

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 eight new SINC species:
 - Bigeye shiner, *Notropis boops*
 - Redfin darter, *Etheostoma whipplei*
 - Lake sturgeon, *Acipenser fulvescens*
 - Striped shiner, *Luxilus chrysocephalus*
 - Common shiner, *Luxilus cornutus*
 - Southern redbelly dace, *Phoxinus erythrogaster*
 - Cardinal shiner, *Luxilus cardinalis*
 - Johnny darter, *Etheostoma nigrum*
- Remove two SINC species:
 - Delta hydrobe, *Probythinella emarginata*
 - Plains minnow, *Hybognathus placitus*

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 Shoal chub, Plains minnow, and Delta hydrobe to the list of threatened species as well as removing the Peregrine falcon from the endangered species list and Bald eagle from the list of threatened 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 February of 2008, the five-year review of Kansas threatened, endangered and species in need of conservation list was initiated. Approximately 450 individuals and organizations were mailed a “petition for species review” form to be returned by May 31, 2008. This initial process provides opportunity for submitting a petition for removal or addition of species to the Kansas list. By May 31, twenty-one species had been petitioned. State law also provides that petitions may be submitted outside of the five-year review process.

Of the twenty-one species petitioned, twelve species were petitioned to be listed as endangered or threatened in Kansas. In addition, two species were petitioned for removal from the threatened list in Kansas, one species was petitioned for removal from the endangered list and three species were petitioned for removal from the SINC species list.

In June 2008, 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 determined that sufficient data existed to consider whether a listing action is warranted for nine species:

- | Bald eagle
- | Peregrine falcon
- | Roadhead skink
- | American eel
- * Shoal chub
- * Bigeye shiner
- * Redfin darter
- * Plains minnow
- * Delta hydrobe

As a component of the prescribed process, notice was published in the *Kansas Register* on September 4, 2008, 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 four 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 September 11, 2008 statewide news release.

Public informational meetings were held October 2, 2008 in Topeka; October 7, 2008 in Wichita; October 9, 2008 in Parsons; and October 30, 2008 in Pittsburg. 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. Four public participants attended the meeting in Topeka; four public participants attended the meeting in Wichita; nineteen public participants attended the meeting in Parsons; and thirty-one public participants attended the meeting in Pittsburg.

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 public meetings of the Wildlife and Parks Commission in Tonganoxie on October 23, 2008 and in Emporia on January 8, 2009.

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 January 6, 2009, and provided them to department administration. These recommendations were presented to the Wildlife and Parks Commission and to the public at the January 8, 2009 Commission meeting in Emporia. 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.

Bigeye shiner: The Bigeye shiner is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is clean streams in quiet pools in the southern tier of counties in southeast 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 Bigeye shiner 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 Bigeye shiner 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.

Redfin darter: The Redfin darter is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is gentle stream riffles with gravel substrate in the southern tier of counties in southeast 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 Redfin darter 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 Redfin darter 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.

Lake sturgeon: The Lake sturgeon is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is large rivers, primarily the Kansas River and the Missouri River. 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 Lake sturgeon 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 Lake sturgeon 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.

Striped shiner: The Striped shiner is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is the Spring River drainage in extreme southeast 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 Striped shiner 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 Striped shiner 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.

Common shiner: The Common shiner is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is 47 streams in 13 Kansas counties. 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 Common shiner 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 Common shiner 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.

Southern redbelly dace: The Southern redbelly dace is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is the Kansas River drainage. 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 Southern redbelly dace 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 Southern redbelly dace 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.

Cardinal shiner: The Cardinal shiner is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is rocky runs and riffles in the Upper Neosho River and Arkansas River drainage. 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 Cardinal shiner 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 Cardinal shiner 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.

Johnny darter: The Johnny darter is proposed to be listed as a SINC species. The species is currently unlisted. The current known habitat is in sandy and muddy, sometimes rocky, pools of headwaters, creeks, and small to medium rivers of eastern 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 Johnny darter 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 Johnny darter 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.

Delta hydrobe: The Delta hydrobe is currently listed as a species in need of conservation and is proposed to be delisted as a SINC species and listed as a threatened species. The species currently occurs primarily in Cedar Creek, in Chase County. Consequently, no economic impact of de-listing the species is expected to the department or the public, as delisting the species eliminates the need for a recovery plan and provides an economic savings to the department.

Plains minnow: The Plains minnow is currently listed as a species in need of conservation and is proposed to be delisted as a SINC species and listed as a threatened species. The species currently occurs primarily the Republican, Smoky Hill and Arkansas River basins as well as the Cimarron River. Consequently, no economic impact of delisting the species is expected to the department or the public, as delisting 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.

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.