

Approved: 3-6-97  
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson David Corbin at 8:00 a.m. on February 21, 1997 in Room 254-E of the Capitol.

All members were present except: Quorum was present

Committee staff present: Raney Gilliland, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes  
Lila McClafin, Committee Secretary

Conferees appearing before the committee:  
Chris Mammoliti, Kansas Department of Wildlife and Parks  
Cynthia Abbott, National Audubon Society  
Bill Fuller, Kansas Farm Bureau  
Mike Bean, Kansas Livestock Association  
Joe Collins, Kansas Herpetological Society  
John Strickler, Kansas Association for Conservation & Environmental Education  
David Jones, Kansas Chapter/The Wildlife Society  
Clark Duffy, Kansas Petroleum Council  
John Irwin, Director, Bureau, Air and Radiation, KDHE

Others attending: See attached list

**SB 309 - Concerning nongame, threatened and endangered species, relating to listing of any recovery plans for such species; allowing tax credits for certain taxes and assessments.**

Chairperson Corbin said due to the weather some of the conferees had not arrived so they would call on those as they arrived. Chris Mammoliti with Kansas Department of Wildlife and Parks was called on to testify.

Chris Mammoliti supported the bill as it is the belief of the department that conservation and recovery of threatened and endangered wildlife is the responsibility of, and a benefit to, all Kansans. Therefore they support the purposed tax credit system. (Attachment 1).

Bill Fuller, Kansas Farm Bureau, supported the full package as recommended by the Task Force. However, there may need to be some technical amendments (Attachment 2).

Kathy Brown George, Chairperson, Kansas Nongame and Endangered Species Task Force, supported the bill as it includes the recommendations of the task force. She submitted copies of the full report of the task force, included in the report is a listing of the members and the group they represented. She urged the committee to adopt the total package (Attachment 3).

Cynthia Abbott, Kansas Audubon Council supported the legislation as it is a package of recommendations that are meant to work with each other and with existing law, and the loss of any part of the package would undermine the effectiveness of the recommendations. She mentioned in the public information meetings that language about emergency designations by the Secretary of Wildlife and Parks was deleted. Staff stated the language had been added back in the House Environment Committee (Attachment 4).

Mike Beam said he served as a member of the task force and they support the bill. His testimony listed four areas which represented the most significant changes from a landowner's perspective: (a) Early notification when listing or de-listing is under consideration (b) Local advisory committee (c) Codify KDWP policy on regulation of private agricultural lands and finally (d) Incentives for landowners (Attachment 5).

Joseph T. Collins, Kansas Herpetological Society, said it was very important that the recommended changes be considered as an integrated and interlocking package (Attachment 6).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 254-E Statehouse, at 8:00 a.m. on February 21, 1997.

John K. Strickler, Executive Director, Kansas Association for Conservation and Environmental Education, urged the members of the committee to approve the recommendations of the task force. He thought it was an example of what can be achieved through the educational and deliberative processes when everyone approaches an environmental issue with a fair and open mind (Attachment 7).

David Jones, Kansas Chapter The Wildlife Society, supports the findings and recommendation of the task force (Attachment 8).

Dr. Thomas D. Warner, Commissioner, Kansas Department of Wildlife and Parks, and Vice Chairman, of the task force supported the bill.

The hearing was closed on **SB 309**.

Chairperson Corbin opened the hearing on **SCR 1609**.

**SCR 1609 - concerning the Ozone Transport Assessment Group (OTAG).**

Clark Duffy supported the resolution and said his testimony on **SCR 1609** was included in his testimony of February 14, 1997 (Attachment 1), which supports only implementation of OTAG recommendations that provide environmental benefits for Kansas. He responded to questions.

John Irwin, Director, Bureau of Air and Radiation, KDHE, supported **SCR 1609** and recommends it be reported favorably (Attachment 9).

The hearing was closed.

Chairperson Corbin opened committee discussion on **SB 120**.

Senator Morris explained an amendment on page 4 section (k), he said if adopted the amendment called for all plans and specifications submitted to the department of new construction or new expansion with an animal capacity of 1,000 or more may be prepared by a professional engineer or qualified consultant. Soil tests for waste water retention structures shall be performed by a professional engineer or qualified soil scientist. After very brief discussion committee time ran out.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for February 25, 1997.

# SENATE ENERGY & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: 2-21-97

NAME	REPRESENTING
THOMAS D. WARREN	KS WILDLIFE & PARKS COMMISSION
Cerry Wedel	Ks Water Office
JOHN IRWIN	KDHIE
Rick Bean	KOHS
Wayne Kitchen	Western Resource
Dana Holthaus	Western Resources
Chris Mammoliti	Ks Wildlife + Parks
Amelia McIntyre	Ks Wildlife & Parks
JOHN STRICKLER	KACEE
Leland E. Rolfs	DWR - Ks Dept. Ag
Or Duffey	KPC
Pat Cussey	KDHIE
Glen Kessel	Western Resource
Scott Vogel	WOT
Don Miles	K&C
Mike Jensen	Ks Park Council
Rich Hays	Mike Hawkins Co.



STATE OF KANSAS  
DEPARTMENT OF WILDLIFE & PARKS

Operations Office  
512 SE 25th Avenue  
Pratt, KS 67124-8174  
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**TESTIMONY TO THE SENATE COMMITTEE ON ENERGY AND NATURAL  
RESOURCES - S.B. 309**

**DATE: FEBRUARY 21, 1997**

Mr. Chairman and members of the Committee, on behalf of Secretary Williams, the Department of Wildlife and Parks appreciates the opportunity to have been a member of the Nongame and Endangered Species Task Force and to now provide testimony in support of S.B. 309. We assert that this Task Force and its consensus recommendations set the standard for a new era of public/private cooperation in the conservation of sensitive wildlife species. The consensus reached in this landmark effort causes the Department to relinquish some of its management flexibility and authority, but represents the best interests of all concerned. We recognize the importance of public participation in this conservation effort and fully support the increased level of public involvement provided through this bill. We also support the requirement for practical, implementable recovery plans as an essential component of effective threatened and endangered species conservation.

With the great majority of Kansas land in private ownership, the Department of Wildlife and Parks acknowledges that private land management is pivotal to the conservation and recovery of listed species. As such, we support the program of incentives in S.B. 309, which further the goal of conservation and recovery through greater voluntary participation and involvement of the private sector. The "no-cost" incentives remove the immediate regulatory burden and the perceived threat of prosecution for private land activities in areas known to support listed species. The "cost-attached" incentives provide financial rewards to landowners who take action to protect or conserve listed species and their habitats.

The conservation and recovery of threatened and endangered wildlife is the responsibility of, and a benefit to, all Kansans. The Department believes that the costs of management and recovery of listed species should be borne by all sectors of the state, not just private landowners, hunters and anglers. For that reason, we support the proposed tax credit system and the Task Force intent for limited general fund appropriations to systematically develop and implement recovery plans for all listed species. Again, the Department thanks you for the opportunity to participate on this Task Force and to provide this testimony in support of S.B. 309. Thank you.

*Sen Energy + Nat Res  
2-21-97  
Attachment 1*





# PUBLIC POLICY STATEMENT

## SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

**RE: SB 309 - Endangered Species Reform**

**February 21, 1997  
Topeka, Kansas**

**Presented by:  
Bill R. Fuller, Associate Director  
Public Affairs Division  
Kansas Farm Bureau**

Chairman Corbin and members of the Senate Committee on Energy and Natural Resources, I am Bill Fuller, Associate Director of the Public Affairs Division for Kansas Farm Bureau.

We certainly appreciate this opportunity to present the views of the farmers and ranchers who are members of the 105 county Farm Bureaus in Kansas. Threatened and Endangered Species Policy that was debated, revised and adopted by the more than 435 Voting Delegates at the 78<sup>th</sup> Annual Meeting of Kansas Farm Bureau is attached to this statement.

Few issues have caused more emotional debate with our members than implementation of the endangered species program. The protection of endangered species has often caused the owners of private property to feel threatened.

We applaud the leadership of this Committee and the wisdom of the 1996 Kansas Legislature in creating the Endangered Species

*Sen Energy & Nat Res  
2-21-97  
Attachment 2 2-1*

Task Force. SB 473 required representatives of 17 diverse groups to examine the statutes, guidelines and operational policies, then make recommendations to the 1997 Legislature. We appreciate that the legislation included Kansas Farm Bureau's participation in this journey.

Kansas Farm Bureau supports SB 309. Several important provisions of Farm Bureau policy are included in SB 309: public informational meetings, local advisory committees, landowner incentives and mandatory 5-year review of the list.

Additionally, we believe "New Section 4", page 4, lines 9-15 is extremely important. This section requires Kansas Wildlife and Parks to adopt by rules and regulations an Operational Directive of the Secretary dated January 18, 1996: "Normal farming and ranching land treatment practices, including those utilizing public fund cost-shares, will not be reviewed, by the department, for permitting purposes and will not be the subject of law enforcement actions, unless an intentional (willful) taking of a threatened or endangered species is evidenced, or a permit is otherwise required by another state or federal agency." We applaud the agency for this common sense approach that avoids interference with normal farming and ranching activities.

Will SB 309 solve all endangered species/landowner conflicts? Probably not, but we believe the proposed legislation is a giant step in the right direction. While there may need to be technical amendments, we ask you to approve SB 309 which contains all of the provisions of the Task Force Report. We believe support by some members of the Task Force will dwindle and the problems that will be solved will be few if the full package is not approved.

In closing, we thank you for considering the views of the Farm Bureau farm and ranch members on this important public policy issue. We respectfully ask you to approve and advance SB 309.

Listing a species as threatened or endangered should require documentation to demonstrate conclusively that the species proposed to be protected are actually present in a clearly defined geographic area, and are dependent for survival on habitat in that location.

A public information meeting should be held in the impacted area immediately following any proposal to list a species. Scientific data supporting the inclusion of a species shall receive wide dissemination to landowners and private organizations representing the rights of these landowners.

Any agency, organization or person requesting a listing for a species in need of conservation, requesting threatened or endangered classification to be placed on any species, or requesting critical habitat designation, should be required to provide and fund an environmental impact report with emphasis on the economic impact of the action.

A local advisory committee should be appointed and be involved in the development of all management, recovery and mitigation plans.

We support the creation and use of landowner incentives for the development and enhancement of habitat that supports endangered species on privately owned lands. Cost-sharing, tax credits and grants should compensate landowners whenever costs are incurred or income from the property is impacted in supporting endangered species.

A complete review of the Kansas Threatened and Endangered Species List should be completed at least every five years.

Additionally, any species placed on the federal list under the Endangered Species Act may be added to the state list only after the following criteria have been met:

1. Public hearings;
2. Approval by the Kansas Department of Wildlife and Parks;

3. Approval by the Kansas Biological Survey;
4. Review by any agency with programs that may be impacted; and
5. Compliance with the state review process and state statutory requirements.

A public hearing should be required and an economic impact statement developed before any animal, plant or marine species is permitted to be introduced or re-introduced by any governmental agency.

We believe mitigation or acreage replacement measures should take into account cost/benefit ratios, and the economic impact of any proposal for mitigation or acreage replacement. We believe KDWP should not require mitigation or replacement of habitat in areas where conversion of the habitat is insignificant in relationship to the total amount of habitat available in the area.

## KANSAS NONGAME AND ENDANGERED SPECIES TASK FORCE

Senator Don Sallee, Chairman  
Senate Energy and Natural Resources Committee

Representative Steve Lloyd, Chairman  
House Environment Committee

January 13, 1997

During the 1996 Kansas Legislative Session, substitute Senate bill No. 473 was passed creating the Kansas Nongame and Endangered Species Task Force. The duties of this group were to study the existing Kansas Nongame and Endangered Species Conservation Act and make a report and recommendations thereon to your respective standing legislative committees.

The membership of the task force is pleased to present you with the following review and recommendations; the result of six meetings totaling over 30 hours of presentations, review and discussion.

Presubmittal and subsequent discussion of related issues and concerns by each represented organization, along with presentations by the U.S. Fish and Wildlife Service, the Kansas Department of Wildlife and Parks and the Kansas Biological Survey, gave the group a sound basis to formulate these recommendations. Concerns centered on public involvement in the species listing process, the effects of listed species on the activities of private land owners, and the need for management and recovery plans with the ultimate goal of removing a species from the status of threatened and endangered.

It would be difficult to compose a task force membership with a more diverse set of opinions on a single issue. Many members have historically found themselves on opposite sides of the aisle on a variety of legislative issues including that of threatened and endangered species in the state of Kansas.

Members of the task force are proud of the fact that recommendations presented in this report were proposed, formulated and finalized through a consensus process. We feel many of our recommendations may be on the cutting edge of actions that may occur at the Federal level.

It is important to note that each recommendation in this report is just a part of a total concept package. While the recommendations have been listed under either Kansas

*Sen Energy & Nat Res  
2-21-97  
Attachment 3*



Department of Wildlife and Parks policies and procedures or fiscal and cooperative incentives for enacting the Kansas Nongame and Endangered Species Conservation Act in order to clarify responsibilities, it is the total of all the recommendations that addresses the concerns and desires of the citizens of Kansas. Each recommendation in this report has been carefully crafted after lengthy discussion to meet the following goals: 1) make the citizens active shareholders in addressing the issue of threatened and endangered species in the state of Kansas; 2) increase the participation and recognize the stewardship of private property owners whose land use practices are affected by threatened and endangered species; and 3) put in place active management and recovery plans for threatened and endangered species, recognized as a crucial piece of the puzzle which must be solved in order to remove a species from threatened and endangered status.

It is the sincere hope of the undersigned members of this task force that the 1997 Kansas Legislature will recognize the vision and soundness of our recommendations and, as elected representatives of the people and stewards of the natural resources of Kansas, will enact these recommendations in total. Thus will a new era of communication and cooperation be ushered in, benefiting both humans and wildlife alike.

*Kathy Brown George*  
 Kathy Brown George, Task Force Chairman  
 Kansas Nongame Wildlife Advisory Council

*Elmer J. Finck*  
 Elmer Finck, Task Force Vice-Chairman  
 Kansas Ornithological Society

*Bill Fuller*  
 Bill Fuller

Kansas Farm Bureau

Dr. Kate Shaw  
 Kansas Chapter/The American Fisheries Society

*Kate Shaw*  
 Dr. Joseph T. Collins  
 Kansas Herpetological Society

*Joseph T. Collins*  
 Dave Jones  
 Kansas Chapter/The Wildlife Society

*Mike Beam*  
 Mike Beam  
 Kansas Livestock Association

*Cynthia Abbott*  
 Cynthia Abbott  
 Kansas Audubon Council

*Richard G. Jones*  
 Richard G. Jones  
 Kansas Association of Conservation Districts

*Duane Hund*  
 Duane Hund  
 Private Landowner

*John K. Strickler*  
 John Strickler

Kansas Assoc. for Conservation and Environmental  
 Education

*Bill Craven*  
 Bill Craven  
 Kansas Natural Resource Council

*Chris Mammoliti*  
 Chris Mammoliti  
 Kansas Dept. of Wildlife and Parks

*M. S. Mitchell*  
 M. S. Mitchell  
 Kansas Building Industry Association, Inc.

*Ben Rogers*  
 Ben Rogers  
 State Association of Kansas Watersheds

*Lee R. Doyle*  
 Lee R. Doyle  
 U.S. Dept/Agriculture Farm Service Agency

*Gordon Stockemer*  
 Gordon Stockemer  
 Kansas Dept. of Wildlife and Parks Commission

# KANSAS NONGAME AND ENDANGERED SPECIES TASK FORCE

## BACKGROUND

During the 1996 Kansas Legislative Session both the Senate and House Energy and Natural Resources Committees received considerable input regarding concerns related to the Kansas Nongame and Endangered Species Conservation Act (covered statutorially in K.S.A. 32-957 through 963; 32-1009 through 1012; and 32-1033).

Actions related to these constituent concerns resulted in the passage of substitute Senate Bill No. 473, creating the Kansas Nongame and Endangered Species Advisory Task Force and describing its membership, powers and duties. The group was charged with reviewing the provisions of the existing act, giving particular attention to the practices and procedures involved in determining whether any species of wildlife indigenous to the state is a threatened or endangered species in this state, and forwarding recommendations emphasizing voluntary compliance to the Senate and House Committees. Designated membership covered a broad spectrum of constituent interest areas and included the following organizations:

- Kansas Nongame Wildlife Advisory Council
- Kansas Farm Bureau
- Kansas Assoc. for Conservation and Environmental Education
- Kansas Chapter of the American Fisheries Society
- Kansas Herpetological Society
- Kansas Chapter of the Wildlife Society
- Kansas Ornithological Society
- Kansas Livestock Association
- Kansas Audubon Council
- Kansas Assoc. of Conservation Districts
- Kansas Natural Resource Council
- Kansas Dept. of Wildlife and Parks
- Kansas Building Industry Assoc., Inc.
- State Assoc. of Kansas Watersheds
- U.S. Dept. of Agricultural Farm Service Agency
- Kansas Dept. of Wildlife and Parks Commission
- Private Land Owner

A list of individual task force members is available.

Prior to the first task force meeting, an informational letter provided by the acting task force chairman (the chairman of the Kansas Nongame Wildlife Advisory Council) went out to all designated organizations requesting representative information and descriptions of issues and concerns each wished to have addressed as part of the task force agenda. (Attachments D and E) These issues and concerns were compiled and reviewed at the first task force meeting and prioritized for consideration as follows:

1. Threatened and Endangered and Species in Need of Conservation listing procedures and mitigation actions.
2. Incentives for affected property owners.
3. Recovery and Conservation Plans taking into consideration the ecosystem approach to habitat management.
4. Funding.

The task force as a whole met a total of six times through-out the summer and fall of 1996 (July 26, September 5, October 2, October 23, November 12 and December 2). All meetings were conducted at the Capitol Building in Topeka, Kansas. Kathy Brown George (Kansas Nongame Wildlife Advisory Council) and Elmer Finck (Kansas Ornithological Society) were elected Chairman and Vice-Chairman respectively at the first meeting.

Backgrounding and informational presentations with question and answer sessions were presented by the U. S. Fish and Wildlife Service, the Kansas Department of Wildlife and Parks, the Kansas Biological Survey and several members of the task force.

Recommendations provided in this report were designed through a concensus process. They have been listed under one of two categories:

1. Recommendations/Kansas Department of Wildlife and Parks Policies and Procedures enacting the Kansas Nongame and Endangered Species Conservation Act.
2. Recommendations/Fiscal and Cooperative Incentives for enacting the Kansas Nongame and Endangered Species Conservation Act.

## **RECOMMENDATIONS**

### **KANSAS DEPARTMENT OF WILDLIFE AND PARKS POLICIES AND PROCEDURES ENACTING THE KANSAS NONGAME AND ENDANGERED SPECIES CONSERVATION ACT**

#### **INTRODUCTION**

In reviewing the existing policies and procedures, the task force gave serious consideration to constituent concerns that there was a lack of opportunity for public awareness and participation through-out the listing and management processes. Many of the recommendations in this section are based on existing legislation in other states, most notably the Wildlife Conservation Act of New Mexico which was created through a similar process and enacted by the New Mexico Legislature in June of 1995. Implications of the Federal Endangered Species Act were also a continuous consideration. These recommendations, if enacted, will not only place in regulation policies which have to date been loosely interpreted and randomly implemented, they will also provide a new and on-going role for the public through-out state actions.

The process of listing a species of wildlife as threatened and/or endangered (T&E) or as a species in need of conservation (SINC) is based on scientific research. The task force understands and accepts this process. The reasoning behind listing a species is two-fold: to protect the remaining population and to actively address the management of the species in such a way as to reduce the threat to the population and remove the species from the T&E or SINC list. This management/recovery process has historically received very low priority leading, unfortunately, to the public perception that "once on the list, always on the list" and that the state's goal is simply to keep adding to the list. To this end the task force recommends emphasizing the recovery plan implementation process as the missing piece to species conservation in Kansas.

The five year state listed species review is recommended to insure that the management and recovery process is continuous.

Kansas Department of Wildlife and Parks has an existing operational directive prescribing guidelines for law enforcement actions and permit requirements related to the state's T&E species under the Kansas Nongame and Endangered Species Act and applicable Kansas Administrative Regulations, based on determination of "intent". It is the recommendation of the task force that this directive be converted to regulation so that Kansas farmers and ranchers can be assured of a consistent interpretation of intentional take when addressing land treatment practices.



## RECOMMENDATIONS

1. Amend K.S.A. 32-960(c)(2)(C) to read: conduct public informational meetings to coincide with the scientific review outside the agency which will recommend action with regard to the listing or de-listing of a species. All documents within the control and custody of the secretary which pertain to any such proposed listing shall be made available to the public in a local repository, such as a public library, courthouse, or regional office of the department. The secretary shall also mail a notice of the proposed listing to federal and state agencies, local and tribal governments that are or may be affected by results of the investigation, and individuals and organizations that have requested notification of department action regarding the administration of this act. The secretary shall also issue news releases to publicize the proposed listing.

2. THIS IS A NEW SECTION: After an affirmative decision has been made by the Kansas Department of Wildlife and Parks Commission to list a species, the secretary shall establish a volunteer local advisory committee. The committee shall be composed of members broadly representing the area affected by the proposed action, including, if appropriate, landowners and public officials, including representatives of state, local, and tribal governments. Additional representation shall be obtained from specialists for academic institutions, representatives of agribusiness or other trade organizations, state environmental and conservation organizations, and other interested organizations or individuals. To the maximum extent possible, the committee membership shall evenly balance the interests of all potentially affected groups and institutions. The committee shall work with the secretary to integrate the listing decision and the recovery plan into the social and economic conditions of the affected area and will disseminate information to the public about the scientific basis of the listing decision, the regulatory process, and incentives to landowners available pursuant to this act. The secretary shall consider data, views, and information provided by the committee in implementing a recovery plan.

3. THIS IS A NEW SECTION: On or before January 1, 1998, the secretary shall establish by rules and regulations procedures for developing and implementing recovery plans for all listed species. Such recovery plans shall also include species listed as species in need of conservation. The secretary shall prioritize the development of recovery plans based on a cumulative assessment of the scientific evidence available. Based on this priority ranking, the secretary shall develop and begin implementation of recovery plans for at least two listed species on or before January 1, 1999.

Note: Implementation of these pilot project recovery plans may ultimately require an appropriation from the legislature.

4. THIS IS A NEW SECTION: The secretary shall conduct a review every five years of the species listed in this act (except for those species listed pursuant to the federal act), and make recommendations to the commission whether any such listings should be changed. The secretary shall first submit any such recommendations to the scientific

review panel for consideration of the scientific evidence which affects any such recommendations.

5. THIS IS A NEW SECTION: The secretary shall establish by rules and regulations guidelines prescribed in the operational directive dated January 18, 1996 related to guidelines for law enforcement actions and permit requirements related to the state's threatened and endangered species under the Kansas Nongame and Endangered Species Conservation Act and applicable Kansas Administrative Regulations, based on determination of "intent" as it relates to normal farming and ranching land treatment practices.

## RECOMMENDATIONS

### FISCAL AND COOPERATIVE INCENTIVES FOR ENACTING THE KANSAS NONGAME AND ENDANGERED SPECIES CONSERVATION ACT

#### INTRODUCTION

As the task force reviewed the implementation of endangered species legislation in other states we found that well-placed incentive programs, when linked with increased public participation and sound management practices, served to greatly enhance the listing and management process. They also served as an avenue for early and continuous communication between the state agencies and the affected land owners.

Recommended incentives have been divided into two categories:

1. No-cost incentives.
2. Cost attached incentives.

Language for these recommendations is provided in concept rather than statutory form. It is believed that the no-cost incentives can be considered as eligible activities under the existing Kansas Nongame and Endangered Species Conservation Act. New sections describing each incentive and directing the secretary of the Kansas Department of Wildlife and Parks to establish procedures by rules and regulation will need to be composed. Terms used in these recommendations such as "critical habitat" and "incidental take" are defined in the existing statutes.

While this task force was created by legislation, it was determined that because no members of the legislature were serving on the task force, the legislative staffing services usually available for interim legislative committees could not be used by this group. Some clerical assistance was provided at legislative direction by the Kansas Department of Wildlife and Parks, however travel, research and reporting were largely a volunteer effort by members of the task force. It was the consensus of the task force members that, absent the skills required to write the actual legislation, both the no-cost and cost attached incentives would be best understood in this informational manner. Kansas Department of Wildlife and Parks staff are familiar with the no-cost incentive concepts and have the information necessary to create rules, regulations and guidelines.

It is further recommended by the task force that the Senate Energy and Natural Resources Committee and the House Environmental Committee place priority on the process of research and interaction with other necessary legislative committees to implement the proposed low-cost incentives. These have been proposed with a sunset review and a monetary cap recommendation.

## RECOMMENDATIONS

### NO-COST INCENTIVES:

#### 1. Pre-listing Conservation Agreement

Description - An agreement between a private landowner and the Kansas Department of Wildlife and Parks (KDWP) about mutually agreed upon land management practices that work to insure species survival before a species is listed. Provisions of the agreement would carry through without penalties (termed a "no surprise" policy) even if the species is later listed. The task force recommends that guidelines include a review of landowner management practices every five years based on the land use practices in effect at the time of review.

Action - Authorization is believed to exist under current law. Direct the secretary of KDWP to establish procedure guidelines through the rules and regulations process.

#### 2. Safe Harbor Agreement

Description - A landowner with endangered species' critical habitat on his/her land could be assessed a "baseline" population of the species (based on actual current occurrence). The landowner could then manage larger areas of land for the critical habitat with the understanding that if an increase in the population occurred, he/she could use the increase to meet the baseline obligation and be free to more flexibly manage and/or develop the land through the use currently available incidental take permits (over and above the baseline population). The task force would recommend that guidelines include a review of landowner management practices every five years based on the land use practices in effect at the time of review. Also recommended for guideline inclusion required notification to KDWP of a landowners intent to develop an area with a T&E or SINC species population, giving KDWP a set amount of time to relocate that population if they so desired. In addition, the task force encourages KDWP to consider these agreements as part of the management and recovery planning process for T&E and SINC species. While the task force understands that safe harbor agreements are not necessarily appropriate for all T&E and SINC species in all situations, their use is encouraged where such an agreement would yield a net benefit for the resource.

Action - Authorization is believed to exist under current law. Direct the secretary of KDWP to establish procedure guidelines through the rules and regulations process.

#### 3. "No Take" Cooperative Agreement

Description - Such an agreement allows the landowner to take voluntary steps to manage for potential T&E or SINC species habitat with the understanding that such practices would not lead later to a charge of "taking" if a T&E or SINC species did indeed take up residence in the habitat but the landowner needed to change the land use. This can be utilized as a stand alone process or as part of the management and recovery planning process for T&E and SINC species. The "no surprise" policy is also a part of these agreements as with the pre-listing conservation agreements. The task force again



recommends that guidelines include a review of landowner management practices every five years based on the land use practices in effect at the time of review.

Action - Authorization is believed to exist under current law. Direct the secretary of KDWP to establish procedure guidelines through the rules and regulations process.

### **LOW-COST INCENTIVES:**

In recognition of those Kansas landowners providing the stewardship, improvements and land management techniques necessary for the management and recovery of T&E and/or SINC species, the task force strongly encourages the passage and implementation of the following tax incentives. The task force recommends implementation of these low-cost incentives as an initial five-year pilot program with sunset and legislative review for continuation occurring in the fifth year.

**Prequalification** for either tax incentive is recommended to include at a minimum:

1. Certification that the land under consideration for the tax credit has been designated as "critical habitat" for a T&E and/or SINC species in the state of Kansas.

**AND/OR**

2. Certification that the land under consideration for the tax credit is part of a KDWP approved management or recovery plan for the benefit of a T&E and/or SINC species in the state of Kansas.

### **DESCRIPTIONS:**

1. **State Income Tax Credit based upon total property taxes paid on qualifying land only.** Tax total is recommended to include taxes or assessments for irrigation, flood control, bank stabilization, watershed, ground management and drainage management districts. It is recommended that this credit be allowed on an annual basis as long as the land continued to meet prequalification requirements.

2. **State Income Tax Credit for actual landowner expenses involved in habitat management and/or improvement construction as specified in a KDWP approved T&E or SINC management or recovery plan.** The task force recommends that guidelines for this tax credit include discretionary authority for KDWP secretary to require a time-line for implementation of qualifying management techniques and for qualifying construction and maintenance of improvements. Further recommendations include the following options for landowner use of this tax credit:

- a. Total approved amount claimed through one-time tax credit only.
- b. Proportional claim in first year with carryover amount allowed for tax credit in subsequent taxing year or years.
- c. A one-time cash reimbursement in excess of claimed year tax liability.

**FUNDING:**

It is difficult to provide a fiscal impact to state tax revenue with this pilot program. It is by nature directly linked to the implementation and progress with the policy and procedure recommendations included within this report. Actual qualifying amounts will vary from landowner to landowner. The need for regulatory action to occur for implementation of management and recovery plans would initially limit use of the property tax equivalent credit to landowners with designated critical habitat. Since geographic areas designated as critical habitat are fairly specific in size, this would further limit initial impact of this credit on state tax revenues. Estimated qualifying acreage figures were not available for task force consideration but can be prepared by KDWP staff.

As with the property tax equivalent credit, use of the management and improvements cost credit is linked to the implementation of management and recovery plans. The task force is confident that with implementation of this package of recommendations and the subsequent increase in public awareness and participation, use of these well-deserved tax credits would grow exponentially with each progressive year. The task force therefore offers the following cap schedule for not-to-exceed fiscal impact on state income tax revenue from these two proposed tax credits. Combined dollar totals for accepted applications would not be allowed to exceed the designated caps for each of the five years of the pilot program. Review of the use and success of the tax credit incentives would occur as part of the sunset review process with approval for continuation including subsequent fiscal impact levels if desired.

**COMBINED FISCAL IMPACT CAP FOR PILOT INCENTIVE PROGRAM\***

Year 1 = \$200,000  
Year 2 = \$300,000  
Year 3 = \$400,000  
Year 4 = \$500,000  
Year 5 = \$500,000

\* Please note that these amounts reflect the carry-over potential of applications having an annual or extended eligibility as well as new eligible applications each subsequent year.

**ACTION:**

These tax incentives will require legislative action with subsequent direction to the secretary of KDWP to establish application and procedure guidelines by the rules and regulations process.

# 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.

# KANSAS DEPARTMENT OF WILDLIFE AND PARKS

## GENERAL PROJECT REVIEW AND T/E PERMIT SUMMARY

Projects reviewed from January 1, 1989 to August 30, 1996	=	6,379
Threatened and Endangered Species permits required	=	201 (3.2%)
Level 3 conditions (requires the purchase of additional lands or waters)	=	15 (0.2%)
Average response time for general project reviews	=	24 calendar days
Average response time for T/E permit issuance (time from receiving a complete application)	=	18 calendar days

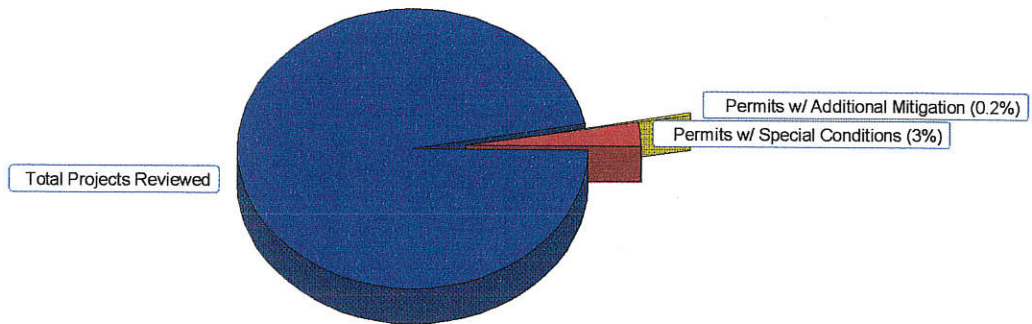
Lawful activities financed with private funds on private lands, such as those activities associated with housing and business construction and normal farming and ranching practices, and including government cost-shared routine agricultural land treatment measures, are not reviewed for permit requirements, unless such a practice requires another state or federal permit, unless it involves an intentional taking.

"Take" is defined for this context by K.S.A. 32-702(t) to mean "harass, harm, pursue, shoot, wound, kill, molest, trap, capture, collect, catch, possess or otherwise take or attempt to engage in any such conduct." Intentional taking is that conduct which is purposeful and willful, not accidental, as defined in K.S.A. 21-3201. In cases of unintentional taking of T/E species documented by the department, the incident will be reported in writing to the ESS chief. Department staff will respond with consultation, education and permitting action where applicable. No law enforcement action will be undertaken in such circumstances.

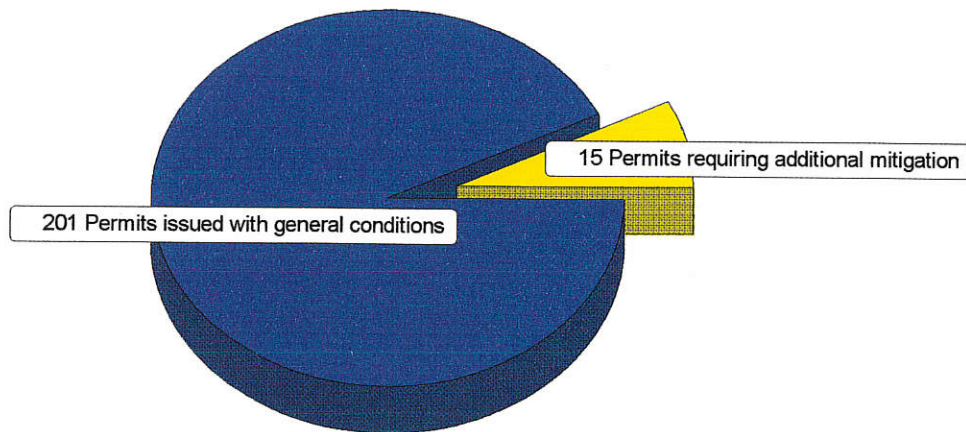


# 1989 - 1996 Projects Reviewed

% of Conditioned Permits Issued



# T/E Permits Issued from 1989 - 1996



## SUBSTITUTE for SENATE BILL No. 473

AN ACT creating the Kansas nongame and endangered species advisory task force; and prescribing the membership, powers and duties thereof.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. (a) There is hereby created the Kansas nongame and endangered species advisory task force. Such task force shall consist of 17 members as follows: (1) The chairperson of the Kansas nongame advisory council; (2) a representative of the Kansas farm bureau, appointed by the farm bureau; (3) a representative of the Kansas advisory council on environmental education, appointed by the council; (4) a representative of the Kansas chapter of the American Fisheries Society, appointed by the chapter; (5) a representative of the Kansas Herpetological Society, appointed by the society; (6) a representative of the Kansas chapter of the Wildlife Society, appointed by the society; (7) a representative of the Kansas Ornithological Society, appointed by the society; (8) a representative of the Kansas Livestock Association, appointed by the association; (9) a representative of the Kansas Audubon Council, appointed by the council; (10) a representative of the Kansas Association of Conservation Districts, appointed by the association; (11) a representative of the Kansas Natural Resource Council, appointed by the council; (12) the secretary of wildlife and parks, or a designee of the secretary; (13) the president of the Kansas Building Industry Association, Inc., or a person appointed by the president; (14) a representative of the State Association of Kansas Watersheds, appointed by the association; (15) one private landowner appointed by the state executive director of the farm service agency of the United States Department of Agriculture; (16) one member of the Kansas Wildlife and Parks Commission, designated by the chairperson of the commission; and (17) a private landowner appointed by the other members of the task force.

(b) The chairperson of the Kansas nongame advisory council shall call and preside at the first meeting of the task force. At such meeting the members of the task force shall elect a permanent chairperson and vice-chairperson. The task force shall meet on the call of the chairperson. All meetings of the task force shall be open public meetings.

(c) It shall be the duty of the task force to review the provisions of the nongame and endangered species conservation act, giving particular attention to the practices and procedures involved in determining whether any species of wildlife indigenous to the state is a threatened or endangered species in this state, the task force shall make recommendations emphasizing voluntary compliance with the nongame and endangered species conservation act and shall make a report and recommendations thereon to the chairperson, vice-chairperson and ranking minority member of the standing committees on energy and natural resources of the senate and the house of representatives, on or before the first day of the 1997 regular session of the legislature.

(d) The provisions of this section shall expire on July 1, 1997.

SUBSTITUTE for SENATE BILL No. 473—page 2

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

\_\_\_\_\_

SENATE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE  
as amended \_\_\_\_\_

HOUSE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*

## 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 & Kansas 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

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  - \* KDWP reviews of applicable state/federal funded/assisted highway projects are initiated through a cooperative interagency agreement with KDOT.
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  - \* 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

(b) 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.



- (c) Any person sponsoring or responsible for an action not covered under subsection (b) and 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 NONGAME AND ENDANGERED SPECIES TASK FORCE

### KANSAS NONGAME WILDLIFE ADVISORY COUNCIL

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P.O. Box 3033	E-mail: <a href="mailto:george@jc.net">george@jc.net</a>
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### KANSAS ASSOCIATION FOR CONSERVATION AND ENVIRONMENTAL EDUCATION

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## MEMORANDUM

**TO:** Designated Organizations  
Kansas Nongame and Endangered Species Advisory Task Force  
**FROM:** Kathy Brown George, Chairman  
Kansas Nongame Wildlife Advisory Council  
**DATE:** June 20, 1996  
**SUBJECT:** Organizational Meeting

As I am sure most of you are aware, the Kansas Nongame and Endangered Species Act was discussed at hearings conducted by both the Senate and House Energy and Natural Resources Committees during the 1996 Legislative Session. Substantial changes to the statute were proposed through Senate Bill 473. Subsequent actions resulted in the passage of substitute SB 473 which creates a task force to review this act and provide a report and recommendations back to the Legislature prior to the start of the 1997 Session. A copy of substitute SB 473 is enclosed for your information.

The first meeting of the task force has been scheduled for July 26, 1997 at 9:00 a.m. in Room 519 of the Capitol Building in Topeka. The meeting will be published in the Kansas Register and will be open to the public as per the statute. Prior to that meeting, I am asking that each member organization provide the following:

1. **Select the task force representative for your organization , complete the attached form and return it to me as soon as possible.** This individual should be able to attend a series of an estimated 6 to 10 meetings from late July through late December. No funding has been provided to reimburse task force members for travel or personal expenses incurred so you may want to address this issue within your organization. Current plans are for the majority of these meetings to be held in Topeka.

2. **Each designated organization is being asked to provide, in writing, a listing of issues and concerns relating to the Kansas Nongame and Endangered Species Act which they would like to have addressed as part of the task force agenda. Any factual and/or background information which you wish to utilize in supporting these issues and concerns must also be provided in printed form.** This information will be compiled into a loose-leaf binder and will serve as the working piece for the group. Copies will be distributed to task force members at the first meeting. It is very important to the success of this task force that we all start off with the same framework of information. Issues and concerns not addressed in your submitted information will be added to the agenda only through a majority vote of the task force members. **Please provide 17 sets of your information to me no later than July 22, 1996.** Copies of the Kansas Nongame and Endangered Species Conservation Act and the Federal Act will be provided so don't include those as part of your copied materials.



The agenda for the first meeting will include introductions and distribution of the workbooks, presentations on the State and Federal regulations, election of a permanent chairman and vice-chairman of the task force, appointment of a private landowner to the task force by the membership, determining the format for future meetings, setting the date, time, location and agenda for the next meeting and reviewing the task force charge as per substitute SB 473.

I appreciate the opportunity for input and recommendation provided through substitute SB 473 and look forward to working with each of your representatives. Please feel free to contact me with any questions.

**Kathy Brown George, President  
The Development Company  
P.O. Box 3033  
Junction City, Kansas 66441  
Attn: T&E Task Force**

**Phone: (913) 238-6866  
FAX: (913) 238-6718  
E-mail: [george@jc.net](mailto:george@jc.net)**

**KANSAS NONGAME AND ENDANGERED SPECIES TASK FORCE**

**REPRESENTATIVE INFORMATION FORM**

**NAME OF ORGANIZATION:**

**NAME OF REPRESENTATIVE:**

**POSITION OR TITLE OF REPRESENTATIVE WITHIN  
ORGANIZATION:**

**REPRESENTATIVE INFORMATION:**

**MAILING ADDRESS:**

**PHONE NUMBER:**

**FAX NUMBER:**

**E-MAIL ADDRESS:**

**ADDITIONAL COMMENTS OR INFORMATION:**

**RETURN TO: KATHY BROWN GEORGE  
P.O. BOX 3033  
JUNCTION CITY, KANSAS 66441**

## KANSAS NONGAME AND ENDANGERED SPECIES TASK FORCE ISSUES AND CONCERNS

ORGANIZATIONS INDICATING AN INTEREST ARE LISTED BEHIND EACH ENTRY.

### **THREATENED & ENDANGERED AND SPECIES IN NEED OF CONSERVATION LISTING PROCEDURES AND MITIGATION ACTIONS:**

- "Best science" approach by professionals should be maintained. (KACD, KNRC, KDWP)
- Greater awareness and involvement by public, other agencies and those who may be impacted (KFB, KACD, KDWP)
- Review list at least every 5 years. (KFB)
- Look at other state's programs. (KLA)
- Should T&E permits be required by state law and can process be improved. (KLA)
- Why is Kansas T&E program necessary. (KBIA)
- What elements must be present for T&E habitat designation. (KBIA)
- Who is qualified to establish sitings and who is qualified to appeal. (KBIA)
- Current state Act is sufficient. (KHS)

### **ECOSYSTEM APPROACH:**

- Ecosystem approach to habitat management should be considered whenever possible. (KAC, KDWP, KNRC)

### **ECONOMIC ASSESSMENTS:**

- Already are covered through the new private property rights statute. (KDWP)
- Should be required. (KFB)

### **INCENTIVES:**

- Incentive programs need to be developed to encourage and reward conservation and stewardship by private landowners. (KAC, KFB, KLA, KNRC)

### **PUBLIC SENTIMENT:**

- Surveys show strong public support for T&E listings and protection efforts (KDWP)
- Private property rights should be respected. (KFB)

### **RECOVERY AND CONSERVATION PLANS:**

- Recovery plans for T&R species and conservation plans for all species in need of conservation should be required. (KAC)
- Plans have been developed for Federally listed species but should also be created for state listed species. (KDWP)

### **THREATENED AND ENDANGERED PLANT SPECIES:**

- Should also be considered for protection under the act. (KAC, KNRC, KDWP)

**NONGAME:**

-Management of nongame species should be separated from T&E species. (KAC)

**PERIPHERAL SPECIES:**

-Should be given due consideration. (KDWP)

-Needs better definition. (KACD)

**FUNDING:**

-Funding needs to be adequate to provide services. (KAC, KDWP)

-Questions on sources of funding and staffing of T&E program by KDWP. (KBIA)

Abbreviations:

KAC - Kansas Audubon Council

KACD - Kansas Association of Conservation Districts

KBIA - Kansas Building Industry Association, Inc.

KDWP - Kansas Department of Wildlife and Parks Commission

KFB - Kansas Farm Bureau

KHS - Kansas Herpetological Society

KLA - Kansas Livestock Association

KNRC - Kansas Natural Resource Council

# KANSAS DEPARTMENT OF WILDLIFE & PARKS

## OPERATIONAL DIRECTIVE

### SUBJECT:

This operational directive prescribes guidelines for law enforcement actions and permit requirements related to the state's threatened and endangered species under the Kansas Nongame and Endangered Species Conservation Act and applicable Kansas Administrative Regulations, based on determination of "intent".

### SUMMARY:

Normal farming and ranching land treatment practices, including those utilizing public fund cost-shares, will not be reviewed, by the department, for permitting purposes and will not be the subject of law enforcement actions, unless an intentional (willful) taking of a threatened or endangered (T/E) species is evidenced, or a permit is otherwise required by another state or federal agency. Utilizing existing Department statutory and regulatory authorities, this policy prescribes that only the intentional, illegal taking of a threatened or endangered species shall be met with enforcement action, as defined in Kansas statutes and regulations. Existing regulations require department permitting action only for those projects (generally construction or development) that utilize public funds or require permitting by another state or federal agency.

### BACKGROUND:

This directive establishes guidelines by which the Department of Wildlife and Parks staff, including Law Enforcement officers and Environmental Services Section (ESS) personnel, shall administer certain provisions of the Kansas Nongame and Endangered Species Conservation Act and associated regulations (K.S.A. 32-957 through 963, 32-1009 through 1012, K.S.A. 32-1031, K.S.A. 32-1033, K.A.R. 115-15-1 through 3, and K.A.R. 115-18-3). These guidelines are based upon the requirement to determine the presence or absence of intent, as described in the statutes and regulations cited above, in the taking (harassing, harming, killing) of T/E species.

Under the statutes and regulations cited above, the Department of Wildlife and Parks is mandated to review certain projects to determine if an "action permit" is required by law. If issued, an action permit prescribes certain project conditions designed to avoid or mitigate damage to T/E species populations or their habitats. The department is mandated to take law enforcement action in the case of unpermitted, intentional taking of T/E species.

### Intentional Taking

"Take" is defined for this context by K.S.A. 32-703(t) to mean "harass, harm, pursue, shoot, wound, kill, molest, trap, capture, collect, catch, possess or otherwise take or attempt to engage in any such conduct." Criminal "intent" may be established by proof that the conduct of the accused person was willful. Intentional conduct is that conduct which is purposeful and willful, not accidental, as defined in K.S.A. 21-3201.

In cases of unintentional taking of T/E species documented by the department, the incident will be reported in writing to the ESS chief. Department staff will respond with consultation, education and permitting action where applicable. No law enforcement action will be undertaken in such circumstances.

Any person who engages in an activity which is not authorized by special permit and results in the intentional take of T/E species may be charged with an unlawful take pursuant to the statutes cited above. Law enforcement action will be followed by contact from ESS staff for consultation, education, and permitting action where applicable.

### **Special Permits**

A special permit, issued by the department, is required for any project that is partially or totally funded with public funds or receives other state or federal assistance, or requires a state or federal permit, and will cause the take of a T/E species. These same conditions apply to projects that will cause the destruction of designated critical habitat of T/E species.

Notification of actions subject to regulatory review are received by the department's ESS staff through interagency cooperative agreements or as required under federal and state laws. Upon receipt of notification of a project, ESS staff will review the proposed project for impacts on T/E species and their habitats, utilizing standard assessment procedures. If it is determined that the proposed project would result in the take of a T/E species or loss of critical habitat, ESS staff will work with the project sponsor to cooperatively develop mitigative measures to avoid or offset adverse impacts. These measures become components of the project plans and conditions of the permit issued to the project sponsor. The department's responsibility for monitoring and ensuring permit compliance is carried out by ESS and Law Enforcement staff. No law enforcement is required against any person who obtains, and complies with the conditions of an action permit from the department prior to initiating the project.

Lawful activities financed with private funds on private lands, such as those activities associated with normal farming and ranching practices, and including government cost-shared routine agricultural land treatment measures, will not be reviewed for permit requirements as described above, unless such a practice requires another state or federal permit, or unless it involves an intentional taking as described above.

Any person who engages in the taking of T/E species for scientific, educational, or display purposes must first obtain a special permit from the department. Permit issuance is the responsibility of the Fisheries and Wildlife Division. Compliance monitoring will be done in cooperation with the Law Enforcement Division. Persons who intentionally take T/E species for this purpose, without first obtaining such a permit, will be subject to law enforcement action, including citation.

### **DUE DILIGENCE**

Nothing in this directive shall be deemed to absolve a person from the obligation to acquire knowledge by the exercise of due diligence once the presence of a threatened or endangered species is known within a project area.

(1-18-96, Subject to filing with the Kansas Attorney General's Office)





# Kansas Audubon Council

February 21, 1997

Senate Energy and Natural Resources Committee  
Testimony on SB 309

Thank you very much for the opportunity to appear before you today in support of SB 309. 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.

Last year a task force was appointed, bringing together representatives from a diverse array of groups concerned, in seemingly diametrically opposed ways, about the Kansas Nongame and Endangered Species Conservation Act. The Kansas Audubon Council was one of those groups, and I served as the Council's representative to the task force. Our charge was to review the Act and especially to look for ways to increase voluntary compliance.

As we worked, two factors stood out that I would like to comment on. First, our chairperson, Kathy Brown George, did an excellent job of marshaling us through the consensus building process. Secondly, all of the task force members were sincere in their desire to work together, thoughtful in their deliberations, and civil at all times. I enjoyed the opportunity to work together towards solutions that were acceptable to all.

As part of the task force's backgrounding, the group studied current statutes, regulations and practices regarding threatened and endangered species, as well as current biological information regarding these issues. We were also encouraged to come forward with our concerns from the very beginning, so that issues could be dealt with openly and in context. These thoughtful preparations helped the task force to see where the problem areas actually were and therefore to focus specifically on them.

SB 309 is the legislative format for our task force's consensual recommendations. These recommended changes work to increase public knowledge and involvement in the listing process, to implement the recovery planning process so that the purpose of listing is actually served, and to provide public financial support for the costs incurred by individual landowners who are carrying out the public's best interest by managing for protection of species that are threatened, endangered or in need of conservation. This is a package of recommendations, meant to work in concert with each other and with existing law, and we hope that you will keep them intact as a package. We feel that the loss of any part of the package will undermine the effectiveness of the other recommendations.

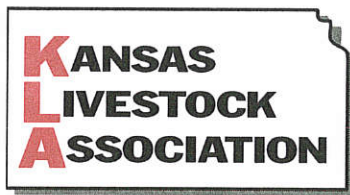
One last comment.... Occasionally in drafting new legislation, something is unintentionally left out or put in. As I read through SB 309, I found one such change to the Act that I believe was an oversight on the part of the drafters: Section 2(c)(2)(C). In adding the language about

*Add in the House*

*Sen Energy & Nat Res  
2-21-97  
Attachment 4*

public informational meetings, the original language about emergency designations by the Secretary of Wildlife and Parks was deleted and not added back elsewhere. Deleting the opportunity for emergency designations was never discussed in our deliberations; therefore I believe that this change was unintentional and I would ask that the emergency designation language be reinserted where appropriate.

In conclusion, the Kansas Audubon Council strongly supports SB 309. We appreciate having been part of the consensus building process, and hope that this cooperative method of solving legislative problems is used again, whenever appropriate.



*Since 1894*

February 21, 1997

To: Senate Energy and Natural Resources Committee  
Sen. David Corbin, Chairperson

Fr: Mike Beam, Executive Secretary, Cow-Calf/Stocker Division

Re: Support of SB 309 - Amendments to the Kansas Nongame, Threatened & Endangered Species Act

During the 1996 Kansas legislative session, several bills were introduced to restrict the Kansas Department of Wildlife and Parks (KDWP) from listing species as threatened or endangered. There was considerable discontent among landowner groups concerning the process for listing species and the impact such listings may have on land use practices.

Eventually, opposing factions came to an agreement. Legislation was passed and signed by the Governor creating a task force to develop and recommend changes to the existing threatened and endangered species act which identify incentives for participation by private landowners. At the same time, KDWP voluntarily agreed to not list additional species during the next one year period.

I served on this task force as a representative of the Kansas Livestock Association. The designated landowner on this task force, Duane Hund, presented the task force's findings and recommendations to our membership last fall. KLA members subsequently voted to support these proposals.

I'll attempt to summarize a few of the recommendations which represent the most significant changes from a landowner's perspective:

- **Early notification when listing or de-listing is under consideration** - It's been a policy and practice to notify the public of a listing proposal after it's been determined by a scientific review panel and KDWP personnel that a species should be listed for protection. The ultimate decision is made by the KDWP Commission.

*Sen. Energy & Nat. Res.*  
*2-21-97*  
*Attachment 5*

SB 309 requires notification to all interested parties when a proposed listing is submitted for scientific review. This will be much earlier in the process. This change offers two distinct advantages. First, a potential listing may cause less resistance if landowners are notified early. Secondly, affected parties may engage their own scientific review if everyone is aware of the proposal in the initial stages.

- **Local Advisory Committee-** SB 309 engages a local advisory committee when a species is listed. This broad-based committee will advise KDWP on the social and economic impact of the listing, help guide the direction of the recovery plan, and help disseminate factual information about the listing and incentives available to landowners.
- **Codify KDWP Policy on Regulation of Private Agricultural Lands -** During the Task Force meetings, KDWP explained their operational guideline limiting state sanctions or penalties for the taking of protected species and their habitat relating to normal farming and ranching land treatment practices. The Task Force recommended this operational guideline be adopted by rules and regulations. SB 309 contains language reflecting this recommendation.
- **Incentives -** The Task Force made three recommendations for “no-cost” and two “cost” incentives for landowners who voluntarily agree to a conservation plan to protect and/or enhance the populations of species designated as in need of conservation, threatened or endangered. The cost incentives, outlined in New Section 6, are restricted and are only available if authorized by KDWP.

Mr. Chairman and committee members, there are additional details of SB 309 that we view as positive and necessary in developing a more acceptable approach for the protection and enhancement of our state’s threatened and endangered species. We support this legislation and pledge to work with this committee and other members of the task force for the passage of the bill. Thank you!

Kansas Herpetological Society  
Lawrence, Kansas  
(913) 749-3467

17 February 1997

Chairperson Corbin  
Kansas Senate Committee on Energy & Natural Resources  
State Capitol, Topeka

Senator Corbin:

It is an honor to address you and your distinguished colleagues of Senate Committee on Energy & Natural Resources.

There are currently sixty (60) species of plants and animals recognized as endangered or threatened in Kansas. Our diverse *Legislative Task Force on Endangered Species* has worked long and hard, and in the spirit of cooperation we have assembled a number of changes to existing laws and regulations that, we believe, will provide greater involvement of the people of Kansas, particularly landowners, in the process of saving and protecting these vanishing native creatures, and thus maintain the wild variety of our beautiful state.

Of great importance to the Kansas Herpetological Society, is that you and your colleagues will consider our recommended changes as an integrated and interlocking package, because all of them are dependent on each other. Of all the recommended changes, the one most vital is funding. It will help the Kansas Department of Wildlife finish a job started decades ago, and begin the process of removing species from the list until we reach a final goal—the elimination of an endangered or threatened species list for Kansas! Providing the proposed funding will enable KDWP to contract for the development of recovery programs. Once recovered, a species can then be delisted. Funding for this process is long overdue.

Of equal importance to the Kansas Herpetological Society, is that these changes will provide an opportunity for Kansas landowners to be rewarded for their efforts in recovering a species, and will encourage those same landowners to become stakeholders in the recovery process of an endangered animal. This is a far cry from the tense situations that have sometimes occurred in the past, when an endangered species stood in the way of reasonable progress. And it is a sign of the cooperative spirit which our Task Force adopted, as we came together to try solve the problem before us.

Our proposed changes are an historic step forward, and I urge you, in the great progressive tradition of the Sunflower State, to look on them with favor and pass them into law. Let Kansas lead the rest of the nation into the next millennium with enlightened, forward-looking environmental regulations and laws.

Thank you for your attention.

Joseph T. Collins  
Task Force Representative, *Kansas Herpetological Society*  
Member, *Kansas Nongame Wildlife Advisory Council*

*Sen Energy & Nat Res*  
*2-21-97*  
*attachment 6*





# KACEE

**Kansas Association for Conservation and Environmental Education**

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February 21, 1997

TO: The Honorable David Corbin, Chair  
Senate Committee on Energy and Natural Resources

FROM: John K. Strickler, Executive Director

SUBJECT: Senate Bill No. 309

The Kansas Association for Conservation and Environmental Education (KACEE) is a 501(c)(3) organization established in 1969 for the purpose of promoting effective environmental education throughout Kansas. It is an association made up of representatives of state, federal and local agencies, higher education institutions, K-12 schools, non-profit organizations and businesses as well as individuals interested in supporting environmental education. Current membership is approximately 100 organizational members and 100 individual members.

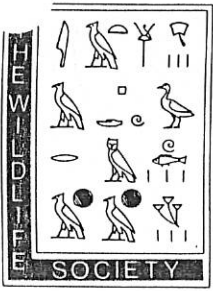
KACEE is in a rather unique position as one of the organizations serving on the Kansas Nongame and Endangered Species Task Force. A number of the organizations represented on Task Force--some with divergent viewpoints on the threatened and endangered species issue--are members of KACEE. However, it is understood that our Association does not become involved in advocacy on specific environmental issues, but rather promotes a full understanding of environmental issues through the educational process. We believe the educational processes were demonstrated in the meetings and deliberations of the Task Force over the past year. That such diverse interests as were represented on the Task Force could reach a consensus on its recommendations is a demonstration of the open-mindedness, sincerity and commitment to understanding and balance that each member approached the deliberations.

We would urge the members of the committee to approve the recommendations of the Task Force represented in S.B. 309. KACEE has appreciated the opportunity to participate in the Task Force and would point out that it could serve as a model for approaching many controversial environmental issues. It is an example of what can be achieved through the educational and deliberative processes when everyone approaches an environmental issue with a fair and open mind.

Thank you for the opportunity to present our support for this bill.

*Sen Energy + Nat Res*  
*2-21-97*  
*Attachment 7*





## Kansas Chapter

# THE WILDLIFE SOCIETY

### KANSAS NONGAME AND ENDANGERED SPECIES TASK FORCE 1997 REPORT TO KANSAS STATE LEGISLATURE

*David Jones*

The Kansas Chapter of The Wildlife Society appreciates the opportunity to participate in the Kansas Nongame and Endangered Species Task Force and the opportunity to testify today.

The Wildlife Society is a professional, non-profit organization dedicated to wildlife stewardship through science and education. Ecology is the primary scientific discipline of the wildlife profession.

The Wildlife Society recognizes that the recovery of endangered species is one of the most formidable environmental challenges of our modern society. The rapid modification of natural ecosystems by technological development and other human activities is causing the rate of extinction among wild flora and fauna to far exceed the natural evolutionary pace. The premature and induced extinction of any organism constitutes a degradation of the environment of which humans are an inseparable part.

Successful endangered species management and recovery must be based on science and be sustainable in the long-term. It was a consensus among the Task Force that listing decisions must be based on the best available scientific information. Secondly, populations of endangered species do not rebound quickly. Biological recovery is a long-term process. Citizens must support the process to obtain the lasting commitment and focus needed to achieve recovery. Many of the Task Force recommendations emphasize public involvement.

The Kansas Chapter of The Wildlife Society (TWS) supports the findings and recommendations of the Task Force. The Task Force carefully and objectively reviewed the Kansas Nongame and Endangered Species Conservation Act. We believe that the Task Force has produced useful and responsible recommendations that should strengthen the integrity of the Act. Additionally, the Kansas Chapter of TWS would like to emphasize our support for some specific recommendations of the Task Force.

We support recommendations regarding incentive-based conservation strategies that promote flexibility and cooperation in working with private landowners. Private land comprises 97% of the Kansas landbase. Consequently, recovery of listed species is dependent upon stewardship of private lands. Incentives-based management is more likely to be supported by landowners, and thus sustainable, than traditional regulatory approaches. Furthermore, cooperative management will reduce the "us-versus-them" climate in listing and recovery.

Listed species can not be recovered without citizens taking responsibility for the process. We support the Task Force recommendation to establish volunteer local advisory committees composed of citizens affected by listing decisions. Public involvement is more likely to produce long-term, stable conservation strategies because the citizenry created the strategy.

The Kansas Chapter of TWS supports the emphasis on the recovery plan implementation process. The whole point of endangered species management is recovery. Listing without management and recovery does nothing to promote biological stability of an endangered species. The recovery and conservation process (separate from the listing process) is bio-political. Public involvement is crucial to recovery because the process must be cooperative and sustainable.

*Sen Energy + Nat Res  
2-21-97  
Attachment 8*

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

Senate Committee on Energy and Natural Resources

by

The Kansas Department of Health and Environment

Senate Concurrent Resolution No. 1609

The Ozone Transport Assessment Group (OTAG) is a 37-state consortium of states formed to develop recommendations (for submission to EPA) for reducing violations of the ozone air quality standard in the northeastern United States. The OTAG group was created when a number of problem area states in the northeast petitioned the EPA for additional time to comply with federal Clean Air Act (CAA) requirements in order to investigate the contribution that transported ozone was making to their compliance problem. The concept was that they would be unable to comply with the standard no matter what action they were to take if problem amounts of ozone were blowing in from neighboring states. In particular, the states were hampered by unavoidable delays in developing the necessary technical information to verify or discount this problem. OTAG is not a legally-constituted entity and carries no authority other than the commitment to submit a technical report to EPA.

The state of Kansas did not join OTAG. Kansas was drawn into OTAG because the boundary of the air dispersion modeling domain being used by OTAG dissected Kansas at the 99th meridian (just west of Great Bend). KDHE staff have been monitoring the work of OTAG closely through attendance at numerous meetings and conference calls, review of written material, and evaluation of modeling runs to assure that emission sources in Kansas were not being erroneously blamed for a downwind states problem. OTAG technical conclusions derived from the results of recent modeling of the impact of emissions from the central United States has shown that Kansas is not a significant contributor to this problem. However, we continue to remain concerned the OTAG process remain on a firmly sound scientific and technical basis. In addition, recent discussions of a "cap and trade" approach also cause some concern. Senate Concurrent Resolution (SCR) 1609 calls upon EPA and OTAG to adopt the following principles in completing their work:

1. Provide adequate time and resources to address the ozone transport issue in a sound scientific manner;
2. Assure elected officials are involved in decision-making that might impose control requirements above those currently required by the federal Clean Air Act (CAA);
3. Present recommendations beyond the current authorities provided in the CAA for Congressional consideration;

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4. Include the contribution of a state to the problem as a primary factor in determining the extent to which a state is included as a part of the solution; and
5. Submit final recommendations, including cost information, to affected legislatures prior to submittal to EPA.

These principles are very similar to those adopted by the Midwestern Governors' Conference in June 1996. These latter principles continue to guide the involvement of KDHE in OTAG.

Conclusion:

The department supports the passage of SCR 1609 and recommends a favorable report.

Testimony Presented By: John Irwin, Director  
Bureau of Air and Radiation  
February 21, 1997