

HOUSE BILL No. 2362

By Committee on Agriculture and Natural Resources

2-15

1 AN ACT concerning wildlife, parks, recreation and tourism; relating to
2 endangered species conservation; amending K.S.A. 32-958, 32-960,
3 32-960a and 32-961 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 32-958 is hereby amended to read as follows: 32-
7 958. As used in the nongame and endangered species conservation act:

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

23 (b) (1) "Critical habitat" means any specific area within a
24 geographical area occupied by a threatened or endangered species listed
25 in accordance with the provisions of K.S.A. 32-960, and amendments
26 thereto, which contains physical or biological features essential to the
27 conservation of such species and may require special management
28 consideration or protection.

29 (2) "Critical habitat" does not include the entire geographical area
30 which can be occupied by the threatened or endangered species, unless the
31 secretary makes a determination that specific areas outside the
32 geographical area occupied by the species at the time it is listed in
33 accordance with K.S.A. 32-960, and amendments thereto, are essential for
34 the conservation of the species.

35 (b) (c) "Ecosystem" means a system of living organisms and their
36 environment, each influencing the existence of the other and both

1 necessary for the maintenance of life.

2 (⊖) (d) "Endangered species" means any species of wildlife whose
3 continued existence as a viable component of the state's wild fauna is
4 determined to be in jeopardy. That term also includes any species of
5 wildlife determined to be an endangered species pursuant to Pub. L. No.
6 93-205 (~~December 28, 1973~~), the endangered species act of 1973, and
7 ~~amendments thereto as amended on July 1, 2013~~.

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

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

15 (⊕) (g) "Threatened species" means any species of wildlife which
16 appears likely, within the foreseeable future, to become an endangered
17 species. That term also includes any species of wildlife determined to be a
18 threatened species pursuant to Pub. L. No. 93-205 (~~December 28, 1973~~),
19 the endangered species act of 1973, and ~~amendments thereto as amended~~
20 ~~on July 1, 2013~~.

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

25 Sec. 2. K.S.A. 32-960 is hereby amended to read as follows: 32-960.

26 (a) The secretary shall determine whether any species of wildlife
27 indigenous to the state is a threatened species or an endangered species in
28 this state ~~because~~ *based on consideration of any all of the following*
29 *factors across the range of such species in the United States and within the*
30 *state:*

31 (1) The present or threatened destruction, modification or curtailment
32 of its habitat or range;

33 (2) the overutilization of such species for commercial, sporting,
34 scientific, educational or other purposes;

35 (3) disease or predation;

36 (4) the inadequacy of existing regulatory mechanisms; ~~or~~ *and*

37 (5) the presence of other natural or man-made factors affecting its
38 continued existence ~~within this state~~.

39 (b) (1) The secretary shall make the determinations required by
40 subsection (a) on the basis of the best scientific, commercial and other data
41 available to the secretary and after consultation, as appropriate, with
42 federal agencies, other interested state agencies and interested persons and
43 organizations.

1 (2) In determining whether any species of wildlife is a threatened
2 species or an endangered species in this state, the secretary shall take into
3 consideration those actions, if any, being carried out or about to be carried
4 out by the federal government, by other states, by other agencies of this
5 state or political subdivisions thereof, or by nongovernmental persons or
6 organizations which may affect the species under consideration.

7 (3) Species of wildlife which occur in this state and which have been
8 determined to be threatened species or endangered species pursuant to
9 Pub. L. No. 93-205-~~(December 28, 1973)~~, the endangered species act of
10 1973, ~~and amendments thereto as amended on July 1, 2013~~, shall receive
11 full consideration by the secretary to determine whether each such species
12 is a threatened or an endangered species in this state.

13 (4) *The secretary shall not designate a species of wildlife as a*
14 *threatened or endangered species in this state, unless such species is at*
15 *risk of becoming a threatened or endangered species pursuant to the*
16 *endangered species act of 1973, Pub. L. No. 93-205, as amended on July*
17 *1, 2013. The secretary shall not designate a species of wildlife as a*
18 *threatened or endangered species in this state if such species has been*
19 *determined to be common, widespread, abundant or uncommon but not*
20 *rare in the United States according to a review of the best scientific data*
21 *available to the secretary.*

22 (c) (1) The secretary shall adopt, in accordance with K.S.A. 32-805,
23 and amendments thereto, rules and regulations pursuant to K.S.A. 32-963,
24 and amendments thereto, which contain a list of all species of wildlife
25 indigenous to this state which have been determined to be endangered
26 species pursuant to this section and a list of all such species which have
27 been determined to be threatened species pursuant to this section. Each list
28 shall refer to the species contained therein by their scientific and common
29 names, if any, and shall specify with respect to each such species the
30 portion of the range of such species within this state in which it is
31 threatened or endangered.

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

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

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

38 (C) (i) in cases where the secretary determines that an emergency
39 situation exists, published a public notice that such an emergency situation
40 exists, together with a summary of facts that support such determination;
41 or (ii) in all other cases, conducted public informational meetings to
42 coincide with the scientific review outside the agency which will
43 recommend action with regard to the addition of the species to or removal

1 of the species from the list. All documents within the control and custody
2 of the secretary that pertain to adding the species to or removing the
3 species from the list shall be made available to the public in a local
4 repository, such as a public library, courthouse or regional office of the
5 department. The secretary shall also mail a notice of the proposed addition
6 of the species to or removal of the species from the list to federal and state
7 agencies and local and tribal governments that are or may be affected by
8 results of the review and to all individuals and organizations that have
9 requested notification of department action regarding the administration of
10 this act. The secretary shall also issue news releases to publicize the
11 proposed addition of the species to or removal of the species from the list.

12 (3) Upon the petition of an interested person, the secretary shall
13 conduct a review of any listed or unlisted species of wildlife proposed to
14 be removed from or added to either of the lists adopted pursuant to this
15 subsection (c), but only if the secretary makes a determination and
16 publishes a public notice that such person has presented substantial
17 evidence which warrants such a review. Once the secretary has made a
18 determination that a review is warranted, the process described in
19 subsection (c)(2), including the conducting of a public information
20 meeting, shall apply.

21 (d) (1) Every five years the secretary shall conduct a review of the
22 species listed pursuant to this act, ~~except for those species listed pursuant~~
23 ~~to the federal endangered species act of 1973, as amended) Pub. L. No. 93-~~
24 ~~205, as amended on July 1, 2013~~ and shall submit any proposed changes in
25 the listings to the following for consideration: ~~(1) (A) Federal and state~~
26 ~~agencies and local and tribal governments that are or may be affected by~~
27 ~~results of the change; and (2) (B) all individuals and organizations that~~
28 ~~have requested notification of departmental action regarding~~
29 ~~administration of this act. After at least 90 days for comment by the~~
30 ~~agencies, governments, individuals and organizations to which the~~
31 ~~proposed changes are submitted, the secretary shall submit to the~~
32 ~~commission proposed rules and regulations making any changes that the~~
33 ~~secretary determines should be made in the listings.~~

34 (2) *The secretary shall complete a review of the species listed*
35 *pursuant to this act as provided in subsection (d)(1) and shall take action*
36 *to remove any species no longer considered to be threatened or*
37 *endangered pursuant to the provisions of subsections (c) and (d)(1) by not*
38 *later than October 1, 2013.*

39 Sec. 3. K.S.A. 32-960a is hereby amended to read as follows: 32-
40 960a. (a) On or before January 1, 1998, the secretary shall adopt, in
41 accordance with K.S.A. 32-805, and amendments thereto, rules and
42 regulations establishing procedures for developing and implementing
43 recovery plans for all species listed as in need of conservation, threatened

1 or endangered. The secretary shall give priority to development of
2 recovery plans for particular species based on a cumulative assessment of
3 the scientific evidence available. Based on the priority ranking, the
4 secretary shall develop and begin implementation of recovery plans for at
5 least two listed species on or before January 1, 1999.

6 (b) Whenever a species is added to the list of threatened or
7 endangered species, the secretary shall establish a volunteer local advisory
8 committee composed of members broadly representative of the area
9 affected by the addition of the species to the list. Members shall include
10 representatives of specialists from academic institutions, agribusiness and
11 other trade organizations, state environmental and conservation
12 organizations and other interested organizations and individuals. In
13 addition, the membership shall include, if appropriate, landowners and
14 public officials representing state, local and tribal governments. To the
15 maximum extent possible, committee membership shall evenly balance the
16 interests of all potentially affected groups and institutions.

17 (c) The advisory committee shall: (1) Work with the secretary to
18 adapt the listing of the species and the recovery plan for the species to the
19 social and economic conditions of the affected area; and (2) disseminate
20 information to the public about the scientific basis of the decision to list
21 the species, the regulatory process and incentives available to landowners
22 pursuant to this act.

23 (d) If a species in need of conservation receives a priority ranking to
24 develop and begin implementation of a recovery plan, the secretary shall
25 establish a volunteer local advisory committee in the same manner as
26 provided by subsection (b) to work with the secretary to adapt the recovery
27 plan and disseminate information to the public.

28 (e) In implementing a recovery plan for a species, the secretary shall
29 consider any data, recommendations and information provided by the
30 advisory committee.

31 (f) *The secretary shall cause each developed and implemented*
32 *recovery plan to be published in the Kansas register and on the official*
33 *website of the department of wildlife, parks and tourism.*

34 Sec. 4. K.S.A. 32-961 is hereby amended to read as follows: 32-961.

35 (a) Whenever any species is listed as a threatened species pursuant to
36 K.S.A. 32-960, *and amendments thereto*, the secretary shall adopt such
37 rules and regulations pursuant to K.S.A. 32-963, *and amendments thereto*,
38 as the secretary deems necessary and advisable to provide for the
39 conservation of such species. *The secretary shall not adopt rules or*
40 *regulations pertaining to any habitat other than a critical habitat of a*
41 *species of wildlife designated as a threatened or endangered species*
42 *pursuant to K.S.A. 32-960, and amendments thereto.* By rules and
43 regulations adopted pursuant to K.S.A. 32-963, *and amendments thereto*,

1 the secretary may prohibit, with respect to any threatened species included
2 in a list adopted pursuant to K.S.A. 32-960, *and amendments thereto*, any
3 act which is prohibited under subsection (b) ~~with respect to any~~
4 ~~endangered species included in a list adopted pursuant to K.S.A. 32-960.~~

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

8 (1) Export from this state any endangered species included in a list
9 adopted pursuant to K.S.A. 32-960, *and amendments thereto*;

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

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

17 (c) *The provisions of subsection (b)(3) shall not apply to any publicly*
18 *funded action, a state or federally assisted action, or an action requiring a*
19 *permit from another state or federal government agency when the public*
20 *funding, state or federal assistance, or permit from another state or*
21 *federal government agency is provided to the recipient in accordance with*
22 *applicable state and federal law after the completion of the action.*

23 (d) Subsection (b) ~~does~~ shall not apply to any endangered species
24 listed pursuant to K.S.A. 32-960, *and amendments thereto*, or any species
25 of wildlife determined to be an endangered species pursuant to Pub. L. 93-
26 205 (~~December 28, 1973~~), the endangered species act of 1973, ~~and~~
27 ~~amendments thereto~~ *as amended on July 1, 2013*, entering the state from
28 another state or from a point outside the territorial limits of the United
29 States and being transported to a point within or beyond the state in
30 accordance with the terms of any federal permit or permit issued under the
31 laws or regulations of another state.

32 ~~(d)~~(e) The secretary may issue special permits to authorize, under
33 such terms and conditions as the secretary prescribes, any act described in
34 subsection (b) or any act which is otherwise prohibited by rules and
35 regulations adopted pursuant to subsection (a), for scientific purposes or to
36 enhance the propagation or survival of the affected species. Application for
37 such permit shall be made to the secretary or the secretary's designee and
38 shall be accompanied by the fee prescribed pursuant to K.S.A. 32-988,
39 *and amendments thereto*. The secretary shall maintain a list of permit
40 applications under this subsection. Where such applications have been
41 approved and special permits have been issued, the secretary shall
42 maintain a list of such permits, including therein the name and address of
43 the permittee and the terms and conditions prescribed for each such

1 permit. The secretary shall keep such lists current and shall file copies
2 thereof, along with any additions or amendments, with the secretary of the
3 interior of the federal government.

4 ~~(e)~~(f) Threatened or endangered species included in a list adopted
5 pursuant to K.S.A. 32-960, *and amendments thereto*, may be captured or
6 destroyed without a permit by any person in an emergency situation
7 involving an immediate and demonstrable threat to human life.

8 (g) *Except in the case of an intentional taking of a threatened species*
9 *under K.S.A. 32-1010, and amendments thereto, or an intentional taking of*
10 *an endangered species under 32-1011, and amendments thereto, rules and*
11 *regulations adopted pursuant to this act with regard to a specific species*
12 *of wildlife designated as threatened or endangered shall have no force and*
13 *effect until 30 days after the publication of the recovery plan for such*
14 *species in the Kansas register by the secretary pursuant to K.S.A. 32-960a,*
15 *and amendments thereto.*

16 Sec. 5. K.S.A. 32-958, 32-960, 32-960a and 32-961 are hereby
17 repealed.

18 Sec. 6. This act shall take effect and be in force from and after its
19 publication in the statute book.