



***KANSAS CHAPTER of the SIERRA CLUB***

Before the Senate Natural Resources Committee  
Testimony presented by Zack Pistora, Kansas Sierra Club  
Opponent to SB 268  
March 19th, 2015

Chairperson Powell and Honorable Members of the Committee,

**Kansas Chapter of the Sierra Club is opposed to SB 268.**

**There should be no arbitrary exclusion of activities which might impact critical habitat for nongame wildlife species, including stream maintenance, from the Kansas Nongame and Endangered Species Conservation Act.**

The Kansas Department of Wildlife, Parks and Tourism (KDWPT) is tasked by law with understanding specific habitat requirements of various aquatic species and for implementing measures to protect critical habitat. No attempt is made in this bill to define what constitutes "stream maintenance," a concept sufficiently broad to include debris removal, bank stabilization, dredging, filling, damming, plant removal, herbicide spraying, etc.

It is crucial that staff biologists maintain statutory authority to protect instream wildlife, even from activities which local governments might consider routine maintenance. This legislative proposal is also not 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."

There appear to be two different issues of concern:

I. First:

"a) Nothing in the nongame and endangered species conservation act shall be construed to:

- (4) apply to stream maintenance performed pursuant to K.S.A. 82a-307, and amendments thereto. Upon such petition or resolution, the board of county commissioners may remove debris pursuant to this section, but shall not change or diminish the course, current or cross section of any stream by *more than 5%*."

Of the federally listed species in KS, over half are aquatic, including mussels and fish; most of the state listed species in Kansas are aquatic, including mussels, fish and amphibians. This should not come as a surprise on the High Plains where freshwater sources are scarce.

For example, Kansas is home to 40 living species of native freshwater mussels; 8 species have already been extirpated. Over half of the mussels today are listed as threatened, endangered or species-in-need-of-conservation (SINC).

Freshwater mussels have been identified as one of the most imperiled groups of animals in North America. They are frontline indicators of water quality and are inextricably tied to different fish species for successful reproduction and range expansion.

While some species are widespread, others are restricted to a few watersheds. Different species



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inhabit specific areas of streams, such as riffles, runs, gravel beds or deeper pools. Major threats to mussel populations are water pollution, increased sediment loading, dewatering of streams, stream channelization and dams.

Unfortunately, what is true for mussels also holds for other sensitive aquatic species, including amphibians and fish. Altering the course, current or cross section of any stream by as much as 5% could have serious consequences on critical instream habitat.

**Critical Habitat:** As defined by Kansas Administrative Regulations, critical habitats include those areas documented as currently supporting self-sustaining population(s) of any threatened or endangered species of wildlife as well as those areas determined by the Kansas Department of Wildlife, Parks and Tourism to be essential for the conservation of any threatened or endangered species of wildlife.

**Action:** any activity resulting in the physical alteration of a listed species' critical habitat, physical disturbance of a listed species, or destruction of individuals of a listed species.

II. In addition, SB 268 would remove Sedgwick County from Zone 1 and place it in Zone 2 for defining what constitutes a “designated stream.”

[ “Designated stream” means a natural or man-made channel that conveys drainage or runoff from a watershed having an area of...]

This is a deliberate attempt to arbitrarily exclude Sedgwick Co. and the Wichita area from Zone 1 designation. The intent appears to be to reduce state agency review by including only those streams designated as having twice the watershed of those in Zone 1, thereby doubling the drainage area. It is not clear what impact that might have on the actual number of streams that would be excluded from oversight of the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture.

**The proposal offers no hydrological, geographical or ecological basis for redefining designated streams in the Wichita area.** Furthermore, stream studies have shown that no two watersheds are the same. Undisturbed landscapes in a watershed will have far less impact on flows downstream than similarly sized urbanized or farmed lands. Where natural grasslands have been replaced by impervious and disturbed surfaces, storm runoff will be drastically increased and aquatic habitat will be proportionally impacted. In a geopolitical region subject to ongoing development, there is certainly no ecological reason to reduce oversight and “rezone” the streams in Sedgwick County.

Thank you for accepting these comments,

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