveys for this salamander have all failed to relocate either the Many-ribbed salamander or the Oklahoma salamander. Because of the lack of evidence that this amphibian is a viable component of the Kansas fauna, delisting is appropriate. Because the Many-ribbed salamander is being proposed for delisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the delisting.

Chestnut lamprey: This species was petitioned for removal from the Kansas threatened species list on the basis that it is no longer a viable component of the Kansas fauna. Recent fish sampling efforts on the Kansas River and other smaller eastern Kansas streams have failed to reveal this species without any additional sightings. Fish sampling efforts by the Missouri Department of Conservation in the Missouri River between Kansas and Missouri and on the lower Kansas River over the last 8 years have also failed to document this species. Because targeted sampling for this particular species has not occurred, a downlisting to SINC status would

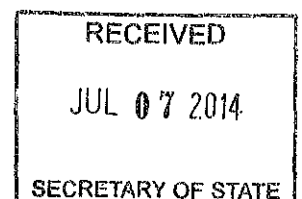


keep the species on the radar for data collection and survey efforts. Because the Chestnut lamprey is being proposed for downlisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the downlisting.

Silverband shiner: This fish species was petitioned for removal from the Kansas threatened species list on the basis that it is no longer a viable part of the Kansas fauna. One specimen was found during the annual survey efforts on the Missouri and lower Kansas Rivers in 2008. Prior to that, the last record was from 1957. Extensive modification of the Missouri River for navigation has eliminated sandbar habitats which may explain the decline of this species in both the lower Kansas River and Missouri River adjacent to Kansas. Because this species apparently has not been totally eliminated from the large rivers, the recommendation is to downlist to SINC status to ensure any more occurrences would be added to the data set. Because the Silverband shiner is being proposed for downlisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the downlisting.

Spring peeper: This frog species was petitioned to be downlisted from threatened to SINC status on the grounds that recent surveys have documented several additional breeding locations in the last two decades. Small ephemeral wetlands in or near woodlands are essential for the reproduction of this frog. Creation and enhancements of wetland habitat in the eastern border counties through the Wetland Reserve Program have likely improved the population status also. Because the Spring peeper is being proposed for downlisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the downlisting.

Redbelly snake: The Redbelly snake was petitioned to be downlisted from threatened to SINC status on the grounds that forestland habitat has increased in eastern Kansas, documentation of the species has occurred in two additional counties since listing in 1987 and the assertion that there might be populations that might not have been sampled due to the secretive nature of the species. The Kansas Biological Survey recently completed research on the habitat requirements, models to predict species distribution, and ecological variables for critical habitats. The research revealed that the Redbelly snake is more of a habitat specialist than previously thought. It requires moist old-forest habitat of oak-hickory to support its food source of snails and slugs. It was also shown to be slower than the Smooth earth snake in recovering from drought conditions. Therefore, it may be more likely to disappear from smaller fragmented habitats. The probability of emigration to nearby habitat is low and no evidence was found that shows the increase in forestland in eastern Kansas would have the proper soil moisture gradient needed to support the species food source. Continuing fragmentation of forestland habitat due to residential and commercial development is a lingering threat to the species and the T&E task committee recommended the species remain threatened. However, the Department is recommending downlisting to SINC status for a variety of reasons including the development of a recovery plan and advisory committee for the species, the ability to secure lands through acquisition and the ability to prevent the species from extirpation simply because of the amount of habitat preserved in perpetuity already. In addition, the existence of the species is secure nationally and the range for the species is from Canada south to the Gulf of Mexico and from the Great Plains states east



to the eastern seaboard. Because the Redbelly snake is being proposed for downlisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the downlisting.

Smooth earth snake: Similar to the Redbelly snake, the petition to delist the Smooth earth snake cited range expansion over the last 35 years in 5 additional counties, an increase in forestland habitat in eastern Kansas, and the assertion that due to the secretive nature of the species, there may be undocumented populations. Research shows the Smooth earth snake is less specific in its habitat requirements and recovers more quickly from drought than the Redbelly snake. In addition, the species has been documented in many more locations since initially listed in 1987. Because the Smooth earth snake is being proposed for downlisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the downlisting.

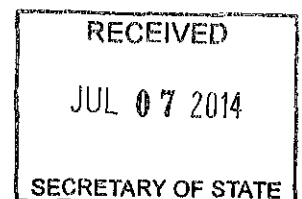
Longnose snake: This nocturnal snake is a secretive resident of southwest Kansas and spends most of the daylight hours underground. The majority of the records of the Longnose snake come from rocky areas of sand sagebrush of the High Plains and Red Hills prairie. A review of this species status was requested by the Secretary. This snakes range is more extensive with many additional instances of documentation in southwest Kansas since the species was listed in 1987. The numerical evaluation from the expert panel that was consulted regarding its status placed its score in the SINC category. In addition, there is a good probability that this snake may be more common than surveys can reveal. Because the Longnose snake is being proposed for downlisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the downlisting.

CAPITAL AND ANNUAL COSTS: Because all of the changes being proposed are for delisting or downlisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the proposed changes.

INITIAL AND ANNUAL COSTS OF IMPLEMENTATION AND ENFORCEMENT: Because all of the changes being proposed are for delisting or downlisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the proposed changes.

COSTS WHICH WOULD ACCRUE WITHOUT REGULATION: Because all of the changes being proposed are for delisting or downlisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the proposed changes.

COST ESTIMATE METHODOLOGY: Because all of the changes being proposed are for delisting or downlisting, no significant economic impacts on the public, small businesses or other state agencies are anticipated from the proposed changes.



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, Parks and Tourism 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:

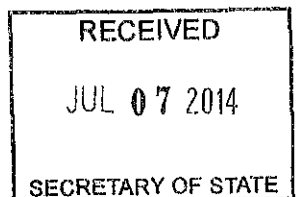
- * Remove three endangered species: Black-capped vireo, *Vireo atricapilla*
Eskimo curlew, *Numenius borealis*
Many-ribbed salamander, *Eurycea multiplicata*

- * Remove six threatened 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*

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 Chestnut lamprey, Silverband shiner, Spring peeper, Redbelly snake, Longnose snake, Smooth earth snake and the Northern long-eared bat to 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 July 31, 2013, 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.

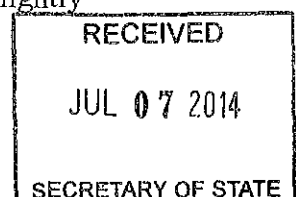
Black-capped vireo (*Vireo atricapilla*)

- Federal Status: Endangered
- Current Kansas Listing Status: Endangered
- Proposed Listing Action: De-list the species
- Description: It is a small songbird. Mature males are olive green above and white below with faint yellow flanks. The crown and upper half of the head is black with a partial white eye-ring and lores. The iris is brownish-red and the bill is black. Females are duller in color than males and have a slate gray crown and underparts washed with greenish yellow
- Size: Adults grow to about 4-5 inches length in body.
- Habitat: Present range is Oklahoma to Northern Mexico. In Kansas, the range is the Red Hills region in the south-central part of the state.
- Reproduction: Breeding occurs April through July.
- Food: Adult insects, insect larvae, and spiders

Threat to the species and need for the regulatory amendment: The Black-capped Vireo is threatened by Brown-headed Cowbird (*Molothrus ater*) brood parasitism, human disturbance, and loss of habitat to urbanization, fire exclusion, grazing, and brush control. However, because of the lack of evidence that this bird is a viable component of the Kansas fauna, delisting is appropriate.

Eskimo curlew (*Numenius borealis*)

- Federal Status: Endangered.
- Current Kansas Listing Status: Endangered.
- Proposed Listing Action: De-list the species.
- Description: Adults have long dark greyish legs and a long bill curved slightly



downward. The upperparts are mottled brown and the underparts are light brown. They show cinnamon wing linings in flight.

- Size: Eskimo curlews are small curlews, about 12-14 inches in length.
- Habitat: Tundra in the Northern Hemisphere to the pampas of South America. In Kansas, the migratory corridor was the all the eastern 2/3rds of the state.
- Reproduction: June with nesting on open ground.
- Food: Insects, snails and other invertebrates.

Threat to the species and need for the regulatory amendment: At one time, the Eskimo curlew may have been one of the most numerous shorebirds in North America, with a population in the millions. As many as 2 million birds per year were killed near the end of the nineteenth century. The last confirmed sightings were in 1962 on Galveston Island, Texas (photographed) and on Barbados in 1963 (specimen). There was a reliable report of 23 birds in Texas in 1981, and more recent additional unconfirmed reports from Texas, Canada (1987), Argentina (1990), and Nova Scotia (2006). No confirmed record of this species has been reported in South America since 1939. Because of the lack of evidence that this bird is a viable component of the Kansas fauna, delisting is appropriate.

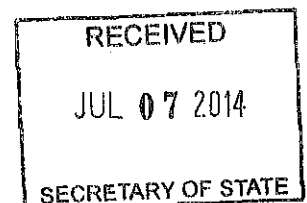
Many-ribbed salamander (*Eurycea multiplicata*)

- Federal Status: None
- Current Kansas Listing Status: Endangered
- Proposed Listing Action: De-list the species.
- Description: Variable in coloration from gray to yellowish-tan, 19-20 costal grooves on side, middorsal stripe is slightly paler than the sides.
- Size: The species is between 2 and 3 inches long.
- Habitat: The Ozark Plateaus and the Boston and Ouachita mountains and associated lowland rocky formations in southwestern Missouri, eastern Oklahoma, and northwestern Arkansas. In Kansas, the range is limited to Cherokee County.
- Reproduction: Females lay their eggs in springs, spring-fed pools, and spring-fed ponds from autumn to early spring.
- Food: A variety of aquatic and semi-aquatic vertebrates associated with springs and permanent streams.

Threat to the species and need for the regulatory amendment: Because of the lack of evidence that this amphibian is a viable component of the Kansas fauna, delisting is appropriate.

Chestnut lamprey (*Ichthyomyzon castaneus*)

- Federal Status: None
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List the species as SINC.
- Description: Eel-like in shape, jawless with disk-shaped mouth, seven pore-like gill openings, single nostril, dorsal fin shallowly notched, back yellowish-tan to light olive-yellow on belly and fins.



- Size: a maximum length of around 14 inches.
- Habitat: Canada, and the Central and Eastern United States, any large lakes or reservoirs and large rivers where large host fish are present. In Kansas, the range is the lower Kansas River and Missouri River main stem.
- Reproduction: Spawning season is from June through July.
- Food: Host species such as fish in a reservoir.

Threat to the species and need for the regulatory amendment: This species was petitioned for removal from the Kansas threatened species list on the basis that it is recently no longer a viable component of the Kansas fauna.

Silverband shiner (*Notropis shumardi*)

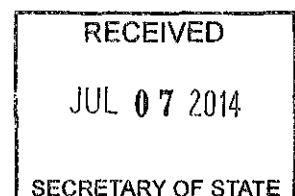
- Federal Status: None
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List as a SINC
- Description: Minnow with a high sharply pointed dorsal fin located directly above the pelvic fins. Its color is pale green with a narrow silvery lateral stripe.
- Size: 2-4 inches.
- Habitat: Large rivers of Missouri-Mississippi basin (mainly Missouri, Mississippi, Illinois, Kaskaskia, lower Ohio, Arkansas, and Red rivers). In Kansas, the range is limited to the Missouri River in deep flowing water along sand or gravel bars.
- Reproduction: Occurs late May through mid-August.
- Food: Unknown.

Threat to the species and need for the regulatory amendment: This fish species was petitioned for removal from the Kansas threatened species list on the basis that it is no longer a viable part of the Kansas fauna. One specimen was found during the annual survey efforts on the Missouri and lower Kansas Rivers in 2008. Prior to that, the last record was from 1957.

Spring peeper (*Pseudacris crucifer*)

- Federal Status: None
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List as a SINC
- Description: tan or brown with a dark cross that roughly forms an X on their dorsa.
- Size: 1 inch.
- Habitat: Eastern Kansas counties to Eastern United States in regenerating woodlands near ephemeral or semi-permanent wetlands.
- Reproduction: Occurs late March to June.
- Food: small invertebrates, such as beetles, ants, flies, and spiders.

Threat to the species and need for the regulatory amendment: This frog species was petitioned to be downlisted from threatened to SINC status on the grounds that recent surveys have

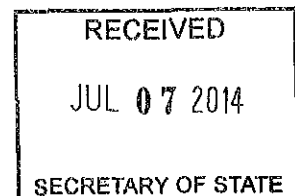


documented several additional breeding locations in the last two decades. Small ephemeral wetlands in or near woodlands are essential for the reproduction of this frog. Creation and enhancements of wetland habitat in the eastern border counties through the Wetland Reserve Program have likely improved the population status as well.

Redbelly snake (*Storeria occipitomaculata*)

- Federal Status: None
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List as a SINC
- Description: The Redbelly Snake has keeled scales and a divided anal scale. On its dorsal side, its color may be slate gray or reddish brown. Two thin darker stripes are on each side. The snake's belly may be bright orange-red or jet black. Any combination of dorsal and belly colors can occur. There are three light spots on the neck.
- Size: 8-10 inches long.
- Habitat: Redbelly Snakes prefer 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. They are usually discovered on damp ground beneath leaf litter, leaf mold, or pine needles mixed with dead leaves; equally as often they are found under flat rocks, logs, rotten logs, boards, and other surface debris.
- Reproduction: Late summer or early fall.
- Food: slugs and snails are the primary food items.

Threat to the species and need for the regulatory amendment: The Redbelly snake was petitioned to be downlisted from threatened to SINC status on the grounds that forestland habitat has increased in eastern Kansas, documentation of the species has occurred in two additional counties since listing in 1987 and the assertion that there might be populations that might not have been sampled due to the secretive nature of the species. The Kansas Biological Survey recently completed research on the habitat requirements, models to predict species distribution, and ecological variables for critical habitats. The research revealed that the Redbelly snake is more of a habitat specialist than previously thought. It requires moist old-forest habitat of oak-hickory to support its food source of snails and slugs. It was also shown to be slower than the Smooth earth snake in recovering from drought conditions. Therefore, it may be more likely to disappear from smaller fragmented habitats. The probability of emigration to nearby habitat is low and no evidence was found that shows the increase in forestland in eastern Kansas would have the proper soil-moisture needed to support the species food source. Continuing fragmentation of forestland habitat due to residential and commercial development is a lingering threat to the species and the T&E task committee recommended the species remain threatened. However, the Department is recommending downlisting to SINC status for a variety of reasons including the development of a recovery plan and advisory committee for the species, the ability to secure lands through acquisition and the ability to prevent the species from extirpation simply because of the amount of habitat preserved in perpetuity already. In addition, the existence of the



species is secure nationally and the range for the species is from Canada south to the Gulf of Mexico and from the Great Plains states east to the eastern seaboard.

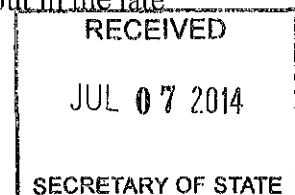
Longnose snake (*Rhinocheilus lecontei*)

- Federal Status: None
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List as a SINC
- Description: It has smooth scales, a single anal scale, and at least half the scales on the underside of the tail not divided into rows. The snake's ground color is yellowish or cream with black blotches on the body separated by pink or reddish interspaces.
- Size: 22-30 inches.
- Habitat: Longnose Snakes prefer grassy or brushy, semiarid regions. Open prairies with sandy soils and/or rocky canyons in southwestern counties in Kansas provide suitable habitat. The snake also ranges south through Oklahoma and Texas.
- Reproduction: clutches of 4-9 eggs in the early summer, which hatch out in the late summer or early fall.
- Food: lizards, amphibians, and sometimes smaller snakes and infrequently rodents.

Threat to the species and need for the regulatory amendment: This nocturnal snake is a secretive resident of southwest Kansas and spends most of the daylight hours underground. The majority of the records of the Longnose snake come from rocky areas of sand sagebrush of the High Plains and Red Hills prairie. A review of this species status was requested by the Secretary. This snakes range is more extensive with many additional instances of documentation in southwest Kansas since the species was listed in 1987. The numerical evaluation from the expert panel that was consulted regarding its status placed its score in the SINC category. In addition, there is a good probability that this snake may be more common than surveys can reveal.

Smooth earth snake (*Virginia valeriae*)

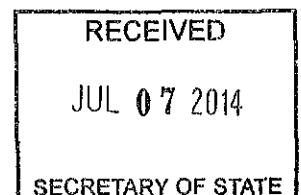
- Federal Status: None
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List as a SINC
- Description: The Smooth Earth Snake has smooth scales on the front part and weakly keeled scales on the rear part of the body, a divided anal scale, six scales on the upper lip and two or more scales bordering the rear edge of the eye. The head, body and tail are gray or brown with no pattern. The belly is white.
- Size: 7-10 inches.
- Habitat: Smooth earth snakes seem to prefer 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 in Eastern Kansas. They are frequently found in thick piles of dead leaves, or beneath leaf litter, flat rocks, logs, and other surface debris, most often near forest-edge or on hillsides with sparse tree cover. They also range in the Eastern United States.
- Reproduction: clutches of 4-9 eggs in the early summer, which hatch out in the late



summer or early fall.

- Food: primarily earthworms and other soft-bodied arthropods.

Threat to the species and need for the regulatory amendment: Similar to the Redbelly snake, the petition to delist the Smooth earth snake cited range expansion over the last 35 years in 5 additional counties, an increase in forestland habitat in eastern Kansas, and the assertion that due to the secretive nature of the species, there may be undocumented populations. Research shows the Smooth earth snake is less specific in its habitat requirements and recovers more quickly from drought than the Redbelly snake. In addition, the species has been documented in many more locations since initially listed in 1987



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.

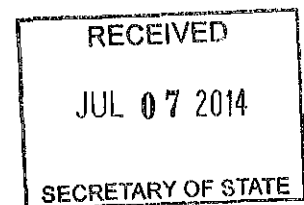
BACKGROUND: The Private Property Protection Act, K.S.A. 77-701 *et seq.*, requires state agencies to evaluate certain governmental actions to determine whether such actions may constitute a taking, and to make the resulting written report available for public inspection. Guidelines to evaluate such governmental actions were established by the Attorney General and first 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.

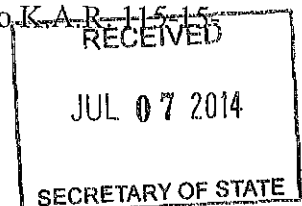
1. Do the proposed amendments result in a permanent or temporary physical occupation or invasion of private property?

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.

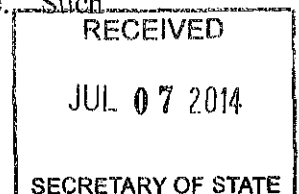
3. Do the proposed amendments deprive the owner of all economically viable uses of the property?

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.



Proposed

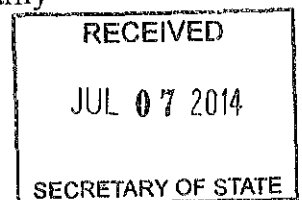
State statute makes determination of threatened or endangered species by the secretary obligatory, and not merely optional. See K.S.A. 32-960(a) (the secretary shall determine whether any species of wildlife indigenous to the state is a threatened species...) (emphasis added). The Kansas Legislature 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.



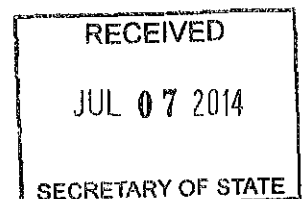
Also, watershed developments fall within the existing scope of the Kansas Water Projects Environmental Coordination Act (K.S.A. 82a-325, *et seq.*). Such Coordination Act requires the consideration of the environmental effects of any water development project. By statutory definition, the department 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.



Proposed

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, *Megalonaias 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)

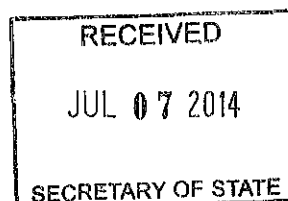
Neosho midget crayfish, *Orconectes macrus* (Williams, 1952)

(2) Fish

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

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

Black redhorse, *Moxostoma duquesnei* (Lesueur ~~Le Sueur~~, 1817)



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Blue sucker, *Cycleptus elongatus* (~~Lesueur~~ Le Sueur, 1817)

Western blacknose dace, *Rhinichthys ~~atratus~~* (~~Hermann~~, 1804) obtusus

(Agassiz, 1854)

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~~ Le Sueur, 1817)

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

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

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

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

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

~~Speckled~~ Highland darter, *Etheostoma ~~stigmaeum~~ teddyroosevelt* (Jordan, 1877)

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

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

Stippled Sunburst darter, *Etheostoma ~~punctulatum~~ mihileze* (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)

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

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

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

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

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

Chestnut lamprey, *Ichthyomyzon castaneus* (Girard, 1858)

Silverband shiner, *Notropis shumardi* (Girard, 1856)

(3) Amphibians

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

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

Spring peeper, *Pseudacris crucifer* (Wied-Neuwied, 1838)

(4) Reptiles

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 jani* (Duges, 1865)

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

Bobolink, *Dolichonyx oryzivorus* (Linnaeus, 1758)

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Cerulean warbler, *Dendroica Setophaga 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)

Eastern whip-poor-will, *Caprimulgus Antrostomas vociferus* (Wilson, 1812)

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

(6) Mammals

Franklin's ground squirrel, *Spermophilus Poliocitellus 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)

Northern long-eared bat, *Myotis septentrionalis* (Trouessart, 1897)

(7) Turtles

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
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. 2008 2013 Supp. 32-1009; effective Oct. 30, 1989; amended Aug. 31, 1992; amended Nov. 29, 1999; amended Feb. 18, 2005; amended July 24, 2009; amended P-_____.)

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ECONOMIC IMPACT STATEMENT

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

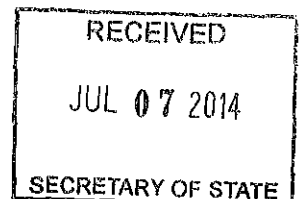
REGULATION DESCRIPTION: This permanent regulation designates species classified as species in need of conservation in Kansas (“SINC species”). The proposed amendments to the regulation are as follows:

- 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.



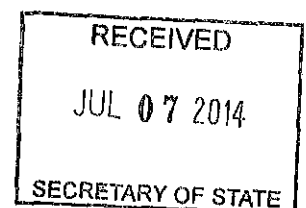
Of the thirty species petitioned, six species were petitioned to be delisted from the endangered category in Kansas. Twenty-two species were petitioned for removal from the threatened list in Kansas. In addition, two species were petitioned to add to the threatened list.

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.

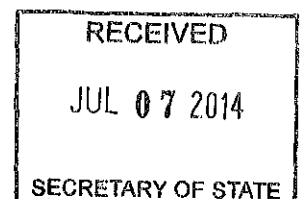
Using this collected information, the scientific task committee finalized recommendations on May 20, 2014, and provided them to department administration. These recommendations were presented to the Wildlife and Parks Commission and to the public at the June 19, 2014 Commission meeting in Pittsburg.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

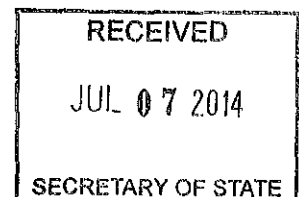
The department is required to develop a recovery plan for each SINC species, based on the priority list developed pursuant to K.A.R. 115-15-4. The cost to the department to establish a recovery plan for the chestnut lamprey is roughly estimated at \$10,000, with an additional \$1,000 in administrative 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.



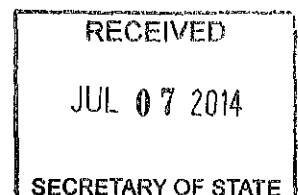
Redbelly snake: The Redbelly snake is proposed to be listed as a SINC species. The species is currently threatened. The current known habitat is deeply wooded regions near rivers and lakes, sandstone woods, wooded hillsides, hillsides near streams, steep slopes of forested hills, moist areas, moist woodlands, 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.

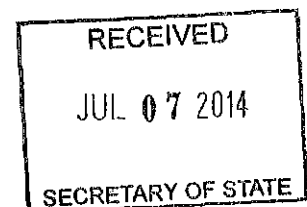
CAPITAL AND ANNUAL COSTS: At the present time, it is not possible to identify the specific capital and annual costs of compliance with the proposed regulation. Nonetheless, as described above, the capital and annual costs due to these proposed listing actions would be expected to be minimal.

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.

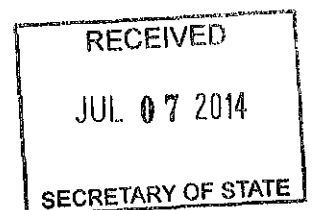
COSTS WHICH WOULD ACCRUE WITHOUT REGULATION: As noted above, federal law requires that the state establish and maintain an adequate and active program for the conservation of endangered and threatened species, and requires that the state program be at least as restrictive as the federal program. Listing 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.



Proposed

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.

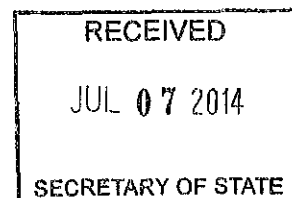
REGULATION DESCRIPTION: This permanent regulation designates species classified as species in need of conservation in Kansas (“SINC species”). An environmental benefit statement is required by law when amending an environmental rule or regulation. A regulation adopted by the Secretary of Wildlife, Parks and tourism 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 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.

The current proposed amendments stem from petitions for listing actions received by the department by July 31, 2013, 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.

Chestnut lamprey (*Ichthyomyzon castaneus*)

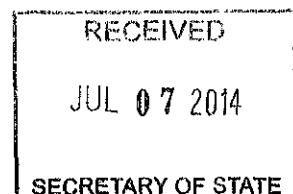
- Federal Status: None
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List the species as SINC.
- Description: Eel-like in shape, jawless with disk-shaped mouth, seven pore-like gill openings, single nostril, dorsal fin shallowly notched, back yellowish-tan to light olive-yellow on belly and fins.
- Size: a maximum length of around 14 inches.
- Habitat: Canada, and the Central and Eastern United States, any large lakes or reservoirs and large rivers where large host fish are present. In Kansas, the range is the lower Kansas River and Missouri River main stem.
- Reproduction: Spawning season is from June through July.
- Food: Host species such as fish in a reservoir.

Threat to the species and need for the regulatory amendment: This species was petitioned for removal from the Kansas threatened species list on the basis that it is recently no longer a viable component of the Kansas fauna.

Silverband shiner (*Notropis shumardi*)

- Federal Status: None
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List as a SINC
- Description: Minnow with a high sharply pointed dorsal fin located directly above the pelvic fins. Its color is pale green with a narrow silvery lateral stripe.
- Size: 2-4 inches.
- Habitat: Large rivers of Missouri-Mississippi basin (mainly Missouri, Mississippi, Illinois, Kaskaskia, lower Ohio, Arkansas, and Red rivers). In Kansas, the range is limited to the Missouri River in deep flowing water along sand or gravel bars.
- Reproduction: Occurs late May through mid-August.
- Food: Unknown.

Threat to the species and need for the regulatory amendment: This fish species was petitioned for removal from the Kansas threatened species list on the basis that it is no longer a viable part of



Proposed

the Kansas fauna. One specimen was found during the annual survey efforts on the Missouri and lower Kansas Rivers in 2008. Prior to that, the last record was from 1957.

Spring peeper (*Pseudacris crucifer*)

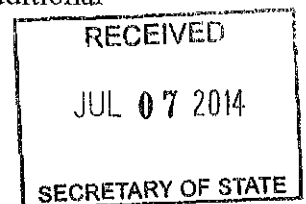
- Federal Status: None
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List as a SINC
- Description: tan or brown with a dark cross that roughly forms an X on their dorsa.
- Size: 1 inch.
- Habitat: Eastern Kansas counties to Eastern United States in regenerating woodlands near ephemeral or semi-permanent wetlands.
- Reproduction: Occurs late March to June.
- Food: small invertebrates, such as beetles, ants, flies, and spiders.

Threat to the species and need for the regulatory amendment: This frog species was petitioned to be downlisted from threatened to SINC status on the grounds that recent surveys have documented several additional breeding locations in the last two decades. Small ephemeral wetlands in or near woodlands are essential for the reproduction of this frog. Creation and enhancements of wetland habitat in the eastern border counties through the Wetland Reserve Program have likely improved the population status as well.

Redbelly snake (*Storeria occipitomaculata*)

- Federal Status: None
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List as a SINC
- Description: The Redbelly Snake has keeled scales and a divided anal scale. On its dorsal side, its color may be slate gray or reddish brown. Two thin darker stripes are on each side. The snake's belly may be bright orange-red or jet black. Any combination of dorsal and belly colors can occur. There are three light spots on the neck.
- Size: 8-10 inches long.
- Habitat: Redbelly Snakes prefer 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. They are usually discovered on damp ground beneath leaf litter, leaf mold, or pine needles mixed with dead leaves; equally as often they are found under flat rocks, logs, rotten logs, boards, and other surface debris.
- Reproduction: Late summer or early fall.
- Food: slugs and snails are the primary food items.

Threat to the species and need for the regulatory amendment: The Redbelly snake was petitioned to be downlisted from threatened to SINC status on the grounds that forestland habitat has increased in eastern Kansas, documentation of the species has occurred in two additional



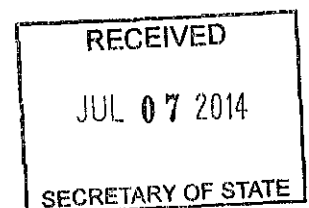
Proposed

counties since listing in 1987 and the assertion that there might be populations that might not have been sampled due to the secretive nature of the species. The Kansas Biological Survey recently completed research on the habitat requirements, models to predict species distribution, and ecological variables for critical habitats. The research revealed that the Redbelly snake is more of a habitat specialist than previously thought. It requires moist old-forest habitat of oak-hickory to support its food source of snails and slugs. It was also shown to be slower than the Smooth earth snake in recovering from drought conditions. Therefore, it may be more likely to disappear from smaller fragmented habitats. The probability of emigration to nearby habitat is low and no evidence was found that shows the increase in forestland in eastern Kansas would have the proper soil-moisture needed to support the species food source. Continuing fragmentation of forestland habitat due to residential and commercial development is a lingering threat to the species and the T&E task committee recommended the species remain threatened. However, the Department is recommending downlisting to SINC status for a variety of reasons including the development of a recovery plan and advisory committee for the species, the ability to secure lands through acquisition and the ability to prevent the species from extirpation simply because of the amount of habitat preserved in perpetuity already. In addition, the existence of the species is secure nationally and the range for the species is from Canada south to the Gulf of Mexico and from the Great Plains states east to the eastern seaboard.

Longnose snake (*Rhinocheilus lecontei*)

- Federal Status: None
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List as a SINC
- Description: It has smooth scales, a single anal scale, and at least half the scales on the underside of the tail not divided into rows. The snake's ground color is yellowish or cream with black blotches on the body separated by pink or reddish interspaces.
- Size: 22-30 inches.
- Habitat: Longnose Snakes prefer grassy or brushy, semiarid regions. Open prairies with sandy soils and/or rocky canyons in southwestern counties in Kansas provide suitable habitat. The snake also ranges south through Oklahoma and Texas.
- Reproduction: clutches of 4-9 eggs in the early summer, which hatch out in the late summer or early fall.
- Food: lizards, amphibians, and sometimes smaller snakes and infrequently rodents.

Threat to the species and need for the regulatory amendment: This nocturnal snake is a secretive resident of southwest Kansas and spends most of the daylight hours underground. The majority of the records of the Longnose snake come from rocky areas of sand sagebrush of the High Plains and Red Hills prairie. A review of this species status was requested by the Secretary. This snakes range is more extensive with many additional instances of documentation in southwest Kansas since the species was listed in 1987. The numerical evaluation from the expert panel that was consulted regarding its status placed its score in the SINC category. In addition, there is a good probability that this snake may be more common than surveys can reveal.



Smooth earth snake (*Virginia valeriae*)

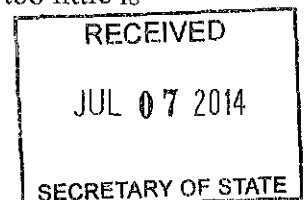
- Federal Status: None
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List as a SINC
- Description: The Smooth Earth Snake has smooth scales on the front part and weakly keeled scales on the rear part of the body, a divided anal scale, six scales on the upper lip and two or more scales bordering the rear edge of the eye. The head, body and tail are gray or brown with no pattern. The belly is white.
- Size: 7-10 inches.
- Habitat: Smooth earth snakes seem to prefer 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 in Eastern Kansas. They are frequently found in thick piles of dead leaves, or beneath leaf litter, flat rocks, logs, and other surface debris, most often near forest-edge or on hillsides with sparse tree cover. They also range in the Eastern United States.
- Reproduction: clutches of 4-9 eggs in the early summer, which hatch out in the late summer or early fall.
- Food: primarily earthworms and other soft-bodied arthropods.

Threat to the species and need for the regulatory amendment: Similar to the Redbelly snake, the petition to delist the Smooth earth snake cited range expansion over the last 35 years in 5 additional counties, an increase in forestland habitat in eastern Kansas, and the assertion that due to the secretive nature of the species, there may be undocumented populations. Research shows the Smooth earth snake is less specific in its habitat requirements and recovers more quickly from drought than the Redbelly snake. In addition, the species has been documented in many more locations since initially listed in 1987.

Northern long-eared bat (*Myotis septentrionalis*)

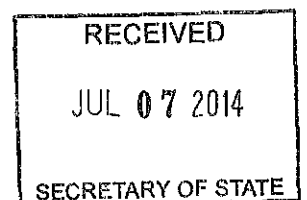
- Federal Status: None (proposed to threatened final ruling due April 2015)
- Current Kansas Listing Status: not listed
- Proposed Listing Action: List as a SINC
- Description: ears extend beyond the tip of nose when laid forward, tragus sharply pointed gray fur with a golden wash
- Size: 3-4 inches total length, weight approx. ¼ oz.
- Habitat: wooded riparian corridors; winter in caves, mines, rock crevices; maternity colonies found in hollow trees or under loose bark
- Reproduction: one pup per female per year born in June.
- Food: insects (mostly moths, true bugs, ichneumons and flies)

Threat to the species and need for the regulatory amendment: This bat was petitioned to the threatened list primarily due to the threat of a fungal disease (White-nose syndrome). That disease has not been documented in Kansas nor is it known if this is truly a threat in Kansas due to the drier conditions here when compared to the eastern populations. In addition, too little is



Proposed

known about where this bat occurs, locations of maternity colonies or hibernation sites in Kansas to list as Threatened. However, a SINC listing would show a concern for the need for survey and research efforts. A State Wildlife Grant to answer some of these questions has been proposed.



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.

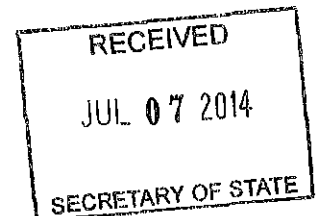
BACKGROUND: The Private Property Protection Act, K.S.A. 77-701 *et seq.*, requires state agencies to evaluate certain governmental actions to determine whether such actions may constitute a taking, and to make the resulting written report available for public inspection. Guidelines to evaluate such governmental actions were established by the Attorney General and first 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.

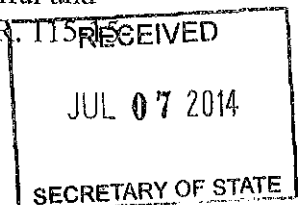
1. Do the proposed amendments result in a permanent or temporary physical occupation or invasion of private property?

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-



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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.

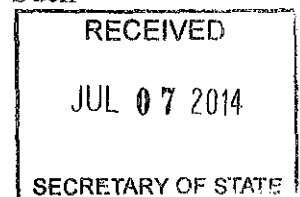
3. Do the proposed amendments deprive the owner of all economically viable uses of the property?

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.



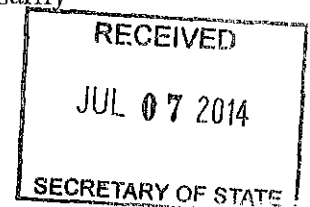
State statute makes determination of threatened or endangered species by the secretary obligatory, and not merely optional. See K.S.A. 32-960(a) (the secretary shall determine whether any species of wildlife indigenous to the state is a threatened species...) (emphasis added). The Kansas Legislature 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.



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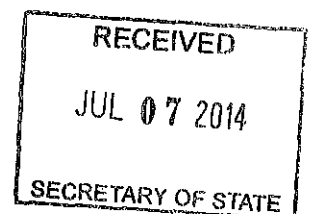
Also, watershed developments fall within the existing scope of the Kansas Water Projects Environmental Coordination Act (K.S.A. 82a-325, *et seq.*). Such Coordination Act requires the consideration of the environmental effects of any water development project. By statutory definition, the department 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 or delisting, 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.



Proposed

115-18-21. This regulation shall be revoked on and after January 1, 2015. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807 and K.S.A. 2007 Supp. 32-1002; effective Dec. 1, 2008; revoked P-_____.)

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ECONOMIC IMPACT STATEMENT

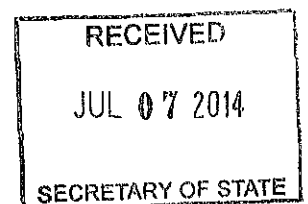
K.A.R. 115-18-21. Floatline fishing permit; requirements, restrictions, and permit duration.

DESCRIPTION: This permanent regulation establishes the floatline fishing permit. The proposed version of the regulation would repeal requirements related to floatline permits.

FEDERAL MANDATE: None.

ECONOMIC IMPACT: No substantial economic impact to the department, other state agencies, small businesses, or members of the public is anticipated.

ALTERNATIVES CONSIDERED: None.



Proposed

115-25-14. Fishing; creel limit, size limit, possession limit, and open season. (a) The open season for the taking of fish in Kansas shall be January 1 through December 31, with the following exceptions:

(1) The flowing portions and backwaters of the Missouri river and any oxbow lake through which the Kansas-Missouri boundary passes, for which the open snagging season for the taking of paddlefish shall be March 15 through May 15;

(2) the flowing portions of the Kansas river from its origin downstream to its confluence with the Missouri river and the flowing portions of the Arkansas river from its origin downstream to the Kansas-Oklahoma border and on federal reservoirs from 150 yards away from the dam to the upper end of the federal property, for which the open hand-fishing season for the taking of flathead catfish shall be from sunrise to sunset, June 15 through August 31;

(3) the open season for floatline fishing shall be from sunrise to sunset, July 15 through September 15, on designated federal reservoirs; and

(4) those areas closed by posted notice.

(b) Pursuant to K.A.R. 115-18-12, a trout permit shall be required for each individual who wants to fish on the following waters during the specified time periods:

(1) November 1 through April 15:

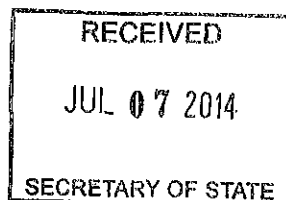
(A) Cedar Bluff Stilling Basin;

(B) Dodge City Lake Charles;

(C) Fort Scott Gun Park Lake;

(D) Garnett Crystal Lake;

(E) Glen Elder State Park Pond;



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- (F) Kanopolis Seep Stream;
- (G) KDOT East Lake, located in Wichita;
- (H) Lake Henry, located in Clinton State Park;
- (I) Pratt Centennial Pond;
- (J) Sandsage Bison Range and Wildlife Area Sandpits;
- (K) the following Sedgwick County Park waters;
 - (i) Vic's Lake; and
 - (ii) Slough Creek;
- (L) Topeka Auburndale Park;
- (M) Walnut River Area, located in El Dorado State Park;
- (N) Webster Stilling Basin; and
- (O) Willow Lake, located in Tuttle Creek State Park; and
- (2) November 1 through October 31: unit number 30, located in the Mined Land Wildlife Area.
- (c) Pursuant to K.A.R. 115-18-12, a trout permit shall be required for each individual who wants

to fish for and possess trout on the following waters from November 1 through April 15:

- (1) Atchison City Lake No. 1;
- (2) Belleville City Lake (Rocky Pond);
- (3) Cameron Springs, located on Fort Riley;
- (4) Cherryvale City Lake (Tanko);
- (5) Cimarron Grasslands Pits;
- (6) Colby-Villa High Lake;

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- (7) Great Bend Veterans Memorial Park Lake;
- (8) Great Bend Stone Lake;
- (9) Herington-Father Padilla Pond;
- (10) Holton-Elkhorn Lake;
- (11) Hutchinson Dillon Nature Center Pond;
- (12) Kanopolis State Park Pond;
- (13) Lake Shawnee, located in Shawnee County;
- (14) Meade State Fishing Lake;
- (15) Moon Lake, located on Fort Riley;
- (16) Salina Lakewood Lake;
- (17) Scott State Fishing Lake;
- (18) Scott State Park Pond;
- (19) the following Sedgwick County Park waters:
 - (A) Moss Lake; and
 - (B) Horseshoe Lake;
- (20) Sherman County Smoky Gardens Lake;
- (21) Solomon River between Webster Reservoir and Rooks County #2 Road; and
- (22) Syracuse-Sam's Pond.

(d) The following daily creel limits and size limits shall apply to each pond, lake, impoundment, and other water of the state that is open to public fishing access, and to all perennial and intermittent watercourses of the state, unless special creel limits and size limits apply pursuant to subsection (f).

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<u>Species</u>	<u>Creel Limit</u>	<u>Size Limit</u>
Black bass: largemouth, spotted, or smallmouth	5*	15"
Channel catfish or blue catfish	10*	--
Trout	5*/2****	--
Flathead catfish	5	--
Walleye, sauger, saugeye	5*	15"
Pike family: northern pike, tiger, or muskellunge	2*	30"
Striped bass	2	--
Wiper: striped bass hybrid	2	--
Paddlefish	2**	--
Crappie: white or black	50*	--
All other species	No limit	--

* The daily creel limit shall be composed of a single listed species or a combination of the species in the listed species group.

** The total snagging creel limit of paddlefish per calendar year shall be six paddlefish.

*** The two-trout-per-day creel limit shall be applicable to individuals under 16 years of age not in possession of a valid trout permit.

(e) The possession limit shall be three daily creel limits.

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(f) Special size limits, creel limits, and bait restrictions for designated waters shall be those limits and restrictions specified in the department's "Kansas special size limits, creel limits, and bait restriction tables," dated June 30, 2014, which is hereby adopted by reference. All fish caught from these designated waters that are of a size or number that is illegal to possess shall be released unrestrained to the water immediately.

This regulation shall be effective on and after January 1, 2015. (Authorized by and implementing K.S.A. 2013 Supp. 32-807.)

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ECONOMIC IMPACT STATEMENT

K.A.R. 115-25-14. Fishing; creel limit, size limit, possession limit, and open season.

DESCRIPTION: This exempt regulation establishes statewide limits and open seasons for fishing in Kansas. The proposed amendments relate to updates to the reference document related to length and creel limits for specific bodies of water and the addition of one trout water.

FEDERAL MANDATE: None.

ECONOMIC IMPACT: The proposed changes would likely have no substantive economic impact to the department, other state agencies, small businesses, or the public.

ALTERNATIVES CONSIDERED: None.

