

ENVIRONMENTAL BENEFIT STATEMENT

K.A.R. 115-15-1. Threatened and endangered species; general provisions.

REGULATION DESCRIPTION: This permanent regulation designates species classified as threatened and endangered in Kansas (“T&E species”). An environmental benefit statement is required by law when amending an environmental rule or regulation. A regulation adopted by the Secretary of Wildlife and Parks concerning threatened or endangered species of wildlife is defined as an environmental rule or regulation. Consequently, this environmental benefit statement has been prepared. The proposed amendments to the regulation are as follows:

- | Remove one endangered species: Peregrine falcon, *Falco peregrinus*
- | Remove one threatened species: Bald eagle, *Haliaeetus leucocephalus*
- * Add three threatened species: Shoal chub, *Macrhybopsis hyostoma*
Plains minnow, *Hybognathus placitus*
Delta hydrobe, *Probythinella emarginata*

In conjunction with these proposed amendments, the department is also proposing amendments to K.A.R. 115-15-2, which includes the lists of species in need of conservation in Kansas. Proposed amendments to that regulation include the addition of the Bigeye shiner, Redfin darter, Lake sturgeon, Striped shiner, Common shiner, Southern redbelly dace, Cardinal shiner, and the Johnny darter to the list of SINC species, and the removal of the Plains minnow and the Delta hydrobe from 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 all species of wildlife indigenous to this state which have been determined to be endangered species . . . and a list of all such species which have been determined to be threatened...” (K.S.A. 32-959(c)(1)). In making this determination, a species may be threatened or endangered 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.

The current proposed amendments stem from petitions for listing actions received by the

department by May 31, 2008, as well as federal threatened and endangered species listings. Since that time, the department has held various public meetings, collected data, and received official recommendations from a task force composed of personnel from the U.S. Fish and Wildlife Service, universities, the Kansas Biological Survey, and the department. In making its recommendation to the department, that task force collected numerical ratings from individuals and companies believed to have knowledge and scientific information about one or more of the species in question, over a 90-day public comment period.

Taking into consideration response from the Wildlife and Parks Commission, the general public, and the task force recommendations, the department has developed these proposed regulatory amendments. A description of the species and related information, as well as a description of the risk or threat to the species and the need for the regulatory amendment, is included for each of the species in question.

Peregrine falcon (*Falco peregrinus*)

- Federal Status: None
- Current Kansas Listing Status: Endangered
- Proposed Listing Action: De-list the species
- Description: It is a large, crow-sized falcon, with a blue-gray back, barred white underparts, and a black head and "moustache".
- Size: Adults grow to about 13-20 inch length in body with a 31-47 inch wingspan.
- Habitat: Distributed worldwide and nests rarely in Kansas.
- Reproduction: Breeding occurs in February and March in the Northern Hemisphere.
- Food: While its diet consists almost exclusively of medium-sized birds, the Peregrine falcon will occasionally hunt small mammals, small reptiles or even insects.

Threat to the species and need for the regulatory amendment: Peregrine Falcons are passage birds through Kansas but the population, severe decline in the 1960's and early 1970's, has recovered and is now considered robust. The bird was removed from the federal list in 1999.

Bald eagle (*Haliaeetus leucocephalus*)

- Federal Status: none
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: De-list the species
- Description: The adult Bald Eagle has a brown body with a white head and tail, and bright yellow irises, taloned feet, and a hooked beak; juveniles are completely brown except for the yellow feet. Males and females are identical in plumage coloration
- Size: Adults grow to a body length of 28-42 inches with a wingspan of 72-96 inches.
- Habitat: The Bald Eagle requires old-growth and mature stands of coniferous or hardwood trees for perching, roosting, and nesting
- Reproduction: The Bald Eagle produces 1-3 eggs per year with a 35 day incubation period.
- Food: The Bald Eagle's diet is opportunistic and varied, but most feed mainly on fish.

Threat to the species and need for the regulatory amendment: The Bald Eagle is proposed for delisting due to an increase in document nest occurrences from 1989 through 2008 and winter sightings are now common. The bird was removed from the federal threatened list in 2007.

Shoal chub (*Macrhybopsis hyostoma*)

- Federal Status: None
- Current Kansas Listing Status:
- Proposed Listing Action: List the species as threatened.
- Description: Sides of the body are light tan or silvery with numerous black pepper-like spots with a white belly and clear fins.
- Size: The species is 2 and ¾ inches long.
- Habitat: The Republican River and lower Kansas River.
- Reproduction: Spawning season is from May through August.
- Food: Eats mostly immature aquatic insects.

Threat to the species and need for the regulatory amendment: Notable declines in distribution and abundance have been documented in the last 50 years. Streamflow modifications (dewatering, reduction in peak flows, and elevation of base flows), compaction of sand substrates, sediment deposition, and establishment of sight-feeding predators and competitors are all mentioned as risks for several minnow species adapted to large rivers in Kansas.

Plains Minnow (*Hybognathus placitus*)

- Federal Status: None
- Current Kansas Listing Status: SINC
- Proposed Listing Action: List the species as threatened.
- Description: Silvery, terete minnow with a small head, small subterminal mouth, and small knob on the inside tip of the lower jaw and it is tan to brown or olive dorsally, silver laterally, and white ventrally with colorless fins.
- Size: The species is 5 inches long.
- Habitat: The Republican, Smoky Hill and Arkansas river basins as well as the Cimarron River.
- Reproduction: Spawning season is from May through August.
- Food: Herbivorous.

Threat to the species and need for the regulatory amendment: Notable declines in distribution and abundance have been documented in the last 50 years. Streamflow modifications (dewatering, reduction in peak flows, and elevation of base flows), compaction of sand substrates, sediment deposition, and establishment of sight-feeding predators and competitors are all mentioned as risks for several minnow species adapted to large rivers in Kansas.

Delta hydrobe (*Probythinella emarginata*)

- Federal Status: None

- Current Kansas Listing Status: SINC
- Proposed Listing Action: List as a threatened in Kansas
- Description: The Delta hydrobe is a gill-breathing aquatic snail. There are 5 species of gill-breathing snails in Kansas, all of which are sensitive to pollution.
- Size: Adults grow shells to 0.1 inches in length.
- Habitat: The species in Kansas had only been documented as fossil specimens from the Pleistocene era until the discovery of a relic population in Cedar Creek in Chase County, attributed to the high quality of this spring-fed stream.
- Reproduction: Unknown.
- Food: Periphyton.

Threat to the species and need for the regulatory amendment: The Delta hydrobe is maintaining an isolated population in Cedar Creek. Developments that would affect the hydrology of the stream could be a detriment. A large impoundment on Cedar Creek has been proposed in the past by the Army Corps of Engineers. Dams on the mainstem of Cedar Creek would be a threat to this population. In addition, stream channelization and gravel dredging could make the substrates unstable and also threaten the established population. If bridge, pipeline and tree removal occurs at or very near the site of the established population, then a severe reduction in population could occur. Dewatering of Cedar Creek for irrigation purposes could be considered a threat during periods of drought. Listing of the species as a threatened species would provide it more protection and would help raise awareness. In addition, if listed species are used in targeting USDA programs to conserve soil, grassland, and enhance riparian zone vegetation, then this listing could help maintain or improve the excellent water quality already found on Cedar Creek.