

Approved: 2-1-96  
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on January 26, 1996 in Room 254-E- of the Capitol.

All members were present except:  
Senator Phil Martin

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Ardan Ensley, Revisor of Statutes  
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:  
Senator Don Sallee  
Darrel Montei, Kansas Department of Wildlife and Parks  
Steve Williams, Acting Secretary, Kansas Department of Wildlife and Parks  
Cynthia Abbott, Kansas Audubon Council  
Bill Craven, Kansas Sierra Club and Kansas Natural Resource Council  
Written testimony only from The Very Reverend Marc DuPlan Lee, Dean, Grace Episcopal Cathedral

Others attending: See attached list

**SB 473 - amending the nongame and endangered species conservation act; concerning the listing of nongame, threatened and endangered species**

After calling the meeting to order Chairperson Sallee called the attention of committee members to a memorandum from Steve Williams, Acting Secretary, Kansas Wildlife and Parks, concerning requested information on the Wildlife Fund Diversion Issues (Attachment 1). Chairperson Sallee then turned the meeting over to Vice-Chairperson, Senator Vancrum.

Senator Sallee appeared as a conferee in support of **SB-473** noting he was speaking prior to the Wildlife and Parks representative in order that the department might provide a rebuttal to his comments.

The Senator told committee members his concern was not only with issues touched on in **SB 473** but on issues dealt with in the Joint Rules and Regulations Committee. A rule and regulation was filed with the committee on the action proposed in **SB 473**. It was the feeling of both the Chairpersons of the House and Senate Committees on Energy and Natural Resources that the proposed rule and regulation did not comply with the letter of the law. Under ordinary circumstances a reply from the department is forthcoming in a timely manner but in this instance that compliance was not received until this date of January 26, 1996. The conferee acknowledged the Acting Secretary has had a great many things with which to become acquainted and such an oversight was understandable. However, the opinion was expressed that other issues were involved, not just the Topeka Shiner.

The conferee expressed concern with the attitude and actions of the department toward the public. He noted that other departments seem to respond well to the legislature and a good working relationship has been established. Up to this time that working relationship has not been evident with the Department of Wildlife and Parks.

The issue of one person having the ability to instigate a move which affects numerous other people and businesses by requesting the placement of a species on the threatened or endangered species list does not seem to provide an equitable situation. The conferee noted that the Rules and Regulations Committee had been told that putting such species on the endangered list does not cost anything but stated documentation would be forthcoming as to extensive costs caused to the Kansas Department of Transportation from a previous situation which cost at least \$250,000. He expressed no difficulty with preserving various species but the process needs to be handled in a far better method and that method needs to be in place before going forward with any further listing of threatened or endangered species.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on January 26, 1996.

A member questioned who would make the final decision if no common ground could be found with the conferee stating that since the Legislature represented all of the people in the state of Kansas it could come down to their decision.

Senator Hardenburger stated she was a member of the Joint Rules and Regulations Committee and that members of that group had found a pattern of the department in reporting the effect on state and federal government but the findings never seemed to consider the impact on the public. She noted this department was not the only one which seemed to leave out consideration of the public but the committee needs to know how much the average citizen is going to be affected. Other departments have complied with these conditions but the Department of Wildlife and Parks seemed to be of the opinion costs to develop an impact statement were too great.

Darrel Montei, Department of Wildlife and Parks, appeared before the committee and presented testimony in opposition to **SB 473 (Attachment 2)**. Mr. Montei stated that although testimony on Thursday dealt primarily with the Topeka Shiner **SB 473** deals with the entire State Nongame and Endangered Species Act by substantially reducing the Department's authority to manage and promote those species which exist in limited numbers in our state. In his written testimony Mr. Montei reviews the limitations of the bill and notes the department would not have the authority to properly manage those state species which require special attention for their survival. Also, veto power is delegated to other agencies, public involvement will be more difficult and federal funding for assistance in endangered and threatened species programs would be jeopardized.

Mr. Montei stated he did not realize the department was to submit an amended impact statement and environmental summary, that such documents were made available at a Commission meeting held Thursday evening, January 25, 1996 in Topeka.

The conferee related how the review is conducted following a petition to declare a species threatened or endangered noting there is more to the process than just the petition.

Senator Vancrum stated he had been the first Chairperson for the Joint Rules and Regulations Committee following a supreme court ruling which struck down the authority of the legislature to reject rules and regulations. Everyone serving on that committee since that time have had tremendous frustration when agencies are asked to respond and do not return to the process. This is the only input by the Legislature and when agencies fail to respond it does cut the legislature out of the process. It was acknowledged that actions were perhaps unintentional but legislative members are very serious about this issue.

A member questioned what the department's position was on the Arkansas Shiner. The member noted that placing this species on the list brings questions of credibility since there has been no water in the river in question for many years.

A member questioned the ratio in those species relating to Kansas and the Federal list with the reply being 57 species with 12 being on the federal list.

Steve Williams, Acting Secretary, Department of Wildlife and Parks, appeared before the committee and stated he heard what the Committee members were saying and the message of cooperation will be carried back to Department. Mr. Williams stated the staff he had dealt with since coming to Kansas is dedicated, hard working and very committed to what they are doing.

Mr. Williams stated his organization does have major concerns about **SB 473** and hoped to work cooperatively with the Legislature.

The Vice-Chairperson asked Mr. Williams to respond to **SB 516** which parallels the federal moratorium and provides a simpler approach. Mr. Williams stated the same concerns would apply in that moratorium would not afford protection for water shed projects, road projects, bridge projects, etc.

A member asked Mr. Williams as to the impact on the state if there was not a threatened or endangered species list. Mr. Williams replied there was flora and fauna in Kansas that would be in peril even though they appear in other states. The list gives Kansas the ability to develop protection of its own without having to rely on the federal government.

Cynthia Abbott, Kansas Audubon Council, appeared and presented testimony in opposition to **SB 473**. Ms. Abbott followed her written testimony provided in Attachment 3. Ms. Abbott stated that all plants and animals, including humans, are bound together in this intricate network of relationships based upon food and energy flow, literally life and death issues. Therefore, if a species of plant ceases to exist, the animals that depended exclusively on that plant will also disappear. She noted the sooner and more consistently we act responsibly to protect the natural inheritance of species that supports and sustains the better off we will be in the future.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on January 26, 1996.

William J. Craven, Kansas Sierra Club and Kansas Natural Resource Council, appeared in opposition to **SB 473** and presented a letter from The Very Reverend Marc DuPlan Lee, Dean, Grace Episcopal Cathedral concerning the endangered species act (Attachment 4). In his letter the Dean stated endangered species are primary spiritual concerns which attend upon how we understand our place in God's creation and our responsibility for it. He further noted many religious people believe our globe's current ecological crises must be at the center of the church's life.

Following presentation of Attachment 4 Mr. Craven presented his own testimony (Attachment 5). In his testimony Mr. Craven stated 3 objectionable points concerning **SB 473**.

1. There is nothing optional about the obligation to protect endangered species.
2. The moratorium is flawed since there is nothing optional about the obligation to protect the endangered species.
3. Tying the Kansas listings to the federal act runs counter to everything heard in current political climate a b o u t turning programs over to the states. Kansans might better be able to make sure determinations for Kansas.

Mr. Craven listed in written testimony potential policies which are largely revenue-neutral and which might help defuse some of the opposition to the existing law.

The meeting adjourned at 9:10 a.m.

The next meeting is scheduled for January 30, 1996.





STATE OF KANSAS  
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary  
900 SW Jackson, Suite 502  
Topeka, KS 66612  
913/296-2281 FAX 913/296-6953



MEMORANDUM

To: Members, Senate Energy and Natural Resources Committee  
Members, House Energy and Natural Resources Committee  
Members, Senate Ways and Means Committee  
Members, House Appropriations Committee

From: Steve Williams, Secretary

Date: January 25, 1996

Subject: Response to U.S. Fish and Wildlife Service re: Wildlife Fund Diversion Issues

In an effort to keep you informed of the department's response to the U.S. Fish and Wildlife Service (USFWS), I have attached relevant correspondence. You will find in this package:

- 1) three letters (dated 12/19/95) from the USFWS concerning the FY89-92 MOA and FY93-94 audit and department actions to eliminate future diversion problems,
- 2) a memo (dated 12/28/95) from me to the Governor explaining department negotiations with the USFWS, and
- 3) a letter (dated 1/11/96) from me to USFWS Regional Director Ralph Morgenweck explaining how the department intends to resolve FY93-94 audit issues.

Please contact me if you have any questions about this material. Of course, the department is prepared to brief any committee on this information at your request and convenience. Thank you.

attachments

cc: Governor Bill Graves  
Darrel Montei, Legislative Liaison

Senate Energy & Nat'l Resources  
January 26 1996  
Attachment 1



STATE OF KANSAS  
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary  
900 SW Jackson, Suite 502  
Topeka, KS 66612  
913/296-2281 FAX 913/296-6953



January 11, 1996

Mr. Ralph Morgenweck  
Regional Director  
Post Office Box 25486  
Denver Federal Center  
Denver, CO 80255

Dear Ralph:

This correspondence acknowledges receipt of your three letters regarding the resolution of the August 1995 U.S. Department of Interior Office of the Inspector General's audit report concerning fiscal years 1993 and 1994. The department accepts the audit findings and concurs with the proposed resolution.

Specifically, the department will request legislative appropriation of \$1,669,396 to offset diversion that occurred during the time period. These requests will be made for FY97 and FY98, in the amount of \$834,698 for each fiscal year. In order to correct fisheries base funding deficiency, the department will apply certain fisheries program expenses, as well as law enforcement expenditures directed toward our overall fisheries program for FY96 and FY97. This plan was approved by your office in a telephone conversation with Mary Gessner on December 21, 1995. Further, the department agrees to a reduction in the use of law enforcement expenditures in the fiscal years following 1997. It is our intention to meet future base fisheries expenditures with a mix of activities similar to that defined when base fisheries expenditures were originally identified (fisheries associated law enforcement costs were included). Finally, the department will initiate approvable Federal Aid projects, which will not be claimed for reimbursement in the amount of \$300,861 no later than June 30, 1996.

The department will submit documentation providing details of each action on a mutually agreed upon schedule. Although your correspondence addresses possible diversion for FY95, the department must wait for formal audit results from the Service before making specific expenditure commitments. Please be assured; however, that the department will resolve diversion issues associated with this audit as soon as possible. We also recognize and accept your description of the department's response to the MOA dated October 7, 1994 between the department and the USFWS. As you have indicated, the department has made substantial progress in affecting administrative and organizational changes that will alleviate future diversion. I appreciate your recognition of significant progress and encourage your continued monitoring of our progress. Be assured, we share your commitment and desire to resolve past diversion and prevent future diversion of wildlife funds.

Mr. Ralph Morgenweck::

- 2 -

January 11, 1996

Governor Bill Graves has reviewed this plan of action and concurs. He has pledged his commitment to support the department's request for legislative appropriation of \$1,669,396 split evenly between FY97 and FY98 budgets. Further, the current Governor's budget recommendation for FY97 includes funding for diversion issues associated with the previous FY89-92 audit. Budget requests to meet the obligations associated with the current audit (FY93-94) must be submitted either through the Governor's budget amendments or legislative initiative. As you may recall, the funding for the previous audit also occurred as a result of the Governor's budget amendment process.

I hope that I have provided adequate information for the Service to respond to the Inspector General's Office regarding the resolution of the FY93-94 audit. Please contact me for further clarification or information. I want to personally thank you and your staff for their cooperative spirit and understanding as the department resolves these past diversion issues. In addition, I would encourage and appreciate your assistance as the department continues efforts to prevent diversion in the future.

Sincerely,



Steven Williams  
Secretary

cc: Governor Bill Graves  
Gloria Timmer, Chief, Division of Budget (KS)  
Robert Lange, Chief, Division of Federal Aid (DC)  
Mary Gessner, Assistant Regional Director, Federal Aid (CO)



STATE OF KANSAS  
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary  
900 SW Jackson, Suite 502  
Topeka, KS 66612  
913/296-2281 FAX 913/296-6953



MEMORANDUM

To: Governor Bill Graves  
From: Steve Williams, Secretary  
Date: December 28, 1995  
Subject: Resolution of FY93-94 Federal Aid Audit

I have recently received notice from the U.S. Fish and Wildlife Service (USFWS) regarding the resolution of our FY93-94 Federal Aid audit. I have attached a copy of that correspondence for your review (see Morgenweck letters # 1 & 2). In addition, I have summarized the fiscal impact of this resolution as well as that associated with our previous audit.

As you are aware, I have made numerous trips to the USFWS Denver Regional Office and two recent trips to Washington, DC in order to negotiate an audit resolution. I am sorry to say that despite attempts to offset the diversion amount through various measures, the department was unable to convince the USFWS of any other means of resolution outside of a direct transfer or appropriation of non-wildlife monies to the Wildlife Fee Fund. For your information, we formally requested consideration of two other means to offset diversion. First, we tried to apply the benefits that anglers receive from park expenditures (boat ramps, facilities, administration, etc.) to offset past diversion. Our second proposal involved the use of the current market value of inmate labor directed to wildlife areas and state fishing lakes as the state's contribution to the wildlife program. Neither proposal was accepted due to interpretation of federal regulations concerning federal aid and related USFWS policy decisions. In spite of these denials, I must state that the USFWS has demonstrated a renewed commitment to work with this department to resolve past diversions and to assist in preventing future problems.

The following information provides a brief summary of the actions necessary to resolve the issues associated with the FY93-94 audit:

Fiscal year 1997 and 1998 actions (required each year):

- Transfer/appropriation of \$834,698 from non-wildlife funds to the Wildlife Fee Fund
- Application of law enforcement expenditures totalling \$462,471 to address base spending levels



Fiscal year 1997

- Additional expenditure of \$300,861 from the Wildlife Fee Fund on fisheries projects to address ineligible projects. These projects must be approved by the USFWS prior to June 30, 1996.

The USFWS has requested that I provide a letter responding to the resolution within 30 days of their letter. This letter must state the administration's intention to request legislative action on the identified issues of the audit in the fiscal years indicated. Further, the USFWS will continue to monitor the department's progress on these issues. If the department cannot satisfy the USFWS of our commitment and progress in resolving diversion issues, the department will be declared ineligible for federal aid and will be designated as a "high risk" agency for other federal program participation. The department will be in this diversion status until the diverted funds are restored.

As the new secretary of the department, I believe that I can somewhat objectively view this issue from both the State of Kansas and the USFWS perspective. The Federal Aid program is under close scrutiny both by other state fish and wildlife agencies and hunters and anglers who contribute to the funding. Recent audits of the USFWS themselves, dictate a conservative approach to administering these funds. These factors, coupled with repeated diversion problems in Kansas, have resulted in the relatively severe resolution outlined above.

I am pleased to report that the USFWS has recognized the positive and substantial steps that the department has taken recently to alleviate diversion of funds in the future (see Morgenweck letter # 3). These steps are crucial to comply with state and federal restrictions on the expenditure of wildlife funds. The federal aid program is critical to fish and wildlife programs across the country. In Kansas, this funding accounts for approximately 15-20 percent of our total budget and 35 percent of our wildlife program budget. Kansas hunters and anglers have rightfully demanded that the agency take full advantage of the funds apportioned to Kansas. As you are aware, these funds result from an excise tax levied on equipment purchased by Kansas hunters and anglers.

I believe that the aggressive administrative actions that the department has recently taken and the proposed appropriation bill language submitted to the Division of Budget, will provide us with the means to end the diversion problems that have plagued this agency since 1989.

I would appreciate an opportunity to discuss the attached correspondence and summary at your earliest convenience. Thank you for your consideration of this request.

attachments

cc: Gloria Timmer, Director, Division of Budget

US S RESOLUTION TO ADDRESS FY93-94 AUDIT

FINDINGS:

1	Diversion of wildlife funds to non-wildlife programs	\$1,669,396
2	Failure to meet base fisheries expenditures	\$924,942
3	Reimbursement for ineligible projects	\$225,646

RESOLUTION:

1	Diversion of wildlife funds to non-wildlife programs	\$1,669,396
	FY97 legislative appropriation of non-wildlife funds to WFF	\$720,073
	FY97 legislative appropriation of Boat Fee Funds to WFF	\$114,625
	FY98 legislative appropriation of non-wildlife funds to WFF	\$720,073
	FY98 legislative appropriation of Boat Fee Funds to WFF	\$114,625
2	Failure to meet base fisheries expenditures	\$924,942
	FY96 application of law enforcement expenditures to base	\$462,471
	FY97 application of law enforcement expenditures to base	\$462,471
3	Reimbursement for ineligible projects (includes 25% state share)	\$300,861
	FY97 requires approvable expenditure without reimbursement	\$300,861

Date: 12/28/95

**SUMMARY OF RESPONSE TO FIRST AND SECOND AUDIT & PRELIM FY95**

1 Diversion of wildlife funds to non-wildlife programs

	<u>FY95</u>	<u>FY96</u>	<u>FY97</u>	<u>FY98</u>	<u>TOTAL</u>
<b>FY89-92 AUDIT</b>					
transfer from SGF to WFF	\$802,736	\$432,710			
SGF appropriation to WFF		\$115,952	\$548,711		\$1,900,109
<b>FY93-94 AUDIT</b>					
non-wildlife fund appropriation to WFF			\$720,073	\$720,073	
BFF appropriation to WFF			\$114,625	\$114,625	\$1,669,396
<b>FY95 PRELIM AUDIT</b>					
non-wildlife fund appropriation to WFF				\$180,570	
BFF appropriation to WFF				\$274,437	\$455,007
<b>TOTALS</b>	\$802,736	\$548,662	\$1,383,409	\$1,289,705	\$4,024,512

2 Failure to meet base fisheries expenditures

	<u>FY95</u>	<u>FY96</u>	<u>FY97</u>	<u>FY98</u>	<u>TOTAL</u>
<b>FY89-92 AUDIT</b>	\$1,180,509	\$1,187,650	\$1,173,367		\$3,541,526
<b>FY93-94 AUDIT</b>		462,471	\$462,471		\$924,942

3 Reimbursement for ineligible projects (adjusted to include state's 25% share)

	<u>FY95</u>	<u>FY96</u>	<u>FY97</u>	<u>FY98</u>	<u>TOTAL</u>
<b>FY89-92 AUDIT</b>	\$1,050,000	\$76,799			\$1,126,799
<b>FY93-94 AUDIT</b>			\$300,861		\$300,861
<b>TOTALS</b>	\$2,230,509	\$1,726,920	\$1,936,699	\$0	\$5,894,128

completed  
 requested in budget

Date: 12/28/95



# United States Department of the Interior

#1

## FISH AND WILDLIFE SERVICE

Mountain-Prairie Region

IN REPLY REFER TO:

FA/KS  
15  
MAILSTOP 60152

MAILING ADDRESS:

Post Office Box 25486  
Denver Federal Center  
Denver, Colorado 80225

STREET LOCATION:

134 Union Blvd.  
Lakewood, Colorado 80228

DEC 19 1995

Steven A. Williams, Secretary  
Kansas Department of Wildlife and Parks  
Landon State Office Building  
900 SW Jackson, Room 502  
Topeka, Kansas 66612

Dear Secretary Williams:

Thank you for your letter of November 21, 1995, responding to the August 1995 U.S. Department of the Interior Office of Inspector General's (OIG) audit of the Kansas Department of Wildlife and Parks (Department) activities in fiscal years 1993 and 1994. The OIG audit revealed that a total of \$1,895,042 (reduced from \$2,000,317) was inappropriately spent from the Department's Wildlife Fee Fund. Of this total, \$1,669,396 was diverted from the Wildlife Fee Fund to non-wildlife programs and \$225,646 was spent on ineligible projects. In addition, the audit found fisheries base funding deficiencies totalling \$924,942. The audit report also identified a number of financial management weaknesses in the Department.

Your proposed resolution of the above audit findings has been reviewed by Federal Aid staff in Denver and Washington, D.C. Two meetings have been held with you to discuss your proposal to correct diversion, ineligible projects, and fisheries funding deficiencies and a proposed action plan to avoid future diversion. After careful consideration and consultation with staff from the Department of the Interior's Office of the Solicitor, it is our determination that use of current market value of prison labor is not an acceptable method to repay the diverted funds. The Federal regulations implementing the Federal Aid programs specifically require that for a state to correct a diversion of license fees, it must return and make properly available for use for the administration of the state fish and wildlife agency an amount equal to the license revenue diverted (see 50 CFR 80.4(d)). This requires the return of "funds" to make up for the funds diverted.

While we recognize the difficulty Kansas might encounter in immediately replacing the funds diverted in fiscal years 1993 and 1994, we must insist on a signed commitment from the State, which sets out a timely schedule for the amount diverted to be repaid to the Wildlife Fee Fund. The following plan of action is recommended for fulfilling this repayment obligation, as well as addressing the audit findings which must be properly dealt with in order for Kansas to retain eligibility to participate in the Federal Aid programs:

1. Diversion of wildlife funds to non-wildlife programs - Total \$1,669,396
  - (a) No later than July 1, 1996 transfer or appropriate \$834,698 from non-wildlife funds to the Department's Wildlife Fee Fund.
  - (b) No later than July 1, 1997 transfer or appropriate \$834,698 from non-wildlife funds to the Department's Wildlife Fee Fund.
2. Fisheries Base Funding Deficiency - Total \$924,942
  - (a) No later than June 30, 1996, expend \$462,471 of additional State funds for the State fisheries program.
  - (b) No later than June 30, 1997, expend \$462,471 of additional State funds for the State fisheries program.
3. Reimbursement of funds expended for ineligible projects (including State's 25% share) - Total \$300,861.
  - (a) No later than June 30, 1996, initiate approvable Federal Aid project(s) without reimbursement in the amount of \$300,861.

We agree to the Department's proposal to plan and implement approvable fisheries projects to accomplish repayment for ineligible activities and fisheries base funding deficiencies. Documentation must be provided to us explaining how these additional funds will be spent.

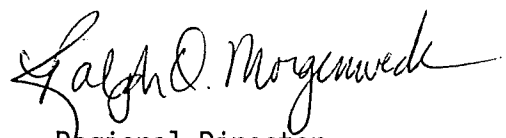
Please be advised that any diversion occurring in fiscal year 1995 (currently estimated by the Department at \$787,000, which must be audited/determined by the Office of the Inspector General) must be returned to the Department's Wildlife Fee Fund via transfer from non-wildlife funds no later than July 1, 1997.

We have the following comments regarding your proposed corrective actions to avoid future diversion, as presented on page 4 of your November 21, 1995 proposed Action Plan:

- Item 1) Any proposed future use of inmate labor as State match must be approved on a project-by-project basis.
- Item 2) Concur. We will need to review and test this corrective action.
- Item 3) Concur.
- Item 4) Concur.
- Item 5) Concur.
- Item 6) Concur. We will need to review and test this corrective action.

We appreciate the time and effort from you and your staff to address the above issues. If you have any questions please contact Mary Gessner, Assistant Regional Director for Federal Aid at 303-236-7392. The deadline for us to provide the OIG with our proposed resolution of this audit is December 30, 1995. Please provide us your written response to this proposal prior to that date.

Sincerely,

  
Regional Director



# United States Department of the Interior

#2

## FISH AND WILDLIFE SERVICE Mountain-Prairie Region

IN REPLY REFER TO:

FA/KS  
15  
MAILSTOP 60152

MAILING ADDRESS:  
Post Office Box 25486  
Denver Federal Center  
Denver, Colorado 80225

STREET LOCATION:  
134 Union Blvd.  
Lakewood, Colorado 80228

DEC 19 1995

Steven A. Williams, Secretary  
Kansas Department of Wildlife and Parks  
Landon State Office Building  
900 SW Jackson, Room 502  
Topeka, Kansas 66612

Dear Secretary Williams:

On March 7, 1994, I sent a letter to Theodore Ensley, Secretary of the Kansas Department of Wildlife and Parks (Department), which declared the Department ineligible to participate in the Federal Aid in Sport Fish and Wildlife Restoration (Federal Aid) Programs. This decision was based on U.S. Department of the Interior Office of the Inspector General (OIG) audit findings that during the State's fiscal years 1989 through 1992 \$1,900,109 of Wildlife Fee Funds were diverted to ineligible uses (original OIG audit figure was \$2,408,358); \$845,099 of Federal Aid funds were used for unapproved activities; and the Department failed to maintain fisheries base level funding in the amount of \$3,541,526. On July 14, 1994, I issued a letter designating the Department a "High Risk" grantee.

On October 7, 1994, a Memorandum of Agreement (MOA) was signed by Joan Finney, Governor of the State of Kansas and me. On November 4, 1994, Kansas was notified that the Department was again eligible to participate in the Federal Aid Programs and the "High Risk" designation was withdrawn. The MOA outlined actions that, when implemented, would allow the Department to once again be eligible to participate in the Federal Aid Programs. It was agreed that the diverted funds (\$1,900,109) would be repaid to the Wildlife Fee Fund from the State General Fund in three installments, with the first payment made upon execution of the MOA, the second payment by July 1, 1995, and the final payment (\$548,711) by July 1, 1996. Documentation has been provided regarding the first payment and we are awaiting additional documentation regarding the second payment. The \$845,099 expended for unapproved Federal Aid reimbursements has been restored by Kansas. According to our records, the Department is on track to rectify the deficiency in fisheries base funding by conducting Federal Aid approvable fisheries projects totalling \$3,541,526, for which no reimbursement will be requested. In addition, the Department must continue to maintain its annual fisheries base funding level of \$1,886,771.

Item four of the MOA states that the Department will share its internal reorganization plan with the U.S. Fish and Wildlife Service (Service). We understand this plan is currently being drafted and should be finalized in the

next three months. The Department should provide a copy of this reorganization plan with an explanation of the benefits to the fisheries and wildlife program to the Service.

Item five of the MOA addresses the review of the Department's administrative organization conducted by an Independent Fisheries Review Panel. As agreed to in the MOA, the Department is to consider implementation of the panel's recommendations. The Department should provide the Service a letter outlining the current administration's response to the Fisheries Review Panel's recommendations.

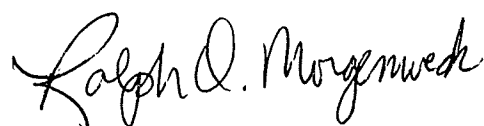
Item six of the MOA states that the Department will submit quarterly financial reports, which have been provided to us on a timely basis. Recent changes to the cost accounting system will require further monthly reconciliations, which the Department has agreed to conduct and share with us in early 1996.

I appreciate that you have acted aggressively to comply with the terms of the MOA addressing fiscal years 1989 through 1992 and to effect changes to prevent future diversions and improper spending of Federal Aid funds. Diversion continued, however, in 1993 and 1994, as those budget years were completed when the final audit report was issued. On August 2, 1995, the Department received an OIG audit report covering State fiscal years 1993 and 1994. This audit revealed that the Department had diverted \$1,669,396 to non-wildlife programs during this period. In addition the audit found a \$924,942 shortfall in maintaining the fisheries base level of funding in 1993, and \$225,646 of Federal Aid reimbursement for ineligible projects. In addition, an internal audit of FY 1995 conducted by the Department, cites estimated diversion totalling \$787,000, for which corrective actions have been initiated. A follow-up audit is planned by the OIG in early 1996, at which time the final audit findings for FY 1995 will be determined.

Unless agreement on resolution of the FY 1993-94 audit and potential future diversion is reached within 30 days of this letter or if the Department cannot demonstrate that its revised cost accounting system accurately tracks Department expenditures and Federal Aid projects within 60 days of this letter, the Department of Wildlife and Parks will be declared ineligible for Federal Aid Program participation and will again be designated a "High Risk" agency for other federal program participation. The Department will remain in diversion until the diverted funds are restored. During the period of time the Department is in diversion and after you are again declared eligible for Federal Aid Program participation requests for retroactive project funding will be denied.

Your continued dedication to resolving this situation is appreciated. If you have any questions regarding this letter, please contact Mary Gessner, Assistant Regional Director for Federal Aid, at (303) 236-7392.

Sincerely,



Regional Director





# United States Department of the Interior

# 3

## FISH AND WILDLIFE SERVICE Mountain-Prairie Region

IN REPLY REFER TO:

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DEC 19 1995

Steven A. Williams, Secretary  
Kansas Department of Wildlife and Parks  
Landon State Office Building  
900 SW Jackson, Room 502  
Topeka, Kansas 66612

Dear Secretary Williams:

As you are aware, we have been monitoring the Department of Wildlife and Parks' (Department) progress toward correcting deficiencies noted in the Department of Interior's Office of Inspector General Audit Reports on Kansas' Federal Aid Program. I understand your Department is currently in a state of transition as a result of attempts to address several of the audit findings simultaneously. Changes that have been initiated by you include: a significantly revised cost accounting system and manual, a new payroll system, new Department and Federal Aid accounting reports, and actively planning a reorganization. My staff informs me that you have made several positive changes in your systems regarding the accounting for Federal Aid Funds. This is a very aggressive endeavor and I am confident your Federal Aid program will benefit.

We have identified below changes that we are aware of and, where appropriate, recommendations for insuring that these changes have the desired effect.

### Fixing and Isolating Program Costs

#### Delineation of wildlife and parks field work

Field personnel were assigned wildlife or parks work such that park employees, including park rangers, were assigned only to the park system operation. Fish and wildlife managers and conservation officers were assigned to work only on wildlife areas, state fishing lakes, and appropriate work on private lands. Attendant equipment and materials were also split accordingly.

STATUS: Completed

RECOMMENDATION: None.

## Organizational changes

The Department has proposed changes in the organizational structure of the agency. These changes will entail splitting the Parks and Public Lands Division. Parks will be a separate division and will continue to be supported by the Parks Fee Fund (PFF) and State General Fund (SGF). Public Lands Section employees and projects will be incorporated into the Fisheries and Wildlife Division and will be funded with Wildlife Fee Fund (WFF) monies.

This restructuring will better identify and strengthen the Department's fish and wildlife programs. In addition, the Department will review current Federal Aid projects to provide a more structured and logical approach to activities funded through Sport Fish and Wildlife Restoration Funds.

Information and education sections will be combined, including those projects associated with hunter and aquatic education, as well as wildlife-oriented public information functions.

Selected positions within the Department's executive and administrative divisions will be assigned to either parks or wildlife programs. This will reduce the number of split-funded positions (those paid for by a mix of WFF and PFF/SGF monies), thereby reducing the exposure to diversion due to improperly funded administrative expenses.

STATUS: In process. To be completed by February 1, 1996.

RECOMMENDATION: Service and Department should review February 1996.

## **Administrative Initiatives**

### Federal Aid compliance

The Department has instituted a new Federal Aid compliance policy that mandates employees to abide by Federal Aid requirements and provides for "whistle blower" protection.

STATUS: Completed. Copy provided to Service.

RECOMMENDATION: None.

### Cost accounting system

Supervisors must review and approve all time and activity reports prior to submission for payroll processing. The Department has developed a computer program that will screen for incorrect activity coding based on an employee's salary funding source and predetermined eligible activities.

The Department restricted use of cost accounting system (CAS) codes that have contributed to inaccurate documentation of administrative expenses.

This restriction forced employees to accurately code their time and activity to direct programs when appropriate.

The CAS has been revised to consolidate codes and more accurately reflect the fund source, Federal Aid eligibility status, and program associated with each type of employee activity. The revision will also assist in budgeting and expense tracking processes, particularly with respect to Federal Aid projects. In addition, it should permit more timely drawdowns (quarterly or monthly) of apportioned Federal Aid funds.

Fund identifiers have been added to each of the Department's CAS activity codes, which will allow the tracking of all expenditures from various fund sources. This step will provide ease in conducting programmatic analyses.

The Department has implemented an automated system to account for and track encumbrances to ensure that only paid encumbrances are charged to Federal Aid projects. This will eliminate manual mistakes that could lead to charging unpaid but encumbered bills to individual projects.

Along with the revised CAS manual, employees have received training in its use and the importance of Federal Aid compliance. This training will be an ongoing process.

STATUS: Completed.

RECOMMENDATION: Department and Service should review and test by February 1996. Department should continue to provide quarterly financial reports to Service.

#### Budget development process

The Department is implementing a budget development process directed toward generating appropriate budgets by fund source. This process will account for planned expenses for projects within each program area. Projects and programs will be associated with the appropriate fund source during the budget process.

STATUS: In process.

RECOMMENDATION: None.

#### Monthly reporting requirements

The Department will conduct monthly reconciliation between the Department's internal CAS and the state systems (SHARP payroll system and STARS accounting system). This should provide a better audit trail and more accurate and verifiable expense information.

Monthly programmatic analyses will be conducted to provide information for mid-year funding and spending plan changes.

STATUS: Completed.

RECOMMENDATION: Service and Department should review and test reconciliations in February 1996.

### Legislative Initiatives

The Department has developed draft appropriation bill language that would provide flexibility for increased spending above that specifically appropriated by the Legislature, to appropriately fund programs by fund source. This action is intended to provide the flexibility needed to correct funding shortfalls or overages identified in monthly programmatic analyses. It is our understanding that additional expenditure authority would only be used to address diversion concerns and would require subsequent notification of the Governor's Office and the State Legislature.

STATUS: In process.

RECOMMENDATION: Department should report progress to Service by April 1996.

### Commission Initiatives

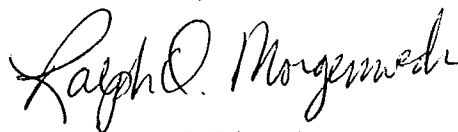
The Wildlife and Parks Commission has announced the formation of a Task Force on Outdoor Kansas. The Task Force will explore alternative funding mechanisms for the Department to increase revenue streams for all programs. If successful, this will further assist the Department in funding both its wildlife and park programs.

STATUS: In process.

RECOMMENDATION: None.

I appreciate your continued efforts to implement changes that will minimize the potential for future diversions and inappropriate use of Federal Aid funds. The above actions represent significant progress towards achieving that goal. I look forward to working with you to complete the above recommendations and resolve this matter.

Sincerely,



Regional Director



STATE OF KANSAS  
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary  
900 SW Jackson, Suite 502  
Topeka, KS 66612  
913/296-2281 FAX 913/296-6953



S.B. 473

Presented To: Senate Energy & Natural Resources Committee

Provided By: Kansas Department of Wildlife & Parks

January 25, 1996

S.B. 473 would amend the State Nongame and Endangered Species Act by substantially reducing the Department's authority to manage and promote those species which exist in limited numbers in our state. The following limitations are noted:

- On and after July 1, 1996, the Secretary could only formulate a list of nongame species in need of conservation and recommendations for conservation programs involving those species. The lists and management recommendations would be contained in a report to the Legislature due by February 1 of each year. Authority to add new species to a regulatory list of nongame species in need of conservation does not appear to exist after July 1, 1996, and the authority to implement conservation programs is restricted.
- On and after July 1, 1996, the Secretary could only formulate lists of species which should be listed as a state threatened or endangered species and propose recommendations for conservation programs involving those species. The lists and management recommendations would be contained in a report to the Legislature due by February 1 of each year.
- On and after July 1, 1996, only those species which have been listed as a federal threatened or endangered species can be considered for a similar listing under the State Act.
- Even with the above restriction, the Department could only add a species to or remove a species from the threatened or endangered regulation if:

Senate Energy & Nat'l Resources  
January 26, 1996  
Attachment 2

- A public hearing is conducted;
  - Approval is received from the Kansas Biological Survey;
  - The proposal is submitted to each potentially impacted state agency and a response is received;
  - Notified the Governor of each surrounding state;
  - Not adopt (or enact) a T&E regulation for 30 days following a hearing.
- Any individual petitioning a species for threatened or endangered consideration would be required to provide and fund an environmental impact report with emphasis on the economic impact of the action.
  - The Secretary would be required to conduct a complete review of the threatened and endangered species listings at least every five years.
  - The Department would lose the authority to manage any nongame species unless it appeared in the "species in need of conservation" regulation. As stated previously, it appears that regulatory authority to establish such a list is removed.

Effects of the bill are many, but basically the Department would not have the authority to properly manage those state species which require special attention for their survival. In addition, veto power is delegated to other agencies, public involvement will be more difficult, and federal funding for assistance in endangered and threatened species programs would be jeopardized. Many well received Department efforts such as OWLS, bird counts, nest boxes, and bird feeder projects performed largely through the Nongame Checkoff would be curtailed, if not discontinued.

Kansans hold threatened and endangered species in high regard and there is strong support for their protection and for management to improve their status. A 1991 survey conducted by Kansas State University found that nearly 97% supported having an official state list of threatened and endangered wildlife and slightly over 97% supported the protection of critical habitats of

those species. There was also very strong support for stiff fines, securing land and/or water necessary for those species, restricting development when necessary and protection of threatened and endangered species.

Since the inception of a T&E permit in 1981, 291 such permits have been issued. 1989 marked the first year for computer tracking of T&E permits. From 1989 through July, 1995, the Department reviewed 5,566 projects for impacts on threatened and endangered species. Of that total, only 3.4% (192) were found to require a T&E permit. Further, only 31 T&E permits (.6% of all projects reviewed) have required additional measures which had the potential to increase the cost of the project. A total of 10 T&E permits were issued to cover projects of the Department.

Projects covered under Department T&E permit authority are those which are publicly funded or assisted, or are subject to some other state or federal permit. Activities carried out on private land by private owners are not subject to the T&E permitting requirement unless T&E species are intentionally taken. The Department has formalized that approach as an operational guideline.

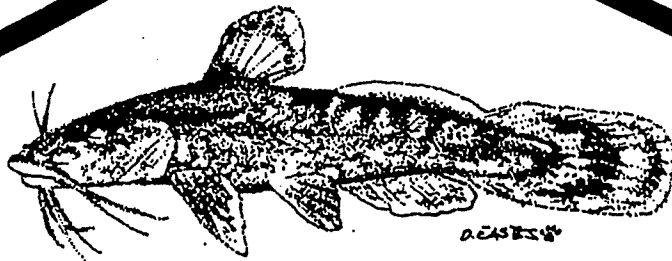
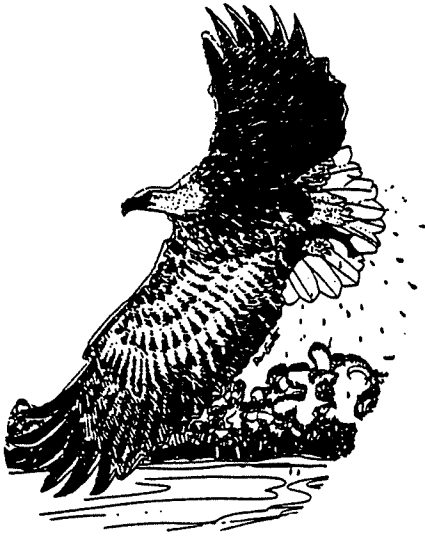
It is evident that the Department has not been over-zealous with the authority to manage T&E species and it is an effort which enjoys strong public support. The Department respectfully recommends the S.B. 473 not be passed.

Final Report

of the

KANSAS DEPARTMENT OF WILDLIFE AND PARKS

"SURVEY OF KANSANS' ATTITUDES REGARDING  
THREATENED AND ENDANGERED WILDLIFE"



Prepared by  
Robert H. Poresky, Ph.D.  
Associate Professor  
Human Development and Family Studies  
College of Human Ecology  
Kansas State University  
Manhattan, Kansas  
July, 1991



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- B: Survey instrument and informed consent instructions.<sup>1</sup>
- C: Detailed statistical analysis for each item.<sup>1</sup>
  - Frequency distribution
  - Chi-square distributions by demographic factors.
  - Cell Means and Analysis of Variance tests.

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<sup>1</sup> Appendices A, B and C are available through request to Chickadee Checkoff, Kansas Department of Wildlife and Parks, Box 54a, Rt. 2, Pratt, Kansas. Appendix A is one page. Appendices B and C are 12 and 112 pages respectively.



OPERATIONS OFFICE  
RR 2, Box 54A  
Pratt, Kansas 67124  
316-672-5911

*Equal Opportunity Employer*

July, 1991

Dear Reader,

The protection of threatened and endangered species is an important mission of the Kansas Department of Wildlife and Parks. The Kansas Nongame and Endangered Species Act, established in 1975, was designed to protect these vulnerable animals. Since 1981, our Environmental Services Section, which oversees projects impacting these species, has issued 149 permits addressing mitigation and protection needs.

During 1990, we saw heightened public awareness concerning sensitive species and our ability to protect them. This was the case in southeast Kansas where planned development of water supply and watershed lakes, along with river gravel dredging, affected some of these animals. Partially as a result of this concern, the Department conducted this telephone survey to assess the knowledge and attitudes of Kansans about threatened and endangered species.

To maximize objectivity, we contracted with an outside and impartial interest, Kansas State University, which has both the required experience and expertise. Additionally, advice was sought from Responsive Management, a national group with specific expertise in telephone survey techniques for wildlife management agencies. The results come from interviews with adults across the state selected totally at random.

Protecting our state's natural resources depends on public attitudes as much as biological information. This survey provided some important information about these feelings. There were also some rather alarming opinions revealed about peoples' perceptions of activities they think endanger wildlife.

In summary, the respondents gave a strong mandate for protecting threatened and endangered species in Kansas, even including those kinds which may be rare here but more abundant in other states.

Please contact us if you would like more copies of this survey or have any questions. Thank you for your interest in Kansas wildlife.

Sincerely,

Jack Lacey, Secretary,  
Kansas Department of Wildlife and Parks

## Introduction

In March, 1991, the Spring 1991 Wildlife and Parks computer assisted telephone survey of Kansas residents was conducted by the Department of Human Development and Family Studies in the College of Human Ecology at Kansas State University. This report includes an analysis and discussion of the survey findings. The appendices contain the survey itself and detailed analyses of the responses to each item in the survey as well as the statistical analyses of the effects associated with size of the community where each person lived, the region of the Kansas where they lived, and the sex and age of the respondents.

## Method

### Computer Assisted Telephone Interviewing Instrument:

The Kansas Department of Wildlife and Parks defined the overall scope of the survey content and wrote the initial draft of the telephone survey instrument. This instrument was revised by Robert H. Poresky, Ph.D. and Ted Cable, Ph.D., of Kansas State University in consultation with Mary Mae Hardt, Ken Brunson and Eric Schenck of the Kansas Department of Wildlife and Parks. The resulting draft was further reviewed and approved by the Department of Wildlife and Parks and Mark D. Duda, Executive Director of Responsive Management. The Responsive Management letter of endorsement is Appendix A. The computer assisted telephone interviewing programming was performed by Robert H. Poresky, Ph.D., using Ci2 software obtained from Sawtooth Software. Final revisions were made to improve the respondent's ability to understand and reply to the questions after pretesting the telephone survey instrument and its programming.

A file of random telephone numbers was provided by the Department of Wildlife and Parks. The random numbers were generated within the area codes, prefixes and ranges obtained from the 47 telephone companies operating in Kansas in 1989. The resulting telephone numbers were reordered and placed on call sheets for the interviewers. Each interviewer was given a sheet of numbers to call.

The interviewers were trained to use the computer assisted telephone interviewing system. The interviewer dialed each number and when the call was answered began the interview. The computers then prompted the interviewers with the text of the interview including informed consent, survey questions, and demographic information. As the questions were answered the computers recorded the responses entered by the interviewers for later analysis.

The interviews were conducted until data from 550 Kansas adults who completed the 10-15 minute survey were obtained. This took about eight weekday evenings and one weekend of calls by trained and supervised K.S.U. students. According to the call sheets, the 19 interviewers called 2,280 telephone numbers to obtain the desired 550 completed

areas (39.1%). In terms of their educational attainments 27.5% had college degrees, 34.7% had some college, 28.2% graduated from high school, and only 9.6% had no high school diploma. Their average income was in the middle of the \$20,000 to \$30,000 range. This report includes only the information from those respondents who finished the telephone interview.

### Results

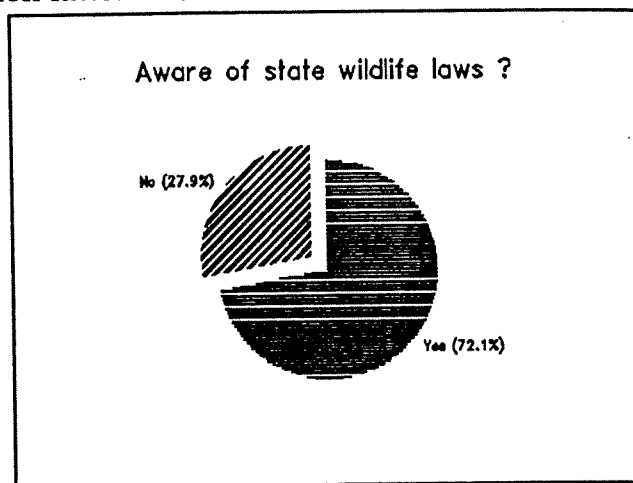
The respondents showed strong awareness of and support for the Department of Wildlife and Parks' protection of threatened and endangered wildlife in Kansas. This awareness and support is reflected in the following results and in those shown in Table 2. "Don't know" and refusals are omitted from the tables and graphs.

Awareness of Kansas wildlife protection laws.....72.1%

#### WILDLIFE

There are federal laws protecting some endanger wildlife. Are you aware that there are also state laws which protect additional wildlife which are threatened and endangered in Kansas?

1. Yes
2. No



Awareness of Kansas habitat protection laws.....78.7%

HABITAT Are you aware that there are state laws protecting the habitats of endangered wildlife -- the places where they live?

1. Yes
2. No

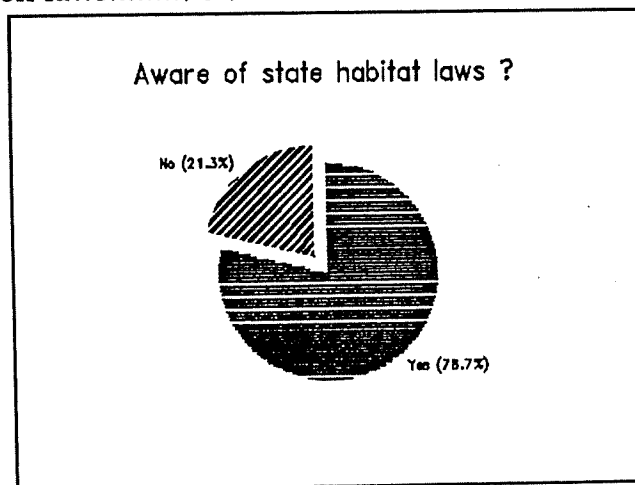


Table 2  
General Results  
Percent of Respondents\*

Item	Responses			
Are you aware of state laws protecting ...	YES		NO	
Wildlife	72.1%		27.9%	
Habitat	78.7%		21.3%	
How do you feel about ... to protect wildlife?	SUPPORT		OPPOSE	
Having a state list	96.6%		3.4%	
Imposing stiff fines	95.9%		4.1%	
Buying land	84.9%		15.1%	
Restricting development	89.1%		10.9%	
Restrict lake development	80.3%		19.7%	
Do you support ... if it endangered a kind of wildlife?				
Constructing a dam for drinking water	54.6%		45.5%	
Straightening stream for a highway	22.3%		77.8%	
Diverting stream water for crops	32.6%		67.5%	
Make a lake for recreation	11.7%		88.3%	
Taking road gravel from a stream	10.2%		89.7%	
Some Kansas wildlife are endangered by ...	AGREE		DISAGREE	
Chemical pollution	95.6%		4.4%	
Legal hunting	64.2%		33.9%	
Legal fishing	52.8%		47.2%	
Legal trapping	77.1%		22.9%	
Oil field development	81.6%		18.4%	
Converting land to ag. crop production	71.0%		28.9%	
Agricultural chemicals	94.9%		5.1%	
Urban growth	87.7%		12.3%	
Do you agree or disagree ...				
KS endangered wildlife should be protected	86.0%		14.0%	
Endangered plants should be protected	84.8%		15.2%	
Habitat be identified and protected	97.6%		2.5%	
Heard of Chickadee Checkoff?	YES		NO	
	47.2%		52.8%	
Aware of non-game line on state income tax?	66.6%		33.4%	
Rating of Wildlife & Parks	Excellent	Good	Fair	Poor
	8.5%	62.6%	26.4%	2.5%

\* Of those responding other than "don't know" or "no opinion." The support, oppose, agree, and disagree headings respectively include the strongly support, strongly oppose, strongly agree and strongly disagree responses.

Table 3  
Demographic Factor Effects  
(level of significance)<sup>1</sup>

Item	Residence (urban/rural)	Region	Gender (sex)	Age Group
Are you aware of state laws protecting ...?				
Wildlife	--	--	--	--
Habitat	--	--	--	--
How do you feel about ... ?				
State list	--	--	--	--
Stiff fines	--	--	--	--
Buying land	--	--	--	.05
Restrict development	--	--	.01	--
Restrict lake dev.	--	--	--	--
Do you support ... if it endangered a kind of wildlife?				
Constructing a dam	--	--	.05	.01
Straightening stream	.01	--	.05	.001
Diverting stream for crops	.001	--	.05	.01
Making recreation lake	--	--	.01	.01
Taking stream gravel	--	--	--	.001
Wildlife endangered by ... (agree--disagree?)				
Chemical pollution	--	--	--	--
Hunting	--	.05	.001	--
Fishing	--	--	.001	--
Trapping	--	--	.001	--
Oil field development	--	.01	.01	--
Expanding crops	--	--	--	.001
Ag. chemicals	--	--	--	.05
Urban growth	--	.05	.01	.01
Do you agree or disagree ...				
Protect KS wildlife	--	--	--	--
Protect KS plants	--	--	--	--
Identify habitat	--	--	--	.01
Support water bill increase to protect wildlife				
Heard of Chickadee Checkoff	--	--	.05	.01
Aware of non-game line on state income tax?				
Rating of Wildlife & Parks	.05	--	.01	--

<sup>1</sup> Levels are the probability that the chance that the effect is due to random error is less than 5%, 1%, 0.1%. Lower probability levels are statistically more significant. "--" indicates a non-significant comparison.

Table 4  
Statistically Significant Gender Effects  
(male/female)

Item	Percent	
	Male	Female
How do you feel about ... ?	SUPPORT	SUPPORT
Restricting development	86.0%	91.7%
Do you support .. if it endangers wildlife?		
Constructing a dam for drinking water	58.0%	51.6%
Straightening stream for a highway	27.7%	17.8%
Diverting stream water for crops	28.8%	35.8%
Making a lake for recreation	17.3%	7.5%
Wildlife endangered by ... (agree--disagree?)	AGREE	AGREE
Hunting	50.4%	74.9%
Fishing	40.8%	63.0%
Trapping	64.5%	87.3%
Oil field development	76.5%	85.8%
Urban growth	81.1%	92.9%
Heard of Chickadee Checkoff?	YES	YES
Aware of non-game line on state income tax?	53.8%	42.1%
	74.3%	60.6%

Female respondents generally showed less support than male respondents for projects which would threaten wildlife including the construction of a dam for drinking water, straightening a stream for a highway, and making a lake for recreation. The female respondents were more supportive than male respondents for diverting water to irrigate crops. The female respondents agreed more than male respondents that chemical pollution, hunting, fishing, trapping, oil field development, and urban growth threaten wildlife. A higher percentage of the male respondents said they were aware of the Chickadee Checkoff and the nongame line on the state income tax form than did the female respondents.

There were also 11 items which showed significant age group effects. A higher percentage of the younger respondents were supportive (about 90%) than older respondents (about 76%) of "the state buying more lands which are important to the continued existence of some of these wildlife." Fewer of the respondents under 45 years of age (about 46%) supported "constructing a dam to increase drinking water supplies if it endangered a kind of wildlife" than older respondents (about 67%). Fewer of the respondents under 45 (about 15%) supported straightening and ditching a stream for highway construction than the older respondents (about 34%). More respondents in the over 65 age group (52%) supported diverting stream water to irrigate crops than younger respondents (24% - 41%). Ninety percent of the respondents under 55 years of age opposed constructing a recreation lake if it endangered wildlife, while 71% of the 55-64 year old respondents opposed it and 83% of the over 65 year old respondents opposed such

Table 5  
 Southeast Region  
 Percent of Respondents <sup>1</sup>

Item	Responses by Region	
	Southeast Region / Rest of Kansas	
Are you aware of state laws protecting ...	YES	YES
Wildlife	78.6%	71.6%
Habitat	83.1%	78.5%
How do you feel about ... to protect wildlife?	SUPPORT	SUPPORT
Having a state list	92.7%	97.0%
Imposing stiff fines	88.3%	96.8% **
Buying land	72.0%	86.2% *
Restricting development	79.2%	90.2% *
Restrict lake development	72.9%	81.1%
Do you support .. if it endangered a kind of wildlife?		
Constructing a dam for drinking water	64.3%	53.1%
Straightening stream for a highway	26.7%	22.0%
Diverting stream water for crops	34.9%	32.3%
Make a lake for recreation	9.3%	12.2%
Taking road gravel from a stream	6.4%	11.1%
Some Kansas wildlife are endangered by ...	AGREE	AGREE
Chemical pollution	86.2%	96.6% **
Legal hunting	56.1%	64.9%
Legal fishing	39.2%	54.2%
Legal trapping	81.8%	75.8%
Oil field development	73.1%	82.1%
Converting land to ag. crop production	70.0%	70.6%
Agricultural chemicals	94.9%	95.5%
Urban growth	89.1%	87.0%
Do you agree or disagree ...		
KS endangered wildlife should be protected	89.3%	85.7%
Endangered plants should be protected	84.6%	84.5%
Habitat be identified and protected	94.9%	97.9%
Heard of Chickadee Checkoff?	YES	YES
Aware of non-game line on state income tax?	41.7%	48.6%
	61.7%	67.8%

<sup>1</sup> Of those responding other than "don't know" or "no opinion." The support, oppose, agree, and disagree headings respectively include the strongly support, strongly oppose, strongly agree and strongly disagree responses. Level of statistical significance: \* = p = < .05, \*\* = p = < .01, \*\*\* = p = < .001.



While over 70% rate the department's activities better than "fair," this rating could be improved. It would be helpful if the department could identify the areas of its functioning which lead almost thirty percent of the respondents to rate the agency's performance as either "fair" or "poor." With more detailed information about this public perception the agency could then direct its efforts to activities which would both assist wildlife and the image of the agency.

The Kansas Department of Wildlife and Parks should pursue more effective public education programs to build upon the strong base of public support revealed in this survey. The public, which strongly supports the protection of threatened and endangered wildlife and plants, appears to be ready for the Department to rally its support.

### Summary

These results from this spring 1991 telephone survey, which was conducted independently for the Kansas Department of Wildlife and Parks, found very strong support among Kansas citizens for both their programs and the protection of both endangered wildlife and their habitat. Five hundred and fifty completed computer assisted telephone interviews were weighted to match the precise regional proportions of Kansas. Demographically the sample was diverse, including the following distribution of respondents: 56% female and 44% male; 95% White, 2% Black, 2% Hispanic, 1% Native American; 28% had college degrees; and they came from rural areas (23%), small towns (17%), small cities (21%), and urban areas (39%). A large majority were aware of Kansas wildlife protection laws (72%), habitat protection laws (79%). Almost all supported having an official state list of endangered wildlife (97%), imposing stiff fines for infractions (96%), and 85% supported buying more lands to protect the wildlife. They showed differential support for different projects which might threaten wildlife and variations in their perceptions of possible threats to wildlife in Kansas. Gender and age, rather than rural/urban effects, affected the respondents answers to many of the interview items including their awareness of the Chickadee Checkoff. While 71% gave Wildlife and Parks programs to manage and protect endangered wildlife "excellent" or "good" ratings, 29% indicated that there was room for improvement. These results should provide a firm basis for further programs to protect the endangered wildlife and their habitats in Kansas.

# THREATENED & ENDANGERED SPECIES ISSUES



Brief Prepared by Kansas Department of Wildlife & Parks

Revised September 1995

# KANSAS THREATENED & ENDANGERED SPECIES CURRENT ISSUES

## Neosho Madtom

This fish is listed as threatened on both state and federal lists.

Critical habitat is designated in the main stem Cottonwood River in Chase County to its confluence with the Neosho River in Lyon County; also the main stems of the Neosho River and Spring River. It is found only in riffles and gravel bars.

The primary activity significantly affected by T&E permitting requirements is gravel dredging. Construction of artificial gravel bars is being studied as a means for offsetting habitat destruction.

In 1991, KDWP issued a moratorium on gravel dredging in the subject streams, based on the agency's obligation to comply with the federal Endangered Species Act.

**Current Issues:** In February 1995, a change in Corps of Engineers rules regarding Clean Water Act administration allowed KDWP to lift the dredging moratorium. Gravel dredging permits are currently being issued by KDWP, with requirements for compliance with COE and USFWS approval and stipulations regarding dredging methods. KDWP has issued five dredging permits for affected streams since February 1995.

## Topeka Shiner

This fish is under petition for federal endangered listing and is currently listed as highest priority for T&E status by the USFWS. The fish is also currently under petition to KDWP for listing under regulations pursuant to the Kansas Nongame and Endangered Species Conservation Act.

Its range is limited to certain Flint Hills streams.

The primary activity of concern is construction of small watershed impoundments. Mitigation for lost habitat is generally not possible.

**Current Issues:** Permits for construction of some watershed dams are not being issued, pending the outcome of the proposed state listing action. KDWP and affected watershed districts are cooperating to continue some dam construction in all three districts and to define the Topeka shiner's occurrence.

A structured technical review resulted in a recommendation for threatened status by the State at the July 1995 Wildlife and Parks Commission meeting. Final commission action on the listing is pending.

## Broadhead Skink

This reptile is found only in mature woodlands and is listed as threatened by KDWP.

Critical habitat is designated in Crawford and Bourbon counties.

Primary activities of concern include mined land reclamation, watershed and reservoir construction, and road and bridge construction.

Mitigation would generally require re-establishment of woodlands.

**Current Issues:** Recently proposed mined land reclamation activities would require mitigation, if executed according to preliminary plans. A water supply lake construction project previously required mitigation for loss of woodland habitat.

## Gray Bat

This mammal is listed as endangered on both state and federal lists.

Critical habitat is designated in Crawford and Cherokee counties. The Pittsburg city storm sewer is a major roost and maternity site. Woodland and surface water foraging habitats are also designated in the area.

Primary activities of concern include mined land reclamation, watershed and reservoir construction, and road and bridge construction.

Mitigation would generally require re-establishment of water bodies and woodlands.

**Current Issues:** The USDA Natural Resources Conservation Service, through its Rural Abandon Mine Program, offers funds to pay for mine reclamation. One such project has been delayed while mitigation requirements are considered. Landowner contracts for the project were signed prior to T&E review. KDWP is working closely with affected landowners.

**SPECIES:** Gray Myotis, *Myotis grisescens*

**STATUS:** Endangered Nationally

Critical habitat has been designated in Crawford and Cherokee counties, including the storm sewer system under the City of Pittsburg (roost & maternity site) and all suitable woodlands and water bodies which provide foraging opportunities for the bat. The gray bat forages for food over water bodies lined with woodlands. A no-net-loss of critical habitat is the goal. When losses occur, habitat replacement is to be in-kind, in quantity and value.

The Endangered status offers the gray bat protection from habitat destruction as well as direct taking of the species. Publicly funded or assisted projects, or projects requiring a permit from another state or federal government agency must meet standards set forth in K.A.R. 115-15-3. For species listed as threatened or endangered, Kansas Department of Wildlife and Parks works with project sponsors to minimize or eliminate impacts to the species in question.

Mined land reclamation, road and bridge construction, and watershed/reservoir development, are a few of the activities which may necessitate an action permit (K.A.R. 115-15-3) from our department for the gray bat.

Mitigation for gray bat critical habitat destroyed by project activities would include re-establishing woodlands and waterbodies similar to the habitat which is lost or enhancing existing habitat to the benefit of the bat. Mitigation is not calculated on an acre for acre basis, but rather on a habitat unit basis. Habitat units are determined by field evaluation of the existing habitat(s) conducted by department biologists or other natural resource professionals. Mitigation is accomplished when replacement habitat units equal or exceed the number of habitat units lost by a project activity.

Environmental Services Section staff has worked with Natural Resource Conservation Service, RAMP officials, local RAMP committee, landowners, U.S. Army Corps of Engineers, and U.S. Fish and Wildlife Service to minimize impacts of mined land reclamation activities on the gray bat. Minimum criteria was developed to allow mined land reclamation to proceed while mitigating for replacement of critical habitat necessary for foraging activities for the gray bat.

**SPECIES:** Neosho Madtom, *Noturus placidus*

**STATUS:** State-Threatened; National-Threatened

Critical habitat has been designated in the main stem Cottonwood river in Chase county to its confluence with the Neosho River in Lyon County, also, the main stems of the Neosho River and the Spring River. Neosho Madtoms are found only in riffles and along sloping gravel bars in relatively clear moderately-large rivers. Deep deposits of loose, 8-16mm diameter rounded limestone gravel in moderate to swift currents seems to be preferred. No-net-loss of critical habitat is the goal.

The Threatened status offers the Neosho Madtom protection from habitat destruction, as well as, direct taking of the species. Publicly funded or assisted projects, or projects requiring a permit from another state or federal government agency must meet standards set forth in K.A.R. 115-15-3. For species listed as threatened or endangered, Kansas Department of Wildlife and Parks works with project sponsors to minimize or eliminate impacts to the species in question.

Gravel mining/harvesting is the main threat, currently, to Neosho Madtom habitat in Kansas, which necessitates an action permit (K.A.R. 115-15-3) from our department for the Neosho Madtom. Habitat replacement is difficult to accomplish, therefore, minimizing impacts to gravel bars and regulation of methods of gravel harvest is emphasized in the permitting process.

In 1991, the Department imposed a moratorium on issuance of state T/E permits for gravel removal below the ordinary high water mark on the mainstems of the Neosho, Cottonwood, and Spring Rivers. The intent of the moratorium was to protect the remaining habitats of the Neosho Madtom. Further, the moratorium was initiated on the basis that the very action of issuing a permit for an activity that may result in a taking of a federally-listed species, would itself be considered a "taking" and place the Department in violation of the federal Endangered Species Act. The Department was legally and morally obligated to obey the law as it was in effect at the time. As of August, 1994, the U.S. Army Corps of Engineers changed their rules to cover gravel excavation under Section 404 of the Clean Water Act. This provides a mechanism by which the U.S. Fish and Wildlife Service can consult with the COE to determine if or how gravel may be taken.

Based on the mechanism for federal consultation, the Department determined that under restricted conditions, issuance of T/E permits could be reinstated on the Neosho and Cottonwood Rivers. Central to the issuance of the Department's permits is the required condition that the state permit is not valid until the applicant has received federal approval, based upon receipt of a 404 permit from the COE. Since the February, 1995, moratorium revocation, the Department has issued 5 T/E permits for gravel harvest.

**SPECIES:** Topeka Shiner, *Notropis topeka*

**STATUS:** State - Species in Need of Conservation (SINC) in Kansas; proposed Threatened.  
National - Category 1

Although the Topeka Shiner is not currently listed as threatened or endangered in Kansas, it requires attention because of a general reduction in its range. It formally occurred in at least twelve counties in central and western Kansas where it has not been found recently. At present, the Topeka Shiner has been petitioned to be added to the endangered species list federally. Kansas is reviewing the species for possible inclusion to the state threatened or endangered list.

Watershed and impoundment development, especially in the headwaters of high quality Kansas streams, represent one concern for the Topeka Shiner in Kansas. Reliant upon clean, gravel bottomed streams for survival, any activity which increases sedimentation and affects normal flows of the stream can be detrimental to the Topeka Shiner population. Impacts to the stream system from dam construction are the result of changes in the physical habitat and an altered flow regime.

Mitigation for Topeka Shiner habitat, destroyed by project activities, is difficult if not impossible to accomplish. A pristine stream is hard to recreate, therefore Department emphasis is directed towards project location and minimizing impacts to the population by reducing negative impacts to the stream.

The Department has initiated surveys for Topeka Shiners in cooperation with three organized watershed districts. Each survey is designed to identify locations important to the species as well as those locations where dams are planned. The goal is to determine sites where dam construction will have little to no impact on Topeka Shiner populations. Ongoing coordination has enabled dam construction to proceed in all three watershed districts. Contacts have been made to initiate surveys in the other three districts known to have populations of Topeka Shiners.

**SPECIES:** Broadhead Skink, *Eumeces laticeps*

**STATUS:** Threatened in Kansas

Critical habitat has been designated in mature woodlands in Crawford and Bourbon counties. Additionally, all suitable woodlands anywhere within the skink's probable range may, upon investigation, also be found to be essential for conservation of the species. Tree cavities and ground litter are important habitat components for this species. A no-net-loss of critical habitat is the goal. When losses occur, habitat replacement is to be in-kind and in value.

The Threatened status offers the Broadhead Skink protection from habitat destruction as well as direct taking of the species. Publicly funded or assisted projects, or projects requiring a permit from another state or federal government agency must meet standards set forth in K.A.R. 115-15-3. For species listed as threatened or endangered, Kansas Department of Wildlife and Parks works with project sponsors to minimize or eliminate impacts to the species in question.

Mined land reclamation, road and bridge construction, and watershed/reservoir development, are a few of the activities which may necessitate an action permit (K.A.R. 115-15-3) from our department for the Broadhead Skink.

Mitigation for Broadhead Skink critical habitat destroyed by project activities would include re-establishing woodlands similar to the habitat which is lost or enhancing existing habitat to the benefit of the skink. Mitigation is not calculated on an acre for acre basis, but rather on a habitat unit basis. Habitat units are determined by field evaluation of the existing habitat(s) conducted by department biologists or other natural resource professionals. Mitigation is accomplished when replacement habitat units equal or exceed the number of habitat units lost due to a project activity.



# FEDERAL ENDANGERED SPECIES ACT

## IMPLICATIONS FOR KANSAS

- The federal Endangered Species Act (ESA) does not allow states to be less restrictive in the protection of federally listed threatened or endangered species. (See 16 U.S.C.A. 1535(f))
- The State of Kansas, including the Department of Wildlife and Parks, must comply with provisions of the ESA regarding the taking of federally listed species, regardless of whether the species is listed by the state. (See 50 CFR 1.6 and 50 CFR 17.21)
- The only federally designated critical T&E habitats in Kansas occur at Cheyenne Bottoms Wildlife Area and Quivira National Wildlife Refuge; all other critical habitats are state designated. (See 50 CFR 17.95 & KS Critical Habitat Designations)
- K.S.A. 32-958 defines state listed T&E species to include federally listed species.
- K.S.A. 32-960 requires the Secretary to give "full consideration" to the inclusion of federally listed species on the state T&E list.
- The Department of Wildlife and Parks received funding for T&E studies under Section 6 of the ESA. This funding is unrelated to fisheries and wildlife restoration funds.

# THE NONGAME & ENDANGERED SPECIES CONSERVATION ACT

## STATUTORY IMPLICATIONS

- Entails 12 statutes; K.S.A. 32-957 through 963; 32-1009 through 1012; and 32-1033 (copies attached).
- K.S.A. 32-958 defines wildlife as "any member of the animal kingdom, including, without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate..." This statute also defines "threatened and endangered" and other key terms.
- K.S.A. 32-960 requires KDWP to determine the threatened or endangered status of any wildlife, regarding the following factors:
  - \* the present or threatened destruction, modification or curtailment of its habitat or range;
  - \* the overutilization of such species for commercial, sporting, scientific, educational or other purposes;
  - \* disease or predation;
  - \* the inadequacy of existing regulatory mechanisms; or
  - \* the presence of other natural or man-made factors affecting its continued existence within the state.
- The act required KDWP to undertake efforts to conserve listed species and increase their populations until they are no longer threatened or endangered.
- The act requires KDWP to add species to the T&E lists if such species need protection under the act.

Implementation of these statutory requirements is referenced in K.A.R. 115-15-1 (list of those species found to be threatened or endangered), and 115-15-3 (addresses the protection of habitats of listed T&E species). These regulations are attached.

# THE NONGAME & ENDANGERED SPECIES CONSERVATION ACT

## REGULATORY IMPLICATIONS

- Pursuant to K.S.A. 32-960 and 32-963, Kansas Administrative Regulation 115-15-1, as amended, establishes state lists of endangered (24 each) and threatened (33 each) species of wildlife occurring within the State of Kansas.
- Pursuant to K.S.A. 32-963, Kansas Administrative Regulation 115-15-3 provides for special permits for certain development projects impacting critical habitats for state-listed threatened or endangered species.
  - \* Activities covered by KDWP permitting authority must be publicly funded or assisted, or be subject to some other state or federal permit.
  - \* KDWP reviews of federally funded, assisted, and permitted projects are initiated through such federal legislation/regulations associated with the National Environmental Policy Act, Federal Water Pollution Control Act, Federal Insecticide, Fungicide, and Rodenticide Act, Fish and Wildlife Coordination Act, and Endangered Species Act.
  - \* KDWP reviews of applicable state/federal funded/assisted highway projects are initiated through a cooperative interagency agreement with KDOT.
  - \* KDWP reviews of state funded/permitted water projects are initiated through the Water Projects Environmental Coordination Act (K.S.A. 82a-325). This act is administered by the Division of Water Resources of the Kansas Dept. of Agriculture. KDWP is one of seven agencies reviewing such state permitted water projects as levees, floodway fringe fills, watershed district general plans, stream obstructions, channel modifications, impoundments, and other projects covered by K.S.A. 82a-301 et seq.
  - \* Activities which do not meet the public funding or state/federal permitting criteria and are otherwise lawful, are not covered by K.A.R. 115-15-3 or any other regulations protecting threatened or endangered species. Lawful activities carried out by private landowners or developers, such as housing or business construction and normal farming and ranching practices are not subject to current T/E protection regulations even if those activities result in an incidental taking of a listed species.

## NONGAME & ENDANGERED SPECIES CONSERVATION ACT

**32-957. Nongame and endangered species conservation act; title.** K.S.A. 1989 Supp. 32-957 through 32-963, 32-1009 through 32-1012 and 32-1033 shall be known and may be cited as the nongame and endangered species conservation act.

**History:** L. 1975, ch. 221, sec. 1; L. 1989, ch. 118, sec. 88; July 1.

Source or prior law:  
32-501.

**32-958. Same; definitions.** As used in the nongame and endangered species conservation act:

(a) "Conserve," "conserving" and "conservation" mean the use of all methods and procedures for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such numbers. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, regulated taking and, when and where appropriate, the periodic or total protection of species or populations of wildlife. With respect to threatened species and endangered species, the terms mean the use of all methods and procedures, including but not limited to those described above, which are necessary to bring any threatened or endangered species to the point at which the methods, procedures and measures provided for such species pursuant to the nongame and endangered species conservation act are no longer necessary.

(b) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

(c) "Endangered species" means any species of wildlife whose continued existence as a viable component of the state's wild fauna is determined to be in jeopardy. That term also includes any species of wildlife determined to be an endangered species pursuant to Pub. L. No. 93-205 (December 28, 1973), the endangered species act of 1973, and amendments thereto.

(d) "Nongame species" means any species of wildlife not legally classified a game species, furbearer, threatened species or an endangered species by statute or by rule and regulation adopted pursuant to statute.

(e) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

(f) "Threatened species" means any species of wildlife which appears likely, within the foreseeable future, to become an endangered species. That term also includes any species of wildlife determined to be a threatened species pursuant to Pub. L. No. 93-205 (December 28, 1973), the endangered species act of 1973, and amendments thereto.

(g) "Wildlife" means any member of the animal kingdom, including, without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg or offspring thereof, or the dead body or parts thereof.

**History:** L. 1975, ch. 221, sec. 2; L. 1989, ch. 118, sec. 89; July 1.

Source or prior law:  
32-502.

**32-959. Same; nongame species.** (a) The secretary shall conduct investigations on nongame species in order to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data to determine conservation measures necessary for their continued ability to sustain themselves successfully. On the basis of such information and determinations, the secretary shall adopt rules and regulations pursuant to K.S.A. 1989 Supp. 32-963 which contain a list of the nongame species deemed by the secretary to be in need of conservation and shall develop conservation programs pursuant to K.S.A. 1989 Supp. 32-962 which are designed to insure the continued ability of such nongame species to perpetuate themselves successfully. The secretary shall conduct ongoing investigations of nongame species.

(b) The secretary shall adopt such rules and regulations pursuant to K.S.A. 1989 Supp. 32-963 which establish limitations relating to taking, possessing, transporting, exporting, processing, selling, offering for sale or shipping as are deemed necessary by the secretary to conserve such nongame species.

**History:** L. 1975, ch. 221, sec. 3; L. 1989, ch. 118, sec. 90; July 1.

Source or prior law:  
32-503.

**32-960. Same; threatened or endangered species.** (a) The secretary shall determine whether any species of wildlife indigenous to the state is a threatened species or an endangered species in this state 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.

(b) (1) The secretary shall make the determinations required by subsection (a) 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.

(2) In determining whether any species of wildlife is a threatened species in this state, the secretary shall 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.

(3) Species of wildlife which occur in this state and which have been determined to be threatened species or endangered species pursuant to Pub. L. No. 93-205 (December 28, 1973), the endangered species act of 1973, and amendments thereto, shall receive full consideration by the secretary to determine whether each such species is a threatened or an endangered species in this state.

(c) (1) The secretary shall adopt rules and regulations pursuant to K.S.A. 1989 Supp. 32-963 which contain a list of all species of wildlife indigenous to this state which have been determined to be endangered species pursuant to this section and a list of all such species pursuant to this section. Each list shall refer to the species contained therein by their scientific and common names, if any, and shall specify with respect to each such species the portion of the range of such species within this state in which it is threatened or endangered.

(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) allowed at least 30 days following publication of such public notice for comment from the public and other interested parties, except that in cases where the secretary determines that an emergency situation exists, the secretary may add species to such lists provided the secretary has published a public notice that such an emergency situation exists together with a summary of facts which support such determination.

(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.

**History:** L. 1975, ch. 221, sec. 4; L. 1989, ch. 118, sec. 91; July 1.

Source or prior law:  
32-504.

**32-961. Same; special permits.** (a) Whenever any species is listed as a threatened species pursuant to K.S.A. 1989 Supp. 32-960, the secretary shall adopt such rules and regulations pursuant to K.S.A. 1989 Supp. 32-963 as the secretary deems necessary and advisable to provide for the conservation of such species. By rules and regulations adopted pursuant to K.S.A. 1989 Supp. 32-963 the secretary may prohibit with respect to any threatened species included in a list adopted pursuant to K.S.A. 1989 Supp. 32-960 any act which is prohibited under subsection (b) with respect to any endangered species included in a list adopted pursuant to K.S.A. 1989 Supp. 32-960.

(b) Except as otherwise specifically provided by this section or rules and regulations adopted pursuant to this section, a special permit is required for any person subject to the jurisdiction of this state to:

(1) Export from this state any endangered species included in a list adopted pursuant to K.S.A. 1989 Supp. 32-960;

(2) possess, process, sell, offer for sale, deliver, carry, transport or ship, by any means whatsoever, any such endangered species; or

(3) act in a manner contrary to any rule and regulation adopted by the secretary pursuant to authority provided by K.S.A. 1989 Supp. 32-957 through 32-963 and 32-1009 through 32-1012, which pertains to such endangered species or to any threatened species of wildlife included in a list adopted pursuant to K.S.A. 1989 Supp. 32-960.

(c) Subsection (b) does not apply to any endangered species listed pursuant to K.S.A. 1989 Supp. 32-960 and any species of wildlife determined to be an endangered species pursuant to Pub. L. 93-205 (December 28, 1973), the endangered species act of 1973, and amendments thereto, entering the state from another state or from a point outside the territorial limits of the United States and being transported to a point within or beyond the state in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(d) The secretary may issue special permits to authorize, under such terms and conditions as the secretary prescribes, any act described in subsection (b) or any act which is otherwise prohibited by rules and regulations adopted pursuant to subsection (a), for scientific purposes or to enhance the propagation or survival of the affected species. Application for such permit shall be made to the secretary or the secretary's designee and shall be accompanied by the fee prescribed pursuant to K.S.A. 1989 Supp. 32-988. The secretary shall maintain a list of permits under this subsection. Where such applications have been approved and special permits have been issued, the secretary shall maintain a list of such permits, including therein the name and address of the permittee and the terms and conditions prescribed for each such permit. The secretary shall keep such lists current and shall file copies thereof, along with any additions or amendments, with the secretary of the interior of the federal government.

(e) Threatened or endangered species included in a list adopted pursuant to K.S.A. 1989 Supp. 32-960 may be captured or destroyed without a permit by any person in an emergency situation involving an immediate and demonstrable threat to human life.

**History:** L. 1975, ch. 221, sec. 5; L. 1989, ch. 118, sec. 92; July 1.

Source or prior law:  
32-505.

**32-962. Same; programs for conservation.** (a) The secretary shall establish such programs, including acquisition of land or aquatic habitat, as are deemed necessary for the conservation of nongame, threatened and endangered species. The secretary shall utilize all authority vested in the secretary by the laws of this state to carry out the purposes of this section with the exception that the secretary shall not utilize the power of eminent domain to carry out such programs unless a specific authorization and appropriation is made therefor by the legislature.

(b) In carrying out programs authorized by this section, the secretary may enter into agreements with federal agencies, other states, other state agencies, political subdivisions of this state or with private persons for administration and management of any area established under this section or utilized for conservation of nongame, threatened or endangered species.

(c) The governor shall review other programs administered by the governor and utilize such programs in furtherance of the purposes of the nongame and endangered species conservation act. All state agencies shall cooperate with the secretary in furtherance of the conservation of nongame, threatened and endangered species.

**History:** L. 1975, ch. 221, sec. 6; L. 1989, ch. 118, sec. 93; July 1.

Source or prior law:  
32-506.

**32-963. Rules and regulations.** The secretary may adopt, in accordance with K.S.A. 1989 Supp. 32-805 and amendments thereto, such rules and regulations that the secretary deems necessary to implement and administer the provisions of the nongame and endangered species conservation act.

**History:** L. 1975, ch. 221, sec. 7; L. 1988, ch. 366, sec. 7; L. 1989, ch. 118, sec. 94; July 1.

Source or prior law:  
32-507.

**32-1009. Nongame species.** Except as provided in rules and regulations adopted pursuant to K.S.A. 1989 Supp. 32-963, it shall be unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship nongame species deemed by the secretary to be in need of conservation pursuant to K.S.A. 1989 Supp. 32-959. Subject to the same exception, it shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment nongame species deemed by the secretary to be in need of conservation pursuant to K.S.A. 1989 Supp. 32-959.

**History:** L. 1989, ch. 118, sec. 120; July 1.

Source or prior law:  
32-503.

**32-1010. Threatened species.** Except as otherwise specifically provided in K.S.A. 1989 Supp. 32-961 or in a special permit issued under K.S.A. 1989 Supp. 32-961 or in any rules and regulations adopted pursuant to K.S.A. 1989 Supp. 32-961, the intentional taking of any threatened species indigenous to this state, which has been determined by the secretary to be a threatened species in this state and is included in a list of such threatened species adopted pursuant to K.S.A. 1989 Supp. 32-960, shall constitute unlawful taking of a threatened species.

**History:** L. 1975, ch. 221, sec. 8; L. 1989, ch. 118, sec. 121; July 1.

Source or prior law:  
32-508.

**32-1011. Endangered species.** Except as otherwise specifically provided in K.S.A. 1989 Supp. 32-961 or in a special permit issued under K.S.A. 1989 Supp. 32-961 or in any rule and regulation adopted pursuant to K.S.A. 1989 Supp. 32-961, the intentional taking of any endangered species indigenous to this state, which has been determined by the secretary to be an endangered species in this state and is included in a list of such endangered species adopted pursuant to K.S.A. 1989 Supp. 32-960, shall constitute unlawful taking of an endangered species.

**History:** L. 1975, ch. 221, sec. 9; L. 1985, ch. 132, sec. 7; L. 1989, ch. 118, sec. 122; July 1.

Source or prior law:  
32-509.

**32-1012. Application of prohibitions regarding nongame or endangered species.** (a) Nothing in the nongame and endangered species conservation act shall be construed to:

(1) Apply retroactively to any occurrence prior to July 1, 1975;

(2) prohibit importation into the state of wildlife which may be lawfully imported into the United States or lawfully taken and removed from another state; or

(3) prohibit entry into the state or possession, transportation, exportation, processing, sale or offer for sale or shipment of any species of wildlife which is deemed to be threatened or endangered in this state but not in the state where originally taken, if the person engaging therein demonstrates by circumstantial evidence that such species of wildlife was lawfully taken and lawfully removed from such state.

(b) The provisions of this section shall not be construed to permit the possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of any species of wildlife determined to be a threatened species or endangered species pursuant to Pub. L. No. 93-205 (December 28, 1973), the endangered species act of 1973, and acts amendatory thereof except as permitted in K.S.A. 1989 Supp. 32-961.

**History:** L. 1975, ch. 221, sec. 10; L. 1989, ch. 118, sec. 123; July 1.

Source or prior law:  
32-510.

**32-1031. Violations, generally.** Unless otherwise provided by law or rules and regulations of the secretary, violation of any provision of the wildlife and parks laws of this state or rules and regulations adopted thereunder is a class C misdemeanor.

**History:** L. 1989, ch. 118, sec. 127; July 1.

Source or prior law:

32-135a, 32-136, 32-142a, 32-146, 32-154, 32-154a, 32-156b, 32-158b, 32-165, 32-172c, 32-176, 32-190, 32-191, 32-1-110, 32-226, 32-503, 32-508, 32-602, 74-4517.

**32-1033. Unlawful taking of an endangered species, as defined in K.S.A. 1989 Supp. 32-1011, is a class A misdemeanor.**

**History:** L. 1989, ch. 118, sec. 129; July 1.

Source or prior law:  
32-509.



# Kansas Department of Wildlife & Parks Regulation

## K.A.R. 115-15-1. THREATENED AND ENDANGERED SPECIES; General Provisions.

### (a) Endangered species in Kansas:

#### (1) Invertebrates

American burying beetle, *Nicrophorus americanus* (Oliver)  
Bleedingtooth mussel, *Venustachoncha pleasi* (Marsh, 1891)  
Elktoe mussel, *Alasmidonta marginata* (Say, 1818)  
Flat floater mussel, *Anodonta suborbiculata* Say, 1831  
Neosho mucket mussel, *Lampsilis rafinesqueana* (Frierson, 1927)  
Rabbitsfoot mussel, *Quadrula cylindrica cylindrica* (Say, 1817)  
Scott riffle beetle, *Optioservus phaeus* (White)  
Slender walker snail, *Pomatiopsis lapidaria* (Say, 1817)  
Western fanshell mussel, *Cyprogenia aberti* (Conrad, 1850)

#### (2) Fish

Arkansas River shiner, *Notropis girardi* Hubbs and Ortenburger  
Pallid sturgeon, *Scaphirhynchus albus* (Forbes and Richardson)  
Sicklefin chub, *Macrhybopsis (Hybopsis) meeki* Jordan and Evermann  
Speckled chub, *Macrhybopsis aestivalis tetranemus* (Gilbert)

#### (3) Amphibians

Cave salamander, *Eurycea lucifuga* Rafinesque  
Graybelly salamander, *Eurycea multiplicata griseogaster* Moore and Hughes  
Grotto salamander, *Typhlotriton spelaeus* Stejneger

#### (4) Birds

Bald eagle, *Haliaeetus leucocephalus* (Linnaeus)  
Black-capped vireo, *Vireo atricapillus* Woodhouse  
Eskimo curlew, *Numenius borealis* (Forster)  
Least tern, *Sterna antillarum* (Lesson)  
Peregrine falcon, *Falco peregrinus* Tunstall  
Whooping crane, *Grus americana* (Linnaeus)

#### (5) Mammals

Black-footed ferret, *Mustela nigripes* (Audubon and Bachman)  
Gray myotis, *Myotis grisescens* A. H. Howell

Threatened species in Kansas:

(1) Invertebrates

Butterfly mussel, *Ellipsaria lineolata* (Rafinesque, 1820)  
Fluted-shell mussel, *Lasmigona costata* (Rafinesque, 1820)  
Ouachita kidneyshell mussel, *Ptychobranchus occidentalis* (Conrad, 836)  
Rock pocketbook mussel, *Arcidens confragosus* (Say, 1829)

(2) Fish

Arkansas darter, *Etheostoma cragini* Gilbert  
Blackside darter, *Percina maculata* (Girard)  
Chestnut lamprey, *Ichthyomyzon castaneus* Girard  
Flathead chub, *Platygobio (Hybopsis) gracilis* (Richardson)  
Hornyhead chub, *Nocomis biguttatus* (Kirtland)  
Neosho madtom, *Noturus placidus* Taylor  
Redspot chub, *Nocomis asper* Lachner and Jenkins  
Silverband shiner, *Notropis shumardi* (Girard)  
Sturgeon chub, *Macrhybopsis gelida* (Girard)  
Western silvery minnow, *Hybognathus argyritis* (Girard)

(3) Amphibians

Central newt, *Notophthalmus viridescens louisianensis* (Wolterstorff)  
Dark-sided salamander, *Eurycea longicauda melanopleura* (Cope)  
Eastern narrowmouth toad, *Gastrophryne carolinensis* (Holbrook)  
Green frog, *Rana clamitans melanota* (Rafinesque)  
Northern spring peeper, *Pseudacris crucifer crucifer* (Wied)  
Strecker's chorus frog, *Pseudacris streckeri streckeri* Wright and Wright  
Western green toad, *Bufo debilis insidiosus* Girard

(4) Reptiles

Broadhead skink, *Eumeces laticeps* (Schneider)  
Checkered garter snake, *Thamnophis marcianus marcianus* (Baird and Girard)  
Common map turtle, *Graptemys geographica* (Le Sueur)  
New Mexico blind snake, *Leptotyphlops dulcis dissectus* (Cope)  
Northern redbelly snake, *Storeria occipitomaculata occipitomaculata* (Storer)  
Texas longnose snake, *Rhinocheilus lecontei tessellatus* Garman  
Texas night snake, *Hypsiglena torquata jani* (Duges)  
Western earth snake, *Virginia valeriae elegans* (Kennicott)

(5) Birds

Piping plover, *Charadrius melodus* Ord  
Snowy plover, *Charadrius alexandrinus* Linnaeus  
White-faced ibis, *Plegadis chihi* (Vieillot)

(6) Mammals

Eastern spotted skunk, *Spilogale putorius interrupta* (Rafinesque)

- (c) Any 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 prior to the effective date of this regulation and not prohibited by previous regulation of the department or national listings may be retained in possession if:
  - (1) an affidavit to that effect has been filed with and approved by the secretary prior to January 1, 1990 that states the circumstances of how the species came into possession; or
  - (2) possession of the animal has been previously approved by the department. (Authorized by 1989 HB 2005, sections 91 and 94; implementing 1989 HB 2005, sections 91, 92, 94, 121, and 122; effective October 30, 1989; amended August 31, 1992.)

# Kansas Department of Wildlife & Parks Regulation

## K.A.R. 115-15-3. THREATENED AND ENDANGERED WILDLIFE; Special Permits.

### (a) Threatened and endangered wildlife; special permits.

- (1) "action" means an activity which results in physical alteration of a listed species' (critical)\* habitat, physical disturbance of listed species, or destruction of individuals of a listed species;
- (2) "critical habitat" means:
  - (A) specific areas documented as currently providing essential physical and biological features and supporting a self-sustaining population of a listed species; or
  - (B) specific areas not documented as currently supporting a listed species, but determined essential for the listed species by the secretary;
- (3) "habitat" means the abode where a listed species is generally found and where all essentials for survival and growth of the listed species are present;
- (4) "listed species" means those species listed in K.A.R. 115-15-1;
- (5) "publicly funded" means any action of which planning and implementation are wholly funded with monies from federal, state or local units of government; and
- (6) "state or federally assisted" means any action receiving technical assistance or partial funding from a state or federal government agency.

### (b) Any person sponsoring or responsible for a publicly funded action, a state or federally assisted action, or an action requiring a permit from another state or federal government agency (which impacts a listed species or critical habitat of a listed species)\* shall apply to the secretary for an action permit on forms provided by the department. An action permit application shall be submitted not less than 90 days prior to the proposed starting date of the planned action and shall include the following information:

- (1) location and description of the proposed action and, if required, detailed plans of the proposed action;
- (2) an assessment of potential impacts resulting from the proposed action;
- (3) proposed measures incorporated into the action plan to protect listed species or critical habitat of listed species; and
- (4) other information required by the secretary.

- ) Any person sponsoring or responsible for an action not covered under subsection (b) which will destroy individuals of any listed species shall apply to the secretary for an action permit on forms provided by the department. An action permit application shall be submitted not less than 30 days prior to the proposed starting date of the planned action and shall include the following information:
- (1) location and description of the proposed action and, if required, detailed plans of the proposed action;
  - (2) an assessment of potential impacts resulting from the proposed action;
  - (3) proposed measures incorporated into the action plan to protect listed species or critical habitat of listed species; and
  - (4) other information required by the secretary.
- (d) An action permit required under subsection (b) or (c) shall be issued by the secretary pursuant to a timely and complete application if the proposed action complies with the following conditions:
- (1) sufficient mitigating or compensating measures to assure protection of either critical habitats, or listed species, or both as conditions require area incorporated into the proposed action;
  - (2) all federal laws protecting listed species.
- (e) The secretary may provide for a public hearing on the proposed action prior to issuance of an action permit.
- (f) In addition to other penalties prescribed by law, an action permit may be revoked by the secretary for:
- (1) violation of conditions established by the permit;
  - (2) significant deviation of an action from the proposed action; or
  - (3) failure to perform or initiate performance of an action within one year after the proposed starting date unless otherwise specified in the permit or an extension has been authorized in writing by the secretary after a determination of no significant change in the proposed action. (Authorized by 1989 HB 2005, sections 92 and 94; implementing 1989 HB 2005, sections 92, 93, 94, 121 and 122; effective October 30, 1989.)

\*These parenthetical entries are provided to clarify the intent of the regulation wording.

# KANSAS DEPARTMENT OF WILDLIFE & PARKS ENVIRONMENTAL REVIEW AND THREATENED & ENDANGERED PERMITTING SUMMARY

1981 thru August 1, 1995

- From 1989 to present, the Department reviewed 5,566 development projects. Of these, only 192 (3.4%) required project sponsors to obtain T&E permits (1989 was the first year of computer tracking to enumerate total projects reviewed). From 1981 to present, the Department has issued a total of 291 T&E permits.
- Since 1981, the Environmental Services Section has required 10 T&E permits (3.4% of the total projects reviewed) to cover its own activities. Recent examples include: Cheyenne Bottoms renovation and impacts to least tern, piping plover; Marais des Cygnes levee and water control structure repair and impacts to flat floater mussel; and Crawford State Fishing Lake Dam repair and impacts to broadhead skink.
- Only 31 T&E permits (0.6% of the total projects reviewed) have required additional mitigation measures which had the potential to increase the costs of the project. The other 161 permits required either routine water quality protection and post-construction land revegetation measures or specific measures by the Department, but no additional land or water acquisition.
- Road and bridge projects constitute approximately half of the total number of required T&E permits.
- Of the 291 permits issued, 6 (2.1%) were projects that directly affected agricultural activities (4 permits for streambank stabilization to protect cropland, 1 permit for turkey feedlot siting, and 1 permit for channel alteration to divert flow from cropland).

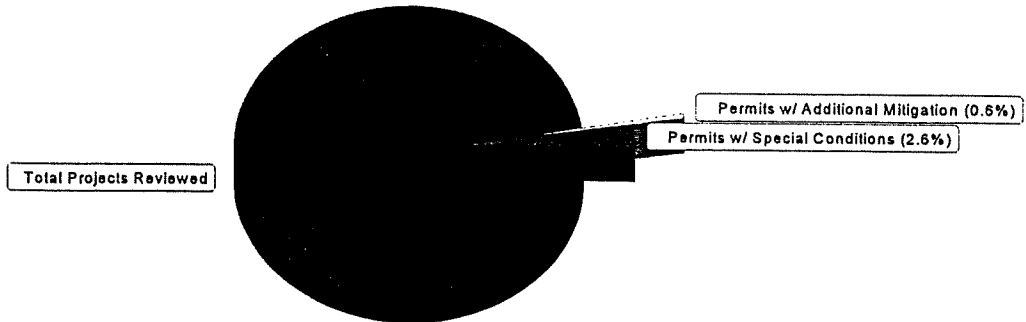
None of these six permits required mitigation measures which would have increased the costs of the project.

- Of the 291 permits issued, 12 (4.1%) were for watershed or flood control dams. As one portion of the benefits derived from these structures is reduction of flood damage to croplands, there may be an indirect effect on agricultural activities.

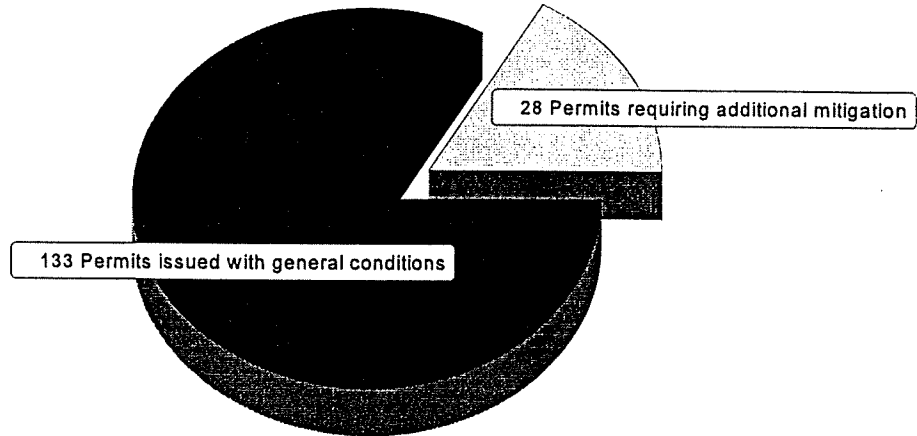
Of these 12 T&E permits, only 3 required additional mitigation measures which may have increased the cost of the project.

# 1989 - 1994 Projects Reviewed

% of Conditioned Permits Issued

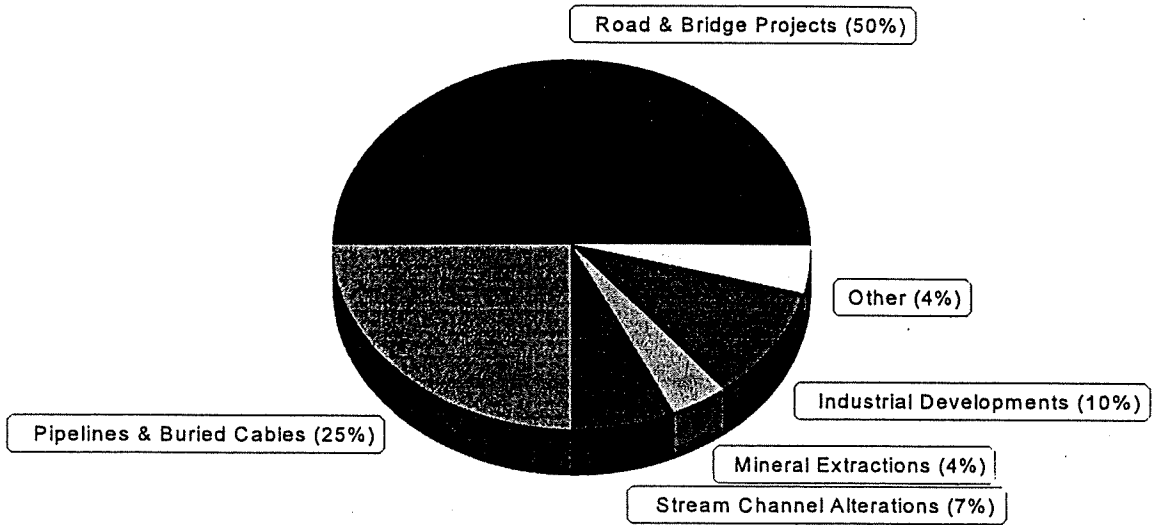


## T/E Permits Issued from 1989 - 1994



# Percentage of T/E Permits Issued

By Type in 1994





## Calendar Year T/E Permit Activity as of 12-31-94

<u>Calendar Year</u>	<u>Projects Reviewed</u>	<u>Permits Issued</u>	<u>Project Completed</u>	<u>Project Abandoned or Canceled</u>	<u>Still Active</u>
1981	*	4	1	3	0
1982	*	9	7	2	0
1983	*	9	9	0	0
1984	*	11	11	0	0
1985	*	12	11	1	0
1986	*	10	9	1	0
1987	*	19	15	3	1
1988	*	25	23	0	2
1989	748	26	20	4	2
1990	827	24	8	0	16
1991	912	32	12	1	19
1992	865	25	8	0	17
1993	840	26	3	0	23
<u>1994</u>	<u>882</u>	<u>28</u>	<u>2</u>	<u>2</u>	<u>24</u>
<u>Totals</u>	<u>5074</u>	<u>260</u>	<u>139</u>	<u>17</u>	<u>104</u>

\* 1989 was first year all projects reviewed were tracked.

## T/E Permit Cumulative Totals

(Totals as of Dec. 31 of cited year)

<u>Year</u>	<u>Active</u>	<u>Inactive</u>	<u>Special Conditions</u>	<u>Additional Mitigations</u>	<u>Total</u>
1981	3	1	4	0	4
1982	12	1	9	0	13
1983	16	6	9	0	22
1984	20	14	10	1	34
1985	22	23	12	0	45
1986	23	33	10	0	56
1987	28	48	19	0	76
1988	39	61	22	3	100
1989	61	68	19	7	129
1990	58	94	15	9	152
1991	86	95	27	5	181
1992	95	111	22	3	206
* 1993	80	152	24	2	232
* 1994	104	156	26	2	260

\*Both years compiled in 1994

# Listing History of Kansas Threatened and Endangered Species

- 1973** "Rare, Endangered and Extirpated Species in Kansas" lists are published in Transactions of Kansas Academy of Science
- 1975** Kansas Nongame and Endangered Species Conservation Act passed
- 1978** Twenty-six species listed as threatened and endangered from a total of 137 candidates
- 1980** Lists were amended to 24 species
- 1985** Five-year review initiated resulting in proposed listing of 45 species from a total of 183 candidate species
- 1987** Forty-five species officially recognized on T&E lists
- 1990** An additional federal species occurring in Kansas is added to list resulting in 46 species
- 1991** Five-year review of all lists was initiated resulting in 49 new petitions for up-listing or down-listing species
- 1992** A final 56 species were approved on the T&E list
- 1993** One additional federal species was added to the state list resulting in the current total of 57 species

## Recent Federal Species Issues

**Swift fox**--petitioned for federal listing in 1994. KDWP objected based on research of species in western Kansas. Was recommended but precluded for listing.

**Black tailed prairie dog**--petitioned as a Category II species in 1994. KDWP objected for variety of reasons and it was not recommended.

**Bald eagle and Peregrine falcon**--petitioned for downlisting. Supported by KDWP and will be under state review for downlisting as well.

**Neosho madtom**--listed federally in 1990 pre-empting some of KDWP's ability to manage species.

Other species petitioned for federal listing in recent years which occur in Kansas: Pallid sturgeon (was adopted), Paddlefish (not listed), Arkansas river shiner (under review).

# Public and Legal Support for Endangered Species in Kansas

Excerpts from "Survey of Kansans' attitudes regarding threatened and endangered wildlife", Robert H. Poresky, College of Human Ecology, Kansas State University, 1991:

96.6% of Kansans support having list of state endangered species

97.6% of Kansans support critical habitat being protected

85% of Kansans support extending protection to endangered plants

"There is a broad base of support among Kansas residents for protecting threatened and endangered wildlife..."

**Received top priority for future programs of the Chickadee Checkoff from:**

"Attitudes towards nongame wildlife: A survey of Kansas Residents", Michael J. Broadway, Wichita State University, 1985

**National Endangered Species Act of 1973 expresses the intent of Congress in this excerpt:**

Endangered species of fish, wildlife, and plants "are of esthetic, ecological, educational, historical, recreational, and scientific value to the nation and its people."

**Kansas nongame and endangered species conservation act (K.S.A. 32-960) excerpt:**

"The secretary shall determine whether any species of wildlife indigenous to the state is a threatened species or an endangered species in this state because of any of the following factors: (1) The present or threatened destruction, modification or curtailment of its habitat or range; ..."

**General support and recommendations for endangered species conservation efforts from:**

"Endangered and threatened wildlife of Kansas, A manual for Kansas 4-H'ers, Kansas Extension Service, Kansas State University, 1982

"Rare, Endangered and Extirpated Species in Kansas" Series I-IV, Soil Conservation and the Conservation Committee of the Kansas Academy of Science, 1974

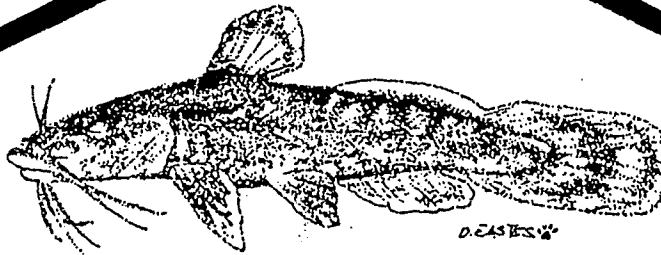
EXECUTIVE SUMMARY

Final Report

of the

KANSAS DEPARTMENT OF WILDLIFE AND PARKS

"SURVEY OF KANSANS' ATTITUDES REGARDING  
THREATENED AND ENDANGERED WILDLIFE"



Prepared by  
Robert H. Poresky, Ph.D.  
Associate Professor  
Human Development and Family Studies  
College of Human Ecology  
Kansas State University  
Manhattan, Kansas  
July, 1991



OPERATIONS OFFICE  
 RR 2, Box 54A  
 Pratt, Kansas 67124  
 316-672-5911  
*Equal Opportunity Employer*

July, 1991

Dear Reader,

The protection of threatened and endangered species is an important mission of the Kansas Department of Wildlife and Parks. The Kansas Nongame and Endangered Species Act, established in 1975, was designed to protect these vulnerable animals. Since 1981, our Environmental Services Section, which oversees projects impacting these species, has issued 149 permits addressing mitigation and protection needs.

During 1990, we saw heightened public awareness concerning sensitive species and our ability to protect them. This was the case in southeast Kansas where planned development of water supply and watershed lakes, along with river gravel dredging, affected some of these animals. Partially as a result of this concern, the Department conducted this telephone survey to assess the knowledge and attitudes of Kansans about threatened and endangered species.

To maximize objectivity, we contracted with an outside and impartial interest, Kansas State University, which has both the required experience and expertise. Additionally, advice was sought from Responsive Management, a national group with specific expertise in telephone survey techniques for wildlife management agencies. The results come from interviews with adults across the state selected totally at random.

Protecting our state's natural resources depends on public attitudes as much as biological information. This survey provided some important information about these feelings. There were also some rather alarming opinions revealed about peoples' perceptions of activities they think endanger wildlife.

In summary, the respondents gave a strong mandate for protecting threatened and endangered species in Kansas, even including those kinds which may be rare here but more abundant in other states.

Please contact us if you would like more copies of this survey or have any questions. Thank you for your interest in Kansas wildlife.

Sincerely,

Jack Lacey, Secretary,  
 Kansas Department of Wildlife and Parks

## Summary<sup>1</sup>

Threatened and endangered species conservation is an important mission of the Kansas Department of Wildlife and Parks. Public opinion is a key factor in the success of this process. To gain a sharper perspective of the public's knowledge and interest in this mission, the Department sponsored a telephone survey of Kansas adults in the spring of 1991. This summary highlights results from that survey of 550 Kansans who completed the 10-15 minute interview(see attached list of questions). The sample was adjusted to generate a weighted sample of 500 respondents which reflected the proportion of the 1990 Kansas population residing in each of the Kansas Department of Wildlife and Parks regions. Telephone numbers were selected at random from lists supplied by the various telephone companies of Kansas. The computer-assisted telephone interviewing system questionnaire was developed by Mary Mae Hardt, Ken Brunson and Eric Schenck from the Kansas Department of Wildlife and Parks and Ted Cable and Robert H. Poresky from Kansas State University. Responsive Management, a national survey group experienced with methods of computer-assisted telephone interviewing, also provided review and endorsement of the questionnaire. The Department of Human Development and Family Studies in the College of Human Ecology at Kansas State University provided the Computer Assisted Telephone Interviewing system, interviewers, and the analyses contained in this report.

The average age of the respondents was 42.90 years (SD = 16.10 years), 56% were female and 44% were male, 94.5% were White, 2.3% were Black, 1.5% were Hispanic, 1.2% were Native American, and 0.6% were of Asian or Pacific origin. Their average Kansas residency was 33.4 years (SD = 19.61 years). The respondents came from rural areas (23.4%), small towns (17.0%), small cities (20.6%), and urban areas (39.1%). Twenty-seven-and-a-half percent had college degrees, 34.7% had some college, 28.2% graduated from high school, and only 9.6% had no high school diploma. Their average income was in the middle of the \$20,000 to \$30,000 range.

The Kansas respondents showed strong awareness of and support for the Department of Wildlife and Parks' protection of threatened and endangered wildlife in Kansas. This awareness and support is reflected in the following results:

Awareness of Kansas wildlife protection laws . . . . .	72.1%
Awareness of Kansas habitat protection laws . . . . .	78.7%
Support for Kansas list of endangered wildlife . . . . .	96.6%
Support to buy more land to protect wildlife . . . . .	84.9%
Support to restrict development which endangers wildlife .	89.1%

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<sup>1</sup> A full report describing this survey and its results may be obtained by contacting Chickadee Checkoff, Kansas Department of Wildlife and Parks, Box 54a, Rt. 2, Pratt, Kansas 67124. Please specify if you also wish to receive copies of Appendix A (Responsive Management, Inc. letter of endorsement), the 12 page survey instrument (Appendix B) and/or the 112 page cross-tabulation and statistical analysis (Appendix C).

The respondents also saw a need to balance considerations for wildlife with the more important needs of people which is reflected in the diminishing support for and increasing opposition to the following activities:

- Support for constructing a drinking water supply dam which would endanger a kind of wildlife . . . . . 54.6% (opposed by 45.4%)
- Support for diverting stream water for irrigation which would endanger a kind of wildlife . . . . . 32.6% (opposed by 67.5%)
- Support for constructing a recreation lake which would endanger a kind of wildlife . . . . . 11.7% (opposed by 88.3%)
- Support for taking road gravel from a stream which would endanger a kind of wildlife . . . . . 10.2% (opposed by 89.8%)

While 25% of the sample did not want to pay more on their water bill to protect endangered species, the remaining 75% said they were willing to pay an average of \$6.72 a month in increased water supply costs to protect endangered wildlife.

The potential threats to wildlife which were identified by 80% or more of the respondents included chemical and industrial pollution (95.6%), oil field development (81.6%), agricultural chemicals (94.9%), and urban growth (87.7%). Legal trapping, hunting, and fishing were seen as endangering Kansas wildlife by 77.1%, 64.2%, and 52.8% of the respondents respectively.

Eighty-five percent of the respondents supported an extension of the protection of wildlife (animals) to plants as well as the protection of rare Kansas wildlife which may be abundant in other states (86.0%). The Kansas respondents gave very strong support (97.6%) to the Department's identification and protection of habitat critical to the existence of endangered wildlife.

Seventy-one percent of the respondents rated the Kansas Department of Wildlife and Parks programs to protect endangered wildlife as either good or excellent, but 28.9% indicated that there was room for improvement. Less than half (47.2%) said they had heard of the Nongame Wildlife Improvement Program (the Chickadee Checkoff Program), while 66.6% were aware of the line on the state income tax form to contribute to the program.

Few rural/urban or regional differences were found. The respondents in the southeast part of Kansas, KDWP Region 5, provided responses similar to those in the rest of the state. Female and younger respondents appeared to be more supportive of wildlife and habitat protection than male and older respondents. The results indicated very strong public support for the protection of Kansas' threatened and endangered wildlife and their habitats.

## Survey Questions

There are federal laws protecting some endangered wildlife. Are you aware that there are also state laws which protect additional wildlife which are threatened and endangered in Kansas?

Are you aware that there are state laws protecting the habitats of endangered wildlife -- the places where they live?

We would like to know if you Strongly Support, Support, Oppose, or Strongly Oppose the following items:

- How do you feel about having an official state list of threatened and endangered wildlife?
- How do you feel about the state imposing stiff fines on persons who harm endangered wildlife or their habitats?
- How do you feel about the state buying more lands which are important to the continued existence of some of these wildlife?
- How do you feel about the state restricting development of areas which are important to the continued existence of some of these endangered wildlife?
- How do you feel about the state restricting lake construction in areas important to the existence of endangered wildlife?
- How do you feel about constructing a dam to increase drinking water supplies if it endangered a kind of wildlife?
- How do you feel about straightening and ditching a stream for highway construction if it endangered a kind of wildlife?
- How do you feel about diverting stream water to irrigate agricultural crops if it endangered a kind of wildlife?
- How do you feel about damming water to make a lake for recreation uses if it endangered a kind of wildlife?
- How do you feel about taking road gravel from a stream if it endangered a kind of wildlife?

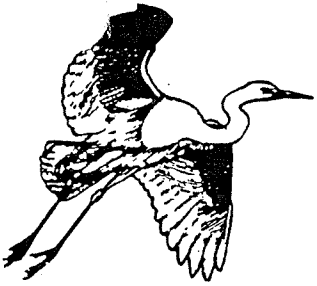
Please tell me if you Strongly Agree, Agree, Disagree or Strongly Disagree with each statement:

- Some Kansas wildlife are endangered by chemical and industrial pollution.
- Some Kansas wildlife are endangered by legal hunting.
- Some Kansas wildlife are endangered by legal fishing.
- Some Kansas wildlife are endangered by legal trapping.
- Some Kansas wildlife are endangered by oil field development.
- Some Kansas wildlife are endangered by converting land to agricultural crop production.
- Some Kansas wildlife are endangered by agricultural chemicals.
- Some Kansas wildlife are endangered by urban growth.
- Wildlife which are endangered in Kansas, but abundant in other states, should be protected.
- Currently only threatened and endangered wildlife are protected in Kansas; threatened and endangered plants should also be protected.
- The Kansas Department of Wildlife and Parks should continue to identify and protect habitat critical to the existence of endangered wildlife.
- The protection of endangered wildlife can result in increased construction costs to build water supply-lakes. How much more would you be willing to pay on your MONTHLY water bill to protect endangered wildlife?
- Have you heard of the Kansas Wildlife and Parks' Nongame Wildlife Improvement Program, sometimes called the Chickadee Checkoff Program?
- Are you aware of the line on the state income tax form that allows Kansas taxpayers to contribute to this Nongame Program?
- How would you rate the Kansas Department of Wildlife and Parks' programs to manage and protect endangered wildlife in Kansas? Are they excellent, good, fair, or poor?

[Several final questions were asked regarding the respondent's ethnic background, age, sex, yearly income, years of education, place of residence(whether they live in a rural area or town/city of various sizes) and the county of their residence.]

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# Kansas Audubon Council

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January 25, 1996  
Senate Energy and Natural Resources Committee  
Testimony on SB 473

Thank you, Chairman Sallee and members of the committee, for giving me the opportunity to appear before you today to express concern about SB 473. My name is Cynthia Abbott, and I am here on behalf of the Kansas Audubon Council and the approximately 5000 Audubon members throughout the state of Kansas.

As I sat down to write this testimony, I debated "wow-ing" you with lots of facts and figures about endangered species, but I decided that it was more important to simply explain why we feel that endangered species need to be preserved, here in Kansas and elsewhere throughout the world.

Simply stated, we humans are a part of the natural world, and our health and welfare is ultimately dependent upon it. In turn, the health of that natural world depends upon a complex network of relationships between plants and animals and their environment. Farmers and ranchers know much of this instinctively - if the soil is too poor for native vegetation to grow, crops won't do well either. If drought is killing off wildflowers and wild animals, crops and livestock are going to be severely affected too. But as is often the case, there is more to the story.

All plants and animals, including humans, are bound together in this intricate network of relationships based upon food and energy flow, literally life and death issues. For example, if a species of plant ceases to exist, the animals that depended exclusively on that plant will also disappear. Those that depended on it partially will have to look for food elsewhere, and will have to compete with other animals for that food. Other types of plants will be eaten more, which may affect their survival. As another example, if an animal species (i.e. a kind of bird) disappears, the smaller animals on which it fed (i.e. insects) will increase in numbers. If the insects eat crops, farmers' yields and incomes will suffer.

An analogy may help to complete the picture. Life on Earth, including humans, is like a piece of fabric. Each species of plant or animal is a thread. Some threads are thicker than others, but all contribute to the integrity of the fabric. If you start removing threads, the fabric weakens. At some point, often unexpectedly, the fabric tears when it is stressed a little more than usual. Many threads are torn in two, and those that remain cannot function as they once did.

As long as an endangered species exists, it is still very much a part of the fabric. Although its thread may be very weak, it still helps to keep the fabric, of which we are a part, whole and functioning properly.

The future is often based on a series of small decisions. The decision at each meal to eat a little less leads to weight loss. The decision to save a little each month leads to future financial stability. The daily choice to put things

away after each use leads to a cleaner house. The fate of an endangered species depends upon considering the impact of our daily decisions on that species. Endangered species legislation causes each of us to take the time to look at the impact of our decisions on endangered species. When we look, we can decide whether our plans have any impact on the species at all, whether a change in plans will help maintain the species' ability to survive, or whether a new plan altogether needs to be developed.

Pretending a species isn't endangered doesn't alter reality. If a species is endangered, it is endangered - whether labeled or not. What the pretence alters is our ability to watch our small decisions for their impact on the species. We may decide that this species truly can't be saved, but more likely we will realize that by making a few relatively small changes, we can keep the weakened "thread" intact and maybe even strengthen it.

Legislating a moratorium on listing new species as endangered doesn't change whether they are endangered or not. It's the human equivalent of hiding our heads in the sand to avoid danger. The old truism, "An ounce of prevention is worth a pound of cure," was never more appropriate. The sooner and more consistently we act responsibly to protect the natural inheritance of species that supports and sustains us, the better off we will be in the future.

I encourage you to vote "No" to SB 473 and keep in place the ounce of prevention that will avoid the pound of cure.

# Grace Episcopal Cathedral

701 S.W. Eighth Avenue Topeka, Kansas 66603 (913) 235-3457

January 24, 1996

Senator Don Sallee  
Chairman, Senate Energy & Natural Resources Committee  
Statehouse, Room 255-E  
Topeka KS 66612

Re: S.B. 473 (Endangered Species)

Dear Senator Sallee,

I regret that my schedule does not permit me to attend the January 25th hearing concerning the state endangered species act. However, I write to you in hopes that you will make this letter available to the committee as they consider this important question.

The questions attending endangered species are not merely ecological or political. These are primary spiritual concerns which attend upon how we understand our place in God's creation and our responsibility for it. For this reason major religious denominations are educating themselves, their congregation, and the public about environmental issues. The Episcopal Church held a national conference in Kansas City two years ago entitled "Caring for Creation." Those in attendance learned that one of the key issues surrounding our relationship to the planet, and to our creator, is the plight of threatened and endangered species. I am hopeful that the Kansas Legislature will not take steps to reduce the legal protections now afforded those species under existing law.

As a religious and spiritual leader in Topeka, I can attest to the fact that many religious people believe that our globe's current ecological crises must be at the center of the church's life.

We are learning to remember that all creation is of God, and that Genesis records that the planet and its creatures were pronounced "good" even before the creation of humankind. We are creatures of the unimaginable diversity of God. Just as every human being is unique and yet in God's image, the variety of species exist as mirrors of the loving goodness which created them. When any species becomes extinct, a piece of God's own creation is destroyed irrevocably and we are diminished. We have been given the role of stewards, not consumers of God's creation. Our unfaithfulness in this responsibility has plunged the whole of creation into a crisis which erodes the essence of our humanity.

Environmental stewardship is about our covenant with God and the inter-connectedness of all of creation. This covenant goes back to Noah and God's regret over the loss of his creation in the story of the flood. For thousands of years it has been the essence of our understanding of creation and it must not be set aside for the sake of economic gain.

We have not fully understood that we can never be apart from nature, but part of it -- spawned from the same life-forms, composed of the same carbon, hydrogen, oxygen, and nitrogen -- dependent on the same resources as the rest of God's natural world. The earth and its creatures are in trouble because we have neither shared nor embraced the reality of its oneness. We must learn to comprehend the depth of our inter-relatedness and assume the responsibility we have been given.

*Senate Energy & Nat'l Resources  
January 26, 1996  
Attachment 4*

I do not pretend to be a technical expert with regard to the endangered species of Kansas. However, I am able to assert that the Earth will be diminished if care is not taken to protect and preserve the species which are indigenous to this area and entrusted to us, and at the last we shall all be called to account for the condition of God's creation as we have bequeathed it to our children.

Sincerely yours,

A handwritten signature in black ink that reads "Marc DuPlan Lee". The signature is written in a cursive style with a long horizontal flourish at the end.

The Very Reverend Marc DuPlan Lee, Dean



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Testimony of Bill Craven  
Kansas Sierra Club and  
Kansas Natural Resource Council  
S.B. 473

Endangered Species Act  
January 25, 1996

Senate Energy and Natural Resources Committee

The groups I represent did not seek a legislative review of the state Endangered Species Act. However, we are prepared to work with the committee and other parties to craft solutions to specific problems on which it is possible we share some common ground. As the committee knows, the groups I work with are often unjustly accused of being hard to work with. However, recent history on such controversial legislative issues as the private property law and the environmental audit law are evidence very much to the contrary. I am willing to bring that same spirit of cooperation to this issue but I cannot support the bill in its current form.

My understanding of the bill is that it does the following things: (1) it changes from mandatory to optional the responsibility of the secretary of wildlife and parks to develop information about existing threatened and endangered species. (2) It imposes a moratorium on the listing of new species under the state act effective on July 1, 1996, and (3) it bars the secretary of from listing new species after that date except for species also listed under the federal law.

The first point is objectionable because there is nothing optional about the obligation to protect endangered species. While we may differ on how to conduct this review, I hope there is no dispute that we should do it. In an era in which "sound science" is the rallying cry for environmental regulation, turning our back on the problem is no solution whatsoever.

The second point--the moratorium--is flawed for the same reason. A moratorium neither advances "sound science" nor addresses the specific issues involved in reforming the statute. A true test of the validity of a position is whether its advocates embrace the facts or try to suppress them. A moratorium is really an attempt to suppress the facts.

The third point--tying the Kansas listings to the federal act--runs counter to everything I have heard in the current political climate about turning programs over the states. If you want the federal government telling Kansas what is and what is not listed, you will like this provision. If you think Kansans might best be able to make these determinations, then you will probably oppose it.

#### Background on Endangered Species.

This nation's preeminent expert on endangered species, Harvard University biologist E.O. Wilson, estimates that, worldwide, more than 50,000 species die out each year, and that 10 percent of all species now alive will be gone within 25 years. With each extinction, a genetic path billions of years old comes to an abrupt end, and a treasure of genetic information is lost. As Dean Lee explains in his letter, we have learned that ecosystems need the small and the ugly as much as the grand and the beautiful. We have also learned that humans need to learn a little humility to share their land.

Listed species provide a wealth of information for the medical community. The rosy periwinkle, native to Madagascar, which is now extinct except for that which is cultivated, has provided the ingredient which has reduced the mortality rate of childhood leukemia from 95 to less than 10 percent. The Pacific yew tree, which was previously considered a "trash tree" by loggers, now provides taxol, a key ingredient in fighting tumors in breast cancer. Ask a family with a history of childhood leukemia or breast cancer whether there is value in preserving threatened or endangered species. In addition, perhaps half the active ingredients in the current arsenal of modern pharmacy comes from plant and animal ingredients.

Senate Energy & Nat'l Resources  
January 26, 1996  
Attachment 5



Extinction can and does occur naturally, but human activity has significantly increased the background extinction rate, perhaps by orders of magnitude. About 95 percent of the listed threatened species in America are listed due to habitat loss.

The Endangered Species Act at either the state or the federal level represent the first attempts by legislation to save the world from ourselves. The acts require agencies to use the best scientific evidence to list all species in danger of extinction as either "threatened" or "endangered" and to develop and carry out plans for their recovery.

Despite the fact that the agency's are backlogged and that the federal and state acts are somewhat clunky, the act is working. At the federal level, of the 962 species listed, 11 have been fully removed from the list. Seven are known to have become extinct and 14 more are feared to be extinct. About 40 percent of the listed species are stable or improving. More than 99 percent of all the listed species continue to exist. That is one of the great successes of the program. The work which awaits us in dealing with the species still waiting to be listed should signal an alarm: What are we doing to this planet? Let's work together to make certain that our "reforms" are responsive and are not an over-reaction, much as we would say about a lobotomy proposed as a cure for a headache.

#### Economic Issues.

There has been considerable overblown rhetoric from the talk shows and the special interest groups about the alleged economic impacts of the endangered species act. The timber industry predicted a loss of several hundred thousand jobs in Oregon because of the listing of the spotted owl. The truth is that the listing cost the industry about 15,000 jobs (many caused by downsizing and the shipping of logs to Japan), but more than 100,000 new jobs were created in other sectors of the state's economy. That kind of tradeoff pales in comparison to the losses of those who work for Kodak, AT&T or IBM.

A 1995 study by MIT compared the economic growth of states to a state's number of endangered species. To the researcher's surprise, he found no correlation, even at the county level. "The evidence is just not there," he wrote, to conclude that the ESA adversely impacts the economy or economic growth.

At the federal level, approximately 50,000 projects with ESA implications (including private projects that required federal permits), were undertaken between 1976 and 1986. Only 1 percent of those activities were found to have any serious impact on a species, and most of those were allowed to proceed, some with modifications. Since the act was implemented, 118,000 proposed projects were reviewed. Only 33 were blocked.

As I said, I would be pleased to work with anyone in an effort to develop incentives and more flexible programs to administer this act. The current law does contain too many sticks and not enough carrots. We need to shift away from the crisis du jour mentality and toward ecosystem management which is not only more efficient but more cost-effective as well. Potential policies which are largely revenue-neutral and which might help defuse some of the opposition to the existing law include:

(1) Voluntary pre-listing conservation agreements. This approach provides more flexibility in land management options, removes an immediate regulatory burden, removes the threat of prosecution for the incidental taking of a listed species, establishes that restoration efforts move from the bottom up, rather from the top down, provides all willing stakeholders are equal partners, promotes participation by the private sector, provides certainty, and makes it possible to address multiple species or issues on a landscape or ecosystem basis.

(2) "Safe Harbor" provisions. Although often exaggerated, we recognize the possibility that the existing law creates a disincentive for landowners to create or maintain habitat favorable to conservation efforts on behalf of listed species. The act, in some cases, would then prohibit the "taking" of a protected species. The federal act has a provision creating a "safe harbor" for landowners who are willing to engage in habitat improvements for endangered species. Landowners who have participated in these plans have been very positive. This arrangement enables landowners to modify habitat for listed species that move into an area, thus allowing landowners to manage land based on their personal objectives. This provision is not appropriate for all species in all locations, but it is an idea which could be the subject of future discussions.

(3) "No Take" provisions. The act should be amended to clearly permit voluntary agreements with the responsible agency for management plans. That way, landowners would have some certainty as to what practices are acceptable on their land.

(4) It is also important to improve communications and guidance from agencies so that affected parties know in advance what is legal and what is not. Technical assistance should be provided especially in response to voluntary requests for information. It is also important to recognize publicly the efforts made by landowners who have improved habitat for listed species.

(5) Habitat conservation planning, under federal law, recognizes economic affects as within the list of issues the agency is supposed to consider. The HCP process is cumbersome, and consideration should be given to an expedited application process for small-scale projects with minor impacts. This process, under federal law, was changed by Secretary Babbitt to incorporate a "No Surprises" policy, thus providing additional certainty to landowners.

(6) Estate tax reform to end the need for estates with undeveloped land to sell the land to pay the taxes. We must help those who are "land rich and cash poor" preserve their land for future generations of people and endangered species. The tax burden could be reduced in exchange for entering into management plans.

(7) Property tax credit and income tax deductions. Property taxes are a disincentive to landowners interested in protecting habitat. Even when we are talking about ag land valued under a use value approach, the landowner who preserves habitat is treated the same as those who don't. I recognize that some of these tax policies are federal, and some are state law matters. The point is that we should do what we can to remove tax penalties for landowners who are trying to do the right thing.

One problem with a review of the state ESA is to determine whether there is a relationship between this proposal and the ongoing consideration of whether a rare fish species, the Topeka shiner, should be listed under the state law. For some strange reason, the shiner has become the focal point of a lot of negative attention about the endangered species act. Instead of imposing a moratorium under the state ESA, my personal view is that the legislature should take a hard look at the watershed dam program. Watershed dam projects are selected by undemocratic units of government which restrict the right of all citizens in their districts to participate in elections. They base their proposals on cost benefit analyses many of which are out of date. In some instances, the cost of the watershed structures exceed the fair market value of the ag land sought to be protected. (South Fork of Cottonwood and Diamond Creek watersheds in particular are "protecting" farmland at a cost of between \$750 and \$1100 an acre.) These projects rely on public subsidies and property tax breaks which disproportionately benefit private landowners and not the public. They foster development in floodplains which many of us are now realizing is environmentally unsound. They foster damming hundreds of tributaries without consideration of the cumulative effects of these structures.

Is there something wrong with leaving Kansas' rivers and streams--especially in sensitive watersheds--undammed and free-flowing and in a natural state? The shiner question is not a question pertaining to private landowners. It is a question of whether a long-standing state law has precedence over activities being advanced by a small minority of watershed districts who are bedeviled by the considerations I just mentioned.

Congressman Brownback recently had a meeting with various environmental groups to discuss the federal ESA. He relayed to us that his ag advisory panel had also considered the ESA questions, and was unable to come up with any examples in Kansas of regulatory abuse under state law. The state law is apparently not a barrier to any significant number of people. Like most laws, it probably does affect a few. All laws, as you all know, are intended to affect human relationships, which is why we consent to these laws. So if this bill is prompted by a concern about over-regulation, my suggestion is that there is no evidence to support that view.

I again want to say I would be happy to participate in a review of the state act. I am concerned, however, that this is a major undertaking which should be done deliberately and with the benefit of considerable study and public discussion. It should not be undertaken in the compressed timeframe of a single hearing and a single mark-up session. At the least, I would suggest that a subcommittee be appointed to work through the suggestions I have made as well as those which might be contributed by others. Perhaps it would even be better to request that the matter be set for an interim study, or that a task force be appointed during the summer much like the task force which did a review of environmental statutes for the chairman of the House Energy and Natural Resources Committee. I assure you my intent is not to delay. My intent is to make certain that changes in this act not be undertaken arbitrarily or without a clear analysis of the problem and whether the solutions offered address those problems.

I appreciate the opportunity to testify.