

Kansas Chapter, Sierra Club: Testimony on SB 269
Removing the Eastern Spotted Skunk from the State Threatened and Endangered List
March 12, 2015

The Kansas Chapter of the Sierra Club opposes SB 269, which proposes to remove the eastern spotted skunk from the state threatened and endangered species list.

1. There is a formal process, in place for 40 years, to determine the status of nongame wildlife species in KS. State statute K.S.A. 32-960 makes determination of threatened or endangered species by the secretary of KDWP obligatory, not optional. The Kansas Legislature, by adopting these requirements and imposing them upon the secretary, indicated that conservation and protection provisions are a legitimate state interest.

2. To exclude the eastern spotted skunk *Spilogale putorius* from its current "threatened" status in Kansas by simply amending the existing state threatened and endangered species law is clearly arbitrary. Such action is not based on the best available science, is in violation of existing process and excludes opportunity for public input, as required by existing law.

3. Nor is this legislative delisting attempt consistent with the federal Endangered Species Act, the intent of which is to protect critically imperiled species from extinction as a "consequence of economic growth and development untempered by adequate concern and conservation."

4. The Sierra Club is concerned this proposed legislation may result in KDWP losing its federal funding by failing to meet federal standards for addressing nongame and listed species issues. If the Kansas Legislature persists in its efforts to remove species from the state T & E list by means other than the public processes described in K.S.A. 32-960, then the Kansas Nongame and Threatened Species Conservation Act will have been truly eviscerated.

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. 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***. 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.

5. Failure of the State to maintain an adequate and active T & E program also invites federal intervention in Kansas to address conservation of species. In the 2008 recovery plan for the eastern spotted skunk, the authors noted: *In the 1994 Animal Candidate Review for Listing as Endangered or Threatened Species (Code of Federal Regulations 1994), the "plains spotted skunk" was listed as a category two species* and not proposed as a candidate for listing because insufficient data was available to support a ruling to federally list the species. **Federal listing for the eastern spotted skunk might be appropriate;** however, additional information is necessary to support a ruling in favor of federally listing the eastern spotted skunk.* (*A category two species is one for which the Service had some indication that listing as threatened or endangered might be warranted, but there was

insufficient data available to justify a proposal to list them.)

The Kansas Chapter of the Sierra Club urges that due process be followed with regard to listing and delisting of nongame wildlife species in Kansas, based on the best available science. Our state government holds Kansas natural resources and wildlife in public trust. It is your job to help maintain species diversity and preserve critical habitat for reasonable public use and enjoyment.

Thank you for accepting these comments,

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The process: K.S.A.: 32-960

(c)(2) The secretary may not add a species to nor remove a species from any such list unless the secretary has first:

(A) Published a public notice of such proposed action;

(B) notified the governor of any state which shares a common border with this state and in which the subject species is known to occur that such action is being proposed; and

(C) (i) in cases where the secretary determines that an emergency situation exists, published a public notice that such an emergency situation exists, together with a summary of facts that support such determination; or (ii) in all other cases, conducted public informational meetings to coincide with the scientific review outside the agency which will recommend action with regard to the addition of the species to or removal of the species from the list. All documents within the control and custody of the secretary that pertain to adding the species to or removing the species from the list shall be made available to the public in a local repository, such as a public library, courthouse or regional office of the department. The secretary shall also mail a notice of the proposed addition of the species to or removal of the species from the list to federal and state agencies and local and tribal governments that are or may be affected by results of the review and to all individuals and organizations that have requested notification of department action regarding the administration of this act. The secretary shall also issue news releases to publicize the proposed addition of the species to or removal of the species from the list.

(3) Upon the petition of an interested person, the secretary shall conduct a review of any listed or unlisted species of wildlife proposed to be removed from or added to either of the lists adopted pursuant to this subsection (c), but only if the secretary makes a determination and publishes a public notice that such person has presented substantial evidence which warrants such a review. Once the secretary has made a determination that a review is

warranted, the process described in subsection (c)(2), including the conducting of a public information meeting, shall apply.

(d) Every five years the secretary shall conduct a review of the species listed pursuant to this act (except for those species listed pursuant to the federal endangered species act of 1973, as amended) and shall submit any proposed changes in the listings to the following for consideration: (1) Federal and state agencies and local and tribal governments that are or may be affected by results of the change; and (2) all individuals and organizations that have requested notification of departmental action regarding administration of this act. After at least 90 days for comment by the agencies, governments, individuals and organizations to which the proposed changes are submitted, the secretary shall submit to the commission proposed rules and regulations making any changes that the secretary determines should be made in the listings.

From Spotted Skunk Recovery Plan, 2008:

RECOVERY PLAN FOR THE EASTERN SPOTTED SKUNK (*SPILOGALE PUTORIUS*) IN KANSAS - Shannan K. Nilz and Elmer J. Finck

p. 2: In the 1994 Animal Candidate Review for Listing as Endangered or Threatened Species (Code of Federal Regulations 1994), the “plains spotted skunk” was listed as a category two species* and not proposed as a candidate for listing because insufficient data were available to support a ruling to federally list the species. Federal listing for the eastern spotted skunk might be appropriate; however, additional information is necessary to support a ruling in favor of federally listing the eastern spotted skunk.

*species for which the Service had some indication that listing as threatened or endangered might be warranted, but there were insufficient data available to justify a proposal to list them.

The limited number of occurrence reports, a general perception of rarity, permitting issues and a concern for the persistence of the species within the state evidenced a need to develop conservation and recovery actions for the eastern spotted skunk in Kansas.

p. 18: Elsewhere in the Central Plains region, the eastern spotted skunk is listed as endangered in Missouri, unlisted in Nebraska with no open season, unlisted in Arkansas with an open season, unlisted in Oklahoma with no open season, and endangered in Iowa. In 1994, the eastern spotted skunk was ineligible for federal candidacy because limited data were available to support the need for federal protection for the species. Based on several decades of few observations, unsuccessful attempts by biologists to verify the population status of the species, and a general perception of rarity *the uplisting of the species in Kansas from threatened to endangered is probably warranted.*

p.24 The primary objective is to reestablish self-sustaining populations of the eastern skunk in Kansas within remaining suitable habitats such to allow persistence into the foreseeable future. Additionally, the strategies and tactics herein aim to prevent the extinction of the eastern spotted skunk from Kansas and recover or reestablish self-sustaining populations within its former range where habitat remains suitable, such that delisting is possible.