

## ECONOMIC IMPACT STATEMENT

**K.A.R. 115-15-2.** Nongame species; general provisions.

**REGULATION DESCRIPTION:** This permanent regulation designates species classified as species in need of conservation in Kansas (“SINC species”). The proposed amendments to the regulation are as follows:

- Add three new SINC species: Texas night snake, *Hypsiglena torquata jani*  
Delta hydrobe, *Probythinella emarginata*  
Brindled madtom, *Noturus miurus*
- Remove two SINC species: Red-shouldered hawk, *Buteo lineatus*  
Eastern chipmunk, *Tamias striatus*

In conjunction with these proposed amendments, the department is also proposing amendments to K.A.R. 115-15-1, which includes the lists of threatened and endangered species in Kansas. Proposed amendments to that regulation include the addition of the Silver Chub to the list of endangered species as well as removing the Texas night snake and White-faced ibis from the list of threatened species, and therefore relate to this proposed regulatory amendment by adding the Texas night snake to the list of SINC species.

The Kansas Nongame and Endangered Species Act, K.S.A. 32-957 et seq., requires the department to adopt rules and regulations “which contain a list of the nongame species deemed by the secretary to be in need of conservation . . .” (K.S.A. 32-959(a)). The law stipulates that this determination shall be on the basis of information related to population, distribution, habitat needs, limiting factors and other biological and ecological data concerning nongame species, gathered to determine conservation measures necessary for their continued ability to sustain themselves successfully.

**BACKGROUND:** K.S.A. 32-960(d) requires that “every five years the secretary shall conduct a review of the species listed . . . and shall submit any proposed changes in the listings . . .” to federal and state agencies and local and tribal governments, and to all individuals and organizations that have requested notification of departmental action. In March of 2003, the five-year review of Kansas threatened, endangered and species in need of conservation list was initiated. Approximately 107 individuals and organizations were mailed a “petition for species review” form to be returned by July 1, 2003. This initial process provides opportunity for submitting a petition for removal or addition of species to the Kansas list. By July 1, nine species had been petitioned. State law also provides that petitions may be submitted outside of the five-year review process.

Five species were petitioned to be listed as endangered in Kansas (Delta hydrobe, Brindled madtom, Silver chub, Purple wartyback and Black Sandshell). In addition, two species were petitioned for removal from the Kansas threatened list (Texas night snake, White-faced

ibis) and two species were petitioned for removal from the SINC species list (Eastern chipmunk, Red-shouldered hawk).

In February and March of 2004, the department began to review possible state threatened and endangered listing and delisting actions for the proposed species. The review was conducted by a scientific task committee composed of personnel from the U.S. Fish and Wildlife service, universities, the Kansas Biological Survey, and the department. The scientific task committee decided that, since the Black sandshell was not considered a viable population as only one living specimen was found and pending survey work on the Marais des Cygnes river would give more pertinent information on the Purple wartyback, no action would be taken on these two species. However, the scientific task committee determined that sufficient data existed to consider whether a listing action is warranted for each of the other seven species:

- \* Delta hydrobe
- \* Brindled madtom
- \* Silver chub
- \* Texas night snake
- \* White-faced ibis
- \* Eastern chipmunk
- \* Red-shouldered hawk

As a component of the prescribed process, notice was published in the *Kansas Register* on May 13, 2004, informing the public that these species were being considered for listing actions, and that the department was obtaining a scientific review of these species' status from sources outside the agency. The notice also informed the public of two public meetings, to be conducted 90 days before submission of any proposed listing to the Wildlife and Parks Commission. Similar information was sent to federal and state agencies and local governments that may be affected by the proposed listings actions, as well as to individuals and organizations that had requested notification of proposed listing actions. Finally, this information was included in a news release sent to local newspapers and radio stations, as well as in the department's May 27, 2004 statewide news release.

Public informational meetings were held June 30 at Emporia State University, Emporia, Kansas and July 1 at the Geary County Fairgrounds in Junction City, Kansas. These locations were selected based on their proximity to areas that may be affected by the proposed listing actions. At each meeting, department staff discussed the laws and procedures for listing a species as threatened or endangered, and reviewed each species' description, distribution, life history, and habitat. Staff emphasized that this was merely the beginning of the listing process, and that the public was invited to submit information for scientific review regarding each species' status. One public participant attended the meeting in Emporia; and three public participants attended the meeting in Junction City.

In addition to other public notification efforts, information about each species proposed for listing was made available to the public at department offices in Emporia, Topeka, and Pratt,

and at a public Wildlife and Parks Commission meeting held at Johnson County Community College in Overland Park on June 24, 2004.

Finally, the scientific task committee sent information concerning the proposed listings to individuals and companies believed to have knowledge and scientific information about one or more of the species in question. These individuals and companies were asked to rate the species from “zero” (species in no danger) to “ten” (species near extirpation) for 17 different categories, using the Species Evaluation Categories endorsed by the Commission in the fall of 1997. These numerical evaluations, along with any other biological and scientific information submitted by the public, were collected by the Task Force over the 90 day public comment period.

Using this collected information, the scientific task committee finalized recommendations on August 16, 2004, and provided them to department administration. These recommendations were presented to the Wildlife and Parks Commission and to the public at the August 26, 2004 Commission meeting in Barton County. Taking into consideration the feedback received at that meeting, the department has proceeded to develop regulatory actions, as discussed below.

**FEDERAL MANDATE:** State law or regulation respecting a threatened or endangered species may be more restrictive, but can not be less restrictive than federal law or regulation (16 U.S.C.A. 1535(f)). The Secretary of Interior may enter into cooperative agreements with a state, provided that state “establishes and maintains an adequate and active program for the conservation of endangered and threatened species” (16 U.S.C.A. 1535(c)). With such cooperative agreements come substantial financial assistance to the state to develop conservation programs. The cost sharing for such programs has 75% of the cost being borne by the federal government. Therefore, a determination by the Secretary of Interior that a state was not maintaining an “adequate or active” program could place in potential jeopardy substantial federal assistance to the state.

None of the species proposed for listing actions are currently listed as threatened or endangered under federal law.

**ECONOMIC IMPACT:** The anticipated economic impacts from the proposed listing action of each species are discussed below.

**Texas night snake:** The Texas night snake is proposed to be listed as a SINC species. The species is currently listed as threatened. The current known habitat of the species is restricted to the Red Hills region of south-central Kansas. The intentional taking of a SINC species is prohibited. However, SINC species do not receive the same level of protection as threatened or endangered species, and no specific review or permit requirement applies to private or public projects that may affect a SINC species or its habitat. Consequently, no economic impact on the general public is anticipated due to the listing of the Texas night snake as a SINC species.

The department is required to develop a recovery plan for each SINC species, based on the priority list developed pursuant to K.A.R. 115-15-4. However, information is already available as a result of the Texas night snake as a threatened species and it is unlikely if additional costs would be incurred.

Delta hydrobe: The Delta hydrobe is proposed to be listed as a SINC species. The current known habitat of the Delta hydrobe is Cedar Creek in Chase County. The presence of this gill-breathing aquatic snail indicate the high-quality of this spring-fed stream. There are only 5 species of gill-breathing snails in Kansas and they are all sensitive to pollution. The intentional taking of a SINC species is prohibited. However, SINC species do not receive the same level of protection as threatened or endangered species, and no specific review or permit requirement applies to private or public projects that may affect a SINC species or its habitat. Consequently, no significant economic impacts on the public or other state agencies are anticipated from the listing of the Delta hydrobe as a SINC species.

The department is required to develop a recovery plan for each SINC species, based on the priority list developed pursuant to K.A.R. 115-15-4. The cost to the department to establish a recovery plan for the Delta hydrobe is roughly estimated at \$5,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Brindled madtom: The Brindled madtom is proposed to be listed as a SINC species. The current known habitat of the Brindled madtom is Cedar Creek in Chase County and the Spring River in Cherokee County. The Brindled madtom is a small member of the catfish family about 3 inches long. It avoids large rivers and can be found in leaf-littered pools in clear streams. The intentional taking of a SINC species is prohibited. However, SINC species do not receive the same level of protection as threatened or endangered species, and no specific review or permit requirement applies to private or public projects that may affect a SINC species or its habitat. Consequently, no significant economic impacts on the public or other state agencies are anticipated from the listing of the Brindled madtom as a SINC species.

The department is required to develop a recovery plan for each SINC species, based on the priority list developed pursuant to K.A.R. 115-15-4. The cost to the department to establish a recovery plan for the Brindled madtom is roughly estimated at \$5,000, with an additional \$1,000 in administrative costs. Annual implementation of the recovery plan may cost approximately \$1,000 in field staff time.

Eastern chipmunk: The Eastern chipmunk is currently listed as a species in need of conservation and is proposed to be de-listed completely. The species currently occurs primarily in eastern Kansas, where it is considered a common species. The Kansas range is not disjunct from the natural range of this species. It is reportedly a nuisance species in some of the suburban areas of Kansas City. Consequently, no economic impact of de-listing the species are expected to the department or the public, as de-listing the species eliminates the need for a recovery plan and provides an economic savings to the department.

Red-shouldered hawk: The Red-shouldered hawk is currently listed as a species in need of conservation and is proposed to be de-listed completely. The species currently occurs primarily in bottomland timber habitat. The Kansas range is primarily the eastern one-fourth of the state. Nest records in eastern Kansas are more common than they were two decades ago. Breeding Bird Survey results over the natural range of this hawk show a significant annual increase of 2.6 percent from 1980-2002. Consequently, no economic impact of de-listing the species are expected to the department or the public, as de-listing the species eliminates the need for a recovery plan and provides an economic savings to the department.

**CAPITAL AND ANNUAL COSTS:** At the present time, it is not possible to identify the specific capital and annual costs of compliance with the proposed regulation. Nonetheless, as described above, the capital and annual costs due to these proposed listing actions would be expected to be minimal, and would probably be restricted to the costs associated with any further action on a recovery plan for the Texas night snake.

**INITIAL AND ANNUAL COSTS OF IMPLEMENTATION AND ENFORCEMENT:** Initial and annual implementation costs will be borne entirely by the department, and would be expected to be minimal. As noted above, SINC species do not require the same review of projects that may affect the species' habitat or status as do threatened or endangered species. Consequently, no additional permitting or enforcement activity would be anticipated.

Development of recovery plans for listed species will also be borne by the department.

**COSTS WHICH WOULD ACCRUE WITHOUT REGULATION:** As noted above, federal law requires that the state establish and maintain an adequate and active program for the conservation of endangered and threatened species, and requires that the state program be at least as restrictive as the federal program. Listing a federally-listed species at the state threatened level meets this requirement. Funding received as a direct result of threatened and endangered species programming currently totals approximately \$25-40,000 annually. Otherwise, costs which would likely accrue if the proposed regulation is not adopted are not readily identifiable.

Again, no species proposed for listing or de-listing action is listed on the federal level.

**COST ESTIMATE METHODOLOGY:** Costs associated with work by Department employees are based on current state civil service salary plan. Costs estimates for the development of species' recovery plans are based on contract costs for development of recovery plans for other species.