

**115-15-3. Threatened and endangered wildlife; special permits and enforcement actions.** (a) The following definitions shall apply only to this regulation:

(1) "Action" means an activity resulting in physical alteration of a listed species' critical habitat, physical disturbance of listed species, or destruction of individuals of a listed species.

(2) "Critical habitat" means either of the following:

(A) Specific geographic areas supporting a population of a listed species and including physical or biological features that meet the following requirements:

(i) Are essential to the conservation of the species; and

(ii) require special management or protection; or

(B) specific geographic areas not documented as currently supporting a population of a listed species, but determined essential for the conservation of the listed species by the secretary.

(3) "Habitat" means the abode where a listed species is generally found and where all essentials for survival and growth of the listed species are present.

(4) "Intentional destruction" means an act or attempt that is willful and is done for the purpose of, and results in, the killing of a threatened or endangered species.

(5) "Intentional taking" means an act or attempt that is willful and is done for the purpose of taking a threatened or endangered species. "Intentional taking" shall include "intentional destruction" as defined in paragraph (a)(4).

(6) "Listed species" means those species listed in K.A.R. 115-15-1.

(7) "Normal farming and ranching practices" shall include activities financed with private funds on private lands and government cost-shared, routine agricultural land treatment measures.

(8) "Permit from another state or federal agency" shall not include a certification or registration.

(9) "Publicly funded," when used to describe an action, means any action for which planning and implementation are wholly funded with monies from federal, state, or local units of government.

(10) "State or federally assisted," when used to describe an action, means any action receiving technical assistance or partial funding from a state or federal governmental agency.

(b) Each person sponsoring or responsible for a publicly funded action, a state or federally assisted action, or an action requiring a permit from another state or federal government agency shall apply to the secretary for an action permit on forms provided by the department, unless one of the following exceptions applies:

(1) An action permit shall not be required to conduct normal farming and ranching practices, unless a permit is required by another state or federal agency or these practices involve an intentional taking.

(2) An action permit shall not be required for the 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 the development involves an intentional taking.

(3) An action permit shall not be required for any activity for which a person has obtained a scientific, educational, or exhibition permit, pursuant to K.S.A. 32-952 and amendments thereto and K.A.R. 115-18-3.

(4) An action permit shall not be required for any species listed after July 1, 2016 if a recovery plan for the listed species is not completed within four years of the listing date, unless the species is listed as threatened or endangered under federal law or until a recovery plan for the listed species is completed.

(c) Each action permit application shall be submitted at least 90 days before the proposed starting date of the planned action and shall include the following information:

(1) Location and description of the proposed action and, if required, detailed plans of the proposed action;

(2) an assessment of potential impacts on the listed species or its critical habitat resulting from the proposed action; and

(3) proposed measures incorporated into the action plan to protect listed species or critical habitat of listed species.

(d) Each person sponsoring or responsible for an action for which an action permit is not required by subsection (b) and that will result in the intentional destruction of a member of any listed species shall apply to the secretary for an action permit on forms provided by the department. An action permit shall not be required for any activity for which a person has obtained a scientific, educational, or exhibition permit, pursuant to K.S.A. 32-952 and amendments thereto and K.A.R. 115-18-3. An action permit application shall be submitted at least 30 days before the proposed starting date of the planned action and shall include the following information:

(1) Location and description of the proposed action and, if required, detailed plans of the proposed action;

(2) an assessment of potential impacts on the listed species or its critical habitat resulting from the proposed action; and

(3) proposed measures incorporated into the action plan to protect listed species or critical habitat of listed species.

(e) An action permit required under subsection (b) or (d) shall be issued by the secretary pursuant to a timely and complete application, if the proposed action meets the requirements of the following:

(1) Sufficient mitigating or compensating measures to ensure protection of either critical habitats or listed species, or both as conditions require, cooperatively developed by the department and the applicant and incorporated into the proposed action; and

(2) all federal laws protecting listed species.

(f) A public hearing on the proposed action may be provided by the secretary before issuance of an action permit.

(g) In addition to other penalties prescribed by law, any action permit may be revoked by the secretary for any of the following reasons:

(1) Violation of conditions established by the permit;

(2) significant deviation of an action from the proposed action; or

(3) failure to perform or initiate performance of an action within one year after the proposed starting date, unless otherwise specified in the permit or an extension has been authorized in writing by the secretary after a determination of no significant change in the proposed action.

(h) Law enforcement action shall be undertaken only in cases of intentional taking.

(i) Nothing in this regulation shall be deemed to exempt a person from the requirement to acquire knowledge of the presence of a listed species by the exercise of due diligence once a listed species is known to exist within an area or the area is designated as critical habitat. This subsection shall be applied only to offenses or obligations arising under state statutes or regulations. (Authorized by K.S.A. 32-960b, K.S.A. 2016 Supp. 32-961, and K.S.A. 32-963; implementing K.S.A. 32-960b, K.S.A. 2016 Supp. 32-961, K.S.A. 32-962, and K.S.A. 32-963; effective Oct. 30, 1989; amended Dec. 29, 1997; amended February 16, 2018.)