

**AGENDA**  
**KANSAS DEPARTMENT OF WILDLIFE AND PARKS**  
**COMMISSION MEETING AND PUBLIC HEARING**  
**Thursday, January 20, 2005**  
**Memorial Hall Auditorium**  
**120 SW 10<sup>th</sup>, 2<sup>nd</sup> Floor, Topeka**  
**Lunch at Capitol Building, 2<sup>nd</sup> Floor Rotunda at 11:30 a.m.**

- I. CALL TO ORDER AT 1:30 p.m.**
- II. INTRODUCTION OF COMMISSIONERS AND GUESTS**  
  
**Flint Oaks/Hunter Education Donation Presentation (Governor Sebelius and Ray Walton)**
- III. ADDITIONS AND DELETIONS TO AGENDA ITEMS**
- IV. APPROVAL OF THE October 28, 2004 MEETING MINUTES**
- V. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS**
- VI. DEPARTMENT REPORT**
  - A. Secretary's Remarks**
    - 1. Recognition of Partners in Aquatic Nuisance Species Plan (Doug Nygren)**
    - 2. 2005 Legislation (Chris Tymeson)**
    - 3. FY 2006 Budget (Dick Koerth)**
  - B. General Discussion**
    - 1. KACEE Award (Roland Stein and Mike Rader)**
    - 2. Wildscape Projects in the Topeka Area (Jim Huntington)**
    - 3. Automated Licenses - Regulations (Karen Beard/Chris Tymeson)**
    - 4. Sandhill Crane Seasons (Helen Hands and Marvin Kraft)**
    - 5. Comprehensive Wildlife Conservation Plan (Laurie Yasui and Ken Brunson)**
    - 6. Operation Game Thief/reward systems (Kevin Jones)**
  - C. Workshop Session**
    - 1. KAR 115-4-2. Big game; general provisions. (Lloyd Fox)**
    - 2. KAR 115-4-4. Big game; legal equipment and taking methods. (Lloyd Fox)**
    - 3. KAR 115-4-13. Deer permits; descriptions and restrictions. (Lloyd Fox)**

4. **KAR 115-25-9. Deer; open season, bag limit and permits. (Lloyd Fox)**
5. **KAR 115-25-10. Deer; special southeast firearms season, bag limit, game tags, application, and hunter reporting requirements. (Lloyd Fox)**
6. **KAR 115-4-4a. Wild turkey; legal equipment and taking methods. (Roger Applegate)**
7. **KAR 115-25-5. Turkey; fall season, bag limit and permits. (Roger Applegate)**
8. **KAR 115-25-7. Antelope; open season, bag limit and permits. (Matt Peek)**
9. **KAR 115-25-8. Elk; open season, bag limit and permits. (Matt Peek)**

**VII. RECESS AT 5:00 p.m.**

**VIII. RECONVENE AT 7:00 p.m.**

**IX. RE-INTRODUCTION OF COMMISSIONERS AND GUESTS**

**X. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS**

**XI. DEPARTMENT REPORT**

**C. Workshop Session (continued)**

10. **KAR 115-18-10. Importation and possession of certain wildlife; prohibition, permit requirement and restrictions - State Law Action pertaining to Exotic Cat Ownership (Kevin Jones) and Adding New Zealand Mud Snail to prohibited species list (Doug Nygren)**

**D. Public Hearing**

1. **KAR 115-18-1. Wildlife rehabilitation permit; application, reporting and general provisions (Kevin Jones)**
2. **KAR 115-4-6. Deer; firearm management units - unit archery permitting (Lloyd Fox)**
3. **KAR 115-4-6a. Deer; archery management units - unit archery permitting (Lloyd Fox)**
4. **KAR 115-15-1. Threatened and endangered species; general provisions. (Ed Miller)**
5. **KAR 115-15-2. Nongame species; general provisions. (Ed Miller)**
6. **KAR 115-2-1. Amount of fees - Revenue Task Force recommendations (Mike Miller)**

7. **KAR 115-3-2. Rabbits, hares and squirrels; legal equipment, taking methods and possession - night scope issue (Kevin Jones)**
8. **KAR 115-5-1. Furbearers and coyotes; legal equipment, taking methods and general provisions - night scope issue (Kevin Jones)**
9. **KAR 115-20-1. Crows; legal equipment, taking methods, and possession - night scope issue (Kevin Jones)**
10. **KAR 115-20-2. Certain wildlife; legal equipment, taking methods, possession and license requirement - night scope issue (Kevin Jones)**
11. **KAR 115-7-2. Fishing; general provisions - 3<sup>rd</sup> pole (Doug Nygren)**
12. **KAR 115-25-14. Fishing; creel limit, size limit, possession limit and open season - Fort Riley fish stocking and designated trout waters (Doug Nygren)**
13. **KAR 115-18-7. Use of crossbows for big game hunting by persons with disabilities; application, permit, and general provisions - night scope issue and turkey amendments (Kevin Jones/Roger Applegate)**
14. **KAR 115-4-11. Big game permit applications - turkey amendments (Roger Applegate)**
15. **KAR 115-9-4. Hunting or furharvester license purchase - automation and Revenue Task Force recommendations (Karen Beard/Mike Miller)**
16. **KAR 115-11-2. Controlled shooting areas; operational requirements - turkey amendments (Roger Applegate)**
17. **Secretary's Resolutions. Free fishing and Park Entry days (Mike Hayden)**

## **XII. OLD BUSINESS**

## **XIII. OTHER BUSINESS**

### **A. Future Meeting Locations and Dates**

## **XIV. ADJOURNMENT**

If necessary, the Commission will recess on January 20, 2005, to reconvene January 21, 2005, at 9:00 a.m., at the same location to complete their business. Should this occur, time will be made available for public comment. If notified in advance, the department will have an interpreter available for the hearing impaired. To request an interpreter call the Kansas Commission of Deaf and Hard of Hearing at 1-800-432-0698. Any individual with a disability may request other accommodations by contacting the Commission Secretary at (620) 672-5911. The next commission meeting is scheduled for Thursday, March 24, 2005, at Beloit Municipal Building, , 119 Hersey, Beloit, Kansas.

**KANSAS DEPARTMENT OF WILDLIFE AND PARKS  
COMMISSION MEETING MINUTES FOR  
Thursday, October 28, 2004  
Atchison Heritage Conference Center, Mercantile Ball Room  
710 S 9th, Atchison, Kansas**

Subject to  
Commission  
Approval

**I. CALL TO ORDER AT 1:30 p.m.**

The October 28, 2004 meeting of the Kansas Department of Wildlife and Parks Commission was called to order by Chairman John Dykes at 1:32 p.m. at the Atchison Heritage Conference Center in Atchison. Chairman Dykes and Commissioners John Fields, Jim Harrington, Kelly Johnston, Frank Meyer, Doug Sebelius, and Shari Wilson were present.

**II. INTRODUCTION OF COMMISSIONERS AND GUESTS**

The Commissioners and Department staff introduced themselves (Attendance roster - Exhibit A).

Mayor Dan Garrity welcomed everyone to Atchison and spoke about riverfront project.

**III. ADDITIONS AND DELETIONS TO AGENDA ITEMS**

Commission secretary Sheila Kemmis added Workshop item No. 8. Department legal counsel Chris Tymeson added workshop item No. 6, fiber optics additions and also third pole permit item, to be presented by Kevin Jones and Mike Miller (Agenda - Exhibit B).

**IV. APPROVAL OF THE AUGUST 26, 2004 MEETING MINUTES**

Commissioner Johnston moved to accept minutes, Commissioner Meyer second. All approved. (Minutes - Exhibit C).

**V. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS**

*None*

**VI. DEPARTMENT REPORT**

**A. Secretary's Remarks**

1. 2005 Potential Legislation - Chris Tymeson, legal counsel, presented this report to the Commission. Potential legislation has been through an internal classification and items have been narrowed it down to five from a long list. None have been drafted or presented to the Governor's office yet. 1) Park funding from a \$5 vehicle license registration fee with \$1.00

going to the local recreation grant program and the other \$4.00 going to parks. This will allow anyone with a Kansas license plate to get in the state parks free. 2) Wildlife Violator Compact will be presented again this year. It has been revised. 3) Boating updates, some of which were passed last year, will be presented again. 4) A bill to create a conservation easement program with dedicated funding will be proposed. 5) And finally, legislation will be introduced that will protect the department's federal funding.

2. FY 2006 Budget - Dick Koerth, assistant secretary, presented this report to the Commission (Exhibit D). The FY 2006 budget request is for a total of \$46,560,352 and 408.5 positions, an increase of two positions (one for Park 24 and one for Circle K Ranch). The amount of State General Fund (SGF) expenditure requested is \$4,218,624. The revised FY 2005 budget totals \$56,601,492, of which \$3,399,386 is from the SGF. The large amount of expenditures for FY 2005 includes re-appropriated capital improvement projects from prior years. The status of the SGF supplemental request will not be known until Governor Sebelius submits the FY 2006 budget recommendations in January 2005. On September 16, 2004, the department requested State Finance Council approval for an \$800,000 increase in the expenditure limitation for the Wildlife Fee Fund. The additional funding will be used to finance the Community Fisheries Assistance Program which will enhance public fishing access to community lakes and use local government expenditures as the required match for federal reimbursement. The State Finance Council approved the request on October 13, 2004. The FY 2006 budget request continues current operations for the department at the previously approved levels with 406.5 positions. Included in the current operations request is \$266,000 in SGF appropriations to continue the program providing active Army and Air National Guard members with free hunting or fishing licenses, or free annual vehicle permits to state parks. Also, \$120,000 is included as the second payment to the Almena Irrigation District for maintaining a minimum water level in the Sebelius Reservoir. For FY 2006, the department has requested the following enhancements: a request to expend \$233,000 from the Wildlife Fee Fund and 1.0 FTE to provide for management of the Circle K Ranch; and a SGF appropriation of \$103,505 and 1.0 FTE to provide for management of Park No. 24 in Shawnee County. In addition, an amount of \$957,000 has been requested to replace 48 pickup trucks for various divisions. The department has not been able to acquire replacement vehicles for the last two fiscal years, and it should be noted that the "backlog" of vehicles projected for replacement totals approximately 95 vehicles. The Commission has previously been provided information on the FY 2006 Capital Improvement request submitted by the department. Chairman Dykes asked when the purchase of Circle K would occur. Secretary Hayden it could happen by July 1, 2005, adding that it would be paid for out of the Water Authority fund for debt service.

Commissioner Wilson asked about the \$5.00 vehicle registration fee proposal, noting that it was \$4.50 when presented to the Commission in August. Secretary Hayden said that the Department of Revenue has a minimum of \$5.00 for issuing refunds and since an optional refund is part of the program it was changed to \$5. Now \$1.00 of that money will go to the local parks (instead of \$.50) and \$4.00 will go to the state parks.

## **B. General Discussion**

1. Wildscape Projects in the Atchison Area - Hank Booth, Wildscape Executive

Director, presented this report to the Commission (Tuttle Creek Cabin Photo - Exhibit E). “Build it and they will come”, four cabins are up at Tuttle Creek and they are full already. The cabins cost between \$26,000 and \$27,000 each and will pay for themselves in a few years. Parks Division Director Jerry Hover will designate where the next four will be built this spring. Booth thanked Hover, Secretary Hayden and legal counsel Amy Thornton for their work on the cabins. Kansas Wildscape LLC has been formed to allow purchases. If critical property comes up for sale Wildscape will be able to purchase it and allow the department pay Wildscape back after the state gets the appropriate funding. Booth announced some personnel changes at Wildscape and a new website [www.kansaswildscape.com](http://www.kansaswildscape.com). The OK Kids program at conducted at Holton was a large event. He thanked Bass Pro and Capitol Federal Savings and others who help sponsor OK Kids events, and he also thanked the bank that helped fund the four cabins.

2. State Comprehensive Wildlife Plan - Ken Brunson, wildlife diversity coordinator and Laurie Yasui, planner, presented this report to the Commission (Exhibit F), after being introduced by assistant secretary Keith Sexson. Sexson explained that the department began developing a comprehensive plan and that public meetings were part of the process. He wanted to update the Commission, as well as the public on the plan’s progress. Brunson explained that the plan was a requirement of a federal program that allows states to apply for wildlife grants. This funding provided new federal dollars to prevent additional species from becoming endangered. This year, through State Wildlife Grants, Kansas will receive about \$800,000. The Comprehensive Wildlife Conservation Plan has the long-term goal of keeping common species common. The Teaming with Wildlife (TWW) program originally sought to create an excise tax on outdoor products to fund nongame projects, but it failed to pass in congress. The Conservation and Reinvestment Act (CARA) sought to supply funding for wildlife through offshore oil lease money. This plan failed at the last minute in 2000. The new plan is the State Wildlife Grants and is a 50/50 match program. One challenge will be to receive spending authority to spend the money. Yasui explained that a planning group had been hired and had already met with assistant secretary Sexson and the federal government. Priority species and habitats of greatest conservation need as well as actions necessary to keep our state’s fish and wildlife healthy will be identified in the comprehensive plan. And parameters will be established to guide spending of future grant funds. Partners and cooperators will also be identified. The plan will also be used to justify continuation of funding for identified conservation actions that can be undertaken by a wide array of public and private natural resource organizations in Kansas, and will be Kansas’ contribution to a nation-wide overview. After internal meetings next spring, the plan will be presented to the public. Commissioner Johnston asked what species might be covered. Brunson said all species on Threatened and Endangered and SINC lists are eligible, except federally recognized species. This will target the species not covered by other federal funding. Commissioner Wilson asked if education programs were included. Yasui said there was no funding at this point, but that the International Association of Fish and Wildlife Agencies (IAFWA) is working to have education included. Education is in the Kansas plan even though it will not be funded.

3. Proposed 2005 Recreational Trail Grant Applications - Jerry Hover, Parks Division director, presented this report to the Commission (Exhibit G). In 1992, the Recreation

Trail Grants Program was funded minimally, and then not funded until 1996, when the Department of Transportation provided funding. The Transportation Enhancement Program did pass congress last year. The department is operating under the 2003 authorization. About \$450,000 of projects will be funded. A total of \$4.8 million was requested, and the advisory board pared that down to \$4.3 million. Projects have been prioritized and there is \$220,000 left from last year. Thirty percent of the total must be spent on non-motorized trails, 30 percent on motorized trails and the other 40 percent is split up on administration and a combination of trails. Not all of the motorized trail money was used last year. The top 10 projects are: 1) Rock Creek Valley Historical Society trail in Westmoreland; 2) Pratt USD 382 trail; 3) City of Wellington trail; 4) KDWP Cross Timbers and Fall River trail equipment; 5) City of Lansing trail; 6) City of Wakeeney trail; 7) City of Anthony trail; 8) City of Jetmore Kenyou Nature Parkway; 9) KDWP Prairie Spirit Rail Trail brush chipper; and 10) Fort Scott Community College trail. Other possible uses for department funds will be Circle K motorized and non-motorized trails. Also, some funding to the Prairie Spirit Rail Trail. Those projects not approved were: City of Valley Falls trail; City of Argonia trail enhancements; City of Cheney trail; City of Wichita Chisholm Park Trail; and Jefferson County Conservation District trail. Chairman Dykes asked about money earmarked for motorized trail projects while most of the mentioned projects are not motorized. Hover said that fewer motorized projects are proposed and that money can be moved from one project to another. Commissioner Johnston asked if the acronym HA meant handicapped accessible. Hover said all trails must be handicapped accessible.

4. KDWP Private Land Programs - Joe Kramer, Fish and Wildlife Division director, presented this report to the Commission (Exhibit H). PowerPoint presentation (Exhibit I). In 1973 the Kansas Department of Wildlife and Parks (KDWP) Private Lands Program was created. Kansas has 80,000 square miles and 6 percent is public land, so most programs are done on private lands. In 1988 our department reorganized and biologists who spent their time on public land moved to private land. A memorandum of agreement signed in 1994 with the Natural Resource Conservation Service (NRCS) and the Wildlife Management Institute (WMI) allowed the department to hire six wildlife biologists (bio-techs) to work in the NRCS district offices and promote wildlife-friendly Farm Bill programs. In 1995, the Walk-In Hunting Area (WIHA) program was created. Today, WIHA leases more than one million acres of private land for public hunting access. More than 50 percent of WIHA acres are enrolled in CRP, and most are in the western two-thirds of the state. WIHA has been a very positive program for the department and is popular with hunters and landowners. KDWP has been a leader among Midwest states as far as access programs. With the 2002 Farm Bill, KDWP signed another cooperative agreement with NRCS which allowed five department biologists to work in NRCS offices and KDWP hired additional bio-techs. The agreement allowed KDWP wildlife private land biologists to implement the federal WHIP program. The six new KDWP bio-techs (12 total) assist the department's 14 private land wildlife biologists. In the first year, under the federal WHIP program, 267 applications were received, covering 31,924 acres. One hundred and forty-eight contracts were approved covering 17,914 acres for a total of \$593,861. KDWP has provided \$150,000 a year for four years to assist county conservation districts to hire staff to promote and develop conservation buffers. This program should improve as time goes on. The department's private land tool box includes programs such as: the quail (5 years) and pheasant initiatives (3 years); 5 regional game bird plans (2 years); farm bill programs; and the Landowner Incentive

Program (LIP) grant. Tier 1 USFWS federal grant in 2003, an agreement was signed with KAWS that will protect wildlife species in need of conservation in the playa lakes area of Kansas, which includes the western two thirds of the state and provides funding for three positions (coordinator and two biologists) in the target area. Statewide pheasant and quail initiatives include five regional upland game bird private land plans that involve all current private land programs available to department. Those programs and partners include: Farm Bill; KDWP's Wildlife Habitat Improvement Program; Pheasants Forever; Quail Unlimited; Kansas Alliance for Wetlands and Streams; Playa Lakes Joint Venture; Ducks Unlimited North American Waterfowl Conservation Act; Upper Mississippi Grant Lakes Joint Venture; U.S. Fish and Wildlife Service; NRCS Buffer Initiative; more. In the future, the department will include agritourism in its tool box. A new cooperative agreement with NRCS will protect, develop, and enhance more wetland habitat acres through the current Wetland Reserve Program (WRP, as well as increase participation in the Farm and Ranch Lands Protection Program (FRPP) and Grassland Reserve Programs (GRP). The LIP program Tier 2 grant would hire four new KDWP bio-techs to assist with programs above. Department staff has been working with Senator Pat Roberts and Representative Jerry Moran to enhance current Farm Bill programs and get legislative backing. Conservation Practice 33 is the first CRP practice established exclusively to provide wildlife habitat and provides financial incentives to landowners who are already implementing good conservation practices. And finally, the goal for WIHA is 1.5 million acres by 2008, which will require additional funding. However, the program is federally reimbursable, for every dollar the department spends it gets \$.75 back.

Chairman Dykes asked how the department helped biologists prioritized their attention when dealing with programs that involve KDWP, NRCS and USDA. Kramer said that the amount of money the USDA starts the process. Biologists have been told to spend half of their time on federal WHIP. Commissioner Fields asked about the approximate cost of WIHA. Kramer said the department pays \$1.26 an acre for rental only. The program cost is about \$2.00 per acre after atlas is printed.

Commissioner Wilson mentioned that she attended the CSP playa lakes kickoff on Tuesday and complimented staff on the presentation.

5. Cooperative Efforts with Department of Commerce - LeAnn Schmitt, special assistant to the Secretary and Commissioner Shari Wilson, presented this report to the Commission (Exhibit J). Schmitt said that she, Bob Matthews, and Commissioner Shari Wilson began working with the Kansas Department of Commerce's Travel and Tourism Division director Scott Allegrucci on a number of marketing efforts. The projects include: 1) Developing an outdoor media kit and strategy plan as a guinea pig project for start of 2005 state legislative session, which will prioritize the market and opportunities, create working relationships, set a budget for outdoor media relations, and set joint procedures for how to handle outdoor media inquiries. 2) Development and marketing of the 2005 Getaway Guide, which is nearly finalized and will include an Outdoor Recreation section that captures the breadth of outdoor recreation opportunities in the state. This may become a stand-alone piece that both KDWP and KDOC can use for general marketing purposes. The Guide looks great and I can't wait for you to see it. 3) Research related to outdoor recreation customers and identifying what research both agencies already have to help us do more targeted marketing by identifying what information we still need; and planning how to obtain that information. KDOC has a contract with data marketing company that we may be able to utilize in the future. 4) In coordination with Kansas Department



of Commerce (KDOT), review current highway signage and related policies, and develop policies and action plan to be coordinated between KDOC, KDWP, and KDOT. Schmitt said she is on the Agritourism Advisory Council, which was formed at the beginning of this year. There will be an agritourism conference in Great Bend November 3-4 and with an expected 400 people present... Schmitt will also represent the department on the Governor's Council on Travel and Tourism, which is developing a comprehensive statewide strategic plan for tourism. Commissioner Wilson added that she was appointed a tourism liaison in March 2004 by the Commission (Exhibit K). She also serves on the Scenic Byways Committee, the Film Commission and the Travel Industry Association of Kansas (TIAK). She has attended some conferences so far and is trying to get geared up on these committees. She said she recently attended a TIAK conference.

Chairman Dykes thanked them both.

6. Lewis and Clark Commemoration Summary - Jeff Bender, Pomona State Park manager, presented this report to the Commission (Exhibit L). Bender has been active in Lewis and Clark re-enactment at commemorative celebrations. He said the organizers refer to the events as the Corps of Discovery Tour instead of the Lewis and Clark Expedition. The national program officially runs from 2003 to 2006. There is a real spirit of discovery and there were many cultural benefits that came from Lewis and Clark's efforts. The trip happened because President Jefferson had a great interest in the West and he wanted to beat the British to the west and the fur trade. Jefferson had three goals: democracy, diplomacy, and geography. There were about 50 people originally on the expedition when they left St. Louis. The trip began in August 1803, and they returned home on September 23, 1806. The trail covers 28 states. The Corps of Discovery encountered 178 species and subspecies of plants, 122 species of animals that they listed, and they brought back specimens. Most of the plant specimens still exist. The specimens were given to scientists in Philadelphia and were exhibited in a museum there. Plant specimens were given to Jefferson and he gave them mostly to a German botanist who took a lot of the specimens to England, where they were auctioned off later and brought back to the U.S. Bird and mammal specimens were sold in 1848 by the Peel family, most went to Kimble's Museum in Boston and American Museum in New York, owned by P.T. Barnum, the museum burned and the specimens were lost. Atchison was the place to be last year as we kicked off the project. Paired up with several public and private organizations and municipalities and tribes (7 total). June 28 to July 4 was the signature program. A lot of projects are still going on. The national celebration goes on until 2006, and projects will continue long after that. The trails are a big part of this.

Karen Seaburg, Atchison Committee Chair, thanked KDWP, and Secretary Hayden in particular, for helping with the state projects. KDWP helped with the \$4.2 million river front project, moving a railroad line, updating two boat ramps, and other improvements. Without KDOT, KDWP, the Water Office and others it would never have gotten done.

*Showed seven-minute video.*

*Break*

### **C. Workshop Session**

1. State Law Action Pertaining to Exotic Cat Ownership - Kevin Jones, Law Enforcement Division director, presented this report to the Commission (Exhibit M). At the

January 2004 Commission meeting the department was directed to review and make recommendations concerning the ownership and possession of large cats, shortly after the passage of the Captive Wildlife Safety Act by Congress and concerns expressed by local government entities and general public. Several meetings have occurred between the department, the Governor's Office, the Secretary of State's office, other governmental agencies, zoological facilities and private citizens. It is recommended that KAR 115-18-10 be amended as follows: 1) The list of animals that are prohibited from importation, possession or release in the state be expanded to include tigers, leopards, cheetahs, jaguars, cougars and lions, or any hybrid of these animals, all bears, wolves and non-human primates and most recently non-native venomous reptiles. 2) Create a provision that any of the above listed animals currently in possession in the state must be reported to the department and a possession permit issued. An application and permitting period will be provided (roughly one year's time), and upon completion of this period, no additional permits will be issued, except as provided for specific, limited circumstances, such as educational or scientific purposes as provided by statute. Possession permits shall expire and possession of any of these animals in the state shall be prohibited after January 1, 2010. 3) Provisions will be created exempting accredited zoos, schools and universities, circuses, or federally allowable transportation of these animals. 4) Any person applying for the limited time possession permit, or desiring to establish a zoo-type facility (term used broadly) will be required to secure the appropriate permissions or permits from the appropriate federal, state and local government agencies. 5) Reporting requirements will be established requiring that the department be notified of the death, transfer or exportation of any animals permitted under this regulation. 6) The allowable activities for all other exotic animals will be moved to this regulation. In addition to the amendments to KAR 115-18-10, the following regulations would be affected as follows: KAR 115-20-3 would be repealed and the necessary provisions added to KAR 115-18-10; and KAR 115-20-4 would be repealed because the possession permit requirements for mountain lions, bears and wolves would be completely covered in KAR 115-18-10. KAR 115-12-3 would remove mountain lions, bears and wolves removed from game breeder. KAR 115-18-1 would include the definition of exotic animals.

Commissioner Johnston said that the proposal mentioned hybrids, meaning cats, but he wondered about wolves. Jones said it was difficult to define wolf hybrids. Commissioner Johnston asked Jones to clarify non-native. Jones said that it meant not native to the state of Kansas.

(Handouts from Speakers - Exhibit N)

Carol Asresras, owner of a facility for unwanted animals in San Antonio, Tex., said her facility had 700 animals. She encouraged the department to grandfather the animals already owned, otherwise there will be too many animals that need special care. Most of these animals live anywhere from 26 to 50 years.

Josephine Wood, IFAW Representative, Massachusetts, said her organization supported this bill and amendments but said it needed to grandfather in existing animals.

Susan Windsor and Vickie Harvey, National Simeon Society, Kansas City, Missouri, gave a booklet of information to Commissioners. They said an all out ban will not benefit anyone, and would create an underworld for those animals. The NSS has been in affect since 1946, and members would be happy to help the department to set up regulations. Florida has specific regulations for primates, and there are USDA regulations that might help. A ban could be very costly. The NSS is hosting a class in Kansas City on clinical capture in case an animal should escape, if anyone is interested in attending. Also, there are several qualified people available that

are already trained in capture.

Chairman Dykes asked how many primates are owned in Kansas. Windsor said possibly 250 primates in the state.

Janell Knutsen, Liberal, said she had 47 primates (10 species) on 160 acres. She said she also had several different exotic species and belonged to several different organizations. It is a known fact that 10 percent of exotic animals are being bred in zoos, the rest are produced in private hands and it will be the same in some of these other species. She said that the bad exotic owners could be controlled through regulations and asked the department not take her animals away.

Commissioner Johnston asked Windsor and Harvey about a comment they made about states where bans have lead to disaster. He asked for specific information. Harvey said that owners have gone underground and the animals are not getting the proper care and a black market was created. Some of these animals are very social, and if one dies and can't be replaced, more than likely the one left will die. Commissioner Johnston asked what kind of fee they would accept for regulation. Harvey said that \$150 for 10 primates was normal in most states. Windsor added that the fees vary. Harvey said that Florida has had regulations in place for the longest time.

Lynn Culver, Feline Conservation Federation, Arkansas, said she was interested in the private land program, which talked about protecting species and that is something that the organization talks about a lot. There are 38 species of cats and many of them are very endangered. The private sectors have many species of cats that do not exist in zoos in the U.S. There are financial incentives to help wildlife. There should be incentives to perpetuate gene pools of captive animals. She did not like the program that would ban these species by 2010. She said the regulation mentioned 6 species of large cats, but there are cats that weigh only 6-8 pounds. Her group has been in existence since 1956. She didn't deny that there is a problem in some areas because people can't take care of their animals. The problem has created a sanctuary industry that is run on the generosity of Americans. The goal of the Captive Wildlife Safety Act was to stop state to state transportation. There is an overload of tigers since 1998 law which was misinterpreted. She didn't believe the department needed to participate in the bandwagon to prohibit captive animals. There is nothing wrong with the animals, but there is something wrong with some of the owners. A ban would take animals away from the good people as well as the bad. Consider going back to the drawing board and preserve the captive breeding. These animals provide economic benefit.

Commissioner Fields asked if there was an animal called a jaguarondi. Culver said there was and it was once native to Texas.

Commissioner Wilson asked how organizations accredited facilities. Culver said the accreditation was a new program and has not accredited anyone yet. It will be a five-member board that will assure public safety and animal welfare.

Commissioner Johnston said he read the article Culver wrote about gene pools and he wondered if there was another way of preserving these gene pools. Culver said there were liquid oxygen tanks in big zoos with eggs and sperm but she worried what would happen if electricity was lost. Zoos can't even do old fashioned breeding and there are only 175 zoos. Commissioner Johnston asked if those zoos preserving species and subspecies that Culver was talking about. Culver said they only work on species they have. She said some might call these animals pets, but she likes to call them individual ambassadors. She hoped all of these species will be here in 20 years.

Commissioner Wilson mentioned that a variety of habitats needed to be preserved. Culver said zoos are not conducive to breeding. When zoos want animals they come to private breeders. She

said she sells to private individuals also. Commissioner Wilson said she wanted to protect all of them. Culver said all animals in captivity are confined, but she had outdoor areas for her animals. Zoos spend \$1-\$3 million on habitats for their animals. We don't want animals in bare cages or in houses.

Jeannie Baker, Atchison, said that captive breeding provides a fresh gene pool. The clouded leopard is one example and the zoos have had trouble getting these bred.

Clay Walker, Mulvane, said he has had a licensed facility for over 20 years, and wondered what he would do with these cats if they were banned. He didn't sell them as pets, but he needs to keep them so they don't become extinct.

Arnold Thomas, Fall River, said he had a couple of monkeys and their life expectancy is far longer than the five years proposed before the ban. He keeps them in his house and takes good care of them. If one dies, the other one will die from loneliness. We take them to the doctor annually. If they are banned after five years, he wondered how they would be removed from homes. The animals will go underground; it is not a good situation. Chairman Dykes asked Thomas if he was a member of the Simian society. Thomas said he was.

Matt Baker, Atchison, said he has a licensed game breeder facility and has heard a lot of reasons why the animals shouldn't be banned. The reason this all came about was because of public endangerment. Chairman Dykes said there was also a concern for the proper care of the animals. Baker said if the animals go underground, they will not be cared for properly. He felt that fees could be set up so that facilities could be inspected. His are inspected at least four times a year. If people want to take on these animals they need to be able to care for the animals, if people want to buy a Mercedes they have to be able to pay the insurance.

Chairman Dykes said the agency has some flexibility in what an accredited facility will be and the agency is working on those issues now. Baker said he doubted very many of the people here were against regulations, but they don't want them banned completely. Chairman Dykes said his feeling was that in five years people will have to register their animals and the animals have to be in an accredited facility. The Commission needs to figure out what an accredited facility is.

Harvey said he didn't think people would register animals if they think the department will ban them in five years.

Tom Harvey, exotic park owner from Caney, said he added big cats to his park in 1999. The plight of these animals doesn't look very good. Started facility in 1989. When people go through the facility they learn about conservation. He did not want them banned, but regulated. It is important to look at freedom of choice and it has already been taken away in so many cases. There were eight subspecies of tigers, but now there are only 5. There are 4.7 million dog and cat bites in the U.S. each year. There are a few bad people in any bunch, but doesn't necessarily represent all exotic animal owners. His facility has 29 big cats, primates and other types of animals and hosts 12,000 to 15,000 visitors a year. Look at what Charlie Walker in Salina has been able to do with species. Don't do a complete ban, but allow us to propagate responsibly. Chairman Dykes asked how large Harvey's facility was. Harvey said it was 10 acres.

Irene Satterfield, Olathe, said she was not a cat owner, but I have looked at several facilities and said these cats are better cared for than domestic dogs and cats. She said she asked the public how they feel about the animals and received signatures from more than 100 people saying they don't want a ban.

Debbie Barnett, primate owner, licensed veterinary technician, said she has had animals for over 10 years and wanted the best care for these animals. She said she was ashamed to see some of the zoos and the way they take care of their animals.

Noreen Overeem, veterinarian from Kansas City, said she owned wolf dogs which couldn't be distinguished from wolves. She said if a ban is passed, she would not be able to care for them, and that she was in favor of regulation.

Vicki Harvey added that many there were worried about being turned over to animal extremist groups, but they came anyway because this is so important.

2. Unit Archery Permitting - Lloyd Fox, wildlife biologist, presented this report to the Commission (Exhibit O). Senate Bill No. 363 was passed and signed during the 2004 legislative session. It is the recommendation of the staff to create 10 archery deer management units using the existing boundary lines of firearm management units. The units would be created by combining some adjacent firearms management units and by using the same boundaries as firearms units. Each resident archery deer hunter would be authorized to designate two of these units when they purchased their archery permit. They would also be authorized to hunt in the suburban deer management unit (DMU 19). Nonresident deer permits for 2006 would be allocated based on the number of resident bowhunters that designated each unit. The total number of nonresident bowhunters would be no more than the maximum established in K.S.A. 32-937. Nonresident bowhunters who obtained an archery permit through the drawing would be allowed to select a second archery deer management unit, and they would also be authorized to bowhunt in the suburban deer management unit. Half of the nonresident archery permits in each archery deer management unit would be available for Kansas landowners to obtain and transfer. The transferred archery deer permits would be restricted to no more than two counties where the landowner possessed 80 acres or more of agricultural lands. Resident bowhunters will need to designate the units where their permit will be valid during the 2005 archery season. Permit authorizations for nonresident bowhunters during the 2005 season will be based on a survey of resident bowhunters to determine the firearm units that they used during the 2004-05 season. A new regulation would need to be prepared for the archery deer management units. Changes in KAR 115-25-9 would be necessary to establish a system where archery permits were restricted to a specific management unit.

Commissioner Fields asked if game tags were good. Fox said that this would not affect the way the game tags or firearms permits would work. This deals with archery permits only.

Commissioner Wilson asked about the units. Fox said they would be the same as shown in August.

Doug Wilson, Emporia, as about the transferable permits. Fox said that transferable permits would still be valid in the county where the landowner qualified.

Dave Easton, Pottawatomie County, said felt bowhunters and the department had been railroaded into this proposal and it has taken deer management away from the department. He said he researched other states and found that some require nonresidents to select units while allowing residents to hunt statewide. Wyoming has resident archery tags that are statewide and nonresidents have to choose a unit and they are considering this for elk. North Dakota has only two units. He thought Kansas could do the same.

Chairman Dykes said it could be done, but there was a law passed that says we have to put units in place for archery. Fox said there wasn't wording in place for residents or nonresidents, it just says nine units. Tymeson said the statute read "bowhunting units," resident or non-residents. Chairman Dykes said it was written clearly. Commissioner Meyer said it was best to obey the law, but laws can be changed. He felt the best course was to get the legislature to change this next year. He didn't want to defy the legislature this year. Easton said Commissioners must feel

they have some flexibility because they are considering two units. Chairman Dykes said they weren't even sure they could do that. Commissioner Fields said the Legislature could say not the two unit regulation. Chairman Dykes said he didn't think legislators could change that for 2005. Tymeson said the Attorney General could, though.

3. T&E and SINC Species Regulations - Chris Tymeson, Legal Council - Made appropriate drafts of 115-15-1 and 1115-15-2 as proposed at the last meeting and the Attorney General has approved that (Exhibit P).

4. KAR 115-18-1. Wildlife Rehabilitation Permit; Application, Reporting and General Provisions - Kevin Jones, Law Enforcement Division director, presented this report to the Commission (Exhibits Q, R). This regulation has undergone extensive review and re-writing to raise the operational standards for wildlife rehabilitation. This work has been done through the combined efforts of Commissioners, department personnel, and permitted rehabilitation professionals. Through the process, many modifications have been requested and accommodated, causing several re-writes of this regulation and a prolonged review process. When brought before the Commission at the August meeting in Great Bend, amendments were brought forward a permitted rehabilitator. Due to the numerous amendments brought forth, the Commission opted to postpone action on the regulation so the suggested amendments could be reviewed. Department staff and legal counsel have reviewed the suggested amendments and are prepared to offer appropriate amendments for consideration by the Commission. Because of legal filing requirements, final action on this regulation will be at the January 2005 Commission meeting in Topeka. Tymeson said that because of the constraints of getting this published again, it is the exact same one that was sent to the Attorney General's office in August with amendments.

5. Regulations per Wild Turkey Split from Big Game - Roger Applegate, wildlife biologist, presented this report to the Commission (Exhibit S). Through the approval of Senate Bill 364 in the past legislative session, amended KSA 32-701 to eliminate wild turkey from the definition of big game species. All regulations that pertain to big game and turkeys must be looked at. 115-2-1 fees, 115-4-2, 115-4-4, and 115-4-11 will be covered later in the agenda. Also, some changes to 115-4-2 which deals with CSAs and 115-25-6 we will be offering an amendment pertaining to these issues. Tymeson said items pertaining to these will be seen throughout several regulations, so it doesn't need to be discussed again. Applegate added that the electronic system was used to send emails on October 20 to 1,637 people who purchased permits online. The email reminded them that fall turkey season had started and linked them to our site to purchase permits and other links. Of those 171 came back undeliverable, there were 266 hits on all three links provided, 114 hits on fall permit link, 74 hits on upland game forecast link, and 75 hits on the WIHA atlas link.

*Added to agenda*

Kevin Jones, Law Enforcement Division director, presented the night scope issue. KAR 115-3-2, 115-5-1, 115-20-1, 115-20-2, and 115-18-7 will be affected by language on night scope technology. This language is identical to language in KAR 115-4-4 (Exhibit T). Chairman Dykes asked if this was in the briefing book. Tymeson said it wasn't because the timing was wrong, but that it went through Attorney General's office, and it can be voted on in January.

*Moved from evening session*

6. Revenue Task Force Recommendation - Mike Miller, magazine editor and special assistant to the assistant secretary for Operations, presented this report to the Commission (Exhibit U). The following recommendations for fee increases are the result of the Revenue Task Force report that was presented at the August Commission meeting. The recommendations are: 1) Nonresident Deer Permits - currently, nonresident Whitetail Either Sex firearms and Archery permits, and muzzleloader Any Deer permits are priced at \$221, including a \$20 nonrefundable application fee. In addition to a deer permit, a nonresident hunting license is required. With the \$71 nonresident hunting license, the total cost is \$292. KDWP staff recommends increasing the price of the nonresident deer permit to \$300 (the statutory cap is \$400, KSA 32-988). This would bring the total cost for license and permit to \$392 (\$301 permit + \$20 application fee + \$71 nonresident hunting license, which includes \$1 issuance fees). 2) Nonresident Trophy Bobcat Permit. To harvest a bobcat a nonresident must currently possess a \$250 nonresident furharvester license. This recommendation would establish a \$100 Trophy Bobcat Permit for nonresidents. The permit would allow the harvest of one bobcat during the furbearer hunting season. Nonresident hunters born on or after July 1, 1966 would also be required to have completed an approved furharvester education course. 3) Lifetime Hunting and Fishing License. The formula for claiming federal aid does not allow the agency to capture funds accurately. Currently, a lifetime hunting or fishing license is \$300, and a combination lifetime hunting/fishing license is \$600. This proposal would increase that fee to \$440 for either a lifetime hunting or fishing license, and \$880 for a combination license. The statutory cap for a lifetime fishing or hunting license is \$500, or \$1,000 for a combination (KSA 32-988). The formula for claiming federal aid based on license sales allows the department to claim that license holder for 12 years for a \$300 license (figured from a ratio of annual license fee versus lifetime license fee). By increasing the price of the lifetime license to \$450, the department could claim those license holders for 24 years. 4) Third Fishing Rod Stamp - current fishing laws allow an angler to use two rods, in addition to setlines or a trotline. Colorado allows an angler to use only one rod, but offers a second rod stamp that is popular with anglers. This proposal would establish a \$4 Third Fishing Rod stamp that anglers who wanted the option to fish with more than two attended rods could purchase. Also, it is proposed to establish a \$5 application fee for elk permits, and \$5 preference point service charge fees for resident Any Deer permit and resident Unit 4 Spring Turkey permit applicants.

Doug Phelps, Manhattan, asked if this would allow someone to buy a preference point without applying for the permit. Tymeson said that this was for a charge for service for keeping track of preference points, but that a separate proposal will allow applicants to purchase a preference point only.

Doug Wilson said he didn't like the nonresident trophy fee. He felt it left residents at a disadvantage. Miller said a resident still has the advantage, since they can buy a furharvester license for \$15. Tymeson explained that the nonresident permit would have to be purchased prior to hunting, not after a bobcat had been harvested. Tymeson also added that KAR 115-7-2, the third pole permit, has to be an amendment.

**VII. RECESS AT 5:40 p.m.**

**VIII. RECONVENE AT 7:00 p.m.**

## **IX. RE-INTRODUCTION OF COMMISSIONERS AND GUESTS**

## **X. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS**

John Goodman, Leavenworth assistant city manager, said that his community has a deer problem and they have authorized hunting in the city limits and in Unit 19. The problem is that a part of the city is not included in DMU 19. The governing body has passed a regulation asking that you change the boundary to Metropolitan Avenue which is on the north side of the city (Exhibit V). Chairman Dykes asked if Goodman was talking about bowhunting within city limits. Goodman said he was. Fox said that KAR 115-4-6 would be discussed later this evening. Chairman Dykes said that nothing could be done for this season.

Greg Marcowitz, Onaga, wanted to discuss deer archery management units. He said he understand it was legislation, but the Commission needed to consider how the mandate was implemented. If a single unit is implemented it will hurt the landowner who lives in one unit and owns land in another. Bowhunters will do whatever they can to get this law changed. Implement regulation that allows residents to harvest bucks or does in two units and let them choose. Chairman Dykes apologized for cutting Marcowitz short, but explained that the Commission was required by statute to create these archery units. It is felt that the legislation planned one unit, but the Commission is kicking around allowing two units. Marcowitz said he appreciated the consideration. His second concern concerned the long-term future of hunting in Kansas, which was losing participants because of access. He said he wasn't against guides and outfitters or nonresidents, but disagreed with nonresidents getting preferential treatment. Commission has to be sure residents get preference and guides and outfitters get what is left over. Commissioner Meyer asked him to leave his notes with the Commission and the would pass them to the legislature.

## **XI. DEPARTMENT REPORT**

### **C. Workshop Session (continued)**

7. Big game regulations - Lloyd Fox, big game biologist, presented this report to the Commission (Exhibit W). Recommendations include: 1) KAR 115-4-2, Big game; general provisions: changes be made to refer to "big game species and wild turkey" wherever the phrase "big game species" currently is used. Changes are also recommended to address procedural changes as a result of the automated license procedures: add a requirement on all permits where the hunter signs to attest that all information is true and correct; add a requirement for the hunter to include a time of kill on the carcass tag when the hunter signs the tag; remove the requirement for the carcass tag to stay attached to the big game permit; and add a section to the regulation that designates the carcass tag is invalidated if signed and not attached to a carcass. The carcass tag will be printed with a bold warning on the signature line indicating; "DO NOT SIGN UNTIL KILL HAS BEEN MADE". 2) KAR 115-4-4 legal equipment and taking methods. All sections that deal with wild turkey should be removed. They will be added to a new regulation dealing with equipment for hunting turkey. It is recommended that section (d)(1) be changed from KAR 115-4-12 to KAR 115-4-2. No changes are being proposed for this regulation this year for the



equipment that may be used to hunt big game. This will be brought back again in 2005 to gather additional comments before bringing a recommendation on changes made to the Commission. Chairman Dykes asked Fox what he was bringing up. Fox said he wanted public comments. Michael Pearce, Wichita Eagle asked about the special restriction on turkey hunting if it wasn't already illegal. Fox said it was but that will be taken out completely and put in another regulation. 3) KAR 115-4-6 Deer; management units. It is recommended that the title of this regulation be changed to "Deer; firearms management units" and be modified to exclude areas in the Landowner Deer Management Program (regulation KAR 115-4-14) from the firearm management units. That would be done in each section that describes a unit boundary. It is proposed that the phrase "except federal and state sanctuaries" be changed to "except federal and state sanctuaries and areas enrolled in the landowner deer management program". A new regulation is recommended to create archery management units. That regulation will be KAR 115-4-6A and refer to sections in KAR 115-4-6 to combine some firearm management units to create a single archery management area. A change in DMUs 10 and 19 will also be brought back.

Garry Cook, Wichita, asked if the deer management thing wouldn't increase the amount of land being leased. Fox said he wasn't sure what would happen in those areas, and he said 115-4-14 would be discussed that later. If 4-14 goes through there will be a portion of those hunters in a draw. 4) KAR 115-4-11, permit application. It is recommended that changes be made to this regulation to refer to "big game species and wild turkey" wherever the phrase "big game species" currently is used. A section needs to be added that would allow people to purchase a preference point during years that they did not desire to be included in a drawing for a permit. This was also covered in the fee structure. Chairman Dykes asked if people would be restricted to buying one preference point. Tymeson said they would be limited to one per year. 5) KAR 115-4-13, permit descriptions and restrictions. No changes are being proposed for this regulation this year. It is proposed that a review will occur this year on the issue of separate systems for mule deer and white-tailed deer. 6) KAR 115-25-9, open season, bag limit, and permits and is the one we change annually. Section (a)(1)(B) will need to be changed from statewide to archery unit(s) designated on the permit. After additional data comes in extended firearms seasons and deer game tags will be considered. The vote on this should be in April. Additional public input is desired on the issue of requiring a hunter to purchase a deer permit before they may purchase a deer game tag. Commissioner Wilson thanked Fox for organizing the report the way it was, with bullet points. Commissioner Fields asked if purchasing a deer permit before purchasing a game tag had already been covered. Fox said that currently a hunter can buy a game tag without purchasing another permit first. This would change that so you would have to have another permit first.

#### *Added to agenda*

Fort Riley fish stocking presented by Doug Nygren, Fisheries Section chief. Reworked KAR 115-25-14 not too long ago, but the lake at Fort Riley needs to be added to the trout stocking permit (Exhibit X). Chairman Dykes asked about access to the lake Nygren said some changes being made on the north side of the base will allow easier access. On the other side you will have to go through the base gate. Pearce asked if this was effective January 1. Nygren said it would, that after that, a state fishing license will be all that's needed for fishing access.

#### **D. Public Hearing**

*Kansas Legislative Research Department and Attorney General's office comments (Exhibit Y).*

1. KAR 115-2-2. Motor vehicle permit fees - Jerry Hover, Parks Division director, presented this report to the Commission (Exhibits Z, AA). Over the last six months staff and Commissioners have been working on park fee increase proposals. In April, a fee schedule was presented to the Commission. As a result of input that fee schedule, a new proposal will be presented that eliminates some of the suggested increases in park fees. Funds are still needed, but the public has spoken and they have told the Governor that parks should continue to receive some State General Fund money. The Governor has stated they would supplement parks the rest of this year and next year if needed. They also like the vehicle tag idea. It is proposed that no changes be made to this regulation on fees, but propose effective dates to 2005. Annual motor vehicle permits shall not be valid during designated special events and move to current subsection (c) to subsection (d). Chairman Dykes asked if Hover was proposing the amendment. Hover said yes. Tymeson explained that this would leave all the fees as they currently are except during special events. Commissioner Sebelius asked if the current fee was \$35.50. Hover said it was \$34.40 plus a \$1.00 issuance fee.

**Commissioner Harrington moved to bring KAR 115-2-2 before the Commission.  
Commissioner Johnston seconded.**

**Commissioner Johnston moved to amend KAR 115-2-2. Commissioner Wilson seconded.**

**The roll call vote to amend KAR 115-2-2 was as follows (Exhibit BB):**

<b>Commissioner Dykes</b>	<b>Yes</b>
<b>Commissioner Fields</b>	<b>Yes</b>
<b>Commissioner Harrington</b>	<b>Yes</b>
<b>Commissioner Johnston</b>	<b>Yes</b>
<b>Commissioner Meyer</b>	<b>Yes</b>
<b>Commissioner Sebelius</b>	<b>Yes</b>
<b>Commissioner Wilson</b>	<b>Yes</b>

**The motion to amend KAR 115-2-2 as presented, passed 7-0.**

**Commissioner Johnston moved to approve amended KAR 115-2-2 as proposed.  
Commissioner Wilson seconded.**

**The roll call vote on amended KAR 115-2-2 was as follows (Exhibit BB):**

<b>Commissioner Dykes</b>	<b>Yes</b>
<b>Commissioner Fields</b>	<b>Yes</b>
<b>Commissioner Harrington</b>	<b>Yes</b>
<b>Commissioner Johnston</b>	<b>Yes</b>
<b>Commissioner Meyer</b>	<b>Yes</b>
<b>Commissioner Sebelius</b>	<b>Yes</b>
<b>Commissioner Wilson</b>	<b>Yes</b>

**The motion to approve KAR 115-2-2 as amended, passed 7-0.**

2. KAR 115-2-3. Camping, utility, and other fees - Jerry Hover, Parks Division director, presented this report to the Commission (Exhibits CC, DD). This proposal would increase peak season rate of 14-day camping from \$75 to \$99. During the October 1 through December 31 season, adding an annual camping permit fee of \$249, deleting the April 1 effective fee of \$150. The October 1 through December 31 season on 14-day camping would be increased from \$65 to \$85. And add fees for recreational vehicle long-term camping permit (includes utilities)--per month (up to six month stay), per unit (annual camping permit and annual vehicle permit required): one utility - \$200.00; two utilities - \$260.00; and three utilities - \$320.00; and recreational vehicle short-term parking, \$125 per month. This proposal would also delete cabin camping fees and put them into a new regulation, KAR 115-2-3a. The proposed amendments may increase FY2005 revenues to the Park Fee Fund by approximately \$311,700, and FY2006 revenues by approximately \$623,400. As a result of internal department and public comment the department suggests that the following amendments be made. Amend proposed subsection (h) to leave permit fees the same as current levels for annual camping permit at \$150.00 year-round as well as prime camping area permit at \$2.00 but enact the remainder of the changes. This also changes the effective dates. Commissioner Sebelius asked if the long-term camping is a park by park decision. Hover said it depends on the park. Ten percent of the sites, not including prime sites, can be used for long-term camping. Also, looking at possibly changing entire loops to long-term camping. Commissioner Sebelius said he could see some problems from the public if they feel they can come in and demand certain sites.

**Commissioner Sebelius moved to bring KAR 115-2-3 before the Commission.  
Commissioner Meyer seconded.**

**Commissioner Johnston moved to amend KAR 115-2-3. Commissioner Meyer seconded.**

**The roll call vote to amend KAR 115-2-3 was as follows (Exhibit EE):**

<b>Commissioner Dykes</b>	<b>Yes</b>
<b>Commissioner Fields</b>	<b>Yes</b>
<b>Commissioner Harrington</b>	<b>Yes</b>
<b>Commissioner Johnston</b>	<b>Yes</b>
<b>Commissioner Meyer</b>	<b>Yes</b>
<b>Commissioner Sebelius</b>	<b>Yes</b>
<b>Commissioner Wilson</b>	<b>Yes</b>

**The motion to amend KAR 115-2-3 as presented, passed 7-0.**

**The roll call vote on amended KAR 115-2-3 was as follows (Exhibit EE):**

<b>Commissioner Dykes</b>	<b>Yes</b>
<b>Commissioner Fields</b>	<b>Yes</b>
<b>Commissioner Harrington</b>	<b>Yes</b>
<b>Commissioner Johnston</b>	<b>Yes</b>
<b>Commissioner Meyer</b>	<b>Yes</b>

**Commissioner Sebelius** Yes  
**Commissioner Wilson** Yes

**The motion to approve KAR 115-2-3 as amended, passed 7-0.**

3. KAR 115-2-3a. Cabin camping permit fees - Jerry Hover, Parks Division director, presented this report to the Commission (Exhibits FF, GG). This is a new regulation that covers all camping fees at each of the parks that have cabins. The fees are broken up in several different ways including: Sunday through Thursday, April 1 through September 30; Sunday through Thursday, October 1 through March 31, per night; Friday and Saturday, April 1 through September 30; Friday and Saturday, October 1 through March 31, per night; April 1 through September 30; October 1 through March 31 at some parks and at other parks: year-round, per night; year-round, per week; or year-round, per month rates. Each park has different rates for the options they have. The proposed regulation is simply replacing current pricing practice through the use of special camping permits. As a result of internal department comment, the department suggests that the following amendments be made. Amend proposed subsection (a)(11) to add Prairie Dog State Park Cabin 1, and renumber the sections accordingly, with the pricing as follows: Cabin 1 (fee covers two adults; add \$5.00 for each additional adult): Year-round, per night - \$45.00; Replace proposed subsection (a)(12), regarding cabin 1 at Webster State Park, with the pricing as follows: Cabin 1: Sunday through Thursday, year-round, per night - \$65.00, Friday and Saturday, year-round, per night - \$80.00, and Year-round, per week - \$450.00.

**Commissioner Meyer moved to bring KAR 115-2-3a before the Commission.  
Commissioner Harrington seconded.**

**Commissioner Meyer moved to amend KAR 115-2-3a as proposed. Commissioner  
Harrington seconded.**

**The roll call vote to amend KAR 115-2-3a was as follows (Exhibit HH):**

**Commissioner Dykes** Yes  
**Commissioner Fields** Yes  
**Commissioner Harrington** Yes  
**Commissioner Johnston** Yes  
**Commissioner Meyer** Yes  
**Commissioner Sebelius** Yes  
**Commissioner Wilson** Yes

**The motion to amend KAR 115-2-3a as presented, passed 7-0.**

**The roll call vote on amended KAR 115-2-3a was as follows (Exhibit HH):**

**Commissioner Dykes** Yes  
**Commissioner Fields** Yes  
**Commissioner Harrington** Yes  
**Commissioner Johnston** Yes  
**Commissioner Meyer** Yes  
**Commissioner Sebelius** Yes

**Commissioner Wilson**

**Yes**

**The motion to approve KAR 115-2-3a as amended, passed 7-0.**

4. KAR 115-4-14. Landowner deer management program; implementation, application, selection, property requirements, deer permitting, property posting, evaluation, renewal, and other provisions - Lloyd Fox, big game biologist, presented this report to the Commission (Exhibits II, JJ). The Landowner Deer Management Program (LDMP) is a new approach in deer management in Kansas, one that will create a contract between a landowner and the department for deer permits. There is also a possible amendment to this regulation. It is a three-year pilot program, one pilot in each of the five administrative regions, unless there isn't an applicant in one of the regions, and there will be no more than 20,000 acres in each unit. This program could include several landowners working together. Under the management plan the landowner will specify the number of permits allocated to their clients and randomly selected public applicants and this will be one of the criteria we use and how the area is selected. Habitat protection and enhancement, conservation programs, public access programs (other than deer hunting) will also be selection criteria. Lands eligible will be lands owned in simple fee title by Kansas landowners. In Deer Management Units (DMUs) 1, 2, 3, 4, 5, 7, 16, 17 and 18 - 10,000 acres each management area, and the rest of the state, only 3,000 acres per management area. Permits issued as client permits to the LDMP manager should be nonresident permits and thus could be transferred to either a resident or nonresident while the permits issued in the public drawing should be resident deer permits. Each permit with its carcass tag should be issued from the Pratt office by the licensing section. Resident permits would be available in the resident draw with an application deadline in mid-July. The permits would be valid during any season with equipment legal during that season. The proposal would not use transferable permits. The landowner would receive a certain number of certificates and the person who receives that certificate would file for the permit. The client-type permits would be on nonresident fee and general permits would be at the resident fee. The application for the general public hunt would be on the regular application and hunters could use their preference points. Evaluations will be done of the landowners and the hunters. Deer permits for a LDMP could be based on the size of the holding, and the average deer harvest density and hunter success rates in the DMU where the property occurs. By knowing those three factors the number of permits a typical area within each unit could support could be calculated. Each application and management plan would be submitted to the regional wildlife supervisor. Each region would assign employees to a review committee, and a community advisory panel may also be selected. The regional review committee will rank the application packages submitted in their area and forward them with their recommendation to statewide selection panel for final review.

The first amendment would be on page two, section (f) to provide copies of agricultural leases extending five years from the date of application if property to be included in the program is not owned in fee simple. Then renumber sections F-I to G-J and add item K (new) a \$100 application nonrefundable application fee. Also, to eliminate Section (A) and change designation of B and C. In section (3)(d)(1) add "fee simple ownership of real property to be enrolled in the program..." Commissioner Johnston asked if on Page 3 the proposal was to use fee simple language. Fox said it was, under item (3). If someone were to apply and not all of their land was under fee simple ownership, the committee could vote on whether to allow that landowner or not. Commissioner Johnston asked if there was a regulation on the types of people who can apply. Tymeson said that

it lists landowner and landowner is listed as an owner with fee simple title. Commissioner Johnston said he thought the Commission was considering land that could not be held by corporations, etc. Tymeson said that was originally proposed, but that is what this amendment is about. Chairman Dykes asked Lloyd to go over the three amendments again and asked if the \$100 fee applied per landowner or per application. Fox said it was per application. Audrey Boos, Denton, asked what the definition of agricultural lease was and if farming was required. Fox said that it could also include some type of ranching operation. Doug Wilson said that in minutes of last meeting, it was stated that the legislation could not superseded. Tymeson stated that he was not at the last meeting and he felt the Commission could add fee simple ownership. Commissioner Johnston asked if it would allow corporations. Tymeson said that corporations are not allowed in regulation to get a permit, so they do not qualify. Steve Swaffar, Farm Bureau, mentioned that FB had been involved in this from the beginning (Exhibit KK) and he wanted to talk about the proposed amendment. Data on deer trends that are different than what is in the deer management unit. He then asked if the department would provide information on that or will the landowner have to come up with that information. He also recommended looking for other application options. Lease agreements are a standard in Kansas and in combination with the contiguous acre limitation that will limit who can apply. This amendment will increase the quality and quantity of applications. Item 5 requires an average score of 5 to renew the application. He asked if that meant yearly or at the end of the three-year pilot. Chairman Dykes commented that the real questions are on first and third amendments. Fox explained that evaluations are the final evaluation, and that the department would provide feedback annually, and the score would be awarded at the end of three years. Chairman Dykes wondered if legislation allowed this program to continue, would it continue on a three year basis. Fox said that was the intention. In other states it has been five to eight years. If the legislation extends this, modifications will be proposed after the three years are over. Answering Swaffar's question about permit numbers, Fox explained that the applicant would have a certain number of permits for that area. If the landowner wants permits over that number, they would have to provide supporting data and the regional committee would evaluate that. Swaffar asked if would the applicant be allowed to do some surveys and spotlighting as the department does. Fox said they would if they notified the appropriate law enforcement personnel first. Mike Beam, Kansas Livestock Association voiced support for this concept. He added that he came before the Commission on June 24, and raised several concerns and was happy with amendment on fee simple. Those applicants with the most attractive proposal will be adopted. Chairman Dykes asked if there were any applications received yet. Tymeson said they had not. Doug Wilson, Emporia, wondered what Kansas hunting will look like if we go past five years. And he asked if Wildlife and Parks will be needed if hunting is privatized. He felt like this program was giving the right to sell permits to the individuals. This program has a lot of things that looked good to start with, like additional land. But he asked if the department wanted to sell the public's right to sell permits. The landowner has rights to say who can hunt there, but should have the right to sell the permits. This will allow a different class of people, the ones with money. He asked if there were royalty in this country and if only allow landowners were allowed to vote. Future generations are at stake here, and he felt that other ways to reward the landowner should be explored.

**Commissioner Meyer to bring KAR-115-4-14 before the Commission. Commissioner Harrington seconded.**

**Commissioner Meyer moved to amend KAR 115-4-14 as proposed. Commissioner Harrington seconded.**

**The roll call vote on amended KAR 115-4-14 was as follows (Exhibit LL):**

<b>Commissioner Dykes</b>	<b>Yes</b>
<b>Commissioner Fields</b>	<b>No</b>
<b>Commissioner Harrington</b>	<b>Yes</b>
<b>Commissioner Johnston</b>	<b>No</b>
<b>Commissioner Meyer</b>	<b>Yes</b>
<b>Commissioner Sebelius</b>	<b>No</b>
<b>Commissioner Wilson</b>	<b>Yes</b>

**The motion to approve KAR 115-4-14, passed 4-3.**

**The roll call vote on the amended KAR 115-4-14 was as follows (Exhibit LL):**

<b>Commissioner Dykes</b>	<b>Yes</b>
<b>Commissioner Fields</b>	<b>No</b>
<b>Commissioner Harrington</b>	<b>Yes</b>
<b>Commissioner Johnston</b>	<b>No</b>
<b>Commissioner Hall</b>	<b>Yes</b>
<b>Commissioner Sebelius</b>	<b>No</b>
<b>Commissioner Wilson</b>	<b>Yes</b>

**The motion to approve KAR 115-4-14, passed 4-3.**

5. KAR 115-7-1. Fishing; legal equipment, methods of taking, and other provisions - Doug Nygren, Fisheries Section chief, presented this report to the Commission (Exhibit MM). This permanent regulation establishes legal equipment, methods of taking and other provisions with regard to fishing. The proposed amendments would require the use of barbless hooks while fishing for paddlefish on the Neosho River. Catch and release of paddlefish currently is not permitted. Under this proposed change, paddlefish could be released back into the water immediately after being caught, unless kept for the daily limit. Requiring barbless hooks will help prevent excessive mortality of released fish. Paddlefish held in possession must still be tagged immediately and cannot be released (no culling). Anglers must stop snagging when a daily limit of paddlefish is taken into possession. These proposed regulations are very similar to the regulations in place in Oklahoma on this shared fishery. The season would still be opened by posted notice on the current season dates of March 15 - May 15 and all harvested fish would be required to be tagged.

**Commissioner Harrington moved to approve KAR 115-7-1 as proposed. Commissioner Johnston seconded.**

**The roll call vote on proposed KAR 115-7-1 was as follows (Exhibit NN):**

<b>Commissioner Dykes</b>	<b>Yes</b>
<b>Commissioner Fields</b>	<b>Yes</b>
<b>Commissioner Harrington</b>	<b>Yes</b>
<b>Commissioner Johnston</b>	<b>Yes</b>
<b>Commissioner Hall</b>	<b>Yes</b>
<b>Commissioner Sebelius</b>	<b>Yes</b>
<b>Commissioner Wilson</b>	<b>Yes</b>

**The motion to approve KAR 115-7-1, passed 7-0.**

6. Secretary's Orders - Fishing - Doug Nygren, Fisheries Section chief, presented this report to the Commission (Exhibit OO). Each year department fisheries biologists monitor fish populations to assess the recreational fishing opportunities of public fisheries. One task is to determine what, if any, special fishing regulations changes could be employed to meet management goals. After sampling fish populations and reviewing other information such as creel surveys, stocking success, and habitat conditions, recommendations are made for changes in existing creel and length limits. Reviewed additions and deletions of waters covered by last year's Secretary's Orders include: a controversial 20 crappie per day limit at some lakes. This is not supported biologically; channel catfish length limit at Chetopa; and a combination of barbless hooks and length limit for paddle fish that will put us in step with Oklahoma regulations. There are two new Secretary's Orders on Yates Center for yellow perch and the introduction of blue catfish at El Dorado Reservoir to help control zebra mussels. Commissioner Fields mentioned that he had caught yellow perch back east and they were wormy. Nygren said that it was due to aquatic vegetation, and that any fish can get wormy. Michael Pearce, Wichita Eagle, asked what lakes would be affected by 20 crappie per day, and when it would take effect. Nygren said it would take effect July 1, 2005 at Melvern, Council Grove, Hillsdale, Perry and Clinton Reservoirs. **Commissioners approved.**

7. KAR 115-18-14. Nontoxic shot; statewide - Kevin Jones, Law Enforcement Division director, presented this report to the Commission (Exhibit PP). The amendment to KAR 115-18-14 adds tungsten-bronze shot; tungsten-iron shot; and tungsten-tin-bismuth shot to the list of allowed shot for hunting waterfowl, coot, rail, snipe, and sandhill crane. These types of shot recently received federal approval, but use of the new shot type is solely at the hunter's discretion.

**Commissioner Johnston moved to approve KAR 115-18-14 as proposed. Commissioner Meyer seconded.**

**The roll call vote to proposed KAR 115-18-14 was as follows (Exhibit QQ):**

<b>Commissioner Dykes</b>	<b>Yes</b>
<b>Commissioner Fields</b>	<b>Yes</b>
<b>Commissioner Harrington</b>	<b>Yes</b>
<b>Commissioner Johnston</b>	<b>Yes</b>
<b>Commissioner Meyer</b>	<b>Yes</b>
<b>Commissioner Sebelius</b>	<b>Yes</b>
<b>Commissioner Wilson</b>	<b>Yes</b>



**The motion to approve KAR 115-18-14, passed 7-0.**

8. KAR 115-25-6. Turkey; spring season bag limit, permits, and game tags - Roger Applegate, Wildlife Biologist, presented this report to the Commission (Exhibits RR, SS). This proposal was to increase the permit allocation in Unit 4 to 200 permits and increase youth permits to 75 permits. No other economic impact on the general public or on other state agencies is anticipated. As a result of internal department review of the wild turkey legislation that passed earlier this year, the department suggests that the following amendment be made to the version of the regulation submitted for public comment. 1) Strike proposed subsection (g) as follows: (g) An unlimited number of hunt-on-your- own-land turkey permits shall be authorized; and 2) Re-alphabetize subsections (h), (i), (j) and (k).

**Commissioner Johnston moved to bring KAR 115-25-6 before the Commission.  
Commissioner Harrington seconded.**

**Commissioner Johnston moved to amend KAR 115-25-6. Commissioner Harrington seconded.**

**The roll call vote to amend KAR 115-25-6 was as follows (Exhibit TT):**

<b>Commissioner Dykes</b>	<b>Yes</b>
<b>Commissioner Fields</b>	<b>Yes</b>
<b>Commissioner Harrington</b>	<b>Yes</b>
<b>Commissioner Johnston</b>	<b>Yes</b>
<b>Commissioner Meyer</b>	<b>Yes</b>
<b>Commissioner Sebelius</b>	<b>Yes</b>
<b>Commissioner Wilson</b>	<b>Yes</b>

**The motion to amend KAR 115-25-6 as presented, passed 7-0.**

**The roll call vote on amended KAR 115-25-6 was as follows (Exhibit TT):**

<b>Commissioner Dykes</b>	<b>Yes</b>
<b>Commissioner Fields</b>	<b>Yes</b>
<b>Commissioner Harrington</b>	<b>Yes</b>
<b>Commissioner Johnston</b>	<b>Yes</b>
<b>Commissioner Meyer</b>	<b>Yes</b>
<b>Commissioner Sebelius</b>	<b>Yes</b>
<b>Commissioner Wilson</b>	<b>Yes</b>

**The motion to approve KAR 115-25-6 as amended, passed 7-0.**

## **XII. OLD BUSINESS**

## **XIII. OTHER BUSINESS**

### **A. Future Meeting Locations and Dates**

Commissioner Johnston would like to schedule a meeting in Wichita next year.

There have been requests from Beloit, Wichita and Liberal.

The March meeting is in Beloit, and the April meeting is in Pittsburg. August was discussed for Wichita.

March 24, 2005 in Beloit. April 21, 2005 in Pittsburg.

The next meeting is scheduled for January 20, 2005 at Memorial Hall Auditorium, Topeka, Luncheon in Capitol Building, 2nd Floor Rotunda.

#### **XIV. ADJOURNMENT**

**Commissioner Harrington moved, Commissioner Wilson second to adjourn.**

The meeting adjourned at 8:55 p.m.

(Exhibits and/or Transcript available upon request)

Exhibit UU - Atchison Completes \$4.1 Million Riverfront Development Project

Exhibit VV - Kansas Traveler Fall 2004 Newsletter

December 17, 2004

Mr. Brad Loveless  
Biologist  
Westar Energy  
122 SW 2<sup>nd</sup>  
Topeka, KS 66603

RE: KDWP Special Recognition Award

Dear Brad:

Aquatic invasive species are invading North America at an alarming rate and pose a serious threat to the water resources of Kansas. The Kansas Department of Wildlife and Parks is deeply concerned about the risk nuisance species pose to our aquatic ecosystems, industry, and aquatic users in general and are grateful to the Westar Green Team for taking the opportunity to assist us in beginning our management activities for aquatic nuisance species. To express our deep appreciation, we would like to present the Westar Green Team with a Special Recognition Award for their generous donation to support aquatic nuisance species management activities. For receipt of this award, we request the honor of your presence at the January 20, 2005 commission meeting at Memorial Hall Auditorium (beside Landon Office Building), in Topeka. The meeting will begin at 1:30 pm. Please RSVP to me at your earliest convenience so I can plan for your attendance. We appreciate your generous donation and the opportunity to partner with the Westar Green Team to stop the spread of invasive species.

Sincerely,

Keith Sexson  
Assistant Secretary  
Kansas Wildlife & Parks

December 17, 2004

Mr. Darrell Whitney  
Friends of El Dorado Lake  
301 N. Main  
El Dorado, KS 67042

RE: KDWP Special Recognition Award

Dear Darrell:

Aquatic invasive species are invading North America at an alarming rate and pose a serious threat to the water resources of Kansas. The Kansas Department of Wildlife and Parks is deeply concerned about the risk nuisance species pose to our aquatic ecosystems, industry, and aquatic users in general and are grateful to the Friends of El Dorado Lake for taking the opportunity to assist us in beginning our management activities for aquatic nuisance species. To express our deep appreciation, we would like to present the Friends of El Dorado Lake with a Special Recognition Award for their generous donation to support aquatic nuisance species management activities. For receipt of this award, we request the honor of your presence at the January 20, 2005 commission meeting at Memorial Hall Auditorium (beside Landon Office Building), in Topeka. The meeting will begin at 1:30 pm. Please RSVP to me at your earliest convenience so I can plan for your attendance. We appreciate your generous donation and the opportunity to partner with the Friends of El Dorado Lake to stop the spread of invasive species.

Sincerely,

Keith Sexson  
Assistant Secretary  
Kansas Wildlife & Parks

December 17, 2004

Mr. Joe Werner  
Senior Environmental Biologist  
Great Plains Energy  
P.O. Box 418679  
Kansas City, MO 64141-9679

RE: KDWP Special Recognition Award

Dear Joe:

Aquatic invasive species are invading North America at an alarming rate and pose a serious threat to the water resources of Kansas. The Kansas Department of Wildlife and Parks is deeply concerned about the risk nuisance species pose to our aquatic ecosystems, industry, and aquatic users in general and are grateful to Great Plains Energy for taking the opportunity to assist us in beginning our management activities for aquatic nuisance species. To express our deep appreciation, we would like to present Great Plains Energy with a Special Recognition Award for their generous donation to support aquatic nuisance species management activities. For receipt of this award, we request the honor of your presence at the January 20, 2005 commission meeting at Memorial Hall Auditorium (beside Landon Office Building), in Topeka. The meeting will begin at 1:30 pm. Please RSVP to me at your earliest convenience so I can plan for your attendance. We appreciate your generous donation and the opportunity to partner with Great Plains Energy to stop the spread of invasive species.

Sincerely,

Keith Sexson  
Assistant Secretary  
Kansas Wildlife & Parks

December 17, 2004

Mr. Dan E. Haines  
Environmental Biologist  
Wolf Creek Nuclear Operation Corporation  
1550 Oxen LN  
Burlington, KS 66839

RE: KDWP Special Recognition Award

Dear Dan:

Aquatic invasive species are invading North America at an alarming rate and pose a serious threat to the water resources of Kansas. The Kansas Department of Wildlife and Parks is deeply concerned about the risk nuisance species pose to our aquatic ecosystems, industry, and aquatic users in general and are grateful to Wolf Creek Nuclear Operation Corporation for taking the opportunity to assist us in beginning our management activities for aquatic nuisance species. To express our deep appreciation, we would like to present Wolf Creek Nuclear Operation Corporation with a Special Recognition Award for their generous donation to support aquatic nuisance species management activities. For receipt of this award, we request the honor of your presence at the January 20, 2005 commission meeting at Memorial Hall Auditorium (beside Landon Office Building), in Topeka. The meeting will begin at 1:30 pm. Please RSVP to me at your earliest convenience so I can plan for your attendance. We appreciate your generous donation and the opportunity to partner with Wolf Creek Nuclear Operation Corporation to stop the spread of invasive species.

Sincerely,

Keith Sexson  
Assistant Secretary  
Kansas Wildlife & Parks

## **KDWP Legislative Agenda for 2005**

*All descriptions are shortened versions of current drafts*

### **Proposal #1. Park Funding**

This proposal would fund future park operations and maintenance from a fee associated with motor vehicle registrations. The fee is proposed at \$5.00 per vehicle with certain classes exempt. \$4.00 of the fee would be directed to the Park Fee Fund and \$1.00 would go to the Local Outdoor Grant Program Fund. The proposal also includes a provision for a refund for those who claim they will not use state parks. The refund would be administered by the Department of Revenue and proportionately return the money from the respective fund. In return, any Kansas registered motor vehicle could enter the state parks free of charge. Ultimately, the goal is to remove state general funding from the Department's budget, although in the transition period, some state general funding will be needed to operate the state park system.

### **Proposal #2. Wildlife Violator Compact**

This proposal would enter the State of Kansas into the Wildlife Violator Compact. Entry into the compact would primarily allow for two major enforcement impacts to occur. First, if a violation of wildlife laws occurred, nonresidents from compact states, while in Kansas, and Kansas residents, while in other compact jurisdictions, could be given citations and notices to appear in lieu of bonding out of custody. Alleged violators would be required to comply with the legal proceedings, much the same way traffic citations are handled. Second, Kansas would be required to recognize other state wildlife hunting privileges suspensions and other states in the compact would be required to recognize Kansas suspensions. This would preclude violators from other compact states from coming to Kansas to hunt, thereby taking away a legitimate hunting opportunity from a legitimate hunter.

### **Proposal #3. Boating Law Updates and New Statutes**

This proposal would apply several updates to the boating laws of Kansas based primarily on federal law changes. In addition, several new statutes are proposed to assist the Department in combating the ever increasing crime of vessel theft.

### **Proposal #4. Fee Fund Protection**

This proposal stems from accounting changes implemented by the Division of Budget this past legislative session. In essence, all federal funds were placed into respective accounts for the purpose of tracking federal fund expenditure. The proposed legislation is necessary to avoid a potential diversion issue should it arise. The language is similar to language for the current fee funds and requires expenditures to be allowed solely for specific purposes.

### **Other potential items of legislative interest to KDWP**

Conservation Easements, Circle K, Deer Legislation

## **KANSAS DEPARTMENT OF WILDLIFE & PARKS**

### **KANSAS OUTDOOR AUTOMATED LICENSE SYSTEM (KOALS)**

KDWP steps into a new era in 2005, using new technology and providing the public with a more convenient access to licenses and permits. KOALS will allow us to identify our customers and take advantage of new marketing techniques allowing us to retain and recruit license buyers.

In October of 2003, a licensing committee with representation from each division within the agency was formed. The committee researched all aspects of a new automated system by contacting other states and various companies in the electronic licensing/permitting business. Six different companies came to KDWP to demonstrate their equipment and software.

An award of contract was given to Central Bank of Jefferson City, Missouri in October, 2004. Central Bank, with its subsidiary Automated License Systems (ALS), operates similar automated systems in nine other states including Missouri and Colorado.

Besides improving marketing and customer convenience efforts, benefits of the system include:

- Development of a comprehensive database of customers will improve Law Enforcement efforts.
- Elimination of printed license and permit books will generate faster sales and revenue accounting for the Department.
- Instant sales and permit counts will create faster collection methods for harvest and survey results.
- A large portion of the dollar savings will accrue to license vendors, who will save on bond premiums, postage, and personnel time for remitting licenses and permits.

Various equipment options will be available at the vendor level which will range from a full set of Point-of-Sale (POS) equipment furnished by the department to a simple Internet software connection that can be used by small vendors who choose to supply their own Internet connection, PC and printer. Our contractor will provide a complete turnkey product with training, support, and setup. The equipment has a small footprint with “store and forward” capabilities. It will be financially secure with an Automated Clearing House (ACH) sweep of the vendors account on a weekly basis for collection on dollars owed to the department.

Our timeline for the new system is as follows:

- 08/04 to 04/05      Design of system
- 04/05 to 05/05      System integration testing
- 06/05 to 07/05      Pilot program and vendor equipment roll out
- 08/05                  Full implementation

In conclusion, an automated license and data system should reduce license administration costs, thereby providing more funds for natural resource management. Licenses are easier to obtain and



more accessible by hunters and anglers, increasing compliance. The names and addresses of license buyers are instantly established in a database that provides the agency with greatly improved survey capabilities. This database will also eliminate the need for surveys to satisfy license certification requirements for federal aid. There is great potential for the use of this database for management purposes, much of which fish and wildlife agencies are only beginning to realize.

# **APPRAISAL OF REGULATORY OPTIONS FOR THE SANDHILL CRANE SEASON IN KANSAS**

**prepared by Marvin Kraft and Helen Hands**  
*(December 14, 2004)*

## **BACKGROUND**

The Kansas Department of Wildlife and Parks (Department) initiated the first sandhill crane season in Kansas in 1993 in response to growing sandhill crane numbers, increasing crop depredation, and the Department's desire to provide hunting opportunity on sandhill cranes. The proposal to establish a sandhill crane season was met with considerable opposition by those opposed to crane hunting. Stated reasons for opposing the season included concern about additional harvest of Mid-Continent sandhill cranes, concern for the welfare of subpopulations, the belief that the management plan for Mid-Continent sandhill cranes was flawed, and a concern that a sandhill crane season would jeopardize the recovery of endangered whooping cranes.

The regulations adopted by the Kansas Wildlife and Parks Commission in August 1993 addressed some of the concerns for whooping cranes by establishing shooting hours of sunrise to 2:00 p.m. and delaying the opener until the first Saturday in November. Based on the data available at that time, approximately 75 percent of historical whooping crane reports in Kansas occurred prior to November 3. The 2:00 p.m. closure reduced human disturbance of whooping cranes as they returned to roost sites.

Since 1993 most, if not all, of the concerns about hunter harvest of the Mid-Continent Population of sandhill cranes, or any subpopulation of the Mid-Continent Population, have eased. Unfortunately the shooting of two whooping cranes in Kansas this fall has reignited concerns about the impact of sandhill crane hunting on whooping crane recovery, particularly since many whooping crane sightings have occurred on and around Quivira NWR, and the area around Quivira NWR. Those who desire further restrictions of sandhill crane hunting have proposed changes including statewide season closure, severely restricted shooting hours, further delaying the opening of the crane season, the closure of private lands around Quivira NWR to hunting, or some combination of these options. There is also the possibility that this shooting incident may result in modification of the Whooping Crane Contingency Plan and/or changes in sandhill crane frameworks, in Kansas alone, or throughout the Central Flyway.

## **WHOOPING CRANE MORTALITIES**

The two whooping cranes shot in Kansas this fall brings the total number to 10 that have been shot, going back to 1968 (Tom Stehn, USFWS, Whooping Crane Coordinator, pers. commun.). This total includes three shootings in Florida and one in Canada. The incident in Kansas is the fourth of these shootings to be connected to hunting seasons.

Within the Central Flyway, prior to this fall, a whooping crane was shot November 14, 2003 south of Dallas, Texas by an individual who was hunting ducks when the season was closed. The individual stated he shot the whooper because he thought it was a sandhill crane, although he was in an area that was not open to crane hunting. A vandal shot a whooping crane in April 1990 in Saskatchewan. During April of 1991 a whooping crane was shot by a vandal near Bend, Texas. In January 1989, a whooping crane was shot and killed near Aransas NWR by a waterfowl hunter who thought he was shooting a snow goose, and in 1968, a whooping crane was illegally killed near Aransas NWR by a snow goose hunter.

The following compilation (1950 through 1987) represents the most complete comparison of known causes of mortality in the Aransas-Wood Buffalo population of whooping cranes during migration (Lewis et al. 1992). Although whooping cranes are intensively monitored throughout their annual cycle compared to other birds, only 13 whooping crane carcasses were found during migration from winter 1950 through spring 1987. These carcasses represent 8 percent of the 157 whooping cranes presumed to have died while migrating during that period. Probable causes of death for these 13 whoopers were collision with power lines (5), trauma from either collision or gunshot (4), shot (1), muskrat trap (1), heart muscle disease (1), and viral infection (1).

Since 1987, probable causes of mortality in the Aransas-Wood Buffalo population include 5 shot and 4 colliding with power lines (Tom Stehn, USFWS, pers. commun.). However, these mortalities may not be representative of total mortalities because they comprise only 5 percent of the 168 individuals missing from Aransas NWR during spring through fall 1987-2003.

### Discussion

The mortality data are not complete enough to conclude which is a more significant cause of mortality: shooting or power line collisions. However, given that whooping crane numbers have increased over 440 percent (10 percent/year, USFWS unpubl. data) since sandhill crane hunting seasons resumed in 1961, hunting apparently has not jeopardized the whooping crane population.

What becomes apparent when you review the history of the 5 whooping crane gun mortalities is that significantly reducing gun mortality will take a broader approach than just restricting crane hunting activities. Vandals, duck hunters, goose hunters, and sandhill crane hunters have all been involved. As the whooping crane population continues to increase, we can expect more frequent sightings throughout their range, and possibly a wider distribution and prolonged migration. The potential for human contact and contact with humans possessing guns will continue to increase. Efforts to separate humans from whooping cranes through establishment or enlargement of sanctuaries and hunt season closures will become increasingly difficult and complicated.

## **POTENTIAL SANDHILL CRANE SEASON STRATEGIES**

### **Delayed Sandhill Crane Season Opener**

The sandhill crane season in Kansas has opened the first Saturday in November since its inception in 1993. From 1982-92, approximately 70 percent of the whooping crane usedays

(number of individuals times number of days reported) in Kansas were reported before November 4, the midpoint of possible dates on which the first Saturday in November could occur. Since 1993, the migration of whooping cranes has delayed slightly, with approximately 60 percent of whooping crane usedays occurring prior to November 4.

The latest whooping crane observation in Kansas was November 12 during 1961–1981, December 6 during 1982–1992, and December 31 during 1993–2003. The number of whooping cranes reported in Kansas has increased as their total population has increased, going from 334 during the 10-year period 1984-1993, to 474 during the most recent ten years, 1994-2003. Not surprisingly, the number of groups ( $r = 0.81$ ,  $df = 38$ ,  $P < 0.01$ ) and number of individual whooping cranes ( $r = 0.74$ ,  $P < 0.74$ ,  $P < 0.01$ ) reported in Kansas since 1961 are significantly correlated with peak whooping crane population the previous winter. As the total number of whooping cranes increases, we should expect some lengthening of the migration period, regardless of weather, and possibly some expansion of the area where they are observed in our state.

The sandhill crane migration has also shifted slightly later, although peak numbers still occur during the first half of November. Based on bi-weekly waterfowl surveys at selected sites throughout Kansas during 1982-1992, numbers of sandhill cranes observed during the second half of November were almost identical to those observed during the second half of October. During 1993-2003, the number of sandhill cranes observed in Kansas during the second half of November was almost double that reported for the second half of October. Preliminary results from a recent (1999-2003) satellite telemetry study of sandhill cranes indicate that for Kansas mean arrival date was October 30, median departure date was November 18, and median length of stay was 20 days (Gary Krapu, USGS, unpubl. data). However, these results are from only 15 cranes.

## Discussion

There is no doubt that the migration of most migratory waterfowl and cranes has been later during recent years, and that this delayed migration is likely due to unseasonably warmer fall and winter periods. However, we can only speculate as to whether this weather change is short term, or the result of a long-term climatic change (i.e., global warming). Adjusting the opening date of the sandhill crane season later could result in a substantial reduction in hunter opportunity and harvest should weather patterns return to what we have experienced in the past. It should also be noted that Kansas and Texas are the only states that delay the sandhill crane season opener for the benefit of whooping cranes. Other states rely on implementation of the Whooping Crane Contingency Plan (USFWS 2001) to address the interaction of whooping cranes and sandhill crane hunting.

The connection between the sandhill crane season and other waterfowl seasons should also be considered when contemplating changes in the opening dates for sandhill crane hunting. The largest concentrations of geese and goose hunter activity in Kansas often occur in the same areas as concentrations of sandhill and whooping cranes. During the last two years for which counts are available, (2002-2003), the average number of geese reported at the Quivira NWR and Cheyenne Bottoms WA during the month of November was slightly more than 519,000. If you

add sandhill crane to the total, the average number of geese and cranes reported from these two areas exceeded 670,000 birds. Such high concentrations increase the risk of an outbreak of disease, such as avian botulism or avian cholera, a threat to all waterbirds in the area.

In the past, the Department has established concurrent openers for cranes and the primary segment of the goose season. This opener has also affected timing of the duck season to a certain extent. Further delaying the sandhill crane season opening date may result in a separation of goose, duck, and crane seasons, which could affect the fall distribution of cranes and still expose whooping cranes to humans with guns. The alternative, maintaining the connection between the waterfowl and crane season, would result in all seasons being later, an action that may affect hunter opportunity and harvest by waterfowl hunters, not just those pursuing sandhill cranes. A delayed opener of both sandhill crane and goose seasons would likely result in increased damage to agricultural crops during the early season build-up of crane and goose concentrations in Stafford and Barton counties. The potential for increased risk of avian disease should also be considered.

### **Buffer Zone Around Whooping Crane Concentrations**

During 1975-99, fall whooping crane sightings in Kansas have comprised 28 percent of the 661 sightings in the primary migration corridor (Montana, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas) (Austin and Reichert 2001). States with the next highest proportion of fall sightings are North Dakota (20 percent), Nebraska (17 percent), and Oklahoma (14 percent). To what extent differences in number of sightings are due to differences in observation effort is unknown.

Since 1961, over 75 percent of the whooping crane groups and individuals reported in Kansas have been in Barton and Stafford counties (USFWS unpubl. data, Wally Jobman, Grand Island, NE). While statewide whooping crane sightings of groups and individuals increased 69 percent and 42 percent, respectively, from the 1984-1993 period to the 1994-2003 period, number of whooping crane groups and individuals reported in Barton and Stafford counties increased 92 percent and 59 percent, respectively. Number of whooping crane groups and individuals reported elsewhere in the state increased 5 percent and decreased 19 percent, respectively, during the same time periods. Although sighting effort has probably increased in Barton and Stafford counties, whooping cranes seem to be concentrating even more in these counties during the past 10 years.

Establishment of a buffer zone around Cheyenne Bottoms WMA and Quivira NWR, with a delayed opening date for sandhill crane hunting, would reduce contact between crane hunters and whooping cranes. A zone including that area of Barton and Stafford counties south of K-4, east of U.S. 281, and north of U.S. 50, would encompass 81 percent of whooping crane observations during years 1993-2003 (Fig. 1, top). This zone could be constricted by eliminating some areas of Stafford and Barton counties by using blacktop roads such as 4<sup>th</sup> Street, which runs west out of Hutchinson, and the Ellinwood-Stafford blacktop road (Fig. 2, bottom). This reduced zone would include 78 percent of the 1993-2003 whooping crane observations, but would likely be more confusing to individuals not familiar with that area of the state and would not include the location where the whooping cranes were shot this fall. One problem with mapping whooping

crane locations is that sightings primarily come from Cheyenne Bottoms and Quivira because that is where people tend to bird watch. Often, when whooping cranes leave these roost areas to feed in surrounding agricultural land, these subsequent locations are not added to the database.

### Discussion

Delaying the opening of the sandhill crane hunting season in Barton and Stafford counties would likely result in a significant decrease in crane hunting opportunity. During the 1993-2003 hunting seasons, 84 percent of the crane harvest and 78 percent of the crane hunting days in Kansas have occurred in these two counties (Martin 1994-2004). Stafford County alone has accounted for 57 percent and 60 percent of the crane harvest and hunting days in Kansas, respectively. Although a delayed opening in these counties would not reduce crane hunting opportunity to zero, it likely would result in a significant decrease because less hunting would occur during periods of peak sandhill crane numbers.

If a buffer zone for sandhill crane hunting is established, we must decide how goose seasons will be handled in that area. Continued use of concurrent openers for sandhill cranes and geese would require creation of a zone for geese. This would undoubtedly further concentrate both geese and cranes into the buffer area with its delayed opener, leading to greater potential for agricultural damage. However, it would separate most field hunters from the majority of whooping cranes, while allowing reasonable hunter and harvest opportunity over the remainder of the state.

If goose seasons are established independently of crane seasons (most likely earlier), the buffer zone will still be occupied by hunters. This situation may also pose a problem for law enforcement.

If goose seasons are established to open at the same time as the late “buffer” crane zone, harvest opportunity for geese will be lost.

Any benefit of zoning must be weighed against the additional complexity of hunting regulations, impact on goose hunting, enforcement, and the potential for increased crop damage.

### **Further Restrict Shooting Hours**

Frameworks for sandhill crane hunting allow shooting hours to begin at one-half hour before sunrise. Since the implementation of the crane season in Kansas, shooting hours have opened at sunrise to reduce the possibility of a whooping crane accidentally being taken by someone hunting sandhill cranes. Some have urged the department to adopt shooting hours for sandhill cranes that begin at 8:00 or 9:00 a.m.

### Discussion

To our knowledge there are no data to support an action of this type. Most studies of shooting hours have focused on ducks, but their conclusions should have some applicability to all types of hunting. In 1993 the Central Flyway Waterfowl Technical Committee was instructed by the

Central Flyway Council to explore the issue of opening shooting hours 15 minutes prior to sunrise. The following is part of the report prepared by the Technical Committee for Council. “In 1977..... a suit was filed against the USFWS contending that the regulations were a violation of the Migratory Bird Treaty Act and the Endangered Species Act. It was argued that hunters could not distinguish protected species from game species. In response to the Court case, the USFWS prepared an Environmental Assessment on proposed regulations allowing waterfowl hunting ½ hour before sunrise. Following a thorough assessment of available information including hunter performance surveys, it was concluded that the impact of early morning shooting on protected species was inconsequential. For example, less than 1 percent of the birds killed each year by waterfowl hunters were protected waterfowl or other protected species and an even smaller percentage occurred during the twilight period (1/2 hour before sunrise to sunrise). To further clarify this issue, the USFWS and the state of Maryland conducted similar studies during the 1978-79 and 1979-80 hunting seasons. The work here substantiated the findings of the EA [Environmental Assessment]; that is, that shooting hours more restrictive than ½ hour before sunrise would result in little or no additional protection for nongame birds or protected waterfowl. In 1990, the Office of Migratory Bird Management of the USFWS conducted a review of the shooting hours issue. They concluded that hunting during the twilight period does not result in a higher incidence of illegal kill compared to other times of the day. They further stated that there would probably be a small reduction in the legal harvest if shooting hours opened at sunrise but with a corresponding increase in shooting hour violations.” Considering what was determined for the twilight period, we would not expect any measurable change in illegal take by adopting shooting hours of 8:00 or 9:00 a.m.

### **Increased Emphasis on Implementation of Whooping Crane Contingency Plan**

The Whooping Crane Contingency Plan (USFWS 2001) has been adopted by all parties responsible for the management of whooping cranes, has mechanisms in place to address interaction between hunters and whooping cranes, and has been implemented throughout the Central Flyway. Prescribed responses to situations such as those encountered in the Barton and Stafford county area include: 1) asking landowners to voluntarily close their land to hunting until the whooping cranes leave, 2) controlling access via roads or land, 3) news releases or personal contact with people in the area, 4) daytime monitoring by Service and state personnel, and 5) spot closures.

### **Discussion**

The Whooping Crane Contingency Plan has been employed a number of times in Kansas. The primary drawback to the Plan is the huge amount of manpower required for daytime monitoring and implementing spot closures. The posting of private lands where whooping cranes are observed, monitoring their presence, and then removing posted signs is labor intensive, especially in an area where few state personnel are located. Those who are present have full work loads managing their own areas of responsibility, particularly during that time of the year.

The Whooping Crane Coordinator for the Endangered Species Section of the USFWS has stated in recent email correspondence that the Stafford County area is a major migration stopover for whooping cranes and deserves special consideration. Because of this, it would appear that our

department would be justified in requesting additional financial and/or manpower assistance from the USFWS with the annual effort of implementing the Whooping Crane Contingency Plan.

### **Increased Emphasis on Hunter Education and Awareness**

News releases and personal contact are included within the Whooping Crane Contingency Plan, and it was widely known that whooping cranes were in and around the Quivira NWR this fall. However, the shooting of two whooping cranes by hunters within several miles of the refuge indicates a total failure by those involved to consider or remember that whooping cranes might be nearby. They also broke the cardinal rule of identifying the target before pulling the trigger. We cannot believe that the shooting was intentional.

### **Discussion**

Increasing hunter awareness has the greatest potential to reduce hunter mortality of whooping cranes. The growing whooping crane population will ultimately result in increasing exposure of whooping cranes to hunters, despite spot closures, delayed openers, buffer zones, etc. None of these measures can match having a hunting fraternity that is aware of the presence of whooping cranes and identifies their targets before they pull the trigger. Communicating the presence of whooping cranes to hunters, encouraging good hunting conduct, and advertising the penalties of accidentally shooting a whooping crane should be a primary emphasis of the Department.

### **Administrative Events and Schedules**

It is unknown when the details of the current case regarding the shooting of two whooping cranes will become available. Although this issue will be on the agenda of the January Commission meeting, we can only speculate as to what action or direction the USFWS will take. The possibility exists that the Contingency Plan might be opened for modification. There might also be some consideration of framework changes for Kansas, or for the entire Central Flyway. Frameworks for sandhill crane seasons will not be known until mid or late summer.

### **Comments**

As whooping crane numbers continue to increase we should expect increased contact between hunters and whooping cranes, not only near major whooping crane concentration areas, but throughout much of Kansas. Emphasizing and improving the awareness and conduct of all hunters will be critical to minimizing events like the shooting of two whooping cranes.

Implementation of actions prescribed in the Whooping Crane Contingency Plan should be continued. To effectively accomplish this, additional personnel will be required. The Department should negotiate increased assistance from the USFWS, above that provided by the Quivira NWR staff. The statement of the Whooping Crane Coordinator of the Endangered Species Section (Division?) implying that the area around the Quivira NWR has become an even more



important migration stopover area for whooping cranes that warrants special consideration should justify this request.

It is critical that we consider the long-term implications of any potential action as a result of the unfortunate incident this year. There is no reason to believe that whooping crane numbers will not continue to increase, currently at a rate of about 10 percent per year. What will happen when whoopers chose new migration “hotspots,” or when the Quivira NWR and/or Cheyenne Bottoms lack water to provide habitat and the whooping cranes move their migratory rest area south to Oklahoma or north Texas, or east a few miles to our new and developing McPherson Wetlands WA? It appears that in the long-term it will be necessary for hunters and whooping cranes to coexist. Trying to isolate hunters from whooping cranes doesn't appear to be the best approach over the long-term.

The bottom line is that sport hunting will not cause the demise of the whooping crane population or program. We should also keep in mind the benefits that whooping cranes have derived from hunters. Most wetlands utilized by whooping cranes within their migration corridor are due to the efforts and dollars provided by these sportsman.

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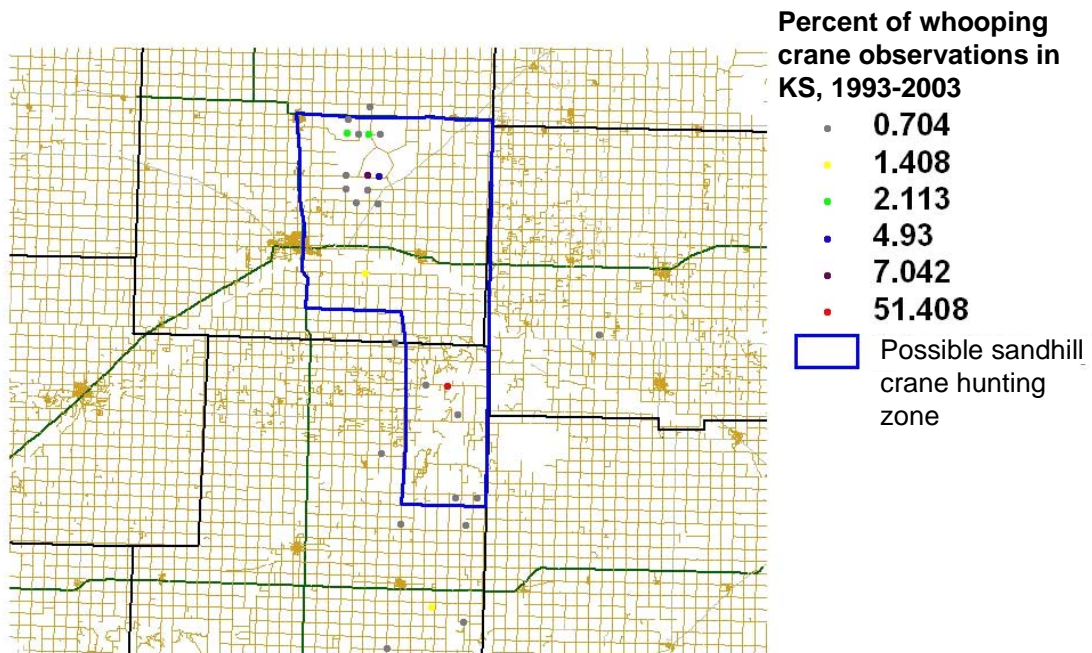
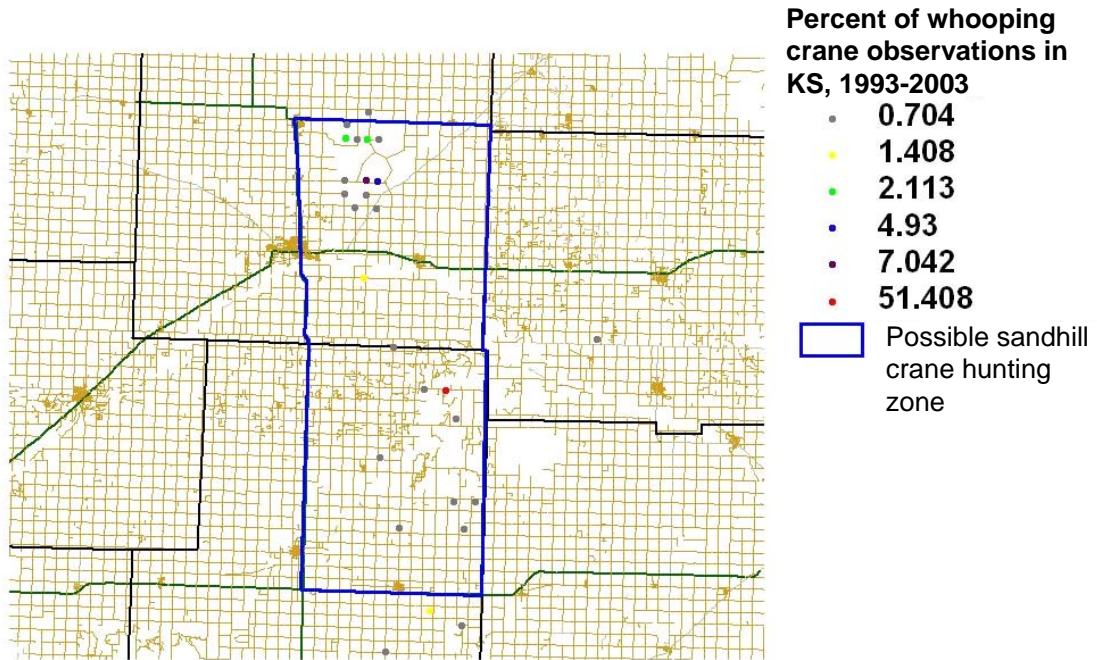


Figure 1. Sandhill crane hunting zone options 1 and 2 (top and bottom). Option 1 zone would include portions of Barton and Stafford counties and be bounded by K-4, US 281, and US 50. Option 2 zone would include portions of Barton and Stafford counties and be bounded by K-4, US 281, SE 50 Rd, the Ellinowood-Stafford blacktop, and 4<sup>th</sup> St. road.

## **State Comprehensive Wildlife Plan Update**

At the last meeting, the Commission was acquainted with the State Wildlife Grant Program, and how the Department is currently in the process of developing a plan to meet the federal requirements of the program. This year, Kansas will receive about \$800,000. Since that report, a session at the Fish and Wildlife Divisional Meeting in early February has been scheduled, to obtain in-house input. A Summit of Experts is planned for February 22 and 23 to gather input from the scientific community, interested organizations and constituents, and an e-mail announcement sent out. The species list has been posted to the internet, along with two reference documents. A questionnaire on life history of Kansas wildlife has been distributed, and results will be compiled before the February meetings. Planning is on track to have a final product by summer.

## **KAR 115-4-2 Big game; general provisions.**

### **Background**

The regulation contains the following items:

- ▶ Information that must be included on the carcass tag
- ▶ Procedures for transferring meat to another person
- ▶ Procedures for possessing a salvaged big game carcass
- ▶ Who may assist a big game permittee and how they may assist, including the provisions for designated individuals to assist disabled big game permittees.

### **Discussion**

Wild turkeys are no longer classified as a big game species (Senate Bill 363). As a result, changes need to be made to this regulation to cover all appropriate species.

### **Recommendation**

It is recommended that changes be made to this regulation to refer to “big game species and wild turkey” wherever the phrase “big game species” currently is used.

The following changes are recommended to address procedural changes:

- 1) Add a requirement for the hunter to include a time of kill and county on the carcass tag when the hunter signs the tag.
- 2) Identification procedures for wild turkey shall be revised.
- 3) A new regulation shall be written to address automated licensing procedures.

## **KAR 115-4-4 Big game: legal equipment and taking methods.**

### **Background**

The regulation contains the following items:

- ▶ Specific equipment differences for hunting various big game species.
- ▶ Specifications for bright orange colored clothing, which must be worn when hunting during certain big game seasons.
- ▶ Accessory equipment such as calls, decoys, and blinds.
- ▶ Shooting hours
- ▶ Special restrictions prohibiting shooting at turkeys while they are in a tree
- ▶ Special restrictions on the use of horses or mules to herd or drive elk.

### **Discussion**

Wild turkeys are no longer classified as a big game species (Senate Bill 363). A new regulation will be created to specify the equipment that may be used to hunt wild turkey.

An error was discovered in section (d) (1) of this regulation.

### **Recommendation**

All sections of this regulation dealing with wild turkey should be removed. They will be added to a new regulation dealing with equipment for hunting turkey.

It is recommended that section (d) (1) be changed from K.A.R. 115-4-12 to K.A.R. 115-4-2.

## **KAR 115-4-13 Deer permits; descriptions and restrictions.**

### **Background**

The regulation contains the following items:

- ▶ Creates permit types that include:
  - ▶ a white-tailed deer, either sex permit valid during muzzleloader and firearms seasons
  - ▶ a white-tailed deer antlerless only permit valid during any season with the appropriate equipment
  - ▶ an antlerless white-tailed deer game tag
  - ▶ Firearm Any-Deer permit
  - ▶ Archery Any-Deer permit
  - ▶ Muzzleloader Any-Deer permit
  - ▶ Leftover any-deer permits
  - ▶ Hunt-own-land permits, including resident HOL, nonresident HOL, and special HOL transferable permits.
- ▶ Nonresident deer permits shall be valid for the same season and same management unit as those for which the equivalent resident permits are valid.
- ▶ Each deer permit or game tag shall be valid only for the species and antler category specified on the permit or game tag.
- ▶ Antlerless deer are defined as a deer without a visible antler plainly protruding from the skull.

### **Discussion**

Once again this year, as had occurred in 2000 and 2003, a review of this regulation has been requested, with an eye for potentially creating a mule deer only permit.

Clarification is necessary for the archery white-tailed deer permit issued to nonresident archers.

### **Recommendation**

It is recommended that a section be added to this regulation for an archery white-tailed deer permit to conform to current practices.

It is proposed that a review will occur this year on the issue of separate systems for mule deer and white-tailed deer.

## **KAR 115-25-9 Deer; open season, bag limit, and permits.**

### **Background**

The regulation contains the following items:

- ▶ Dates of when deer seasons equipment such as archery, firearms, muzzleloader may be used.
- ▶ Provisions when seasons may occur on military subunits within management units.
- ▶ Dates for urban firearm deer season and extended archery seasons.
- ▶ Dates of deer seasons for designated persons.
- ▶ Dates and units when extended firearms seasons are authorized and the type of permits and changes in the species and antler categories of those permits.
  - ▶ Dates for extended firearms season in northern DMUs 7 and 8.
- ▶ Permit application dates and procedures.
- ▶ Reclassification of permits issued as leftover permits.
- ▶ Limitations in obtaining multiple permits.
- ▶ Check station requirements.

### **Discussion**

Annual adjustments will be made in the season and application dates. Population indices will be examined and public input will be considered in the development of a list of units where extended firearms seasons and antlerless white-tailed deer game tags will be authorized. The number of game tags that may be used in each unit will also be evaluated after additional data becomes available.

Fort Riley has requested a change in the archery deer season. Currently the archery season is closed during the firearms season, however, the firearms deer season on military installations are not the same as elsewhere in the state. In addition, some archery hunters have requested to hunt with archery equipment and their archery permit during the regular firearm season.

The extended season for antlerless white-tailed deer has ranged in extent from 2 days to 14 days. Last year the extended season was only two days in length and legislators requested an additional seven days for the extended season in the northern portion DMUs 7 and 8. To allow a full weekend of hunting after December 31, 2005 would require a delay until January 7<sup>th</sup> and 8<sup>th</sup>, 2006. By increasing the length of the extended season to eight days in some units where the extended season was only two days this year, we might be able to eliminate the special extended seasons in northern portions of units 7 & 8 and the central portion of unit 12.

Input from department personnel indicates that consideration should be made to restrict white-tailed antlerless only permits and deer game tags to people who possess an either sex deer permit.

## **Recommendation**

Season dates for the 2005-06 deer hunting are recommended as follows:

Early Muzzleloader	September 10, 2005 – September 23, 2005
Youth and Disability	September 24, 2005 – September 25, 2005
Archery	October 1, 2005 – December 31, 2005
Early Firearms (DMU 19)	October 15, 2005 – October 23, 2005
Regular Firearms	November 30, 2005 – December 11, 2005
Extended WAO	January 1, 2006 – January 8, 2006
Extended Archery (DMU 19)	January 9, 2006 – January 31, 2006

The recommendation for the deadline for applications is:

Nonresident	May 31, 2005
Resident Drawing	July 15, 2005
Unlimited Availability	December 30, 2005

Section (a)(1)(B) will need to be changed from statewide to two archery unit(s) designated on the permit.

Consideration will be made on issues of extended firearms seasons and deer game tags after additional data become available.

Consideration will be given to a change in this regulation to require a hunter to possess an either sex deer permit before they may purchase either a white-tailed deer antlerless deer permit or deer game tag.



## **KAR 115-25-10 Deer; special southeast firearms season, bag limit, game tags, application and hunter reporting requirements.**

### **Background**

The regulation contains the following items:

- ▶ Dates for a special deer season in southeast Kansas.
- ▶ A bag limit of four deer on a deer game tag.
- ▶ Boundary lines for the special unit.
- ▶ A quota limit of resident and nonresident hunters.
- ▶ Application dates and procedures to handle leftover game tags not issued during the regular application.
- ▶ Hunter reporting procedures, including check station requirements.

### **Discussion**

This regulation was used in an experimental manner to determine if hunting pressure could be directed into a small unit. The cost to Resident and nonresident hunters was reduced to \$2.75 per deer during the 2004 season and \$2.75 per deer for residents and \$5.25 for nonresidents during the 2005 season. The season length was extended to 26 and 29 days to allow a great deal of opportunity for hunters.

The results have been discouraging. Whereas 385 game tags were authorized (350 for residents and 35 for nonresidents), only 219 people applied for a game tag last year, and so far only 161 have applied for a special game tag for the 2005 season. This regulation allowed for a potential harvest of 1,540 deer. Typically the hunter success in DMU 12 is approximately 50 percent and therefore a harvest of 600 – 800 deer was expected. However, hunters harvested only 75 deer during the 2004 season.

### **Recommendation**

Public input is desired on the regulation for this season. The staff recommendation is to discontinue this season.

**KAR 115-4-4a. Wild turkey; legal equipment and taking methods.**

This regulation is provided as a result of KSA 32-701 as amended by the legislature to remove wild turkey from the designation as big game. Provisions for wild turkey have been taken from 115-4-4 to establish this regulation specifically for wild turkey.

### **KAR 115-25-5. Turkey; fall season, bag limit, and permits.**

This regulation establishes a fall hunting season, units, and permit quotas for wild turkey. Two changes are requested for this regulation:

1. Eliminate the split in the turkey season by eliminating the closure during firearms deer season. *When archery hunting seasons were first opened for wild turkey, a closure during the firearms deer season was logical since archery deer season was also closed during that time. Since then, we have expanded turkey hunting opportunities to include a firearms season, and now a single fall season that permits use of archery or firearms methods. It is no longer necessary to continue closing during firearms deer season.*
2. *Extend the season through January 31 instead of December 31.* Much of Kansas continues to have high turkey numbers. At the same time, numbers of hunters taking advantage of fall turkey hunting remain low. With this combination of high turkey numbers and low hunter numbers, we can offer an additional month of opportunity during a time when competition with deer seasons is lessened.



## **KAR 115-25-7**

### **Antelope; open season, bag limit and permits**

#### **Background**

This regulation pertains to seasons, bag limits, unit boundaries, permits and tags for pronghorn antelope.

Western Kansas pronghorn antelope populations have supported a hunting season since 1974. The firearms pronghorn season has been four days long since 1990 and traditionally has started on the first Friday in October. The archery pronghorn season has been nine days since 1985 and traditionally has included the two weekends prior to the firearms season. A muzzleloader season was initiated in 2001. It has begun immediately after the archery season and ran for eight days. During the first four days of the muzzleloader season, hunters have been restricted to muzzleloader equipment with open or peep sights. During the last four days, which has coincided with the firearms season, hunters have been allowed to use telescopic sights.

Since 1990, archery permits have been unlimited. Annual sales have averaged about 115 in recent years. Firearm and muzzleloader permits have been issued by limited draw, with half going to general residents and half going to landowner/tenants. Successful applicants are determined through a preference point system. Since 1995, there have been about 1,000 applications annually (mostly general residents) for these permits. In 2004, 104 firearms permits and 30 muzzleloader permits were available. Approximately 6 preference points were required for a general resident to draw a firearms permit, and 2-4 points for a muzzleloader permit. Landowners drew permits with 0-2 points.

#### **Discussion**

With a 10 percent to 15 percent success rate in recent times, the archery season has provided a lot of opportunity with limited impact on the resource. Consideration should be given to reopening the archery season following the firearms season, so that it overlaps with part of the archery deer season. We have estimates for the potential impact on the resource and participation by current archery pronghorn hunters. However, the number of “new” pronghorn hunters that may be enticed by the opportunity to hunt pronghorn and deer is unknown.

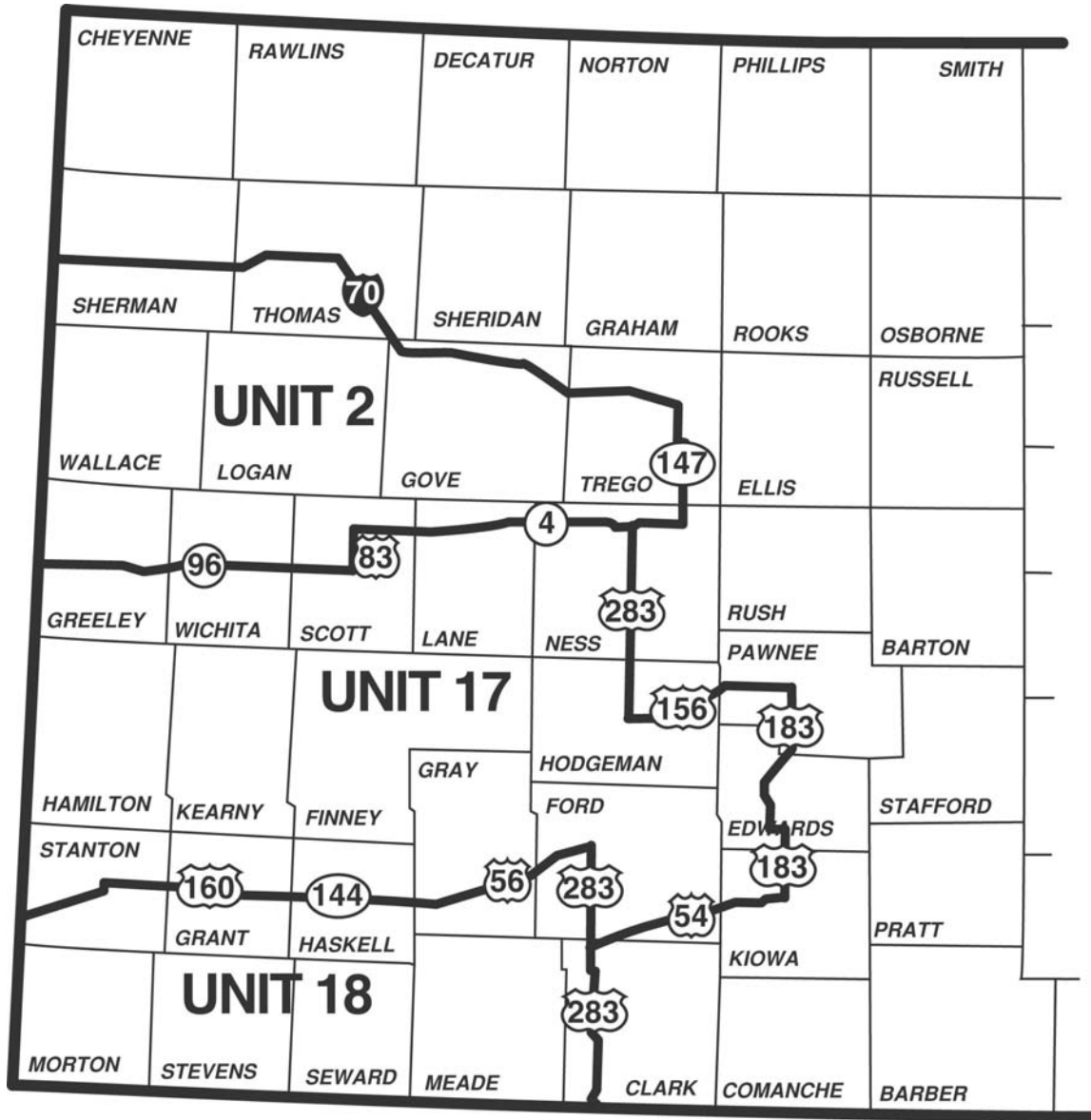
#### **Recommendations**

We recommend no changes for the unit boundaries, or bag limits. Unit boundaries are proposed to coincide with firearm deer management units defined in K.A.R. 115-4-6, with units 2, 17, and 18 being open. Firearm and muzzleloader permit allocations will be determined after the winter aerial surveys have been conducted. Archery permits will be unlimited. All pronghorn hunting will be restricted to residents. Half the permits will be assigned to landowner/tenants. The remainder will be awarded to general residents. The proposed season dates are:

- a) September 24, 2005 through October 2, 2005 for the archery season.
- b) October 3, 2005 through October 10, 2005 for the muzzleloader season.
- c) October 7, 2005 through October 10, 2005 for the firearms season.

It is recommended that the application deadline for firearms and muzzleloader permits correspond with the date of the 2004 deadline, that would be June 10, 2005. Application for archery permits would be available through the next to last day of the season.

# Antelope Units



## **KAR 115-25-8**

### **Elk; open season, bag limit and permits**

#### **Background**

This regulation pertains to seasons, bag limits, unit boundaries, permits and tags for elk hunting.

Elk hunting on and around Fort Riley was initiated in 1990. Since that time, there has been considerable interest in acquiring elk permits to hunt on the Fort. In 2004, 1505 general residents and 36 military applicants applied for limited draw permits. With permits being divided between military and general resident applicants, a general resident has had less than a 1.5% chance of drawing any permit or less than a .5% chance of drawing an any-elk permit. Last season, 7 any-elk permits and 15 antlerless elk permits were allocated.

Most of the hunting opportunity occurs on the Fort, and emphasis is placed on maintaining this population. However, lengthened seasons and unlimited hunt-own-land permits have been allocated off the base since 1999, and additional units were opened to hunting in 2003. This framework is intended to allow for elk that may be causing crop damage or other conflicts to be harvested, and for landowners to have the opportunity to restrict the distribution of this free-ranging population to the vicinity of Fort Riley. Few landowner complaints have been received in recent years.

#### **Discussion and Recommendations**

Unit boundaries are proposed to coincide with deer management units defined in K.A.R. 115-4-6. It is recommended that Units 6, 8, 9, 14 & subunit 8a be open.

The proposed season dates outside the boundaries of Fort Riley are:

- a) September 1, 2005 through September 30, 2005 for the muzzleloader season.
- b) October 1, 2005 through November 29, 2005, and December 12-31, 2005, for the archery season.
- c) November 30, 2005 through December 11, 2005, and January 1, 2006 through March 15, 2006 for the firearms seasons.

The proposed season dates on Fort Riley are:

- a) October 1, 2005 through December 31, 2005 for the firearms seasons with one-third of the antlerless-only permits valid during each of the following segments:
  - 1) First segment: October 1, 2005 through October 31, 2005.
  - 2) Second segment: November 1, 2005 through November 30, 2005.

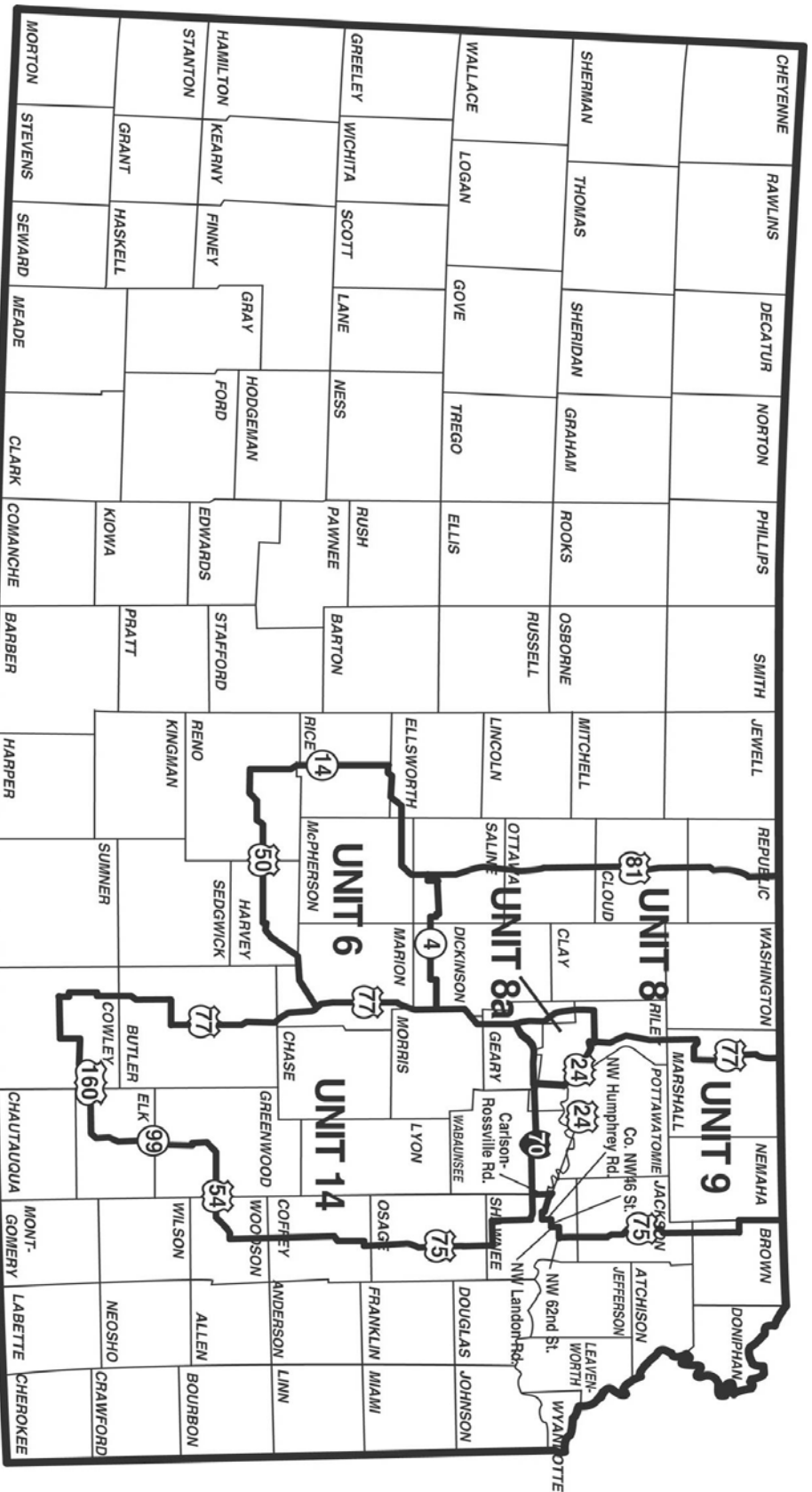


- 3) Third segment: December 1, 2005 through December 31, 2005.
  - b) October 1, 2005 through December 31, 2005 for a firearms season for all holders of any-elk permits.

Limited-draw permit allocations will be determined closer to the completion of the ongoing 2004-2005 season.

Elk permits will be available only to Kansas residents. We propose that permit applications be separated into military and nonmilitary applicants, as has been done in the past. We propose that an unlimited number of hunt-own-land antlerless-only elk permits be authorized. The bag limit shall be one elk as specified on the permit. It is recommended that the application deadline for elk permits be similar to the 2003 period. The corresponding date would be July 15, 2005. Applications for hunt-own-land permits would be available through the next to last day of the season.

# Elk Units



## **KAR 115-18-10. Importation and possession of certain wildlife; prohibition, permit requirement and restrictions.**

### **State Law Action pertaining to Exotic Cat Ownership**

#### **Background:**

The Commission was initially presented with information about the possession of large cat species during the January 2004 meeting. At this meeting, the Commission directed the Department to conduct further review of the possession issue and provide recommendations for regulatory changes. After review of the current statutes and regulations in addition to meetings with the Governor's Sub-cabinet on Natural Resources, the Kansas Secretary of State, and other groups and citizens, a proposal was brought forward to the Commission.

Zoos, circuses, colleges or universities would be exempt from this regulation. Additionally, an exemption would allow the transportation of legally possessed animals through the state on a temporary basis. An exemption would also exist for veterinarians to temporarily hold these animals for medical treatment.

The original proposal included the following provisions.

1. Upon enactment of the regulation, the importation of six species of large cats, specifically lions, tigers, leopards, jaguars, cheetahs and mountain lions, as well as wolves and bears for permanent possession would be prohibited except as authorized by terms of a wildlife importation or possession permit issued by the Secretary.
2. Any large cats, wolves or bears possessed in Kansas prior to January 1, 2006 could be retained in possession, in closed confinement, by making application to the Department for a permit to possess the animal or animals. Any such permit issued would expire on January 1, 2010. During the time period from January 1, 2006 to January 1, 2010, there are no specific requirements on holding facilities, inspections or other conditions.
3. On or after January 1, 2010 large cats, wolves or bears could not be possessed. The Secretary could, however, issue a wildlife importation or possession permit as provided in KSA 32-956 for experimental, scientific or display purposes. The permit would set forth the conditions and restrictions under which an animal could be imported or possessed and would require specific, detailed information relating to the allowable statutory provisions for the importation or possession; the description of holding facilities for the wildlife; descriptions of plans to prevent the release of the wildlife; proof of legal ownership; the location where the wildlife would be confined; and written approval to possess the wildlife from the local governing unit having jurisdiction.
4. Any permit issued by the Department would be for a specific time period and only for the species and number of animals per species authorized by the permit. All wildlife authorized by

the permit would be confined or controlled at all times, as per the permit's limitations, and could not be released onto the lands or waters of the state. All changes in possession of any permitted wildlife would require reporting to the Department, regardless of whether due to sale, gift, exportation or death. Any wildlife held under permit that is released to the wild, or escapes and is not retrieved within three days, would be considered feral animals and subject to the Secretary's order to collect and remove the wildlife from the lands or waters of the state.

5. Any permit application could be refused, or any issued permit revoked if the following conditions exist; the application is incomplete or contains false information; the issuance of the permit would not be in the best interest of the public or natural resources of the state; the permittee fails to meet the permit requirements or violates the permit conditions; the issuance of the permit would conflict with any federal, state or local law, rule or ordinance; the health or welfare of the animal is jeopardized; or the facilities are inadequate to prevent the wildlife's escape or to protect the safety of the public.

### **Discussion:**

In light of the numerous and varied opinions, concerns and demands expressed by a variety of individuals, groups and organizations, further consideration of the aforementioned provisions and possible clarifications are warranted. Several issues should be more clearly addressed, including:

- a.) conditions whereby an importation permit would or would not be issued;
- b.) clear parameters of allowable activities under a possession permit, addressing such issues as:
  - breeding and propagation;
  - sale or exchange;
  - allowances for sanctuary operations dealing with the care of unwanted animals; and,
  - grandfathering of animals currently present in the state.
- c.) facility and animal care standards or accreditations.

### **Recommendation:**

It is the recommendation of the Department to the Commission that the provisions listed in the "Background" portion of this report be implemented along with the following provisions.

- a.) A definition for "zoo" be written to include a facility intended for the display or exhibition of wildlife maintained by any municipal, county, state or federal governmental agency, or operated by a private party accredited by the American Zoo and Aquarium Association.
- b.) A definition for "sanctuary" be written to include a facility holding a status of a 501 (c) (3) nonprofit organization as defined in the Federal Internal Revenue Service Code that operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or

displaced wildlife are provided care for their lifetime; does not conduct any commercial activity with respect to any animal of which the organization is an owner; and, does not buy, sell, trade, auction, lease, loan, display or breed any animal of which the organization is an owner, except as an integral part of the species survival plan of the American Zoo and Aquarium Association. Any such sanctuary would require application to the department for and approval of importation or possession permits for any of the six large cats, wolf or bear taken into possession prior to actual acquisition of the animal. Any animal held under this permit would need to be individually identified by tattoo, tag, micro-chip or other approved method. Once acquired, no animal could only be transferred to a similar sanctuary facility and could not be made available to any person for simple private ownership. Any facility permitted under this regulation would be subject to inspection by department personnel during reasonable hours. Issuance of a permit by the Department would not limit, restrict or prevent any local government body from placing further limitations of the operation of the facility.

c.) Items 2 and 3 provided in the “Background” portion of this report would be changed as follows. Any person in possession of any wolf, bear or any of the six large cats on or after January 1, 2006 will be required to apply to the department for a possession permit. In addition to the previously mentioned permit conditions, any animal held under this permit would need to be individually identified by tattoo, tag, micro-chip or other approved identification method. No breeding of these animals would be allowed after January 1, 2006. Any animal held under this permit could be held by the original permittee for the duration of the animal’s life. If the original permittee would desire to transfer ownership to another person, zoo or sanctuary, authorization would have to be acquired from the department prior to any such transfer. No new applications for possession permits would be accepted on or after January 1, 2006. Any facility permitted under this regulation would be subject to inspection by department personnel during reasonable hours.

## **Proposal to add New Zealand mudsnail *Potamopyrgus antipodarum* to prohibited species list (KAR 115-18-10)**

Current regulations restrict the importation, possession, or release of several animal species that could be detrimental to Kansas ecosystems. The New Zealand mudsnail *Potamopyrgus antipodarum*, an invasive species that has the potential to significantly alter the aquatic ecosystem in Kansas, is not currently on the prohibited species list in KAR 115-18-10. The department currently lacks the authority to restrict the importation, possession or release of New Zealand mudsnail. The Department is proposing to add this snail to the restricted species list in KAR 115-18-10 to enhance regulatory authority for controlling its spread into and within the State.

### Justification:

Native to New Zealand, this species was discovered in North America in 1987 and has rapidly spread throughout the western United States. It is a parthenogenesis livebearer with a high reproductive potential. Mature New Zealand mudsnails average 5mm in length and juveniles are much smaller making them difficult to notice on gear. Mudsnail populations can often reach densities greater than 100,000 per square meter in suitable habitat. Densities of 750,000 per square meter within rivers in Yellowstone National Park have been reported. Much concern about the potential impacts that the New Zealand mudsnail may have on native species, fisheries, and aquatic ecosystems in the western United States has been generated by the rapid spread of this species. These snails degrade habitat with their high reproductive capacity and the subsequent impacts on invertebrate food sources. Reductions in insect species diversity or abundance could diminish the availability of this critical food resource to fish and disrupt these dynamic aquatic ecosystems. New Zealand mudsnails are a poor substitute for the traditional food base, yielding as little as 2 percent of their nutritional value when eaten by fish. Fish are known to consume mudsnails and the snails are known to survive passage through the digestive tract. Thus, the spread of the mudsnail may be assisted by stocking fish from a facility known to be infested with the snail. Unintentional transport by people is probably the primary vector for the spread of New Zealand mudsnails.

Document No. \_\_\_\_\_

KANSAS REGISTER  
SUBMISSION FORM

Agency Number -- 710-01

Agency Name -- Kansas Department of Wildlife and Parks

Agency Address - 1020 S. Kansas Ave., Suite 200

Topeka, Kansas 66612-1233

Title of Document -- Public Notice

Desired Date of Publication - November 18, 2004

**ITEMS SUBMITTED IN DUPLICATE**

CERTIFICATION

I hereby certify that I have reviewed the attached documents, and that they conform to all applicable Kansas Register publication guidelines and to the requirements of K.S.A. 75-431, as amended. I further certify that submission of these items for publication is a proper and lawful action of this agency, that funds are available to pay the publication fees and that such fees will be paid by this agency on receipt of billing.

Christopher J. Tymeson  
Liaison officer's typed name

\_\_\_\_\_  
Liaison officer's signature

Department Attorney  
Title

(785) 296-2281  
Phone

\_\_\_\_\_  
-  
This space for Register office use only

## Wildlife and Parks Commission

### Notice of Hearing of Proposed Administrative Regulations

A public hearing will be conducted by the Wildlife and Parks Commission at 7:00 p.m., Thursday, January 20, 2005 at the Memorial Hall Auditorium, 120 SW 10<sup>th</sup> Street, Topeka, Kansas, to consider the approval and adoption of proposed administrative regulations of the Kansas Department of Wildlife and Parks.

A workshop meeting on business of the Wildlife and Parks Commission will begin at 1:30 p.m., January 20<sup>th</sup> at the location listed above. The meeting will recess at 5:30 p.m. then resume at 7:00 p.m. at the same location for the regulatory hearing. There will be public comment periods at the beginning of the afternoon and evening meetings for any issues not on the agenda and additional comment periods will be available during the meeting on agenda items. Old and new business may also be discussed at this time. If necessary to complete the hearing or other business matters, the commission will reconvene at 9:00 a.m. January 21<sup>st</sup> at the location listed above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Sheila Kemmis, Commission secretary, at (620) 672-5911. Persons with a hearing impairment may call the Kansas Commission of Deaf and Hard Hearing at 1-800-432-0698 to request special accommodations.

This 60-day notice period prior to the hearing constitutes a public comment period for the purpose of receiving written public comments on proposed administrative regulations.

All interested parties may submit written comments prior to the hearing to the Chairman of the Commission, Kansas Department of Wildlife and Parks, 1020 S. Kansas Ave, Suite 200, Topeka, KS 66612 or to [sheilak@wp.state.ks.us](mailto:sheilak@wp.state.ks.us) if electronically. All interested parties will be given a reasonable opportunity at the hearing to express their views orally in regard to the adoption of the proposed regulations. During the hearing, all written and oral comments submitted by interested parties will be considered by the commission as a basis for approving, amending and approving, or rejecting the proposed regulations.

The regulations that will be heard during the regulatory hearing portion of the meeting are as follows:

**K.A.R. 115-18-1.** This permanent regulation sets the application, reporting and general requirements wildlife rehabilitation permits. The proposed amendments include minimum age for permittees, a base level of knowledge and experience, examination of applicants and continuing education, inspection of facilities, wildlife care requirements, transfer requirements, provisions for emergency care and transfer, record keeping, and cancellation of permits.

Economic Impact Summary: The proposed amendments will have an impact on the department and current rehabilitation permittees. However, after implementation of the new program, impact to the department and permittees will diminish substantially.



**K.A.R. 115-4-6.** This permanent regulation delineates the boundaries of deer management units. Proposed changes include the exclusion of landowner deer management program areas and a minor expansion of Unit 19 to include a larger portion of the City of Leavenworth to assist in conducting urban deer management.

Economic Impact Summary: The proposed amendments are not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**K.A.R. 115-4-6a.** This new permanent regulation delineates the boundaries of new archery deer management units.

Economic Impact Summary: The proposed regulation is not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**K.A.R. 115-15-1.** This permanent regulation designates the endangered and threatened species within the boundaries of the state. The proposed amendments would add one new endangered species, the Silver chub, and remove two threatened species, the Texas night snake and White-faced ibis, from the list of species designated.

Economic Impact Summary: The economic impact of the proposed amendments is expected to be minimal due to a number of factors, including the current existence of other species in the same habitat that are already listed as threatened or endangered (concerning the Silver chub). To the extent the proposed amendments would lead to additional review of projects that would impact one of this species or its habitat, the economic impact would be anticipated to be small. State law requires a permit of such a project only if publicly funded or if a state or federal permit is already required. Of approximately 1000 to 1500 projects reviewed annually, only 20-30 require a permit, and less than 5 percent are required to perform additional mitigation. The proposed amendments would impose some cost on the department for the development and implementation of a recovery plan for the silver chub. However, the plan would be developed based on a priority list of all listed species. No other economic impact on the public or other state agencies is anticipated.

**K.A.R. 115-15-2.** This permanent regulation designates species in need of conservation (SINC species) within the boundaries of the state. SINC species do not receive the same level of protection as threatened or endangered species. The proposed amendments would add the Night snake, Delta hydrobe, and Brindled madtom and remove the Red-shouldered hawk and Eastern chipmunk from the list of SINC species.

Economic Impact Summary: Listing a species as a SINC species provides no special protection or permit requirements other than a prohibition on the intentional taking of such species. Therefore, the proposed amendments would not be anticipated to have an economic impact of the public or other state agencies. Adding a new SINC species would create some cost to the department for the development of a recovery plan for that species.

**K.A.R. 115-2-1.** This permanent regulation sets the fee schedule for licenses, permits and other issues of the department. The proposed amendments would establish an elk permit application charge, an any-deer permit preference point service charge, a limited draw turkey permit preference point service charge, realign wild turkey permit fees, increase nonresident deer permit fees, increase lifetime hunting, fishing, combination and furharvesting license fees,

establish a three-pole permit fee for fishing and create a nonresident bobcat permit as a subset of the nonresident furharvester license.

Economic Impact Summary: The proposed amendments for new services and issuances would generate approximately \$339,000 annually, all of which would accrue to the wildlife fee fund. The proposed amendments for lifetime license issuances would generate approximately \$371,000 annually, all of which would accrue to the wildlife conservation fund. The proposed amendment for nonresident deer permits would generate approximately \$1,200,000, all of which would accrue to the wildlife fee fund. Otherwise, the proposed amendments are not anticipated to have any further appreciable economic impact on the department, other agencies, or the public.

**K.A.R. 115-3-2.** This permanent regulation sets the legal equipment, taking methods and possession limits for rabbits, squirrels and hares. The proposed amendment would prohibit the use of night vision equipment when hunting these species.

Economic Impact Summary: The proposed amendment is not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**K.A.R. 115-5-1.** This permanent regulation sets the legal equipment, taking methods and general provisions for furbearers and coyotes. The proposed amendment would prohibit the use of night vision equipment when hunting these species.

Economic Impact Summary: The proposed amendment is not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**K.A.R. 115-20-1.** This permanent regulation sets the legal equipment, taking methods and possession limits for crows. The proposed amendment would prohibit the use of night vision equipment when hunting these species.

Economic Impact Summary: The proposed amendment is not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**K.A.R. 115-20-2.** This permanent regulation sets the legal equipment, taking methods, possession limits and license requirements for certain species. The proposed amendment would prohibit the use of night vision equipment when hunting these species.

Economic Impact Summary: The proposed amendment is not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**K.A.R. 115-7-2.** This permanent regulation contains general provisions for fishing. The proposed amendment would allow the use of a third pole while fishing provided the individual is possession of a third-pole permit.

Economic Impact Summary: The proposed amendment is not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**K.A.R. 115-25-14.** This exempt regulation contains creel limits, size limits, possession limits and open seasons for fishing. The proposed amendment would add Moon Lake on Fort Riley to list of designated trout waters.

Economic Impact Summary: The proposed amendment is not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**K.A.R. 115-18-7.** This permanent regulation contains application procedures, permit requirements and general provisions for the use of crossbows and locking draws for big game and wild turkeys. The proposed amendments would delineate wild turkeys from big game due to changes in the statutory status of wild turkeys as well as clarify certain provisions dealing with telescopic sights.

Economic Impact Summary: The proposed amendment is not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**K.A.R. 115-4-11.** This permanent regulation deals with big game and wild turkey applications. The proposed amendments would delineate wild turkeys from big game due to changes in the statutory status of wild turkeys as well as create a preference point system for limited wild turkey seasons. In addition, the proposed amendments would allow for the purchase of a preference point in a given year in lieu of applying for a limited deer, antelope or wild turkey permit.

Economic Impact Summary: The proposed amendment is not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**K.A.R. 115-9-4.** This permanent regulation deals with hunting or furharvesting license purchases. The proposed amendment would permit the attesting of bowhunting or furharvesting certificates of completion when purchasing permits to better accommodate a new automated licensing system.

Economic Impact Summary: The proposed amendment is not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**K.A.R. 115-11-2.** This permanent regulation deals with operational requirements for controlled shooting areas. The proposed amendments would delineate wild turkeys from big game due changes in the statutory status of wild turkeys.

Economic Impact Summary: The proposed amendment is not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

Copies of the complete text of the regulations and their respective economic impact statements may be obtained by writing the chairman of the Commission at the address above, electronically on the department's website at [www.kdwp.state.ks.us](http://www.kdwp.state.ks.us), or by calling (785) 296-2281.

John R. Dykes, Chairman



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**PHILL KLINE**  
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.KSAG.ORG

October 26, 2004

Chris Tymeson  
Legal Counsel  
Kansas Department of Wildlife and Parks  
1020 S Kansas Avenue, Suite 200  
Topeka, Kansas 66612

Re: **Various regulations**

Dear Mr. Tymeson:

Pursuant to K.S.A. 77-420(b), we have determined that the above-referenced regulations are within the statutory authority of the agency and do not present any other legal issues of concern. We have therefore approved these regulations for legality.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
PHILL KLINE

Camille Nohe  
Assistant Attorney General

CN:cn  
Enclosure: Original document

cc: Representative Carl Holmes, Chair, Joint Committee on Rules and Regulations  
Senator Dwayne Umbarger, Vice Chair, Joint Committee on Rules and Regulations  
Raney Gilliland, Legislative Research

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STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**PHILL KLINE**  
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.KSAG.ORG

June 10, 2004

Chris Tymeson  
Legal Counsel  
Kansas Department of Wildlife and Parks  
1020 S Kansas Avenue, Suite 200  
Topeka, Kansas 66612

Re: **K.A.R. 115-18-1, wildlife rehabilitation permit**

Dear Mr. Tymeson:

Pursuant to K.S.A. 77-420(b), we have determined that the above-referenced regulation is within the statutory authority of the agency and does not present any other legal issues of concern. We have therefore approved this regulation for legality.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
PHILL KLINE

Camille Nohe  
Assistant Attorney General

CN:cn  
Enclosure: Original document

cc: Representative Carl Holmes, Chair, Joint Committee on Rules and Regulations  
Senator Dwayne Umbarger, Vice Chair, Joint Committee on Rules and Regulations  
Raney Gilliland, Legislative Research

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STATE OF KANSAS

ALAN D. CONROY  
DIRECTOR  
WILLIAM G. WOLFF  
ASSOCIATE DIRECTOR  
J.G. SCOTT  
CHIEF FISCAL ANALYST



STAFF  
LEGISLATIVE COORDINATING COUNCIL  
INTERIM COMMITTEES  
STANDING COMMITTEES  
LEGISLATIVE INQUIRIES

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

300 SW TENTH — ROOM 545-N — TOPEKA, KANSAS 66612-1504

PHONE (785) 296-3181/FAX (785) 296-3824

INTERNET: <http://www.kslegislature.org/kldr> E-MAIL: [kslegres@kldr.state.ks.us](mailto:kslegres@kldr.state.ks.us)

July 13, 2004

Mike Hayden, Secretary  
Kansas Department of Wildlife and Parks  
1020 South Kansas Avenue, Room 200  
BUILDING MAIL

Dear Secretary Hayden:

At its meeting on July 9, 2004, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning wildlife rehabilitation permits. After discussion, the Committee had no comment.

Please make this letter a part of the public record on these regulations. The Committee will review the regulations which the agency ultimately adopts and reserves any expression of legislative concern to that review. To assist in that final review, please inform the Joint Committee in writing, at the time the rules and regulations are adopted and filed with the Secretary of State, of any and all changes which have been made following the public hearing.

Prior to filing with the Secretary of State, review the history sections of the rules and regulations to update them to the most recent statutory citations, making certain the citations for authorizing and implementing statutes are correct and complete. Please indicate your agency's website address in the filing notice where proposed regulations can be located. In addition, if your agency accepts written comments by e-mail include this information in the public notice. Finally, verify that the adoption by reference of any materials included in the regulations is properly completed as prescribed in the *Policy and Procedure Manual for the Adoption of Kansas Administrative Regulations*.

Sincerely,

A handwritten signature in cursive script that reads "Raney Gilliland". The signature is written in black ink and is positioned above the printed name and title.

Raney Gilliland  
Principal Analyst

RG/jl

**115-18-1. Wildlife rehabilitation permit; application, reporting and general provisions. (a)**

~~Applications~~ Each application for a wildlife rehabilitation permit shall be submitted on forms a form provided by the department. Each applicant shall provide the following information:

(1) The name of applicant;

(2) the applicant's address;

(3) the location or address of the applicant's facilities if different from the applicant's address;

(4) the name of each assisting subpermittee;

(5) the type of wildlife rehabilitation service to be provided;

~~(5)~~ (6) a description of the applicant's available facilities available;

~~(6)~~ (7) the applicant's qualifications to provide the services specified; and

~~(7)~~ (8) the name of each assisting veterinarian; and

(9) other relevant information as required by the secretary.

(b) (1) A wildlife rehabilitation permit shall be issued only to each individual who meets the following qualifications:

(A) Is 18 years of age or older;

(B) has 100 hours of experience in the handling and care of wildlife acquired over the course of one calendar year. Up to 20 hours of this 100-hour requirement may be fulfilled by successful completion of a training course provided by either the international wildlife rehabilitation council (IWRC) or the national wildlife rehabilitators' association (NWRA);

(C) submits letters of recommendation regarding the applicant's knowledge of wildlife rehabilitation from three persons who have known the applicant for at least two years. The

letters of recommendation shall be from any of the following:

(i) A wildlife professional, which may include a biologist employed by a state or federal wildlife agency, the curator or manager of a zoo or wildlife sanctuary, or other person professionally engaged in wildlife management or care;

(ii) a department conservation officer;

(iii) a Kansas-licensed veterinarian; or

(iv) a permitted wildlife rehabilitator; and

(D) has obtained one of the following:

(i) A certificate of completion of a training course offered by the international wildlife rehabilitation council (IWRC) within the preceding three years;

(ii) a certificate of completion of a training course offered by the national wildlife rehabilitators' association (NWRA) within the preceding three years; or

(iii) a test score of at least 80 percent on a department-administered wildlife rehabilitation examination. Each applicant who fails the examination shall wait a minimum of 30 days before retaking the examination. The test may be taken only twice during each calendar year. The test shall not be returned to applicants at any time.

(2) A total of eight hours of continuing education or training every three years from a department-approved program shall be required for the renewal of a permit.

~~(b)~~ (c) Each applicant or permittee shall allow an inspection of the rehabilitation facilities to be made by a department official. A permit shall not be issued until the rehabilitation facilities have been approved by the inspecting official. All facilities shall be subject, during reasonable hours of operation, to inspection by the department to determine compliance with the provisions of the permit and the provisions contained in this regulation. Each facility shall be inspected by



a department official once during the permit period and upon each change in facility location.  
Each subpermittee authorized to care for wildlife at a site other than the primary permittee's  
facility shall have those facilities annually inspected and approved by a department official.

~~(e)~~ (d) Permits issued shall be valid through December 31.

~~(d)~~ (e) A permittee may provide for subpermittees to operate under the authority of the permit during the effective period of the permit upon approval of the secretary; or designee,  
based on the following requirements:

(1) Each permittee shall submit the name of each individual for whom the designation of subpermittee is requested. The permittee shall be notified by the department in writing of the approval or denial of each request. The permittee shall notify the department in writing of any approved subpermittee whose services with the permit holder are terminated.

(2) Each subpermittee shall be 18 years of age or older and have experience in handling and caring for animals during the previous two years.

(3) Each wildlife rehabilitation permittee shall be responsible for insuring that each subpermittee meets all requirements of the rehabilitation permit.

(4) Each subpermittee needing to care for wildlife in need of rehabilitation at a site other than the primary permittee's facility shall have that site inspected and approved according to the standards set forth in subsection (g) before holding any wildlife at that site.

(5) Each subpermittee holding wildlife at a site different from the primary permittee's facility shall comply with the conditions set forth in the primary permittee's permit.

~~(e) Each permittee shall maintain current records of wildlife rehabilitation services provided under the permit on report forms provided by the department.~~

~~(f) Each permittee shall submit a report of permit activity to the department prior to permit renewal, or not later than 20 days following permit expiration. The report shall include the following information:~~

~~(1) name of permittee;~~

~~(2) address;~~

~~(3) wildlife rehabilitation permit number;~~

~~(4) number and species of wildlife handled;~~

~~(5) disposition of wildlife handled;~~

~~(6) wildlife in possession on reporting date or on expiration date of permit; and~~

~~(7) other information as required by the secretary.~~

(f) The rehabilitation activities authorized by each permit issued under this regulation shall be performed only by the permittee or subpermittee specified on the permit. Volunteers may assist in rehabilitation activities only in the presence and under the direction of a permittee or subpermittee. Each permittee utilizing volunteers shall keep on file at the permitted facility a current record of all volunteers working at the facility. At no time shall volunteers be allowed to remove wildlife from the permitted facility, except as provided in subsection (l).

~~(g) Any person performing rehabilitation services and exempted by law from possessing a wildlife rehabilitation permit shall maintain records and submit a report as required by subsections (e) and (f) to the department on or before January 20 for activity which occurred during the prior year. Wildlife rehabilitation care and treatment shall be provided in accordance with the following provisions:~~

(1) All rehabilitation of wildlife shall be performed in consultation with a licensed veterinarian named on the rehabilitator's permit or with veterinarians on staff at the Kansas State

University veterinary hospital.

(2) Individual caging requirements may be specified by the secretary or designee based on the size, species, condition, age, or health of the wildlife under care.

(3) Clean water shall be available at all times except when medical treatment requires the temporary denial of water.

(4) Cages shall be cleaned on a daily basis and disinfected using nonirritating methods.

(5) A person authorized by permit shall observe and provide care for wildlife at least once daily unless otherwise specified by the permit.

(6) Wildlife shall be kept in an environment that minimizes human contact and prevents imprinting and bonding to humans.

(7) Wildlife possessed under a rehabilitation permit shall not be allowed to come into contact with any person other than a permit holder, subpermittee, volunteer, licensed veterinarian, animal control specialist, law enforcement officer, or wildlife professional from the department.

(8) Wildlife shall be housed separately from domestic animals, unless domestic animals are being used for bonding or surrogate parenting.

(9) Public viewing, exhibition, or display of any kind to the public, including electronic viewing, shall be prohibited, unless specifically authorized in writing by the secretary or designee.

~~(h) Any person authorized by permit to perform wildlife rehabilitation services or exempt by law from possessing a wildlife rehabilitation permit may possess individual animals for treatment purposes on a temporary basis until the animal is disposed of as provided by subsections (i) or (k). Possession of an individual animal for treatment purposes shall not exceed~~

~~one month unless an extension has been approved by the secretary or the secretary's designee.~~

Wildlife held under the authority of a rehabilitation permit shall not be sold, bartered, or exchanged for any consideration. A permit issued under this regulation shall not authorize a person, firm, or corporation to engage in the propagation or commercial sale of wildlife.

~~(i) Any person authorized by permit to perform wildlife rehabilitation services or exempt by law from possessing a wildlife rehabilitation permit may temporarily possess and transport wildlife to another location within the state for purposes of providing treatment, for releasing in its natural habitat, or to transport to an approved temporary or permanent holding facility. Possession of an individual animal for transportation to another location shall not exceed one week. Wildlife held under the authority of a rehabilitation permit may be transferred from one permittee to another permittee if all of the following conditions are met:~~

(1) The permittee receiving the wildlife holds all the proper permits and authorizations necessary for that species of wildlife.

(2) The transfer is necessary for the proper treatment or care of the wildlife.

(3) The transfer is properly recorded in both permittees' operational records.

(4) The transfer is approved in writing by the secretary or designee.

~~(j) Any person may temporarily possess and transport sick or injured wildlife within the state to a person authorized to perform wildlife rehabilitation services for initial treatment. Possession of an individual animal for transportation for initial treatment shall not exceed one day. The secretary or designee shall be notified if the permittee receives for transport or care an endangered species, threatened species, or species in need of conservation, as identified in K.A.R. 115-15-1 and K.A.R. 115-15-2. Permission for treatment and care by the requesting permittee may be granted by the secretary or designee, or an alternate course of action may be~~

specified by the secretary or designee.

~~(k) Any wildlife not disposed of as provided under subsection (i) shall be disposed of as directed by the secretary or the secretary's designee. No permittee shall perform any of the following acts, unless the permittee possesses, in advance, an amended permit authorizing this activity from the secretary or designee:~~

(1) Change the facility location, consulting veterinarian, or subpermittees;

(2) receive previously unauthorized species; or

(3) conduct previously unauthorized activities.

~~(l) Any person desiring to perform wildlife rehabilitation services for federally protected species shall also possess a federal rehabilitation permit issued pursuant to 50 C.F.R., part 21, section 21.27, as in effect on March 4, 1985, which is here adopted by reference. Sick or injured wildlife may be possessed, transported, or treated in accordance with the following provisions:~~

(1) Any person may temporarily possess and transport sick or injured wildlife within the state to a person authorized to perform wildlife rehabilitation services or initial treatment.

Possession of an individual animal for transportation to initial treatment shall not exceed one day.

(2) Wildlife in need of rehabilitation treatment or care may be provided emergency medical care and stabilization by any of the following individuals or institutions not holding a rehabilitation permit for 48 hours, after which time the wildlife shall be transferred to a permitted rehabilitator:

(A) Accredited zoological parks;

(B) nature centers;

(C) department wildlife professionals; or

(D) licensed veterinarians.

Any wildlife requiring extensive medical care and recovery may remain under the care of a licensed veterinarian beyond the 48-hour restriction, subject to subsection (g).

(3) Any person authorized by permit to perform wildlife rehabilitation services or exempt by law from the requirement to possess a wildlife rehabilitation permit may possess individual animals for treatment purposes on a temporary basis. Possession of an individual animal for treatment purposes shall not exceed 90 days, unless an extension has been approved by the secretary or designee.

(4) Rehabilitation treatment or care shall not be provided to the following species of wildlife:

(A) European starlings;

(B) English or house sparrows;

(C) feral pigeons; and

(D) any wildlife species listed in K.A.R. 115-18-10.

(m) The care of, possession or transportation of federally protected species shall be in accordance with the provision of 50 C.F.R., part 21, section 21.27, as in effect on March 4, 1985, which is here adopted by reference. Each permittee shall maintain current records of wildlife rehabilitation services provided under the permit on report forms provided by the department. The records shall be maintained at the designated facility, be made available to department officials for inspection purposes, and include the following information:

(1) The name of the permittee;

(2) the permittee contact information;

(3) the name and address of the facility;

(4) the wildlife rehabilitation permit number;

(5) the date on which any wildlife is received for treatment;

(6) the species of wildlife received for treatment;

(7) the suspected or known cause for treatment;

(8) the date and disposition of the wildlife at the conclusion of treatment; and

(9) other relevant information as required by the secretary.

~~(n) In addition to other penalties prescribed by law, the secretary may refuse to issue or may revoke a permit if:~~

~~(1) the application is incomplete or contains false information;~~

~~(2) issuance of a permit would not be in the best interest of the public; or~~

~~(3) the permittee fails to meet permit requirements or violates permit conditions.~~

Each permittee shall submit the true and accurate, original report required in subsection (m) to the department on or before January 31 of the year following the permitted activity. The permittee may retain a copy of the report for the permittee's records.

~~(o) This regulation shall be effective on and after January 1, 1990. Any person authorized by permit to perform wildlife rehabilitation services or exempt by law from the requirement to possess a wildlife rehabilitation permit may temporarily possess and transport wildlife to another location within the state for the purposes of providing treatment, releasing wildlife in its natural habitat, or transporting wildlife to an approved temporary or permanent holding facility. Possession of wildlife for transportation to another location shall not exceed one week.~~

(p) Wildlife no longer in need of rehabilitation treatment or care shall be handled in accordance with the following requirements:

(1) All wildlife determined to be capable of survival in the wild shall be released to the wild. Each individual releasing wildlife in accordance with this subsection shall ensure that the following conditions are met:

(A) The animal is released in an area consistent with the animal's normal habitat.

(B) The animal is released only on land, including both public and private properties, if written permission has been granted by the person in legal possession of the land where the release is to be made.

(C) The animal is not released in a location so close to human dwellings that the release is likely to result in nuisance, health, or safety problems.

(D) The animal is not released within the limits of any municipality without prior written approval from the appropriate municipal authority.

(2) Wildlife that cannot be rehabilitated and released to the wild shall be euthanized unless a written request, specifying an alternate course of action, is approved by the secretary or designee. Each course of action requiring the wildlife to remain in captivity shall be approved only if the wildlife is transferred from the permittee providing the rehabilitation services to an accredited zoological, scientific, or educational permit holder in accordance with subsection (i). Each transfer shall be allowed only for educational programs or fostering or socialization purposes, and no transfer shall take place unless the secretary or designee has approved the request in writing.

(3) All euthanized wildlife and wildlife that have died of natural causes shall be buried, incinerated, or transferred to a person or facility possessing a valid department salvage permit. All federally permitted wildlife shall be disposed of in accordance with the terms of any federal permit. Any deceased wildlife may be disposed of on private property with the prior written



permission of the person in legal possession of the private property. Deceased wildlife shall not be disposed of within the limits of any municipality without the prior written permission of the municipality.

(q) Any permittee may continue to possess a permit if all of the following conditions are met:

(1) The permit application is complete.

(2) The permit application contains no false information.

(3) The permittee meets the permit requirements and does not violate the permit conditions.

(4) The permittee has not been convicted of violating local, state, or federal laws relating to the care, treatment, possession, or disposal of wildlife or domestic animals within the previous five years.

(5) The permit has not expired.

The permittee shall be notified, in writing, of the cancellation of the permit by the secretary or designee. The permittee shall be provided by the secretary or designee with the opportunity to respond, in writing, within 10 days of receipt of the cancellation.

(r) Any provision of this regulation may be temporarily waived by the secretary or designee during a wildlife health crisis for the protection of public or wildlife health.

(s) This regulation shall be effective on and after January 1, 2005. (Authorized by ~~1989 HB-2005, Sec. 9 and 84~~ K.S.A. 32-807, K.S.A. 32-953, and K.S.A. 32-961; implementing ~~1989 HB-2005, Sec. 84 and 114~~ K.S.A. 32-807, K.S.A. 32-953, K.S.A. 32-961, K.S.A. 2003 Supp. 32-1001, and K.S.A. 32-1002; effective Jan. 1, 1990; amended P-\_\_\_\_\_.)

## **ECONOMIC IMPACT STATEMENT**

**K.A.R. 115-18-1.** Wildlife rehabilitation permit; application, reporting and general provisions.

**DESCRIPTION:** This permanent regulation establishes requirements for wildlife rehabilitation permits. The proposed amendments arose from a working group consisting of members of the Commission, the Department and the public over the past two years. This regulation was last amended in 1990. The proposed amendments are a substantial change from the past and include requirements for age to hold a rehabilitation permit, a minimum base level of knowledge and experience, an examination, continuing education, inspection of facilities, subpermittee responsibilities, wildlife care requirements, transfer requirements, emergency care and transfer, record requirements, courses of action for wildlife no longer in need of treatment, and cancellation of permits.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACT:** The proposed amendments will have an impact on the department and current rehabilitation permittees. However, once the program is in place, impact to permittees and the department will diminish substantially.

**ALTERNATIVES CONSIDERED:** None.

**KAR 115-18-1.**  
**Wildlife rehabilitation permit; application,**  
**reporting and general provisions.**  
**POSSIBLE AMENDMENT**

As a result of internal department comment as well as external constituent comment on the proposed amendments to K.A.R. 115-18-1, concerning wildlife rehabilitation permits, the department suggests that the following amendments be made to the version of the regulation submitted for public comment.

**K.A.R. 115-18-1. Wildlife rehabilitation permit; application, reporting and general provisions.**

1. Amend proposed subsection (b)(D)(iii) on page two as follows:

(iii) a test score of at least 80 percent on a department-administered wildlife rehabilitation examination at a department office location. Each applicant who fails the examination shall wait a minimum of 30 days before retaking the examination. The test may be taken only twice during each calendar year. The test shall not be returned to applicants at any time.

2. Amend proposed subsection (g)(1) on page 5 as follows:

(1) All rehabilitation of wildlife shall be performed in consultation, as necessary, with a licensed veterinarian named on the rehabilitator's permit or with veterinarians on staff at the Kansas State University veterinary hospital.

3. Amend proposed subsection (j) on page 7 as follows:

(j) The secretary or designee shall be notified within 48 hours if the permittee receives for transport or care an endangered species, threatened species, or species in need of conservation, as identified in K.A.R. 115-15-1 and K.A.R. 115-15-2. Permission for treatment and care by the requesting permittee may be granted by the secretary or designee, or an alternate course of action may be specified by the secretary or designee.

4. Amend proposed subsection (l)(1) on page 8 as follows:

(1) Any person may temporarily possess and transport sick, orphaned, displaced or injured wildlife within the state to a person authorized to perform wildlife rehabilitation services or initial treatment. Possession of an individual animal for transportation to initial treatment shall not exceed one day.

4. Amend proposed subsection (1)(3) on page 9 as follows:

(3) Any person authorized by permit to perform wildlife rehabilitation services or exempt by law from the requirement to possess a wildlife rehabilitation permit may possess individual animals for treatment purposes on a temporary basis. Possession of an individual animal for treatment purposes shall not exceed ~~90~~ 120 days, unless an extension has been approved by the secretary or designee.

5. Amend proposed subsection (1)(4)(D) on page 10 as follows:

(D) any wildlife species listed in K.A.R. 115-18-10, except as authorized in writing by the secretary.

6. Amend proposed subsection (o) on page 11 as follows:

(o) ~~This regulation shall be effective on and after January 1, 1990.~~ Any person authorized by permit to perform wildlife rehabilitation services or exempt by law from the requirement to possess a wildlife rehabilitation permit may temporarily possess and transport wildlife to another location within the state for the purposes of providing treatment, releasing wildlife in its natural habitat, or transporting wildlife to an approved temporary or permanent holding facility. Possession of wildlife for transportation to another location shall not exceed ~~one week~~ 48 hours.

7. Amend proposed subsection (p)(2) on page 12 as follows:

(2) Wildlife that cannot be rehabilitated and released to the wild shall be euthanized unless a written request, specifying an alternate course of action, is approved by the secretary or designee. Each course of action requiring the wildlife to remain in captivity shall be approved only if the wildlife is transferred from the permittee providing the rehabilitation services to an accredited zoological facility, or a scientific, or educational permit holder in accordance with subsection (i). Each transfer shall be allowed only for educational programs or fostering or socialization purposes, and no transfer shall take place unless the secretary or designee has approved the request in writing.

8. Amend proposed subsection (p)(3) on page 12-13 as follows:

(3) All euthanized wildlife and wildlife that have died ~~of natural causes~~ shall be buried, incinerated, or transferred to a person or facility possessing a valid department ~~salvage~~ scientific, educational, or exhibition permit. All federally permitted wildlife shall be disposed of in accordance with the terms of any federal permit. Any deceased wildlife may be disposed of on private property with the prior written permission of the person in legal possession of the private property. Deceased wildlife shall not be disposed of within the limits of any municipality without the prior written permission of the municipality.

9. Amend proposed subsection (q)(4) on page 13 as follows:

(4) The permittee has not been convicted of violating local, state, or federal laws relating to the care, treatment, possession, take, or disposal of wildlife or domestic animals within the previous five years.

10. Amend proposed subsection (s) on page 13 as follows:

(s) This regulation shall be effective on and after January 1, 2005 2006.

**115-4-6. Deer; firearm management units.** Each of the following subsections shall designate a deer firearm management unit: (a) High Plains; unit 1: that part of Kansas bounded by a line from the Nebraska-Kansas state line south on federal highway US-283 to its junction with interstate highway I-70, then west on interstate highway I-70 to the Colorado-Kansas state line, then north along the Colorado-Kansas state line to its junction with the Nebraska-Kansas state line, then east along the Nebraska-Kansas state line to its junction with federal highway US-283, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(b) Smoky Hill; unit 2: that part of Kansas bounded by a line from the Colorado-Kansas state line east on interstate highway I-70 to its junction with state highway K-147, then south on state highway K-147 to its junction with state highway K-4, then west on state highway K-4 to its junction with federal highway US-83, then south on federal highway US-83 to its junction with state highway K-96, then west on state highway K-96 to its junction with the Colorado-Kansas state line, then north along the Colorado-Kansas state line to its junction with interstate highway I-70, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(c) Kirwin-Webster; unit 3: that part of Kansas bounded by a line from the Nebraska-Kansas state line south on state highway K-8 to its junction with federal highway US-36, then east on federal highway US-36 to its junction with federal highway US-281, then south on federal highway US-281 to its junction with interstate highway I-70, then west on interstate highway I-70 to its junction with federal highway US-283, then north on federal highway US-283 to its junction with the Nebraska-Kansas state line, then east along the Nebraska-Kansas

state line to its junction with state highway K-8, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(d) Kanopolis; unit 4: that part of Kansas bounded by a line from the interstate highway I-70 and state highway K-147 junction, then east on interstate highway I-70 to its junction with federal highway US-81, then south on federal highway US-81 to its junction with state highway K-4, then west on state highway K-4 to its junction with state highway K-147, then north on state highway K-147 to its junction with interstate highway I-70, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

Smoky Hill Air National Guard Range; subunit 4a<sub>2</sub>. The following described area shall be designated a subunit of unit 4, and, with approval of air national guard command, the area shall be open for the taking of deer during the firearm season: United States government land lying entirely within the boundaries of the Smoky Hill Air National Guard Range. Each person hunting in this subunit during the firearm deer season shall be in possession of any permits and licenses required by the air national guard.

(e) Pawnee; unit 5: that part of Kansas bounded by a line from the state highway K-4 and state highway K-14 junction, then south on state highway K-14 to its junction with federal highway US-50, then west on federal highway US-50 to its junction with federal highway US-183, then northeast and north on federal highway US-183 to its junction with federal highway US-156, then west on federal highway US-156 to its junction with federal highway US-283, then north on federal highway US-283 to its junction with state highway K-4, then east on state highway K-4 to its junction with state highway K-14, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(f) Middle Arkansas; unit 6: that part of Kansas bounded by a line from the state highway K-4 and federal highway US-77 junction, then south on federal highway US-77 to its junction with federal highway US-50, then west on federal highway US-50 to its junction with state highway K-14, then north on state highway K-14 to its junction with state highway K-4, then east on state highway K-4 to its junction with federal highway US-77, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(g) Solomon; unit 7: that part of Kansas bounded by a line from the Nebraska-Kansas state line south on federal highway US-81 to its junction with interstate highway I-70, then west on interstate highway I-70 to its junction with federal highway US-281, then north on federal highway US-281 to its junction with federal highway US-36, then west on federal highway US-36 to its junction with state highway K-8, then north on state highway K-8 to its junction with the Nebraska-Kansas state line, then east along the Nebraska-Kansas state line to its junction with federal highway US-81, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(h) Republican; unit 8: that part of Kansas bounded by a line from the Nebraska-Kansas state line south on federal highway US-77 to its junction with federal highway US-24, then south on federal highway US-24 to its junction with state highway K-177, then south on state highway K-177 to its junction with interstate highway I-70, then west on interstate highway I-70 to its junction with federal highway US-77, then south on federal highway US-77 to its junction with state highway K-4, then west on state highway K-4 to its junction with federal highway US-81, then north on federal highway US-81 to its junction with the Nebraska-Kansas state line, then east along the Nebraska-Kansas state line to its junction with federal highway US-77, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.



Fort Riley; subunit 8a: The following described area shall be designated a subunit of unit 8, and, with approval of Fort Riley command, the area shall be open for the taking of deer during the firearm deer season: United States government land lying entirely within the boundaries of the Fort Riley military reservation. Each person hunting in this subunit during the firearm deer season shall be in possession of any permits and licenses required by Fort Riley.

(i) Tuttle Creek; unit 9: that part of Kansas bounded by a line from the Nebraska-Kansas state line, south on federal highway US-75 to its junction with Shawnee County NW 62 Street, then west on Shawnee County NW 62 Street to its junction with Shawnee County Landon Road, then south on Shawnee County Landon Road to its junction with Shawnee County NW 46 Street, then west on Shawnee County NW 46 Street to its junction with Shawnee County NW Humphrey Road, then south on Shawnee County NW Humphrey Road to its junction with federal highway US-24, then west on federal highway US-24 to its junction with Carlson-Rossville Road, then south on Carlson-Rossville Road to its junction with interstate highway I-70, then west on interstate highway I-70 to its junction with state highway K-177, then north on state highway K-177 to its junction with federal highway US-24, then north on federal highway US-24 to its junction with federal highway US-77, then north on federal highway US-77 to its junction with the Nebraska-Kansas state line, then east along the Nebraska-Kansas state line to its junction with federal highway US-75, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(j) Kaw; unit 10: that part of Kansas bounded by a line from the Nebraska-Kansas state line south on federal highway US-75 to its junction with Shawnee County NW 62 Street, then east on Shawnee County NW 62 Street to its junction with Jefferson County Clark Road, then south on Jefferson County Clark Road to its junction with Jefferson County 50 Road, then east

on Jefferson County 50 Road to state highway K-237, then south on state highway K-237 to its junction with federal highway US-24, then east on federal highway US-24 to its junction with Tonganoxie Drive, then northeast on Tonganoxie Drive to its junction with Leavenworth County 187 Street, then north on Leavenworth County 187 Street to its junction with state highway K-92, then ~~northeast~~ west on state highway K-92 to its junction with Leavenworth County 207 Street, then north on Leavenworth County 207 Street to its junction with state highway K-192, then northeast on state highway K-192 to its junction with federal highway US-73, then east on federal highway US-73 to the Missouri-Kansas state line, then north along the Missouri-Kansas state line to its junction with the Nebraska-Kansas state line, then west along the Nebraska-Kansas state line to its junction with federal highway US-75, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

Fort Leavenworth; subunit 10a<sub>2</sub>. The following described area shall be designated a subunit of unit 10, and, with approval of Fort Leavenworth command, the area shall be open for the taking of deer during the firearm deer season: United States government land lying entirely within the boundaries of the Fort Leavenworth military reservation. Each person hunting in this subunit during the firearm deer season shall be in possession of any permits and licenses required by Fort Leavenworth.

(k) Osage Prairie; unit 11: that part of Kansas bounded by a line from the Oklahoma-Kansas state line north on federal highway US-169 to its junction with state highway K-47, then west on state highway K-47 to its junction with federal highway US-75, then north on federal highway US-75 to its junction with federal highway US-56, then east on federal highway US-56 to its junction with Johnson County 199 Street, then east on Johnson County 199 Street to its junction with the Missouri-Kansas state line, then south along the Missouri-Kansas state line to

its junction with the Oklahoma-Kansas state line, then west along the Oklahoma-Kansas state line to its junction with federal highway US-169, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(1) Chautauqua Hills; unit 12: that part of Kansas bounded by a line from the Oklahoma-Kansas state line north on federal highway US-169 to its junction with state highway K-47, then west on state highway K-47 to its junction with federal highway US-75, then north on federal highway US-75 to its junction with federal highway US-54, then west on federal highway US-54 to its junction with state highway K-99, then south on state highway K-99 to its junction with federal highway US-160, then west on federal highway US-160 to its junction with state highway K-15, then east and south on state highway K-15 to its junction with the Oklahoma-Kansas state line, then east along the Oklahoma-Kansas state line to its junction with federal highway US-169, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(m) Lower Arkansas; unit 13: that part of Kansas bounded by a line from the Oklahoma-Kansas state line north on federal highway US-81 to its junction with state highway K-53, then east on state highway K-53 to its junction with state highway K-15, then southeasterly on state highway K-15 to its junction with the Oklahoma-Kansas state line, then west along the Oklahoma-Kansas state line to its junction with federal highway US-81, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(n) Flint Hills; unit 14: that part of Kansas bounded by a line from the junction of interstate highway I-70 and Shawnee County SW Auburn Road, then south on Shawnee County Auburn Road to its junction with Shawnee County SW 93 Road, then east on Shawnee County SW 93 Road to its junction with South Topeka Boulevard, then south on South Topeka

Boulevard to its junction with federal highway US-56, then east on federal highway US-56 to its junction with federal highway US-75, then south on federal highway US-75 to its junction with federal highway US-54, then west on federal highway US-54 to its junction with state highway K-99, then south on state highway K-99 to its junction with federal highway US-160, then west on federal highway US-160 to its junction with federal highway US-77, then north on federal highway US-77 to its junction with interstate highway I-70, then east on interstate highway I-70 to its junction with Shawnee County SW Auburn Road, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(o) Ninnescah; unit 15: that part of Kansas bounded by a line from the Oklahoma-Kansas state line north on state highway K-179 to its junction with state highway K-14, then continuing north on state highway K-14 to its junction with state highway K-42, then west on state highway K-42 to its junction with federal highway US-281, then north on federal highway US-281 to its junction with federal highway US-50, then east on federal highway US-50 to its junction with federal highway US-77, then south on federal highway US-77 to its junction with state highway K-15, then west and northwest on state highway K-15 to its junction with state highway K-53, then west on state highway K-53 to its junction with federal highway US-81, then south on federal highway US-81 to the Oklahoma-Kansas state line, then west along the Oklahoma-Kansas state line to its junction with state highway K-179, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(p) Red Hills; unit 16: that part of Kansas bounded by a line from the Oklahoma-Kansas state line north on federal highway US-283 to its junction with federal highway US-54, then east on federal highway US-54 to its junction with federal highway US-183, then north on federal highway US-183 to its junction with federal highway US-50, then east on federal highway US-

50 to its junction with federal highway US-281, then south on federal highway US-281 to its junction with state highway K-42, then east on state highway K-42 to its junction with state highway K-14, then south on state highway K-14 to its junction with state highway K-179, then south on state highway K-179 to the Oklahoma-Kansas state line, then west along the Oklahoma-Kansas state line to its junction with federal highway US-283, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(q) West Arkansas; unit 17: that part of Kansas bounded by a line from the Colorado-Kansas state line east on state highway K-96 to its junction with federal highway US-83, then north on federal highway US-83 to its junction with state highway K-4, then east on state highway K-4 to its junction with federal highway US-283, then south on federal highway US-283 to its junction with federal highway US-156, then east on federal highway US-156 to its junction with federal highway US-183, then south on federal highway US-183 to its junction with federal highway US-54, then southwest on federal highway US-54 to its junction with federal highway US-283, then north on federal highway US-283 to its junction with federal highway US-56, then southwest on federal highway US-56 to its junction with state highway K-144, then west on state highway K-144 to its junction with federal highway US-160, then continuing west on federal highway US-160 to the Colorado-Kansas state line, then north along the Colorado-Kansas state line to its junction with state highway K-96, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(r) Cimarron; unit 18: that part of Kansas bounded by a line from the Colorado-Kansas state line east on federal highway US-160 to its junction with state highway K-144, then east on state highway K-144 to its junction with federal highway US-56, then east on federal highway US-56 to its junction with federal highway US-283, then south on federal highway US-283 to its

junction with the Oklahoma-Kansas state line, then west along the Oklahoma-Kansas state line to its junction with the Colorado-Kansas state line, then north along the Colorado-Kansas state line to its junction with federal highway US-160, except federal and state sanctuaries and the areas enrolled in the landowner deer management program.

(s) Kansas City urban; unit 19: that part of Kansas bounded by a line from the Missouri-Kansas state line west on Johnson County 199 Street to its junction with federal highway US-56, then west on federal highway US-56 to its junction with South Topeka Boulevard, then north on South Topeka Boulevard to its junction with Shawnee County SW 93 Road, then west on Shawnee County SW 93 Road to its junction with Shawnee County SW Auburn Road, then north on Shawnee County SW Auburn Road to its junction with interstate highway I-70, then west on interstate highway I-70 to its junction with Carlson-Rossville Road, then north on Carlson-Rossville Road to its junction with federal highway US-24, then southeast on federal highway US-24 to its junction with Shawnee County NW Humphrey Road, then north on Shawnee County NW Humphrey Road to its junction with Shawnee County NW 46 Street, then east on Shawnee County NW 46 Street to its junction with Shawnee County NW Landon Road, then north on Shawnee County NW Landon Road to its junction with Shawnee County NW 62 Street, then east on Shawnee County NW 62 Street to its junction with Jefferson County Clark Road, then south on Jefferson County Clark Road to its junction with Jefferson County 50 Road, then east on Jefferson County 50 Road to state highway K-237, then south on state highway K-237 to its junction with federal highway US-24, then east on federal highway US-24 to its junction with Tonganoxie Drive, then northeast on Tonganoxie Drive to its junction with Leavenworth County 187 Street, then north on Leavenworth County 187 Street to its junction with state highway K-92, then ~~northeast~~ west on state highway K-92 to its junction with Leavenworth County 207

Street, then north on Leavenworth County 207 Street to its junction with state highway K-192, then northeast on state highway K-192 to its junction with federal highway US-73, then east on federal highway US-73 to the Missouri-Kansas state line, then south on the Missouri-Kansas state line to Johnson County 199 Street, except federal and state sanctuaries and the areas enrolled in the landowner deer management program. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807 and K.S.A. ~~2002~~ 2003 Supp. 32-937, as amended by L. 2004, Ch. 99, Sec. 5; effective April 30, 1990; amended June 8, 1992; amended June 1, 1993; amended June 13, 1994; amended May 30, 1995; amended June 6, 1997; amended July 21, 2000; amended April 18, 2003; amended July 25, 2003; amended P-\_\_\_\_\_.)

## **ECONOMIC IMPACT STATEMENT**

**K.A.R. 115-4-6.** Deer; management units.

**DESCRIPTION:** This permanent regulation establishes deer management units within the state of Kansas. The proposed amendments would create landowner deer management program areas as separate and distinct from the firearm management units and at simultaneously, another new regulation is being enacted creating archery management units. Both changes are as a result of legislation passed by the 2004 Legislature. In addition, the boundary of Unit 19 is being expanded to accommodate the City of Leavenworth in conducting urban deer management.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACT:** The proposed amendments are not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**ALTERNATIVES CONSIDERED:** Other than the proposed amendments, no other alternatives were considered.



**115-4-6a. Deer; archery management units.** (a) Archery unit 1 shall be that part of Kansas described in subsections (a), (b), and (c) of K.A.R. 115-4-6.

(b) Archery unit 2 shall be that part of Kansas described in subsections (q) and (r) of K.A.R. 115-4-6.

(c) Archery unit 3 shall be that part of Kansas described in subsections (g) and (h) of K.A.R. 115-4-6.

(d) Archery unit 4 shall be that part of Kansas described in subsections (d), (e), and (f) of K.A.R. 115-4-6.

(e) Archery unit 5 shall be that part of Kansas described in subsection (p) of K.A.R. 115-4-6.

(f) Archery unit 6 shall be that part of Kansas described in subsections (l), (m), and (o) of K.A.R. 115-4-6.

(g) Archery unit 7 shall be that part of Kansas described in subsections (i) and (j) of K.A.R. 115-4-6.

(h) Archery unit 8 shall be that part of Kansas described in subsection (n) of K.A.R. 115-4-6.

(i) Archery unit 9 shall be that part of Kansas described in subsection (k) of K.A.R. 115-4-6

(j) Archery unit 19 shall be that part of Kansas described in subsection (s) of K.A.R. 115-4-6. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807 and K.S.A. 2003 Supp. 32-937, as amended by L. 2004, Ch. 99, Sec. 5; effective P-\_\_\_\_\_.)

## **ECONOMIC IMPACT STATEMENT**

**K.A.R. 115-4-6a.** Deer; archery management units.

**DESCRIPTION:** This permanent regulation will establish deer archery management units within the state of Kansas. The proposed regulation is as a result of legislation passed by the 2004 Legislature.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACT:** There may be both negligible positive and negative collateral fiscal impacts through the enactment of this regulation. However, the proposed amendments are not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**ALTERNATIVES CONSIDERED:** Other than the proposed amendments, no other alternatives were considered.

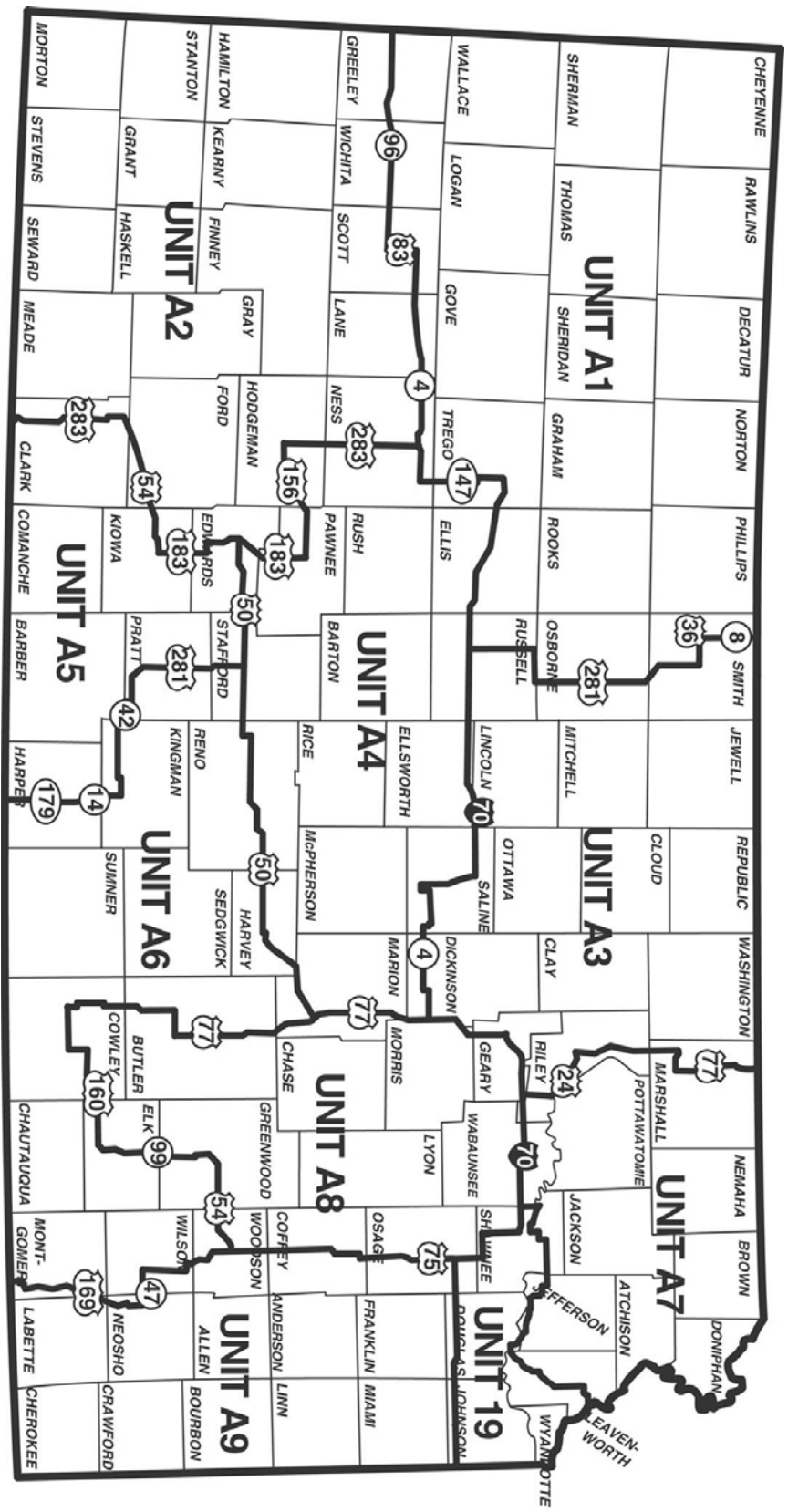


Figure 1. Proposed boundaries for the archery deer management units in 2005.

**115-15-1. Threatened and endangered species; general provisions.** (a) The following species shall be designated endangered within the boundaries of the state of Kansas.

(1) Invertebrates

Flat floater mussel, *Anodonta suborbiculata* (Say, 1831)

~~Rabbit's foot~~ Rabbitsfoot mussel, *Quadrula cylindrica ~~cylindrica~~* (Say, 1817)

Western fanshell mussel, *Cyprogenia aberti* (Conrad, 1850)

Neosho mucket mussel, *Lampsilis rafinesqueana* (Frierson, 1927)

Elktoe mussel, *Alasmidonta marginata* (Say, 1818)

~~Bleedingtooth~~ Ellipse mussel, *Venustaconcha ~~pleasi~~ ellipsiformis* (~~Marsh, 1894~~  
Conrad, 1836)

Slender walker snail, *Pomatiopsis lapidaria* (Say, 1817)

Scott optioservus riffle beetle, *Optioservus phaeus* (White, 1978)

American burying beetle, *Nicrophorus americanus* (~~Oliver~~ Olivier, 1890)

Mucket, *Actinonaias ligamentina* (Lamarck, 1819)

(2) Fish

Arkansas River shiner, *Notropis girardi* (Hubbs and Ortenburger, 1929)

Pallid sturgeon, *Scaphirhynchus albus* (Forbes and Richardson, 1905)

Sicklefin chub, ~~Hybopsis~~ Macrhybopsis meeki (Jordan and Evermann,  
1896)

Arkansas River speckled chub, *Macrhybopsis ~~aestivalis tetranemus~~ tetranema*  
(Gilbert, 1886)

Silver chub, *Macrhybopsis storeriana* (Kirtland, 1845)

(3) Amphibians

Cave salamander, *Eurycea lucifuga* (Rafinesque, 1822)

~~Graybelly~~ Many-ribbed salamander, *Eurycea multiplicata griseogaster* (Moore and Hughes Cope, 1869)

Grotto salamander, *Typhlotriton spelaeus* (Stejneger, 1893)

(4) Birds

Black-capped vireo, *Vireo ~~atricapillus~~ atricapilla* (Woodhouse, 1852)

Eskimo curlew, *Numenius borealis* (Forster, 1772)

Least tern, *Sterna antillarum* (Lesson, 1847)

Peregrine falcon, *Falco peregrinus* (Tunstall, 1771)

Whooping crane, *Grus americana* (Linnaeus, 1758)

(5) Mammals

Black-footed ferret, *Mustela nigripes* (Audubon and Bachman, 1851)

Gray myotis, *Myotis grisescens* (A.H. Howell, 1909)

(b) The following species shall be designated threatened within the boundaries of the state of Kansas.

(1) Invertebrates

Rock pocketbook mussel, *Arcidens confragosus* (Say, 1829)

~~Fluted shell~~ Flutedshell mussel, *Lasmigona ~~eostate~~ costata* (Rafinesque, 1820)

Butterfly mussel, *Ellipsaria lineolata* (Rafinesque, 1820)

Ouachita kidneyshell mussel, *Ptychobranthus occidentalis* (Conrad, 1836)

Sharp hornsnail, *Pleurocera acuta* (Rafinesque, 1831)

(2) Fish

Arkansas darter, *Etheostoma cragini* (Gilbert, 1885)

Chestnut lamprey, *Ichthyomyzon castaneus* (Girard, 1858)

Flathead chub, ~~*Hybopsis*~~ *Platygobio gracilis* (Richardson, 1836)

Hornyhead chub, *Nocomis biguttatus* (Kirtland, 1840)

Neosho madtom, *Noturus placidus* (Taylor, 1969)

Redspot chub, *Nocomis asper* (Lachner and Jenkins, 1971)

Silverband shiner, *Notropis shumardi* (Girard, 1856)

Blackside darter, *Percina maculata* (Girard, 1859)

Sturgeon chub, *Macrhybopsis gelida* (Girard, 1856)

Western silvery minnow, *Hybognathus argyritis* (Girard, 1856)

Topeka shiner, *Notropis topeka* (Gilbert, 1884)

(3) Amphibians

~~Central~~ Eastern newt, *Notophthalmus viridescens louisianensis* (~~Wolterstorff~~  
Rafinesque, 1820)

~~Dark-sided~~ Longtail salamander, *Eurycea longicauda melanopleura* (~~Cope~~ Green,  
1818)

Eastern narrowmouth toad, *Gastrophryne carolinensis* (Holbrook, 1836)

Green frog, *Rana clamitans melanota* (~~Rafinesque~~ Latreille, 1801)

~~Northern~~ Spring peeper, *Pseudacris crucifer erueifer* (~~Wied-Neuwied~~, 1838)

Strecker's chorus frog, *Pseudacris streckeri streckeri* (~~Wright and Wright~~, 1933)

~~Western~~ Green toad, *Bufo debilis insidiosus* (Girard, 1854)

(4) Reptiles

Broadhead skink, *Eumeces laticeps* (Schneider, 1801)

Checkered garter snake, *Thamnophis marcianus* ~~marcianus~~ (Baird and Girard, 1853)

Common map turtle, *Graptemys geographica* (Le Sueur, 1817)

~~New Mexico~~ Texas blind snake, *Leptotyphlops dulcis* ~~dissectus~~ (~~Cope~~ Baird and Girard, 1853)

~~Northern~~ Redbelly snake, *Storeria occipitomaculata* ~~occipitomaculata~~ (Storer, 1839)

~~Texas~~ Longnose snake, *Rhinocheilus lecontei* ~~tessellatus~~ (~~Garman~~ Baird and Girard, 1853)

~~Texas night~~ snake, *Hypsiglena torquata jani* (Duges)

~~Western~~ Smooth earth snake, *Virginia valeriae* ~~elegans~~ (~~Kennicott~~ Baird and Girard, 1853)

(5) Birds

Piping plover, *Charadrius melodus* (Ord, 1824)

Snowy plover, *Charadrius alexandrinus* (Linnaeus, 1758)

~~White faced~~ ibis, *Plegadis chihi* (Vieillot)

Bald eagle, *Haliaeetus leucocephalus* (Linnaeus, 1766)

(6) Mammals

~~Eastern~~ Spotted skunk, *Spilogale putorius* ~~interrupta~~ (~~Rafinesque~~ Linnaeus, 1758)

(c) A threatened or endangered species taken during established trapping seasons,

authorized commercial wildlife operations, fishing by hook and line, bait fish seining, or other lawful activity shall not be unlawfully taken if immediately released.

(d) Any threatened or endangered species in possession before the effective date of this regulation and not prohibited by any previous regulation of the department or national listings may be retained in possession if either of the following conditions is met:

(1) An application of affidavit to that effect has been filed with and approved by the secretary before January 1, 1990 that states the circumstances of how the species came into possession.

(2) Possession of the animal has been previously approved by the department.

(Authorized by K.S.A. ~~1998 Supp.~~ 32-960 and K.S.A. 32-963; implementing K.S.A. ~~1998 Supp.~~ 32-960, K.S.A. 32-961, K.S.A. 32-963, K.S.A. 32-1010, and K.S.A. 32-1011; effective Oct. 30, 1989; amended Aug. 31, 1992; Nov. 29, 1999; amended P-\_\_\_\_\_.)



## ECONOMIC IMPACT STATEMENT

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

**REGULATION DESCRIPTION:** This permanent regulation designates species classified as endangered and threatened in Kansas. The proposed amendments to the regulation are as follows:

- | Add one new endangered species: Silver Chub, *Macryhbopsis storeriana*
- \* Remove two threatened species: Texas night snake, *Hypsiglena torquata jani*  
White-faced ibis, *Plegadi chihi*

In conjunction with these proposed amendments, the department is also proposing amendments to K.A.R. 115-15-2, which designated species in need of conservation in Kansas (or SINC species). Proposed amendments to that regulation include the addition of the Texas night snake, Delta hydrobe and Brindled madtom to the list of SINC species, and the removal of the Red-shouldered hawk and the Eastern chipmunk 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. 32-960(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.

K.S.A. 32-960(a). The law stipulates that the secretary make the above determinations on the basis of the best scientific, commercial, and other data available to the secretary after consultation, as appropriate, with federal agencies, other interested state agencies and interested persons and organizations. In addition, the secretary is required to take into consideration those actions, if any, being carried out or about to be carried out by the federal government, by other states, by other agencies of this state or political subdivisions thereof, or by nongovernmental persons or organizations which may affect the species under consideration.

**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.

Of the nine species petitioned, five species were petitioned to be listed as endangered in Kansas (Delta hydrobe, Brindled madtom, Silver chub, Purple wartyback, Black sandshell). In addition, two species were petitioned for removal from the threatened list in Kansas (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 petitions. 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 in Emporia, Kansas; and July 1 at 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's 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's status. One public participant attended the meeting in Emporia; 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 on June 24, 2004.

Finally, the scientific task committee sent information concerning the proposed listings to individuals and organizations believed to have knowledge and scientific information about one or more of the species in question. These individuals and organizations 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 scientific task committee 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 cannot 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.

Silver chub: The Silver chub is proposed to be listed as endangered. The current known habitat of the Silver chub is the Kansas, Lower Arkansas and Missouri Rivers. The Silver chub is a member of the minnow family and can reach six inches in length. It has a blunt, rounded snout; large eyes; a silvery patch in front of the eye; and a narrow, bright, silvery streak along the sides. It was once common in the known habitat but is now found infrequently. Possible impacts through permit requirements or other limitations on habitat impacts would be minimized, since the species is only found infrequently. Consequently, no significant economic impacts on the public or other state agencies are anticipated from the listing of the Silver chub as an endangered species.

The department is required to develop a recovery plan for each species listed as threatened or endangered, 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 Silver chub 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.

Texas night snake: The Texas night snake is currently listed as a threatened species in Kansas. The proposed amendment would re-classify the Texas night snake as a species in need of conservation in K.A.R. 115-15-2. The range of the Texas night snake in Kansas includes the Red Hills region of south-central Kansas. It also ranges through the southwest portion of the United States, where its status is regarded as common. Recent surveys in Kansas show the Texas night snake to be one of the most common species where it occurs. Consequently, no economic impact to the department or the public is expected, as de-listing the species eliminates the need for a recovery plan and providing an economic savings to the department.

White-faced ibis: The White-faced ibis is currently listed as a threatened species in Kansas. The proposed amendment would de-list the White-faced ibis altogether. The species is known to nest at Quivira National Wildlife Refuge and Cheyenne Bottoms. Few breeding records are known in Kansas prior to 1962, but the trend in numbers has been increasing since that time and the bird's numbers have increased throughout its range. According to Breeding Bird Survey data, the White-faced ibis has increased by 18 percent annually from 1980 to 2002 across its range. Consequently, no economic impact to the department or the public is expected, as de-listing the species eliminates the need for a recovery plan and providing 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. Actual costs will be dependent upon the specific project and the extent of involvement by the Department of

Wildlife and Parks during the early planning stages of project development. Projects which may affect the species proposed for listing would be reviewed on a case-by-case basis, with site specific mitigation options developed. Nonetheless, as described above, the capital and annual costs due to these proposed listing actions would be expected to be minimal, due to a number of factors including the current existence of other species in the same habitat that are already listed as threatened or endangered, the fact that the listing action would upgrade the species' status, or the current listing status under federal law.

**INITIAL AND ANNUAL COSTS OF IMPLEMENTATION AND ENFORCEMENT:**

Initial and annual implementation costs will be borne entirely by the department. There exist several state and federal environmental protection laws that require project sponsors to conduct impact assessments and enter into consultation with the department to determine short- and long-term impacts their projects may have on wildlife resources, including threatened and endangered species. The Environmental Services Section (ESS) is responsible for providing departmental input to projects covered by such environmental laws. ESS staff reviews approximately 1,000-1,500 projects annually. Of these, approximately 20-30 projects require a permit to protect threatened and endangered species or their habitats, and less than 0.5% are required to perform mitigation involving compensation. Because the project is likely to already be affecting a currently-listed species, most projects that would affect a species proposed for listing at this time would not require an additional permit or more stringent conditions, unless there is a site-specific concern directly affecting a documented population of the newly listed species. Based on current knowledge, it is expected that the proposed listing actions might involve issuance of approximately 2 additional permits per year at an estimated cost of \$500. All permitting and enforcement activity will be incorporated into existing Department operations and require no additional funding.

Regulatory review provided through K.A.R. 115-15-1 is predicated on the need for a permit from another state agency or the involvement of public funding. The final determination of whether a permit is issued stands independent of the authorities of other state agencies. As such, there will be no negative impact, including increased funding requirements or workload, upon other state laws, regulations, or agencies.

Development of recovery plans for listed species will also be borne by the department. Estimates for these costs are provided above, in consideration of economic impacts of the proposed listing actions.

**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. However, no species proposed for listing at this time are listed on the federal level. Therefore, costs which would likely accrue if the proposed regulation is not adopted are not readily identifiable.

**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.

## 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:

- Add one new endangered species: Silver chub, *Macrhybopsis storeriana*
- Remove two threatened species: Texas night snake, *Hypsiglena torquata jani*  
White-faced ibis, *Plegadis chihi*

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 Texas night snake, Delta hydrobe, and Brindled madtom to the list of SINC species as well as the removal of the Red-shouldered hawk and Eastern Chipmunk from the list of SINC species, and therefore relate to this proposed regulatory amendment.

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 July 2003, 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.

### **Silver chub (*Macrhybopsis storeriana*)**

- Federal Status: None
- Current Kansas Listing Status: None
- Proposed Listing Action: List the species as endangered
- Description: This species has a blunt, rounded snout, large eyes, silvery patches in front of the eyes, and narrow, bright, silvery streaks along the sides.
- Size: Adults grow to about six inches in length.
- Habitat: The Silver chub was once common in the Kansas and Missouri Rivers but now is found infrequently during sampling efforts.
- Reproduction: Spawning occurs during late May through June.
- Food: This species' diet consists of insects and small crustaceans.

Threat to the species and need for the regulatory amendment: The Silver chub is a big-river fish and its fate is tied to the hydrology of large rivers. This species, like two closely related and previously listed species (Sturgeon and Sicklefin Chub), is specially adapted to the conditions found on the large rivers prior to the establishment of large mainstem reservoirs. Decreased turbidity, reduction in frequency and amplitude of peak flows, and establishment of sight-feeding predators in a previously inhospitable habitat all may have had a role in reducing or eliminating populations of the Silver chub and its congeners. Listing would increasingly draw attention to the need to periodically manage the rivers to mimic the natural flow events that could benefit several rare species that are found in and along the largest rivers in Kansas.

### **Texas night snake (*Hysiglena torquata jani*)**

- Federal Status: none
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List as a species in need of conservation in Kansas
- Description: The Texas night snake is small dorsal ground color light brown or gray with brown or dark gray spotted snake. It has bulging eyes with vertically elliptical pupils and the scales are smooth.
- Size: Adults grow to 10-16 inches in length.
- Habitat: The Texas night snake is commonly seen in arid or semi-arid sandy/gravelly habitats and rocky bluffs. In Kansas, the Texas night snake is



found in south-central Kansas in the area known as the Red Hills region.

- Reproduction: The Texas night snake is an egg-bearing reptile. 4-6 eggs are laid from April-June and hatch after 8 weeks.
- Food: The Texas night snake is nocturnal and active in warmer months. It feeds on lizards, other small snakes and insects.

Threat to the species and need for the regulatory amendment: The Texas night snake is proposed to be de-listed from threatened status to a SINC species. It is common where found in Kansas but the distribution of the snake is small. Listing it as a species in need of conservation would provide it some protection and would help raise awareness.

### **White-faced ibis (*Plegades chihi*)**

- Federal Status: None
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: De-list the species completely
- Description: This species is described as having a red eye, grayish bare facial skin, gray-green legs, a duller gray-brown body and a head and neck streaked with white.
- Size: Adults grow to 19 inches in length with a 37 inch wingspan.
- Habitat: The White-faced ibis is known to nest in Kansas at Quivera National Wildlife Refuge and Cheyenne Bottoms Wildlife Area.
- Reproduction: This bird is a colonial nester that usual nests in emergent vegetation over shallow water. Nesting occurs between April through June, and three to four greenish-blue eggs will hatch after an incubation period of approximately 21 to 22 days.
- Food: This species' diet consists of insects, newts, leeches, earthworms, snails and especially crayfish, frogs and fish.

Threat to the species and need for the regulatory amendment: Few breeding records are known in Kansas prior to 1962, but the trend in numbers has been increasing since that time. This bird has been on a strong rebound throughout its natural range. According to the Breeding Bird survey data, this species has an annual increasing trend of 18 percent from 1980-2002 across its range. This positive trend has been attributed to wetland habitat conservation and the banning of chlorinated hydrocarbon pesticides (DDT) that affected its reproductive success.

## TAKINGS ASSESSMENT STATEMENT

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

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

**BACKGROUND:** The Private Property Protection Act, K.S.A. 77-701 *et seq.*, requires state agencies to evaluate certain governmental actions to determine whether such actions may constitute a taking, and to make the resulting written report available for public inspection. Guidelines to evaluate such governmental actions were established by the Attorney General and published in the Kansas Register on December 21, 1995. Before a state agency initiates a governmental action, it shall prepare a written report, following the Attorney General's guidelines, and make the report available for public inspection. Two regulations affecting species receiving some level of protected status based on their need for conservation, K.A.R. 115-15-1 and K.A.R. 115-15-2, and jointly assessed in this statement.

**ANALYSIS:** The analysis used follows the sequence and the scope of the questions from the "Takings Checklist" contained in the Attorney General's Guidelines.

1. Does the government action result in a permanent or temporary physical occupation or invasion of private property?
2. Does the governmental action deny or abrogate a fundamental property right?
3. Does the governmental action deprive the owner of all economically viable uses of the property?
4. Does the governmental action substantially further a legitimate interest?
5. Are the proscribed uses or physical occupation part of a preexisting limitation on the landowner's title?

K.A.R. 115-15-1 identifies species classified as endangered or threatened in Kansas, as required by, and according to the factors listed in K.S.A. 32-960. K.S.A. 32-960 requires the agency secretary to determine whether any species of indigenous wildlife is a threatened or endangered species because of any of the statutorily imposed factors:

- (1) the present or threatened destruction, modification or curtailment of its habitat or range;
- (2) the over utilization 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 secretary's determination is to be made on the basis of the best scientific, commercial and other data available to the secretary, and after consultation, as appropriate, with federal agencies, other interested state agencies and interested persons and organizations.

K.A.R. 115-15-2 identifies species in need of conservation, as required by, and according to the factors in 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. Species listed in this classification are not considered to be at the level of danger of threatened or endangered species, and do not receive the same level of legal protection.

1. Do the proposed amendments result in a permanent or temporary physical occupation or invasion of private property?

The listing of a species as threatened, endangered, or in need of conservation does not require an "occupation or invasion" of private property. Investigations surveying for the presence, or absence, of a species are among the statutorily available and authorized activities available to the agency pursuant to K.S.A. 32-959, and that activity does not rise to a level constituting an occupation or invasion. Typically, agency personnel seek consent of the landowner, or manager prior to conducting an inspection. If such consent is withheld, then the agency endeavors to work through a third party intermediary (such as a watershed district or a NRCS representative) to explain to the property owner the relevancy of such inspection to activities beneficial to the property owner. If those efforts fail to generate a consent, then the agency typically relies on other scientific data.

2. Do the proposed amendments deny or abrogate a fundamental property right?

Protected fundamental property interests include the right to possess property, the right to exclude others from the property and the right to dispose of the property. By state law, ownership of all wildlife is declared to be in the state, regardless of whether it is listed or not (K.S.A. 32-703). Consequently, the listing of a species as threatened or endangered does not dispose or otherwise impair a property owner's continuing existing use of private property.

Listing a species as threatened or endangered (but not as a species in need of conservation) could have certain indirect effects on the use of a person's property, if a proposed use of the property would result in the alteration of the listed species' habitat or destruction of individuals of the species. Any person sponsoring or responsible for a publicly funded action of this sort, or an action requiring a permit from another state or federal permit from another state or federal government agency, must apply for a permit from the department, pursuant to K.A.R. 115-15-3. However, this permit is not required for normal farming and ranching practices, or for development of residential and commercial property on privately-owned property financed with private, nonpublic funds, unless a permit is required by another state or federal agency, or unless the action would involve an intentional taking (defined as an act or attempt that is willful and

done for the purpose of taking a threatened or endangered species). Pursuant to K.A.R. 115-15-3(d), the secretary is obligated to issue a permit for which a timely and complete application has been submitted, if the proposed action meets with two conditions. First, the application must describe in the action plan sufficient mitigating or compensating measures to ensure protection of critical habitats and listed species, and assurances that such measures will remain in effect. Second, the proposed activity must comply with all federal laws protecting listed species.

The mere listing of a species as threatened, endangered or in need of conservation does not require any action by a property owner. Only if the property owner elects to undertake publicly funded activity that could result in the taking of a threatened or endangered species would a permit be required. In addition, these permits are not required for certain actions, and department regulation states that, in any case, law enforcement action would only be taken in cases involving intentional takings.

3. Do the proposed amendments deprive the owner of all economically viable uses of the property?

The listing of a species as threatened, endangered, or in need of conservation does not, itself, have any impact on the use of property. However, as noted above, a permit may be required if a proposed use would result in the alteration of a threatened or endangered species' habitat or the destruction of an individual of the species. Again, management of private property for normal farming or ranching uses would not be impaired by the listing of a threatened or endangered species, even if such practices were publicly funded or state or federally assisted, unless an intentional taking were involved. In addition, development of residential or commercial property would not be impaired unless publicly funded or an intentional taking were involved.

In addition, no use of private property could ever be restricted under these regulations unless it were publicly funded, state or federally assisted, or destroyed individuals of any listed species. All other economically viable uses of the property not within these categories are still available to the landowner. Furthermore, any use proposed action that would fall within these categories will still receive a permit to proceed, as long as sufficient mitigating or compensating measures are incorporated within the proposed action. Therefore, even in such cases, the regulation would not deprive a property of all economically viable use.

4. Do the proposed amendments substantially further a legitimate state interest?

The general governmental purposes for listing of any threatened or endangered species have been articulated in the Congressional findings and declaration of policies in the Federal Endangered Species Act of 1973 (16 U.S.C.A. 1531). Congress found that "various species of fish, wildlife and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation," and that "other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction," and such species are of "esthetic, ecological,

educational, historical, recreational and scientific value to the Nation and its people.” Such findings adopted at a national level have equal applicability at the state level.

State statute makes determination of threatened or endangered species by the secretary obligatory, and not merely optional. See K.S.A. 32-960(a) (the secretary shall determine whether any species of wildlife indigenous to the state is a threatened species...) (emphasis added). The Kansas Legislature by statutorily adopting these obligatory requirements and imposing them upon the secretary evidenced that such conservation and protection provisions furthered a legitimate state interest.

A further legitimate state interest is served because federal agencies are directed by statutory federal policy (16 U.S.C.A. 1531(c)) to use their authority in furtherance of the stated federal policy of conserving ecosystems of threatened and endangered species. State law or regulation respecting a threatened 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.

5. Are any proscribed uses or physical occupation from the proposed amendments part of a preexisting limitation on the landowner’s title?

As described above, the listing of a threatened or endangered species does not result in a permanent or temporary physical occupation on private property without consent of the landowner or manager. Second, as described above, the regulations do not deprive an owner of all economically viable uses of the property.

Even if limited proscriptions would exist, however (due to the involvement of public funding, for example), they may be part of a preexisting limitation on the landowner’s title. For example, to the extent a landowner is also within a watershed district, and such district wishes to use federal assistance for construction of watershed structures (dams or impoundments), then the statutory rights of the watershed district may be pre-existing limitations that limit the impact of a listing of a species as threatened or endangered. Specifically, K.S.A. 24-1209 vests in an incorporated watershed district the power “where the construction, improvement or operation of such works causes the substantial displacement of a wildlife habitat and when required by the soil conservation service of the United States department of agriculture as a condition precedent of the release of federal funds for such works, to acquire land for the purpose of restoring such wildlife habitat.” The watershed district authorizing statutes contemplate that conservation or protection of wildlife habitat may be a factor in the siting and design of structures or impoundments and further, that certain mitigating conditions may have to be developed to gain

approval by a federal funding source. Therefore, even if the listing of a threatened or endangered species were to create some limitations on the use of the property, it might not necessarily impose more of a burden for property already within a watershed district.

Also, watershed developments fall within the existing scope of the Kansas Water Projects Environmental Coordination Act (K.S.A. 82a-325, *et seq.*). Such Coordination Act requires the consideration of the environmental effects of any water development project. By statutory definition, the department is an environmental review agency, to whom watershed development projects must be submitted for review and comment. K.S.A. 82a-326(b)(1) and 82a-327. Permissible consideration for such review include:

- (a) beneficial and adverse environmental effects of proposed project on fish and wildlife;
- (b) means and methods to reduce adverse environmental effects; and
- (c) alternatives to a proposed project with significant adverse environmental effects.

Therefore, construction of a watershed dam could require the district to file an application for and obtain a permit if a threatened or endangered species were present, but due to the existing limitation under the Kansas Water Projects Environmental Coordination Act, the impact of such listing is reduced in this context.

Finally, any possible limitation would only occur if the proposed use of the property would impact a listed species. If another listed species already exists in the same habitat as the newly listed species, restrictions on the use of the property, if any, would be pre-existing. For certain of the proposed species for listing (e.g. the Silver chub, in the Kansas and Missouri Rivers), that would normally be the case.

**CONCLUSION:** Based on the foregoing analysis, the agency believes that the proposed amendments to K.A.R. 115-15-1 and to K.A.R. 115-15-2 do not constitute a taking of private property.

**115-15-2. Nongame species; general provisions.** (a) The following species shall be designated nongame species in need of conservation within the boundaries of the state of Kansas.

(1) Invertebrates

Cylindrical papershell mussel, *Anodontoides ferussacianus* (I. Lea, 1834)

Snuffbox mussel, *Epioblasma triquetra* (Rafinesque, 1820)

Wartyback mussel, *Quadrula nodulata* (Rafinesque, 1820)

Spike (~~Lady finger~~) mussel, *Elliptio dilatata* (Rafinesque, 1820)

Wabash pigtoe mussel, *Fusconaia flava* (Rafinesque, 1820)

~~Fat mucket~~ Fatmucket mussel, *Lampsilis radiata-conspicua siliquoidea* (~~Gmelin, 1794~~) (Barnes, 1823)

Yellow sandshell mussel, *Lampsilis teres* (Rafinesque, 1820)

Washboard mussel, *Megaloniais nervosa* (Rafinesque, 1820)

Round pigtoe mussel, *Pleurobema ~~eoeineum~~ sintoxia* (Conrad, 1834)

~~Squawfoot~~ Creeper mussel, *Strophitus undulatus* (Say, 1817)

Fawnsfoot mussel, *Truncilla donaciformis* (I. Lea, 1828)

Deertoe mussel, *Truncilla truncata* (Rafinesque, 1820)

Ozark emerald dragonfly, *Somatochlora ozarkensis* (Bird, 1833)

Gray petaltail dragonfly, *Tachopteryx thoreyi* (Hagen in Selys, 1857)

Prairie mole cricket, *Gryllotalpa major* (~~Sauss~~ Saussure, 1874)

Neosho midget crayfish, *Orconectes macrus* (Williams, 1952)

Delta hydrobe, *Probythinella emarginata* (Kuster, 1852)

(2) Fish

Banded darter, *Etheostoma zonale* (Cope, 1868)

Banded sculpin, *Cottus carolinae* (Gill, 1861)

Black redhorse, *Moxostoma duquesnei* (Lesueur, 1817)

Blue sucker, *Cycleptus elongatus* (Lesueur, 1817)

Blacknose dace, *Rhinichthys atratulus* (Hermann, 1804)

Bluntnose darter, *Etheostoma ~~chlorosomum~~ chlorosoma* (Hay, 1881)

Brassy minnow, *Hybognathus hankinsoni* (Hubbs, 1929)

Gravel chub, *Erimystax ~~x-punctata~~ x-punctatus* (Hubbs and Crowe, 1956)

Greenside darter, *Etheostoma blennioides* (Rafinesque, 1819)

Highfin carpsucker, *Carpionodes velifer* (Rafinesque, 1820)

Northern hog sucker, *Hypentelium nigricans* (Lesueur, 1817)

Ozark minnow, *Notropis nubilus* (Forbes, 1878)

Plains minnow, *Hybognathus placitus* (Girard, 1856)

River darter, *Percina shumardi* (Girard, 1859)

River redhorse, *Moxostoma carinatum* (Cope, 1870)

River shiner, *Notropis blennioides* (Girard, 1856)

Slough darter, *Etheostoma gracile* (Girard, 1859)

Speckled darter, *Etheostoma stigmaeum* (Jordan, 1877)

Spotfin shiner, *Cyprinella spiloptera* (Cope, 1868)

Spotted sucker, *Minytrema melanops* (Rafinesque, 1820)

Stippled darter, *Etheostoma punctulatum* (Agassiz, 1854)



Tadpole madtom, *Noturus gyrinus* (Mitchill, 1817)

Brindled madtom, *Noturus miurus* (Jordan, 1877)

(3) Amphibians

Red-spotted toad, *Bufo punctatus* (Baird and Girard, 1852)

~~Northern~~ Crawfish frog, *Rana areolata ~~circulosa~~* (~~Rice and Davis~~ Baird and Girard, 1852)

(4) Reptiles

Alligator snapping turtle, ~~*Macrochelys*~~ *Macrochelys temminckii* (Troost, in Harlan, 1835)

Rough earth snake, *Virginia striatula* (Linnaeus, 1766)

Western hognose snake, *Heterodon nasicus* (Baird and Girard, 1852)

Timber rattlesnake, *Crotalus horridus* (Linnaeus, 1758)

Eastern hognose snake, *Heterodon platirhinos* (Latreille, 1801)

Glossy snake, *Arizona elegans ~~elegans~~* (Kennicott, 1859)

Night snake, *Hypsiglena torquata* (Gunther, 1860)

(5) Birds

Bobolink, *Dolichonyx oryzivorus* (Linnaeus, 1758)

Cerulean warbler, *Dendroica cerulea* (Wilson, 1810)

Curve-billed thrasher, *Toxostoma curvirostre* (Swainson, 1827)

Ferruginous hawk, *Buteo regalis* (Gray, 1844)

Golden eagle, *Aquila chrysaetos* (Linnaeus, 1758)

Short-eared owl, *Asio flammeus* (Pontoppidan, 1763)

Henslow's sparrow, *Ammodramus henslowii* (Audubon, 1829)

Ladder-backed woodpecker, *Picoides scalaris* (Wagler, 1829)

Long-billed curlew, *Numenius americanus* (Bechstein, 1812)

Mountain plover, *Charadrius montanus* (Townsend, 1837)

Chihuahuan raven, *Corvus cryptoleucus* (Couch, 1854)

Black tern, *Chlidonias niger* (Linnaeus, 1758)

Black rail, *Laterallus jamaicensis* (Gmelin, 1789)

~~Red-shouldered hawk, *Buteo lineatus* (Gmelin)~~

Whip-poor-will, *Caprimulgus vociferus* (Wilson, 1812)

Yellow-throated warbler, *Dendroica dominica* (Linnaeus, 1776)

(6) Mammals

~~Eastern chipmunk, *Tamias striatus* (Linnaeus)~~

Franklin's ground squirrel, *Spermophilus franklinii* (Sabine, 1822)

Pallid bat, *Antrozous pallidus bunkerii* (Hibbard LeConte, 1856)

Southern bog lemming, *Synaptomys cooperi* (Baird, 1858)

Southern flying squirrel, *Glaucomys volans volans* (Linnaeus, 1758)

Texas mouse, *Peromyscus attwateri* (J.A. Allen, 1895)

Townsend's big-eared bat, ~~*Plecotus*~~ *Corynorhinus townsendii pallescens* (Miller Cooper, 1837)

(b) Any nongame species in need of conservation taken during established trapping seasons, authorized commercial wildlife operations, fishing by hook and line, bait fish seining, or other lawful activity shall not be unlawfully taken if immediately released.

(c) Any nongame species in need of conservation in possession before the effective date of this regulation and not prohibited by any previous regulation of the department or national listings may be retained in possession if either of the following conditions is met:

(1) An application of affidavit to that effect has been filed with and approved by the secretary before January 1, 1990, that states the circumstances of how the species came into possession.

(2) Possession of the animal has been previously approved by the department.

(Authorized by K.S.A. 32-959 and K.S.A. 32-963; implementing K.S.A. 32-959 and K.S.A. 2003 Supp. 32-1009; effective Oct. 30, 1989; amended Aug. 31, 1992; amended Nov. 29, 1999; amended P-\_\_\_\_\_.)

## 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 wartback, 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.



## ENVIRONMENTAL BENEFIT 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”). 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. Although a SINC species is not a threatened or endangered species, and does not receive the same protections from other regulations requiring permit review for actions that affect threatened or endangered species, the list may be considered one that concerns threatened or endangered wildlife. Consequently, this environmental benefit statement has been prepared. 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 the removal of the Texas night snake and White-faced ibis from the list of threatened species, and therefore relate to this proposed regulatory amendment.

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.

The current proposed amendments stem from petitions for listing actions received by the department by July 2003, 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.

**Texas night snake (*Hysiglena torquata jani*)**

- Federal Status: none
- Current Kansas Listing Status: Threatened
- Proposed Listing Action: List as a species in need of conservation in Kansas
- Description: The Texas night snake has a dorsal ground color, light brown or gray with brown or dark gray spots. It has bulging eyes with vertically elliptical pupils and the scales are smooth.
- Size: Adults grow to 10-16 inches in length.
- Habitat: The Texas night snake is commonly seen in arid or semi-arid sandy/gravelly habitats and rocky bluffs. In Kansas, the Texas night snake is found in south-central Kansas in the area known as the Red Hills region.
- Reproduction: The Texas night snake is an egg-bearing reptile. 4-6 eggs are laid from April-June and hatch after 8 weeks.
- Food: The Texas night snake is nocturnal and active in warmer months. It feeds on lizards, other small snakes and insects.

Threat to the species and need for the regulatory amendment: The Texas night snake is proposed to be de-listed from threatened status to a SINC species. It is common where found in Kansas but the distribution of the snake is small. Listing it as a species in need of conservation would provide it some protection and would help raise awareness.

**Delta hydrobe (*Probythinella emarginata*)**

- Federal Status: None
- Current Kansas Listing Status: None
- Proposed Listing Action: List as a species in need of conservation 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: Unknown.

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 SINC species would provide it some 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.

### **Brindled madtom (*Noturus miurus*)**

- Federal Status: None
- Current Kansas Listing Status: None
- Proposed Listing Action: List as a species in need of conservation in Kansas
- Description: The species is a small member of the catfish family with distinct black and yellow markings on body and fins.
- Size: Adults may grow to just over 3 inches in length.
- Habitat: This species avoids large riffles and rivers and can be found in leaf-littered pools of clear streams. In the past 25 years, it has been documented in the Spring River in Cherokee County and Cedar Creek in Chase County.
- Reproduction: Spawning occurs May-August.
- Food: The diet of the Brindled madtom consists of insects and small crustaceans.

Threat to the species and need for the regulatory amendment: The Brindled madtom is a stream and small river catfish that requires clear water pools. Threats from changes in stream hydrology such as channelization, gravel dredging, or impoundments could be detrimental to this species. Dewatering a stream for irrigation during periods of drought could reduce necessary habitats for this madtom. Listing of the species as a SINC species would provide it some 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 water quality at the few sites in Kansas where this species is found.

### **Red-shouldered hawk (*Buteo lineatus*)**

- Federal Status: None
- Current Kansas Listing Status: Species in need of conservation
- Proposed Listing Action: De-list the species completely
- Description: The species is known as a brown headed bird with reddish breast and underwing coverts. It also has dark flight feathers above with barring and pale flight feathers below with dark barring. It has a short, dark hooked beak with a dark tail.
- Size: Length is 16 inches with a 40 inch wingspan
- Habitat: The species currently occurs primarily in bottomland timber habitat. In

Kansas, the range is primarily the eastern ¼ of the state.

- Reproduction: 2-3 eggs laid from April to May. Fledge at 45 days.
- Food: The diet of the Red-shouldered hawk includes medium sized snakes, amphibians and reptiles, small mammals, small birds, crayfish, and insects. Typically hunt alone, diving from a perch located near water.

Threat to the species and need for the regulatory amendment: Breeding Bird Survey results over the natural range of this hawk show a significant annual increase of 2.6 percent from 1980-2002. Nest records in eastern Kansas are far more common than they were two decades ago.

### **Eastern chipmunk (*Tamias striatus*)**

- Federal Status: none
- Current Kansas Listing Status: Species in need of conservation
- Proposed Listing Action: De-list the species completely
- Description: The Eastern chipmunk is a small, brightly-colored squirrel that has five conspicuous black stripes running along the back and sides fading into the rump and shoulders.
- Size: Adults grow to about five to six inches.
- Habitat: The Eastern chipmunk inhabits the extreme easternmost part of Kansas. In natural situations, they are likely to be found along wooded bluffs bordering the Missouri River and other waterways. It inhabits the floor of deciduous forests where the ground is covered with fallen logs and where trees are associated with ledges and outcrops. It is also common in residential areas, where they are sometimes regarded as a nuisance species.
- Reproduction: The species breeding takes place in March and after a gestation period of 30 days, 2-7 young are born. They may live up to 8 years.
- Food: The species consumes the vegetation found in the oak-hickory forest including nuts, berries, seeds and invertebrate life associated with forests.

Threat to the species and need for the regulatory amendment: Information derived from wildlife surveys show an increase to the Kansas population and the Kansas population is not segmented from the natural range of the species. In addition, the population in residential areas has increased dramatically, so much that they are sometimes regarded as a nuisance species.

## TAKINGS ASSESSMENT STATEMENT

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

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

**BACKGROUND:** The Private Property Protection Act, K.S.A. 77-701 *et seq.*, requires state agencies to evaluate certain governmental actions to determine whether such actions may constitute a taking, and to make the resulting written report available for public inspection. Guidelines to evaluate such governmental actions were established by the Attorney General and published in the Kansas Register on December 21, 1995. Before a state agency initiates a governmental action, it shall prepare a written report, following the Attorney General's guidelines, and make the report available for public inspection. Two regulations affecting species receiving some level of protected status based on their need for conservation, K.A.R. 115-15-1 and K.A.R. 115-15-2, and jointly assessed in this statement.

**ANALYSIS:** The analysis used follows the sequence and the scope of the questions from the "Takings Checklist" contained in the Attorney General's Guidelines.

1. Does the government action result in a permanent or temporary physical occupation or invasion of private property?
2. Does the governmental action deny or abrogate a fundamental property right?
3. Does the governmental action deprive the owner of all economically viable uses of the property?
4. Does the governmental action substantially further a legitimate interest?
5. Are the proscribed uses or physical occupation part of a preexisting limitation on the landowner's title?

K.A.R. 115-15-1 identifies species classified as endangered or threatened in Kansas, as required by, and according to the factors listed in K.S.A. 32-960. K.S.A. 32-960 requires the agency secretary to determine whether any species of indigenous wildlife is a threatened or endangered species because of any of the statutorily imposed factors:

- (1) the present or threatened destruction, modification or curtailment of its habitat or range;
- (2) the over utilization 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 secretary's determination is to be made on the basis of the best scientific, commercial and other data available to the secretary, and after consultation, as appropriate, with federal agencies, other interested state agencies and interested persons and organizations.

K.A.R. 115-15-2 identifies species in need of conservation, as required by, and according to the factors in 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. Species listed in this classification are not considered to be at the level of danger of threatened or endangered species, and do not receive the same level of legal protection.

1. Do the proposed amendments result in a permanent or temporary physical occupation or invasion of private property?

The listing of a species as threatened, endangered, or in need of conservation does not require an "occupation or invasion" of private property. Investigations surveying for the presence, or absence, of a species are among the statutorily available and authorized activities available to the agency pursuant to K.S.A. 32-959, and that activity does not rise to a level constituting an occupation or invasion. Typically, agency personnel seek consent of the landowner, or manager prior to conducting an inspection. If such consent is withheld, then the agency endeavors to work through a third party intermediary (such as a watershed district or a NRCS representative) to explain to the property owner the relevancy of such inspection to activities beneficial to the property owner. If those efforts fail to generate a consent, then the agency typically relies on other scientific data.

2. Do the proposed amendments deny or abrogate a fundamental property right?

Protected fundamental property interests include the right to possess property, the right to exclude others from the property and the right to dispose of the property. By state law, ownership of all wildlife is declared to be in the state, regardless of whether it is listed or not (K.S.A. 32-703). Consequently, the listing of a species as threatened or endangered does not dispose or otherwise impair a property owner's continuing existing use of private property.

Listing a species as threatened or endangered (but not as a species in need of conservation) could have certain indirect effects on the use of a person's property, if a proposed use of the property would result in the alteration of the listed species' habitat or destruction of individuals of the species. Any person sponsoring or responsible for a publicly funded action of this sort, or an action requiring a permit from another state or federal permit from another state or federal government agency, must apply for a permit from the department, pursuant to K.A.R. 115-15-3. However, this permit is not required for normal farming and ranching practices, or for development of residential and commercial property on privately-owned property financed with private, nonpublic funds, unless a permit is required by another state or federal agency, or unless the action would involve an intentional taking (defined as an act or attempt that is willful and

done for the purpose of taking a threatened or endangered species). Pursuant to K.A.R. 115-15-3(d), the secretary is obligated to issue a permit for which a timely and complete application has been submitted, if the proposed action meets with two conditions. First, the application must describe in the action plan sufficient mitigating or compensating measures to ensure protection of critical habitats and listed species, and assurances that such measures will remain in effect. Second, the proposed activity must comply with all federal laws protecting listed species.

The mere listing of a species as threatened, endangered or in need of conservation does not require any action by a property owner. Only if the property owner elects to undertake publicly funded activity that could result in the taking of a threatened or endangered species would a permit be required. In addition, these permits are not required for certain actions, and department regulation states that, in any case, law enforcement action would only be taken in cases involving intentional takings.

3. Do the proposed amendments deprive the owner of all economically viable uses of the property?

The listing of a species as threatened, endangered, or in need of conservation does not, itself, have any impact on the use of property. However, as noted above, a permit may be required if a proposed use would result in the alteration of a threatened or endangered species' habitat or the destruction of an individual of the species. Again, management of private property for normal farming or ranching uses would not be impaired by the listing of a threatened or endangered species, even if such practices were publicly funded or state or federally assisted, unless an intentional taking were involved. In addition, development of residential or commercial property would not be impaired unless publicly funded or an intentional taking were involved.

In addition, no use of private property could ever be restricted under these regulations unless it were publicly funded, state or federally assisted, or destroyed individuals of any listed species. All other economically viable uses of the property not within these categories are still available to the landowner. Furthermore, any use proposed action that would fall within these categories will still receive a permit to proceed, as long as sufficient mitigating or compensating measures are incorporated within the proposed action. Therefore, even in such cases, the regulation would not deprive a property of all economically viable use.

4. Do the proposed amendments substantially further a legitimate state interest?

The general governmental purposes for listing of any threatened or endangered species have been articulated in the Congressional findings and declaration of policies in the Federal Endangered Species Act of 1973 (16 U.S.C.A. 1531). Congress found that "various species of fish, wildlife and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation," and that "other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction," and such species are of "esthetic, ecological,

educational, historical, recreational and scientific value to the Nation and its people.” Such findings adopted at a national level have equal applicability at the state level.

State statute makes determination of threatened or endangered species by the secretary obligatory, and not merely optional. See K.S.A. 32-960(a) (the secretary shall determine whether any species of wildlife indigenous to the state is a threatened species...) (emphasis added). The Kansas Legislature by statutorily adopting these obligatory requirements and imposing them upon the secretary evidenced that such conservation and protection provisions furthered a legitimate state interest.

A further legitimate state interest is served because federal agencies are directed by statutory federal policy (16 U.S.C.A. 1531(c)) to use their authority in furtherance of the stated federal policy of conserving ecosystems of threatened and endangered species. State law or regulation respecting a threatened 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.

5. Are any proscribed uses or physical occupation from the proposed amendments part of a preexisting limitation on the landowner’s title?

As described above, the listing of a threatened or endangered species does not result in a permanent or temporary physical occupation on private property without consent of the landowner or manager. Second, as described above, the regulations do not deprive an owner of all economically viable uses of the property.

Even if limited proscriptions would exist, however (due to the involvement of public funding, for example), they may be part of a preexisting limitation on the landowner’s title. For example, to the extent a landowner is also within a watershed district, and such district wishes to use federal assistance for construction of watershed structures (dams or impoundments), then the statutory rights of the watershed district may be pre-existing limitations that limit the impact of a listing of a species as threatened or endangered. Specifically, K.S.A. 24-1209 vests in an incorporated watershed district the power “where the construction, improvement or operation of such works causes the substantial displacement of a wildlife habitat and when required by the soil conservation service of the United States department of agriculture as a condition precedent of the release of federal funds for such works, to acquire land for the purpose of restoring such wildlife habitat.” The watershed district authorizing statutes contemplate that conservation or protection of wildlife habitat may be a factor in the siting and design of structures or impoundments and further, that certain mitigating conditions may have to be developed to gain



approval by a federal funding source. Therefore, even if the listing of a threatened or endangered species were to create some limitations on the use of the property, it might not necessarily impose more of a burden for property already within a watershed district.

Also, watershed developments fall within the existing scope of the Kansas Water Projects Environmental Coordination Act (K.S.A. 82a-325, *et seq.*). Such Coordination Act requires the consideration of the environmental effects of any water development project. By statutory definition, the department is an environmental review agency, to whom watershed development projects must be submitted for review and comment. K.S.A. 82a-326(b)(1) and 82a-327. Permissible consideration for such review include:

- (a) beneficial and adverse environmental effects of proposed project on fish and wildlife;
- (b) means and methods to reduce adverse environmental effects; and
- (c) alternatives to a proposed project with significant adverse environmental effects.

Therefore, construction of a watershed dam could require the district to file an application for and obtain a permit if a threatened or endangered species were present, but due to the existing limitation under the Kansas Water Projects Environmental Coordination Act, the impact of such listing is reduced in this context.

Finally, any possible limitation would only occur if the proposed use of the property would impact a listed species. If another listed species already exists in the same habitat as the newly listed species, restrictions on the use of the property, if any, would be pre-existing. For certain of the proposed species for listing (e.g. the Silver chub, in the Kansas and Missouri Rivers), that would normally be the case.

**CONCLUSION:** Based on the foregoing analysis, the agency believes that the proposed amendments to K.A.R. 115-15-1 and to K.A.R. 115-15-2 do not constitute a taking of private property.

**115-2-1. Amount of fees.** The following fees shall be in effect for the following licenses, permits, and other issues of the department: (a) Hunting licenses and permits.

Resident hunting license .....	18.00
Nonresident hunting license .....	70.00
Nonresident junior hunting license (under 16 years of age) .....	35.00
Resident big game hunting permit:	
General resident: either-sex elk permit .....	250.00
General resident: antlerless-only elk permit .....	100.00
Landowner/tenant: either-sex elk permit .....	125.00
Landowner/tenant: antlerless-only elk permit .....	50.00
Hunt-on-your-own-land: elk permit .....	30.00
<u>Application fee: elk permit .....</u>	<u>5.00</u>
General resident: deer permit .....	30.00
Landowner/tenant: deer permit .....	15.00
Hunt-on-your-own-land: deer permit .....	10.00
Special hunt-on-your-own-land: deer permit .....	10.00
General resident: antelope permit .....	40.00
Landowner/tenant: antelope permit .....	20.00
Hunt-on-your-own-land: antelope permit .....	10.00
General resident: turkey permit (1 bird limit) .....	20.00
General resident: turkey permit (2 bird limit) .....	25.00
Landowner/tenant: turkey permit (1 bird limit) .....	10.00

<del>Landowner/tenant: turkey permit (2 bird limit)</del> .....	15.00
<del>Hunt on your own land: turkey permit (1 bird limit)</del> .....	10.00
<del>Hunt on your own land: turkey permit (2 bird limit)</del> .....	15.00
Antelope preference point service charge .....	5.00
<u>Any-deer preference point service charge .....</u>	<u>5.00</u>

Resident game tag:

Deer game tag .....	10.00
Turkey game tag .....	10.00

Wild turkey permit:

<u>General resident: turkey permit (1-bird limit) .....</u>	<u>20.00</u>
<u>Landowner/tenant: turkey permit (1-bird limit) .....</u>	<u>10.00</u>
<u>Resident: turkey preference point service charge .....</u>	<u>5.00</u>
<u>Nonresident: turkey permit (1-bird limit) .....</u>	<u>30.00</u>

Nonresident big game hunting permit:

<del>Nonresident: turkey permit (1 bird limit)</del> .....	<del>30.00</del>
<del>Nonresident: turkey permit (2 bird limit)</del> .....	<del>35.00</del>
Nonresident hunt-on-your-own-land: deer permit .....	50.00
Nonresident: deer permit ( <del>buck only</del> or any <u>antlered</u> deer) .....	<del>200.00</del> <u>300.00</u>
Nonresident: deer permit (antlerless only) .....	50.00
Nonresident: deer permit (application fee) .....	20.00

Nonresident game tag:

Deer game tag .....	20.00
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Turkey game tag .....	20.00
48-hour waterfowl hunting permit .....	25.00
Field trial permit: game birds .....	20.00
Lifetime hunting license .....	<del>300.00</del> <u>440.00</u>
or eight quarterly installment payments of .....	<del>45.00</del> <u>60.00</u>
Migratory waterfowl habitat stamp .....	5.00
Special dark goose hunting permit .....	5.00
Sandhill crane hunting permit: validation fee .....	5.00
Disabled person hunt-from-a-vehicle permit .....	0

(b) Fishing licenses and permits.

Resident fishing license .....	18.00
Nonresident fishing license .....	40.00
24-hour fishing license .....	5.00
<u>Three-pole permit.....</u>	<u>4.00</u>
Lifetime fishing license .....	<del>300.00</del> <u>440.00</u>
or eight quarterly installment payments of .....	<del>45.00</del> <u>60.00</u>
Five-day nonresident fishing license .....	20.00
Institutional group fishing license .....	100.00
Special nonprofit group fishing license .....	50.00
Trout permit .....	10.00

(c) Combination hunting and fishing licenses and permits.

Resident combination hunting and fishing license .....	36.00
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Resident lifetime combination hunting and fishing license .....	<del>600.00</del>	<u>880.00</u>
or eight quarterly installment payments of .....	<del>90.00</del>	<u>120.00</u>
Nonresident combination hunting and fishing license .....		110.00
(d) Furharvester licenses.		
Resident furharvester license .....		18.00
Resident junior furharvester license .....		10.00
Lifetime furharvester license .....	<del>300.00</del>	<u>440.00</u>
or eight quarterly installment payments of .....	<del>45.00</del>	<u>60.00</u>
Nonresident furharvester license .....		250.00
<u>Nonresident bobcat permit (1-bobcat limit per permit) .....</u>		<u>100.00</u>
Resident fur dealer license .....		100.00
Nonresident fur dealer license .....		400.00
Field trial permit: furbearing animals .....		20.00
(e) Commercial licenses and permits.		
Controlled shooting area hunting license .....		15.00
Resident mussel fishing license .....		75.00
Nonresident mussel fishing license .....		1,000.00
Mussel dealer permit .....		200.00
Missouri river fishing permit .....		25.00
Game breeder permit .....		10.00
Controlled shooting area operator license .....		200.00
Commercial dog training permit .....		20.00

Resident commercial guide permit .....	250.00
Nonresident commercial guide permit .....	1,000.00
Associate guide permit .....	100.00
Commercial fish bait permit .....	20.00
Commercial prairie rattlesnake harvest permit (without a valid Kansas hunting license) .....	20.00
Commercial prairie rattlesnake harvest permit (with a valid Kansas hunting license or exempt from this license requirement) .....	5.00
Commercial prairie rattlesnake dealer permit.....	50.00
Prairie rattlesnake round-up event permit .....	25.00

(f) Collection, scientific, importation, rehabilitation, and damage-control permits.

Scientific, educational, or exhibition permit .....	10.00
Raptor propagation permit .....	0
Rehabilitation permit .....	0
Wildlife damage-control permit .....	0
Wildlife importation permit .....	10.00
Threatened or endangered species: special permits .....	0

(g) Falconry.

Apprentice permit .....	75.00
General permit .....	75.00
Master permit .....	75.00
Testing fee .....	50.00

(h) Miscellaneous fees.

Duplicate license, permit, stamp, and other issues of the department .....10.00

Special departmental services, materials, or supplies ..... At cost

Vendor bond

For bond amounts of \$5,000 and less .....50.00

For bond amounts of more than \$5,000 .....50.00

plus \$6.00 per additional \$1,000.00 coverage or any fraction thereof.

(i) ~~This regulation shall be effective on and after January 1, 2004.~~ (Authorized by and implementing K.S.A. 32-807 and K.S.A. ~~2002~~ 2003 Supp. 32-988, as amended by ~~L. 2003, Ch. 121, Sec. 2~~ L. 2004, Ch. 99, Sec. 8; effective Dec. 4, 1989; amended Sept. 10, 1990; amended Jan. 1, 1991; amended June 8, 1992; amended Oct. 12, 1992; amended April 11, 1994; amended Aug. 29, 1994; amended June 5, 1995; amended Aug. 21, 1995; amended Feb. 28, 1997; amended July 30, 1999; amended Jan. 2, 2002; amended Jan. 1, 2003; amended Jan. 1, 2004; amended P-\_\_\_\_\_.)

## ECONOMIC IMPACT STATEMENT

**K.A.R. 115-2-1.** Amount of fees.

**DESCRIPTION:** This permanent regulation establishes fish and wildlife-related license and permit fees. The propose amendments would establish an elk permit application charge, an any-deer permit preference point service charge, a limited draw turkey permit preference point service charge, realign wild turkey permit fees, increase nonresident deer permit fees, increase lifetime hunting, fishing, combination and furharvesting license fees, establish a third pole permit fee for fishing and create a nonresident bobcat permit as a subset of the nonresident furharvester license. These changes are in response to the 2004 legislative session and recommendations from the department's revenue task force and automation working group.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACT:** There is no current fee for third pole fishing permits, nonresident bobcat permits, elk applications and any-deer preference points. It is anticipated that the third pole permit fee will generate approximately \$200,000 annually, nonresident bobcat permits will generate approximately \$100,000 annually, elk application charges will generate approximately \$7,730 annually, turkey preference point charges will generate approximately \$1000 annually, and any-deer preference point charges will generate approximately \$30,475 annually, all of which will accrue to the wildlife fee fund. The turkey realignment will not generate any additional income as it is primarily a regulatory shift from big game to its own regulatory category and there is no increase in fees. The lifetime license fee increases will generate approximately \$371,140 annually for all categories, all of which will accrue to the wildlife conservation fund. The nonresident deer permit fee increase will generate approximately \$1,200,000 annually, all of which will accrue to the wildlife fee fund. Otherwise, we anticipate no substantive impact to the department, other agencies or the public.

**ALTERNATIVES CONSIDERED:** None.



**115-3-2. Rabbits, hares, and squirrels; legal equipment, taking methods, and possession.**

(a) Legal hunting equipment for rabbits, hares, and squirrels shall consist of the following:

(1) Firearms, except fully automatic rifles and handguns and except shotguns and muzzleloading shotguns larger than 10 gauge or using other than shot ammunition;

(2) pellet and BB guns;

(3) archery equipment;

(4) crossbows;

(5) falconry equipment;

(6) projectiles hand-thrown or propelled by a slingshot;

(7) box traps for rabbits only; ~~and~~

(8) optical scopes or sights that project no visible light toward the target and do not electronically amplify visible or infrared light; and

(9) other equipment or methods as allowed by permit.

(b) The use of dogs, horses, and mules shall be permitted while hunting, but no person shall shoot while mounted on a horse or mule.

(c) Legal hours for the hunting and taking of rabbits, hares, and squirrels shall be from ½ hour before sunrise to sunset during established hunting seasons, except that legal hours for the running and box-trapping of rabbits shall be 24 hours per day during established running seasons.

(d) Any type of apparel may be worn while hunting or running rabbits.

(e) Legally taken rabbits, hares, and squirrels may be possessed without limit in time and may be given to another if accompanied by a dated written notice that includes the donor's

printed name, signature, address, and permit or license number. The person receiving the meat shall retain the notice until the meat is consumed, given to another, or otherwise disposed of.

(Authorized by and implementing K.S.A. 32-807 and K.S.A. 32-1002; effective, T-115-7-27-89, July 27, 1989; effective Sept. 18, 1989; amended, T-115-12-28-89, Dec. 28, 1989; amended Jan. 22, 1990; amended Sept. 19, 1997; amended June 1, 2001; amended July 23, 2004; amended P-  
\_\_\_\_\_.)

## **ECONOMIC IMPACT STATEMENT**

**K.A.R. 115-3-2.** Rabbits, hares, and squirrels; legal equipment, taking methods, and possession.

**DESCRIPTION:** This administrative regulation establishes certain requirements for hunting of rabbits, hares, and squirrels. The proposed amendment would restrict the use of night vision scopes while hunting.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACT:** The proposed amendments are not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**ALTERNATIVES CONSIDERED:** None.

**115-5-1. Furbearers and coyotes; legal equipment, taking methods, and general provisions.**

(a) Hunting equipment permitted during furbearer hunting seasons and during coyote hunting seasons shall consist of the following:

- (1) Firearms, except fully automatic firearms;
- (2) archery equipment; ~~and~~
- (3) crossbows; and
- (4) optical scopes or sights that project no visible light toward the target and do not electronically amplify visible or infrared light.

(b) Trapping equipment permitted during furbearer and coyote trapping seasons shall consist of the following:

- (1) Foothold traps;
- (2) body-gripping traps;
- (3) box traps;
- (4) live traps;
- (5) snares; and
- (6) ~~dead-falls~~ deadfalls.

(c) The following general provisions shall apply to the taking of furbearers and coyotes:

- (1) Calls may be used in the taking of furbearers and coyotes.
- (2) Handheld, battery-powered flashlights, hat lamps, and handheld lanterns may be used while trapping furbearers or coyotes or while running furbearers.
- (3) .22 caliber rimfire rifles and handguns may be used to take trapped furbearers or trapped coyotes when using a light to check traps.

(4) .22 caliber rimfire rifles and handguns may be used while using a handheld, battery-powered flashlight, hat lamp, or handheld lantern to take furbearers treed with the aid of dogs.

(5) Lures, baits, and decoys may be used in the taking of furbearers and coyotes.

(6) The use of horses and mules shall be permitted while hunting, trapping, or running furbearers and coyotes.

(7) The use of motor vehicles for taking coyotes shall be permitted while hunting coyotes.

(8) The use of radios in land or water vehicles shall be permitted for the taking of coyotes.

(9) The use of dogs for hunting and during running seasons shall be permitted.

(10) Any conibear-type, body-gripping trap with a jawsread of eight inches or greater shall be used only in a water set.

(11) Only landowners or tenants of land immediately adjacent to the right-of-way of a public road, or their immediate family members or authorized agents, may set slide-locking wire or snare-type cable traps as dryland sets within five feet of a fence bordering a public road or within 50 feet of the outside edge of the surface of a public road. Only these landowners or tenants, or their immediate family members or authorized agents, may possess the fur, pelt, skin, or carcass of any furbearer or coyote removed from these devices located within these specified limits.

(12) A person shall not have in possession any equipment specified in subsection (a) while pursuing or chasing furbearers with hounds during the running season.

(13) All trapping devices included in subsection (b) shall be tagged with the user's name

and address and shall be tended and inspected at least once every calendar day. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807, K.S.A. 32-1002, and K.S.A. 32-1003; effective March 19, 1990; amended Nov. 15, 1993; amended July 19, 2002; amended P-\_\_\_\_\_.)

## **ECONOMIC IMPACT STATEMENT**

**K.A.R. 115-5-1.** Furbearers and coyotes; legal equipment, taking methods, and general provisions.

**DESCRIPTION:** This administrative regulation establishes legal equipment, taking methods, and general provisions for the taking of furbearers and coyotes. The proposed amendment would restrict the use of night vision scopes while hunting.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACT:** The proposed amendments are not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**ALTERNATIVES CONSIDERED:** None.

**115-20-1. Crows; legal equipment, taking methods, and possession.** (a) Legal hunting equipment for taking crows shall consist of the following:

(1) Firearms, except fully automatic rifles and handguns and except shotguns and muzzleloading shotguns larger than 10 gauge or using other than shot ammunition;

(2) pellet and BB guns;

(3) archery equipment;

(4) falconry equipment; ~~and~~

(5) calls and decoys, except live decoys; and

(6) optical scopes or sights that project no visible light toward the target and do not electronically amplify visible or infrared light.

(b) The use of dogs shall be permitted while hunting.

(c) Hunting hours shall be from 1/2 hour before sunrise to sunset.

(d) Any type of apparel may be worn while hunting crows.

(e) Crows may be shot or pursued by falconry means while the crow is in flight, on the ground, or perched.

(f) Legally taken crows may be possessed without limit in time and number and may be disposed of in any manner, ~~except~~. However, crows shall not be purchased, sold, bartered, or offered for purchase, sale, or barter.

(g) Blinds and stands may be used while hunting. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807 and K.S.A. 32-1002; effective July 30, 1990; amended March 20, 1995; amended July 13, 2001; amended P-\_\_\_\_\_.)



## **ECONOMIC IMPACT STATEMENT**

**K.A.R. 115-20-1.** Crows; legal equipment, taking methods, and possession.

**DESCRIPTION:** This administrative regulation establishes certain requirements for hunting of crows. The proposed amendment would restrict the use of night vision equipment when hunting crows.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACT:** The proposed amendments are not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**ALTERNATIVES CONSIDERED:** None.

**115-20-2. Certain wildlife; legal equipment, taking methods, possession, and license**

**requirement.** (a) Subject to federal and state laws and rules and regulations, wildlife listed below in subsection (b) may be taken for personal use on a noncommercial basis.

(b) For purposes of this regulation, wildlife shall include the following, excluding any species listed in K.A.R. 115-15-1 or K.A.R. 115-15-2:

- (1) Prairie dog;
- (2) ground squirrel;
- (3) woodchuck;
- (4) mole;
- (5) gopher;
- (6) kangaroo rat;
- (7) wood rat;
- (8) armadillo;
- (9) porcupine;
- (10) feral pigeon;
- (11) commensal and other rodents, excluding game and furbearing animals;
- (12) invertebrates;
- (13) amphibians; except bullfrogs; and
- (14) reptiles, except common snapping turtles and soft-shelled turtles.

(c) Wildlife listed above in subsection (b) shall be taken only with any of the following legal equipment or methods:

- (1) Firearms, except fully automatic firearms;

- (2) bow and arrow;
- (3) pellet and BB gun;
- (4) crossbow;
- (5) falconry;
- (6) projectiles hand-thrown or propelled by a slingshot;
- (7) trap;
- (8) deadfall;
- (9) snare or noose;
- (10) net or seine;
- (11) glue board;
- (12) hand;
- (13) dogs; ~~or~~
- (14) poison, poisonous gas, or smoke, if the toxicant is registered and labeled for that use and if all permit requirements for use of the poison, poisonous gas, or smoke have been met; or
- (15) optical scopes or sights that project no visible light toward the target and do not amplify visible or infrared light.

(d) The open season for the taking of wildlife listed above in subsection (b) shall be year-round.

(e) There shall be no maximum daily bag or possession limit for wildlife listed above in subsection (b), except that no more than five of any one species of amphibian, reptile, or mussel may be possessed and no more than five live specimens of mussels may be possessed. Two opposing shells shall constitute one mussel.

(f) Legally taken wildlife listed above in subsection (b) may be possessed without limit in time.

(g) A hunting license shall not be required to take invertebrates. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807, K.S.A. 32-919, K.S.A. 32-1002, and K.S.A. 32-1003; effective Sept. 10, 1990; amended Nov. 30, 1998; amended July 13, 2001; amended Nov. 22, 2002; amended P-\_\_\_\_\_.)

## **ECONOMIC IMPACT STATEMENT**

**K.A.R. 115-20-2.** Certain wildlife; legal equipment; taking methods, possession and license requirement.

**DESCRIPTION:** This permanent regulation establishes guidelines for the legal equipment, taking methods and possessions and license requirements for certain wildlife. The proposed amendment would restrict the use of night vision equipment while hunting.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACT:** The proposed amendment is not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**ALTERNATIVES CONSIDERED:** None.

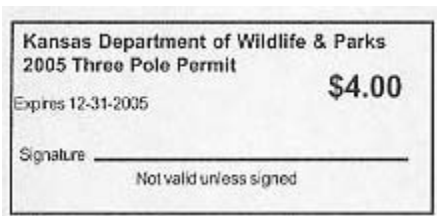
## Third Rod Fishing Permit

The Department recommends implementation of an additional rod permit. Currently, anglers are restricted to no more than two lines. This new permit will allow anglers to fish with three lines.

Additional pole permits are available in several other states. However, in those states, the additional permit allows the use of a second pole. This third pole proposal's uniqueness makes revenue projections somewhat difficult, but it is reasonable to expect an additional \$100,000-\$150,000.00 per year from third pole permits. Anglers likely to be interested in fishing with three poles are those using passive techniques or techniques that don't require a pole to be in-hand at all times. This would include channel catfish anglers, crappie anglers, trollers, etc.

This new permit would certainly allow some anglers to harvest more fish than in the past. However, impacts to the fisheries resource would be minimal due the length and creel limit restriction in place across the state.

The new permit would be sold in calendar year 2005 in two forms, a stamp when purchased from a traditional vendor and on the Department's new automated system, KOALS, as a line item "privilege". The KOALS system will be fully deployed in 2006, making the stamp a one-year issuance.



Proposed Stamp

**115-7-2. Fishing; general provisions.** (a) Except as authorized in this regulation, any person may operate or set two fishing lines and, in addition, one trotline or eight setlines.

(b) Each fishing line, trotline, and setline shall be checked at least once every 24 hours.

(c) Each trotline, setline, tip-up, and unattended fishing line shall have a tag or label securely attached, designating the name and address of the operator. No trotline or setline shall be set within 150 yards of any dam.

(d) Sport fish shall be deemed legally taken by hook and fishing line only when hooked within the mouth, except paddlefish, which may be snagged as authorized by K.A.R. 115-7-1. Other sport fish hooked elsewhere shall be returned unrestrained to the water immediately.

(e) Fish may be taken by legal methods through the ice, unless the area is closed to ice fishing by posted notice or otherwise prohibited by regulation. Ice holes used for ice fishing shall not exceed 12 inches in diameter or 144 square inches.

(f) For ice fishing, a tip-up may be used on each of the allowed eight setlines, unless otherwise posted.

(g) Bow and arrow fishing and crossbow and arrow fishing shall be permitted in all waters of the state except those waters posted as closed to such fishing and except all waters within 50 yards of an occupied boat dock or ramp, occupied swimming area, occupied picnic or camping area, or other occupied public use area.

(h) Speargun fishing shall be permitted on waters open to skin and scuba diving, unless prohibited by posted notice or regulation. By posted notice, certain water areas may be opened by the department for the taking of one or more species of sport fish by spearguns during a specified time period.

(i) In the flowing portions and backwaters of the Missouri river and in any oxbow lake through which the Kansas-Missouri boundary passes, any person may operate or set three fishing lines and, in addition, one trotline or eight setlines.

(j) In the waters of the state other than those waters specified in subsection (i), any person in possession of a three-pole permit may operate or set three fishing lines, and in addition, one trotline or eight setlines. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-1002 and K.S.A. 32-1003; effective Dec. 26, 1989; amended Sept. 27, 2002; amended P-  
\_\_\_\_\_.)



## **ECONOMIC IMPACT STATEMENT**

**K.A.R. 115-7-2.** Fishing; general provisions.

**DESCRIPTION:** This regulation establishes general provisions applicable to fishing in Kansas.

The proposed amendments would allow persons to use three fishing lines on all waters of the state pursuant to purchasing the appropriate third pole permit. This recommendation is a result of the Revenue Task Force formed by the Department this past summer.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACT:** The proposed amendments are intended to offer another alternative for anglers in Kansas. It is anticipated that this alternative could provide up to \$200,000 dollars in increased revenue for the Wildlife Fee Fund at four dollars per permit. Otherwise, we would anticipate no substantive economic impact to the department, other state agencies, or the public.

**ALTERNATIVES CONSIDERED:** No alternative amendments are being considered at this time.

## **Fort Riley's Fish Stocking Program and Designated Trout Waters**

The Department is implementing a statewide effort to reduce barriers to participation in recreational fishing. Some of the biggest barriers are the additional fees to waters operated by other government entities. A recent appropriation of \$800,000 was approved by the Governor and the Kansas Legislature to offer financial incentives to these entities to remove the requirement for additional fishing access fees. The Department has offered these incentives to community lakes and has entered into an agreement with Ft. Riley regarding the current Ft. Riley fishing license requirements.

Rather than leasing fishing rights at Ft. Riley, as the Department is doing on community lakes, the department has agreed to take over the existing fish stocking program for the military base in exchange for removing the local fishing license. Part of that agreement includes responsibility for stocking rainbow trout.

Under the agreement, Moon Lake would become designated trout water and would require the state's trout stamp. All fishing at the Fort would be subject to state licensing requirements and no other fees will be imposed. Anglers entering the Fort will still need to go through the security check points and abide by Ft. Riley's rules and regulations.

Ft. Riley has 29 ponds managed for fishing, access to the Kansas, Smokey Hill, and Republican Rivers, and numerous smaller streams. Of course, the base's waters are subject to closure as needed to meet the military's mission. Anglers can visit the Ft. Riley web site for current information on fishing at [www.riley.army.mil/](http://www.riley.army.mil/).

**115-25-14. Fishing; creel limit, size limit, possession limit, and open season.** (a) The open season for the taking of fish in Kansas shall be January 1 through December 31, with the following exceptions:

(1) The flowing portions and backwaters of the Missouri river and any oxbow lake through which the Kansas-Missouri boundary passes, for which the open season for the taking of paddlefish shall be March 15 through May 15; and

(2) those areas closed by posted notice.

(b) Pursuant to K.A.R. 115-18-12, a trout permit shall be required to fish for and possess trout on the following waters during the specified time periods:

(1) October 15 through April 15:

(A) Webster Stilling Basin;

(B) Kanopolis Seep Stream;

(C) Cedar Bluff Stilling Basin;

(D) Lake Henry, located in Clinton State Park;

(E) Scott State Fishing Lake;

(F) Scott State Park Pond;

(G) Cimarron Grasslands Pits;

(H) Dodge City Lake Charles;

(I) the following Sedgwick County Park waters:

(i) Moss Lake;

(ii) Horseshoe Lake;

(iii) Vic's Lake; and

(iv) Slough Creek;

(J) Walnut River Area, located in El Dorado State Park;

(K) KDOT East Lake, located in Wichita;

(L) Finney Refuge Sandpits;

(M) Salina Lakewood Lake;

(N) Fort Scott Gun Park Lake;

(O) Hutchinson Dillon Nature Center Pond;

(P) Kanopolis State Park Pond;

(Q) Glen Elder State Park Pond;

(R) Sherman County Smoky Gardens Lake;

(S) Great Bend Veterans Memorial Park Lake;

(T) Solomon River between Webster Reservoir and Rooks County #2 Road;

(U) Pratt Centennial Pond;

(V) Topeka Auburndale Park; and

(W) Moon Lake, located in Fort Riley.

(2) October 15 through October 14:

(A) Unit number 30, located in the Mined Land Wildlife Area; and

(B) Tuttle Creek Reservoir Seep Stream.

(c) The following daily creel limits and size limits shall apply to each pond, lake, impoundment, and other water of the state that is open to public fishing access, and to all perennial and intermittent watercourses of the state.

<u>Species</u>	<u>Creel Limit</u>	<u>Size Limit</u>
Black Bass: largemouth, spotted, or smallmouth	5*	15"
Channel catfish or blue catfish	10*	--
Trout	5*	--
Flathead catfish	5	--
Walleye, sauger, saugeye	5*	15"
Pike family: northern pike, tiger or muskellunge	2*	30"
Striped bass	2	--
Wiper: striped bass hybrid	2	--
Paddlefish	2	--
Crappie: white or black	50*	--
All other species	No limit	--

\* The daily creel limit is composed of a single listed species or a combination of the species in the listed species group.

(d) The possession limit shall be three daily creel limits.

(e) Special size limits and creel limits may be established on designated waters by an order of the secretary through posted notice or as published annually in the fishing brochure. All fish caught from these designated waters that are of a size or number that is illegal to possess shall be released unrestrained to the water immediately.

(f) This regulation shall be effective on and after February 1, 2005. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807 and K.S.A. 32-1002.)

## **ECONOMIC IMPACT STATEMENT**

**K.A.R. 115-25-14.** Fishing; creel limit, size limit, possession limit, and open season.

**DESCRIPTION:** This exempt regulation establishes statewide limits and open seasons for fishing in Kansas. The proposed amendment would add the Moon Lake, located in Fort Riley, to the list of waters where a trout permit is needed from October 15 to April 15. This is a new area of opportunity where the Department intends to stock trout.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACT:** The proposed change would likely have no substantive economic impact to the department, other state agencies, or the public.

**ALTERNATIVES CONSIDERED:** None.

**115-18-7. Use of crossbows and locking draws for big game and wild turkey hunting by persons with disabilities; application, permit, and general provisions.** (a) ~~Any~~ Each

permanently disabled person qualified to hunt deer, antelope, elk, or wild turkey with a crossbow and desiring to obtain a crossbow and locking draw permit shall apply to the secretary on forms provided by the department. Each applicant shall provide the following information:

- (1) Name of applicant;
- (2) address;
- (3) a physician's signed report, on forms provided by the department, describing the permanent disability and certifying the applicant physically incapable of using a bow; and
- (4) other relevant information as required by the secretary.

(b) ~~Any~~ Each person with a temporary disability who would be qualified to hunt deer, antelope, elk, or wild turkey with a crossbow if the disability were permanent and who desires to obtain a temporary crossbow and locking draw permit shall apply to the secretary on forms provided by the department. Each applicant shall provide the following information:

- (1) Name of applicant;
- (2) address;
- (3) a physician's signed report, on forms provided by the department, describing the disability, certifying the applicant physically incapable of using a bow, and estimating the time period that the person is likely to be subject to the disability; and
- (4) other relevant information as required by the secretary.

A Each temporary permit shall expire no more than three years from the date of issuance and shall state the expiration date on the face of the permit.

(c) ~~An~~ Any applicant may be required by the secretary to obtain, at ~~department~~ the department's expense, a report from a second physician chosen by the secretary.

(d) A crossbow and locking draw permit or temporary permit may be refused issuance or may be revoked by the secretary for any of the following reasons:

(1) The disability does not meet qualifications for the permit.

(2) The application is incomplete or contains false information.

(3) The disability under which the permit was issued no longer exists.

(e) A crossbow and locking draw permit or temporary permit shall be valid statewide.

(f) ~~A~~ Any crossbow and locking draw permittee may use a crossbow or bow equipped with a locking draw for hunting deer, antelope, elk, or wild turkey during any archery season established by the secretary for the big game species or wild turkey being hunted by the permittee. This provision shall be subject to the applicable ~~rules and~~ regulations governing archery hunting of that big game species or wild turkey, including possession of a valid hunting permit issued by the department for that big game species or wild turkey, if required.

(g) Legal equipment for hunting any big game or wild turkey by crossbow shall consist of the following:

(1) Crossbows of not less than 125 pounds of draw weight ~~and without telescopic sights~~;

(2) arrows not less than 16 inches in length, equipped with broadhead points and all-metal cutting edges;

(3) lighted pin, dot, or holographic sights attached to the bow, but no other electronic or chemical device attached to the crossbow or arrow;

(4) optical scopes or sights that project no visible light toward the target and do not



electronically amplify visible or infrared light; ~~and~~

(5) optical scopes that do not magnify the target; and

(6) range-finding devices, if the system does not project visible light toward the target.

(h) Legal equipment for hunting any big game or wild turkey using a bow equipped with a locking draw shall consist of legal archery equipment as specified in K.A.R. 115-4-4, except that the bow may have a mechanical device that locks the bow at full or partial draw.

(i) Any person may assist the holder of a crossbow permit or a temporary crossbow permit during the permittee's hunting activity. A person assisting a holder of a permit shall not perform the actual shooting of the crossbow for the permittee. (Authorized by K.S.A. 32-807, K.S.A. 32-919, and K.S.A. 32-932; implementing K.S.A. 32-932; effective Oct. 30, 1989; amended, T-115-9-9-97, Sept. 9, 1997; amended Dec. 29, 1997; amended Oct. 1, 1999; amended April 19, 2002; amended P-\_\_\_\_\_.)

## **ECONOMIC IMPACT STATEMENT**

**K.A.R. 115-18-7.** Use of permits for big game hunting by persons with disabilities; application, permit, and general provisions.

**DESCRIPTION:** Pursuant to K.S.A. 32-932, this regulation provides for the issuance of a permit to any person with a qualifying disability allowing the use of a crossbow to hunt big game. The proposed amendment would allow clarify the use of telescopic sights as current language is unclear for participants in this activity.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACT:** The department annually issues approximately 120 crossbow permits. No fee is currently charged for these permits. Otherwise, no substantial economic impact to the department, other state agencies or members of the public is anticipated.

**ALTERNATIVES CONSIDERED:** None.

**115-4-11. Big game and wild turkey permit applications.** (a) General application provisions.

(1) Unless otherwise authorized by law or regulation, an individual shall not apply for or obtain more than one big game or wild turkey permit for each big game species or wild turkey.

(2) Unless otherwise authorized by law or regulation, each big game or wild turkey permit application shall be signed by the individual applying for the permit.

(3) Subject to any priority draw system established by this regulation, if the number of permit applications of a specific species and type received by the designated application deadline exceeds the number of available permits of that species and type, a random drawing to issue permits of that species and type shall be conducted by the secretary.

(4) A hunt-on-your-own-land permit shall not be tabulated in a priority draw system if the permit would otherwise reduce the applicant's odds of receiving a big game permit through that draw system.

(b) Deer permit applications.

(1) Subject to any priority draw system established by this subsection, in awarding deer permits in units having a limited number of permits, the first priority shall be given to those applicants who did not receive, in the previous year, a deer permit that allowed the taking of an antlered deer. All other deer permit applicants shall be given equal priority.

(2) In awarding a limited number of deer permits by a priority draw system, the first priority shall be given to those individuals who have earned the highest number of preference points. Preference points shall be awarded as follows:

(A) One point shall be awarded to an individual for each year the individual is unsuccessful in obtaining, by a priority draw system, a deer permit that allows the taking of an antlered deer.

(B) If the individual fails to make at least one application or purchase one preference point within a period of five consecutive years, all earned points shall be lost.

(C) If an applicant obtains, by a priority draw system, a deer permit that allows the taking of an antlered deer, all earned points shall be lost.

(D) If the number of applicants with the most preference points exceeds the number of permits for specified units or permit types, then a drawing shall be held to determine the successful applicants.

(E) If an individual desires to apply for a preference point for a deer permit that allows the taking of antlered deer and not receive a permit, the person may apply for and receive a preference point by paying the proper application or preference point fee and making application during the application period specified in K.A.R. 115-25-9. No individual may apply for more than one preference point in the same calendar year, and no individual shall apply for a preference point in the same calendar year as the calendar year in which the individual is applying for a permit.

(c) Firearm antelope permit applications. In awarding firearm antelope permits, the first priority shall be given to those individuals who have earned the highest number of preference points. Preference points shall be awarded as follows:

(1) One point shall be awarded to an individual for each year the individual is unsuccessful in obtaining ~~an~~ a firearm antelope permit.

(2) If the individual fails to make at least one application or purchase one preference point within a period of five consecutive years, all earned points shall be lost.

(3) If an applicant obtains ~~either~~ a firearm ~~or archery~~ permit, all earned points shall be lost.

(4) If the number of applicants with the most preference points exceeds the number of permits for specified units or permit types, then a drawing shall be held to determine the successful applicants.

(5) If an individual desires to apply for a preference point for an antelope firearms permit that allows the taking of an antelope and not receive a permit, the person may apply for and receive a preference point by paying the preference point fee and making application during the application period specified in K.A.R. 115-25-7. No individual may apply for more than one preference point in the same calendar year, and no individual shall apply for a preference point in the same calendar year as the calendar year in which the individual is applying for a permit.

(d) Elk permit applications. An individual receiving a limited-quota elk permit shall not be eligible to apply for or receive an elk permit in subsequent seasons, with the following exceptions:

(1) An individual receiving an any-elk or a bull-only elk permit may apply for and receive an antlerless-only elk permit in subsequent seasons.

(2) An individual receiving a limited-quota, antlerless-only elk hunting permit shall not be eligible to apply for or receive a limited-quota, antlerless-only elk permit for a five-year period thereafter. Subject to subsection (d), however, this individual may apply for and receive an any-elk or bull-only elk permit without a waiting period.

(e) Wild turkey permit applications.

(1) When awarding wild turkey permits in units having a limited number of permits, the first priority shall be given to those individuals who did not receive a permit in a limited wild turkey unit during the previous year. All other applicants shall be given equal priority.

(2) In awarding a limited number of wild turkey permits by a priority draw system, the first priority shall be given to those individuals who have earned the highest number of preference points. Preference points shall be awarded as follows:

(A) One point shall be awarded to an individual for each year the individual is unsuccessful in obtaining, by a priority draw system, a wild turkey permit.

(B) If the individual fails to make at least one application or purchase one preference point within a period of five consecutive years, all earned points shall be lost.

(C) If an applicant obtains, by a priority draw system, a wild turkey permit, all earned points shall be lost.

(D) If the number of applicants with the most preference points exceeds the number of permits for specified units or permit types, then a drawing shall be held to determine the successful applicants.

(E) If an individual desires to apply for a preference point for a wild turkey permit and not receive a permit, the person may apply for and receive a preference point by paying the preference point fee and making application during the application period specified in K.A.R. 115-25-6. No individual may apply for more than one preference point in the same calendar year, and no individual shall apply for a preference point in the same calendar year as the calendar year in which the individual is applying for a permit. (Authorized by K.S.A. 32-807

and K.S.A. 2003 Supp. 32-937, as amended by ~~L. 2002, ch. 96, sec. 4~~ L. 2004, ch. 99, sec. 5, and  
L. 2004, ch. 99, sec. 12; implementing K.S.A. 2003 Supp. 32-937, as amended by ~~L. 2002, ch.~~  
~~96, sec. 4~~ L. 2004, ch. 99, sec. 5, and L. 2004 ch.99, sec. 12; effective Sept. 10, 1990; amended  
May 27, 1991; amended June 1, 2001; amended April 18, 2003; amended P-\_\_\_\_\_.)

## **ECONOMIC IMPACT STATEMENT**

**K.A.R. 115-4-11.** Big game permit applications.

**DESCRIPTION:** This regulation currently addresses permit application requirements for obtaining big game permits. As a result of 2004 legislation removing turkey from big game as well as public comment requesting the purchase of preference points in lieu of applying for a permit, the proposed changes would allow the purchase of preference points for limited draw deer and antelope permits, allow antelope hunters to purchase an unlimited archery antelope permit as well as apply for firearm antelope permits without losing preference points in the draw system and establish a preference point system for limited draw turkey permits.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACT:** The proposed amendments are not anticipated to have any appreciable economic impact on the department, other agencies, or the public.

**ALTERNATIVES CONSIDERED:** None.



**115-9-4. Hunting or furharvester license or permit purchase.** (a) Any individual required to have a certificate of completion of an approved hunter or bowhunter education course before purchasing a hunting license or permit, or an approved furharvester education course before purchasing a furharvester license or permit, may purchase a hunting or furharvester license or permit by attesting to the individual's successful completion of an approved hunter, bowhunter, or furharvester education course, respectively, at the time of purchase.

(b) The signature of the individual on the hunting, bowhunting, or furharvester license or permit, respectively, shall satisfy the attesting requirement of subsection (a). (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807, K.S.A. 2003 Supp. 32-912, ~~as amended by L. 2001, Ch. 13, Sec. 1,~~ and K.S.A. 2003 Supp. 32-920, as amended by L. 2004, Ch. 99, Sec. 2; effective Dec. 26, 1989; amended Feb. 22, 2002; amended P-\_\_\_\_\_.)

## **ECONOMIC IMPACT STATEMENT**

**K.A.R. 115-9-4.** Hunting or furharvester license purchase.

**DESCRIPTION:** This permanent regulation allows individuals purchasing a hunting or furharvester license to attest, by their signature, to the completion of a hunter or furharvester education course. This permits individuals to obtain a hunting or furharvester license without displaying their hunter education certificate or card. Due to legislation passed during the 2004 session as well as the addition of a nonresident bobcat permit, this proposal would simply add bowhunting and furharvester permits to the regulation, concerning attesting to completion of the required bowhunting or furharvester education course. This allows the sale of bowhunting or furharvester permits in situations when the buyer cannot physically demonstrate possession of the certificate. These situations include purchase of licenses as a gift, sale by the telephone, sale through the department's website, or instances when the buyer simply has forgotten his or her certificate. The underlying requirement for bowhunting or furharvester education continues to apply, but it would be checked by department officers when checking licenses in the field.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACTS:** Some number of license sales might occur due to the added convenience of the regulation due to this amendment. However, because the sales would likely have occurred anyway through some other form, any added revenue to the department is expected to be negligible. No other economic impacts on the department, other agencies, or the public are expected.

**ALTERNATIVES CONSIDERED:** None.

**115-11-2. Controlled shooting areas; operational requirements.** (a) Each controlled shooting areas area shall be posted as follows:

(1) Signs shall be made of metal, plastic, or wood and shall be not less than 15 inches by 15 inches.

(2) Signs shall legibly display the words “controlled shooting area” in block lettering that is not less than two inches in height.

(3) Signs shall be placed along the boundary of the controlled shooting area, at intervals of not more than 500 feet.

(b) The licensee shall keep the license and a copy of the laws and regulations pertaining to the controlled shooting areas posted in a conspicuous and readily available place at the headquarters of the area.

(c) If the license of the controlled shooting area is cancelled or revoked, the licensee shall remove all controlled shooting area signs from the boundary of the area within 30 days of the cancellation or revocation date.

(d) If a licensee fails to renew a controlled shooting area license, all controlled shooting area signs shall be removed from the boundary of the area before September 1.

(e) Only those game birds released on the controlled shooting area from August 15 through March 31 of the license period shall be credited toward the allowable take for the area.

(f) The licensee shall not take or permit the taking of more than 100 percent of the number of each species of game bird released on the controlled shooting area. These game bird species shall not be hunted on the area until a release of the game bird species has been made.

(g) The shooting hours for the taking of game birds released on controlled shooting areas

shall be from ½ hour before sunrise to sunset.

(h) Game birds taken on a controlled shooting area shall be accompanied during transportation from the area by a form provided by the department and completed by the licensee, which shall include the number and species of game birds being transported, the name and license number of the licensee, the date of harvest, and any other relevant information required by the secretary.

(i) Except as authorized under Kansas dog training and field trial regulations, only hand-reared mallard ducks may be recaptured by trapping after release.

(j) Hunting during the established seasons and in compliance with all laws and regulations governing the hunting activity may occur on a controlled shooting area for wildlife species not included in K.S.A. 32-943, and amendments thereto, ~~or~~ and for any wildlife species not included in the license issued for that controlled shooting area, including big game animals and wild turkeys for which the hunter has a valid permit issued by the department. The hunting, shooting, or taking of wild migratory waterfowl, however, shall be prohibited on each controlled shooting area used for the shooting of hand-reared mallard ducks.

(k) This regulation shall be effective on and after ~~July 1, 2002~~ April 1, 2005.

(Authorized by K.S.A. 32-948; implementing K.S.A. 32-945, K.S.A. 32-946, K.S.A. 32-947, and K.S.A. 32-948; effective Dec. 4, 1989; amended Aug. 31, 1992; amended July 1, 1999; amended July 1, 2002; amended P-\_\_\_\_\_.)

## **ECONOMIC IMPACT STATEMENT**

**K.A.R. 115-11-2.** Controlled shooting areas; operational requirements.

**DESCRIPTION:** This permanent regulation establishes operational procedures for controlled shooting areas. The proposed changes clarify that wild turkeys, now a separate regulatory category, may be hunted on the controlled shooting area within the established season and with established permits.

**FEDERAL MANDATE:** None.

**ECONOMIC IMPACT:** These proposed changes are consistent with current practice, and therefore no economic impacts on the department, other agencies, or the public are expected.

**ALTERNATIVES CONSIDERED:** None.

# **Secretary's Resolution**

## **KANSAS FREE FISHING DAYS**

Under authorities contained in K.S.A. 32-906(f), the dates of June 4 and 5, 2005 are established as "Free Fishing Days." All persons may fish in the waters of the State, by legal means, without a valid fishing license on these dates. All residents and visitors to the State of Kansas are encouraged to use this opportunity to enjoy our outdoor recreational resources.

\_\_\_\_\_  
Date

\_\_\_\_\_  
J. Michael Hayden, Secretary  
Kansas Department of Wildlife and Parks

# **Secretary's Resolution**

## **KANSAS FREE PARK ENTRANCE DAYS**

Under authorities contained in K.S.A. 32-906(e), the following dates:

January 15 & 16, 2005 – Milford SP	February 26 & 27, 2005 – Clinton SP
April 23 & 24, 2005 – Cheney SP	May 7 & 8, 2005 – Kanopolis SP
May 7 & 8, 2005 – Prairie Dog SP	May 7 & 8, 2005 – Meade SP
May 7 & 8, 2005 – Pomona SP	May 7, 2005 – Fall River SP
May 7, 2005 – Cross Timbers SP	May 7, 2005 – Elk City SP
June 4 & 5, 2005 – Crawford SP	June 4 & 5, 2005 – Scott SP
June 4, 2005 – Cross Timbers SP	June 12, 2005 – Hillsdale SP
June 18 & 19, 2005 – Wilson SP	July 9 & 10, 2005 – Cedar Bluff SP
July 16 & 17, 2005 – Webster SP	August 13 & 14, 2005 – Eisenhower SP
August 20 & 21, 2005 – Tuttle Creek SP	September 10, 2005 – Hillsdale SP
September 17 & 18, 2005 – Lovewell SP	September 24 & 25, 2005 – Perry SP
September 24, 2005 – Fall River SP	September 24 & 25, 2005 – Mushroom Rock
October 1 & 2, 2005 – El Dorado SP	October 1 & 2, 2005 – Sand Hills SP
October 9, 2005 – Prairie Spirit Rail Trail	October 29, 2005 – Elk City SP
November 5 & 6, 2005 – Glen Elder SP	

are established as “Free Park Entrance Days.” All persons may enter any of the above Kansas state parks free-of-charge. All residents and visitors to the State of Kansas are encouraged to use this opportunity to enjoy our outdoor recreational resources.

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Date

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J. Michael Hayden, Secretary  
Kansas Department of Wildlife and Parks