

**Testimony on HB 2669 regarding Threatened and Endangered Species
To
The House Committee on Agriculture**

**By Brad Loveless
Secretary
Kansas Department of Wildlife, Parks and Tourism**

18 February 2020

HB 2669 seeks to amend laws related to threatened and endangered species in Kansas by only allowing the Department to list species that are listed by the United States government. **The Department opposes the provisions contained in the bill.** The provisions of the bill would be effective upon publication in the statute book.

The management of threatened and endangered species in Kansas is a relatively new concept, beginning in the 1970's, but is very limited in nature as the application **is limited to publicly funded projects or projects which require a public permit.** The law also currently exempts normal farming and ranching practices (includes certification and registrations) and government cost shared agriculture land treatment measures, unless a permit is required by another state or federal agency or involves the intentional take of a threatened or endangered species.

As this committee is well aware, wildlife management, including threatened and endangered species, is funded by hunters and anglers dollars. A survey conducted in 2011 by Responsive Management, an internationally recognized research firm specializing in natural resource and outdoor recreation issues, found that conservation of threatened and endangered wildlife remains important to Kansans. Some interesting findings include:

- 91 percent of Kansas residents agreed that the Department should continue to identify and protect habitat critical to the existence of threatened and endangered species
- 73 percent of residents agree with the statement "Wildlife that is threatened and endangered in Kansas, yet abundant in other states should still be protected in Kansas."

Kansas is home to more than 140 species of fish, 80 species of amphibians and reptiles, more than 400 species of birds, nearly 90 species of mammals and thousands of species of invertebrates. Most of these animals are doing relatively well, but some are in trouble and need protection. If this bill is approved, as of July 1, 2021 the Kansas State List of Endangered Species would change from 22 species to 9 species currently on the federal endangered list, and from 29 species currently on the state threatened list to 3 species currently on the federal threatened list.

At its core, the federal ESA is a conservation tool aimed at the prevention of species population declines such that they become imperiled and at risk of extinction nationally. It has long been recognized that proactive conservation measures that preclude the need to list species at the federal level are more economical, require

less regulatory oversight, and are more likely to benefit the species in need. Kansas' state threatened and endangered species statutes act at the local level, based on recommendations and input from a diverse set of Kansas stakeholders to address the needs of species native to Kansas in an effort to preclude the need to list those species at the federal level. This framework has been successful at maintaining viable populations of rare and unique species within the state, while resulting in positive findings regarding the need to list those same species under the federal statutes. Recent examples include the findings of "not warranted" for inclusion and regulation under the federal ESA for the petitioned Arkansas Darter (*Etheostoma cragini*) and the Scott Optioservus Riffle Beetle (*Optioservus phaeus*), as well as not designating federal critical habitat for the Topeka Shiner (*Notropis topeka*).

The proposed amendments to the Kansas Nongame and Endangered Species Conservation Act (KNESCA) remove the local and state species petitioning process, ultimately requiring petitioners to petition the federal government for species to be listed at the federal level. This also removes the ability for the emergency petition process through which the KDWPT Secretary could consider immediate threats to wildlife species and provide adequate protections to keep species from becoming extirpated or extinct—an important tool for the conservation of species with limited ranges/populations in the event of catastrophic circumstances (e.g. man-made or natural disaster). If the proposed amendments are enacted, species petitions would all occur first at the federal level, not allowing for immediate action to avoid the potential loss of the species from the state.

The Department contends this bill is unnecessary and the Department is hardly heavy handed in enforcing the provisions of the KNESCA. The concepts of **avoidance, minimization and, in a last resort, mitigation** have served the Department and all Kansans well. In the 38 years of the program, the Department statewide reviewed 29,038 publicly funded or publicly permitted projects. Of those, 1,116 required an action permit (3.84%), and of those, 82 required some sort of compensatory mitigation (0.28%). The numbers speak for themselves and clearly show that this process does not impose a large regulatory footprint.

The Department has been exceptionally responsive to concerned parties, including reviewing the regulatory decisions and removing, when appropriate, species from the lists, as well as assisting agricultural, public or development interests and working those parties on a one on one basis to reduce fiscal impacts of threatened and endangered species on projects.

In summary, the current law in Kansas with regard to threatened and endangered species serves the public and wildlife resource well. To make these changes invites intrusion, in the form of federal regulatory action as well as putting more emphasis on placing species in Kansas onto the federal T&E lists.

The Department appreciates the support of the Committee in opposing the bill.