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To: Senate Natural Resources Committee
Sen. Larry Powell, Chair

From: Aaron M. Popelka, V.P. of Legal and Governmental Affairs, Kansas Livestock Association

Re: **SB 384 AN ACT AN ACT concerning wildlife, parks and tourism; relating to the nongame and endangered species act.**

Date: February 4, 2016

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,200 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, swine production, grazing land management, and diversified farming operations.

Thank you, Chairwoman Powell and members of the Committee, my name is Aaron Popelka and I am with the Kansas Livestock Association (KLA). KLA appears to today as a proponent of SB 384.

KLA has policy that “supports legislation to limit the scope of the KNESCA and the regulatory authority of the KDWPT to policies that are no more restrictive than the ESA,” as well as policy that “opposes attempts by KDWPT to impose an action permit or mitigation plan prior to completion of a recovery plan.” The reason KLA has policy specific to this Act is because KLA members have faced instances in the past where permits were threatened without proper public notification or adoption of critical habitat.

When these issues first arose, KLA discovered that habitat of threatened and endangered species under the KNESCA was not accurately being published. While publication has improved, to date it is difficult to find a detailed map of a species habitat. KDWPT simply designates counties where habitat and critical habitat may be present.

Furthermore, under K.S.A. 32-960a, KDWPT is directed to conduct what are called recovery plans for each species listed as threatened or endangered. These plans are required to receive public hearings to allow KDWPT to gather public comments. The comments are then supposed to help shape how KNESCA permits are to be issued and mitigation measures constructed. In addition, the recovery plans are also required to balance the biological needs of a species with the social and economic conditions of an affected area.

The KNESCA was adopted in 1975 and the species listed as threatened or endangered has grown to 51 species, but only 19 species have a completed recovery plan. Instead of utilizing the recovery plan process, KDWPT staff has made mitigation decision without weighing the

social and economic needs of affected rural communities in conjunction with input from the public, as required by statute.

In addition, through regulation, KDWPT regulates habitat more strictly than the federal government under the Endangered Species Act of 1973. The KNESCA does not once mention the word habitat. Instead, regulation of habitat was created by KDWPT through regulations. If the KDWPT's regulations are examined closely, the rules demonstrate that KDWPT has given itself authority to regulate all habitat of a threatened or endangered species, rather than limiting the authority to critical habitat as is the case in the ESA. Critical habitat is only such habitat "essential to conservation of the species . . .," whereas habitat "means the abode where a listed species is generally found" *Compare* 16 U.S.C. § 1532(5)(A), to K.A.R. § 115-15-3(a)(3).

KLA believes SB 384 is a modest means of reforming the KNESCA to return it to what was originally intended by its drafters. Before discussing our proposed changes to the KNESCA, the Committee should know what SB 384 does not do. It does NOT repeal the KNESCA, it does NOT prohibit regulation of legitimately threatened or endangered species, it does NOT change the listing process, and it does NOT endanger federal funding under Section 6 of the ESA.

SB 384 proposes the following changes to the KNESCA:

- Page 1, line 23 – This places in statute a definition of "critical habitat" that is identical to the definition found in the ESA. Kansas regulations currently regulate habitat stricter than the ESA.
- Page 3, line 16 – Requires KDWPT to publish on its website statutorily required recovery plans. KDWPT is currently doing this and it would not increase costs.
- Page 3, line 24 – Limits KDWPT regulation of habitat to only critical habitat and prevents critical habitat regulations from going into place until KDWPT has completed the recovery plan process.
- Page 4, line 7 – 23 – Places into statute three exemptions that are similar to exemptions found in K.A.R. 115-15-3(b).
- Page 4, line 24 – Prohibits KDWPT from requiring a KNESCA action permit for privately funded projects on private land if the owner lawfully obtains a state construction permit after construction is complete (i.e. DWR dam safety permit).
- Page 7, line 8 – Prohibits KDWPT from requiring permits or developing mitigation measures, except to prevent intentional killing of a listed species, until a recovery plan is completed. This prevents direct harm to actual listed species, but prevents KDWPT from regulating critical habitat until it has followed its statutory mandate to complete the recovery plan process.

Finally, KLA would like to thank KDWPT Secretary Robin Jennison and his staff for their efforts to assist KLA's members when these issues were discovered. Secretary Jennison went to work changing internal KDWPT policy and KLA members have successfully avoided regulatory disaster. However, internal policy is easily changed by a subsequent secretary, and substantive problems with the KNESCA continue to exist. KLA believes the legislature needs to clarify and reform the law to prevent future problems.

Thank you for the opportunity to submit testimony. KLA urges the committee to pass SB 384 favorably.