

REVISED AGENDA
KANSAS DEPARTMENT OF WILDLIFE, PARKS & TOURISM
COMMISSION MEETING AND PUBLIC HEARING
Thursday, January 11, 2018
Milford Lake Conference Center
3710 Farnum Creek Rd
Milford, Kansas

- I. CALL TO ORDER AT 1:00 p.m.**
- II. INTRODUCTION OF COMMISSIONERS AND GUESTS**
- III. ADDITIONS AND DELETIONS TO AGENDA ITEMS**
- IV. APPROVAL OF THE November 16, 2017 MEETING MINUTES**
- V. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS**
- VI. DEPARTMENT REPORT**

2017 Sport Fish Restoration Outstanding Project Award Presentation (AFS presenting to Doug Nygren)

Partner in Conservation award from RMEF (Mason Cooper)

K-9 Presentation (Jason Sawyers)

A. Secretary's Remarks

- 1. Agency and State Fiscal Status (Robin Jennison)**
- 2. 2018 Legislature (Chris Tymeson)**

B. General Discussion

- 1. Commissioner Permit Update and Drawing (Mike Miller)**
- 2. Tourism Update (Linda Craghead)**
- 3. Threatened and Endangered Five Year Review (Ed Miller)**
- 4. Webless Migratory Bird Regulations (Richard Schultheis)**
- 5. Waterfowl Regulations (Tom Bidrowski)**
- 6. KAR 115-25-9a. Deer; open season, bag limit, and permits; additional considerations; Fort Riley. (Levi Jaster)**

C. Workshop Session

- 1. Antelope and Elk 25-Series Regulations (Matt Peek)**
- 2. Public Land Regulations (Stuart Schrag)**
- 3. Big Game Permanent Regulations (Levi Jaster)**
- 4. Deer 25-Series Regulations (Levi Jaster)**

5. Coast Guard Navigation Rules (Dan Hesket)

VII. RECESS AT 5:00 p.m.

VIII. RECONVENE AT 6:30 p.m.

IX. RE-INTRODUCTION OF COMMISSIONERS AND GUESTS

X. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS

XI. DEPARTMENT REPORT

Recognition of Fisheries Division Employees of the Year Awards (Doug Nygren)

D. Public Hearing

- 1. Free Park Entrance and Free Fishing Days by Secretary's Orders (Linda Lanterman)**
- 2. KAR 115-15-3. Threatened and endangered wildlife; special permits, and enforcement actions (Chris Berens)**
- 3. KAR 115-15-4. Recovery plans; procedures (Chris Berens)**

XII. OLD BUSINESS

XIII. OTHER BUSINESS

A. Future Meeting Locations and Dates

XIV. ADJOURNMENT

If necessary, the Commission will recess on January 11, 2018, to reconvene January 12, 2018, 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 22, 2018 at Kansas Historical Society, Topeka, KS.

**Kansas Department of Wildlife, Parks and Tourism
Commission Meeting Minutes
Thursday, November 16, 2017
Bryan Conference Center
416 S. Main (inside Wheatland Broadband)
Scott City, KS**

Subject to
Commission
Approval

The November 16, 2017 meeting of the Kansas Wildlife, Parks and Tourism Commission was called to order by Chairman Gerald Lauber at 1:00 p.m. at the Bryan Conference Center, Scott City. Chairman Lauber and Commissioners Ward Cassidy, Emerick Cross, Aaron Rider and Harrison Williams were present.

II. INTRODUCTION OF COMMISSIONERS, STAFF AND GUESTS

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

III. ADDITIONS AND DELETIONS TO AGENDA ITEMS

Sheila Kemmis - Jordan Hofmeier will be presenting the Threatened and Endangered Species Regulations under Workshop Session. (Agenda - Exhibit B).

IV. APPROVAL OF THE August 10, 2017 MEETING MINUTES

Commissioner Harrison Williams moved to approve the minutes, Commissioner Emerick Cross second. *Approved.* (Minutes – Exhibit C).

V. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS

Chairman Lauber - Nice tour this morning, went to Little Jerusalem and Scott State Park, Representative Don Hineman joined us. Appreciate courtesy and hospitality from community.

Paul Cramer – (*gave handout to commission, do not have one*). Handout shows last three years of turkey permits issued for Unit 4, 2015-2017. Looking at how many permits left after the draw. In 2015, more permits applied for than drawn; in 2017, had 40 permits left over. Could we allow leftover draw for those permits? At my dad's he does youth turkey hunting, trying to get youth involved for the first time and some of leftovers could be used to bring in kids. Our Unit 4 does not allow for out-of-state people to hunt or apply; why not allow leftover permits to go to out-of-state people? Went back to see how many permits left after the draw. You want to make money for the state and we want to use leftovers, so maybe have first-come first-serve leftover drawing like we do leftover deer permits. Ask you to look into that for me. Chairman Lauber – I will suggest we do, as it appears we have met resident demand, but not sure how much harvest the resource can handle. Secretary Jennison – Where do you live? Cramer - I live in Scott City, dad lives out by Scott Lake. Any day I go out there I have to drive through the turkeys, like a herd of cows, just to get to my dad's house; probably 400-500 turkeys in his yard every day. We had 29 people going turkey hunting and only one person didn't get a bird, but only because his gun didn't work, with 27 of those being kids.

Steve French, new conservation director for Kansas Bass Nation, Buhler – I have been involved

with bass nation for ten years, pretty exclusively with youth. Bass Pass that was changed this past year helped kids with desire to push forward with fishing, thank you for doing that. Look forward to working with the department over next few years, working on conservation with Doug Nygren and other staff. Appreciate what you do.

L.J. Coffman – Are you in receipt of letter I delivered to Mr. Ron Kaufman in Topeka in September 2017? Chairman Lauber – I don't have the letter. Coffman – I requested it be attached to the minutes. Sheila Kemmis – I saw the letter, but I did not attach it. Chairman Lauber – Maybe there was an oversight. Secretary – We will get the letter and get it distributed to the Commission. Coffman – Do I need to retype it? Chairman Lauber – No, we will get it distributed. Coffman – Distributed to whom? Chairman Lauber – The commission. Coffman – Thank you.

VI. DEPARTMENT REPORT

A. Secretary's Remarks

1. Agency and State Fiscal Status – Robin Jennison, Secretary, presented this update to the Commission (Exhibit D). Parks revenue continues to outperform previous years. It is 14 percent ahead of last year. To refresh your memory, Parks EDIF received a \$500,000 hit last year, so more reliant on Park Fee Fund (PFF) and that is significant drop you see; replenished some out of EDIF from Tourism and Administration; began year pretty close to same revenue as previous. Last month's revenues did not perform as good as past years, but can be explained by where a month ends, a weekday or weekend and how quickly monies get deposited, not concerned at this time. Cabin Fee Fund continuing to perform like it has last few years, up a little; unencumbered monies running ahead of last year. New graph is attempt to show advantage of Park Passport, started in 2013, under \$60,000 before implementing that now over \$120,000; this year \$100,000 with Park Passport alone. People getting annual pass to enter parks has had significant increase. Wildlife Fee Fund (WFF) performing similar, not seeing new fees you passed yet; similar fall off as before new fees, only outlier was 2011, not sure what that spike was. Expect WFF to be similar to last year and end with \$20 million. Got budget request back from the Budget Office, had supplemental this year and increases for 2019, it appears all of those accepted by the Budget Office and the Governor, which could influence these balances a little in Park and Wildlife fee funds. Unknown Audience – What was \$500,000 hit? Jennison – Our share of legislature trying to meet their budget obligations last year, we don't have any general fund money that EDIF money we in essence returned back to the state they used for something else. Because we do have our own money, not had to see reductions some of the other agencies have seen over last six years. We have some deferred maintenance in parks and wildlife side and managed to give a good number of employees a pay raise, some agencies haven't been able to do that.

2. 2017 Legislature – Chris Tymeson, chief legal counsel, presented this update to the Commission (Exhibit E). In between sessions, 2018 will start by next meeting. In two-year cycle, bills not passed still alive for next session; fairly successful last session in stopping issues we disagreed with and getting a few things through. SB 24 – Designating channel catfish as state fish of Kansas did not go anywhere. SB 25 – department initiative, dealt with dynamic pricing on cabin, had hearing in Senate where they added campsites in state parks, passed Senate 26-14 and went to House where it was derailed, first to Ag and Natural Resource Committee and transferred without hearing to House Commerce Committee and Labor, had hearing where there was an attempt to add other things the department didn't support and bill died as a result. Try to push forward again this year. SB 26 – increasing cap on vessel registration fee cap passed and signed by Governor in April and will discuss this evening in public hearing. SB 77 – Renamed property at Mined Land Wildlife Area after Rep. Bob Grant. Companion bill in the House and

that version passed. SB 86 - An amusement ride bill and deals with agritourism in our agency, bill passed quickly and dealt with safety requirements for amusement rides, but because of the fashion this passed, it encompassed more than intended. I think there will be an attempt this year to modify those rules. SB 161 – Attempt by Humane Society of U.S. Kansas chapter to amend statutes related to dangerous regulated animals and tighten restrictions on tigers, lions, bears, cheetahs, leopards and other cats. It did not go anywhere. SB 240 – which authorized purchase of property from Pheasants Forever in Sherman County, bill did not pass in this form, but provisions passed in HB 2407. HB 2098 – renamed bison herd after Bob Grant and we are in the process of doing that signage. HB 2191 – relates to law enforcement; on permits, licenses and stamps as we move toward electronic licensing; cleans up some issues. Bill was held over, passed originally in 2015 and died in Conference Committee and passed this last year and was signed by the Governor in April. HB 2192 – renames Lake Scott State Park to Historic Lake Scott State Park, Representative Don Hineman was a champion for us on that bill; signed by Governor in March. HB 2193 – would have phased in boater education just like hunter education; had a hearing and didn't go anywhere in House Agriculture and Natural Resources. HB 2199 – would have authorized county commissioners to regulate conservation easements on private property within their county, did not go anywhere. HB 2207 – was hunting on private land by written permission only bill; a lot of debate, different version passed and went to House floor and was referred back to Committee; don't think it will go anywhere. HB 2208 – dealt with transferrable deer permits, which is something the state tried back in early 2000s and it was a failure. It had a hearing in House Ag, did not get out of that committee, but there was an attempt to amend it onto our dynamic pricing for cabins bill where that failed; also attempted to added to budget bill as budget proviso and that failed also. HB 2407 – was the Sherman County land purchase that was signed by the Governor in June. For 2018, the department has a few initiatives; one would deal with fee caps, Commission increased fees two years ago that went into effect last year and we have reached those caps. For future administrations and commissions the department is going to propose to raise those so at some point the department will be able to keep up with inflation. Also, looking at initiative on Flint Hills Nature Trail and Little Jerusalem owned by The Nature Conservancy, to bring both of them into the state park system. Cabin fees dynamic pricing is still out there and a couple of law enforcement references to statutes that did not get changed back when Chapter 21 series overall went through two years ago and we need to clean up an item there. Also, boater education initiative and state fish initiative. Chairman Lauber – Anticipate transferable deer bill to come back with as much fervor? Tyemson – I think it will come back, but can't gauge level of support; don't think there is as much because we have had discussions, but the same people will still be pushing the issue. Jack Riley – Bill on amusement association, we have our own amusement association in Wichita County and have run into problems with insurance because of these new laws. Tyemson – The bill arose as a result of two incidents where two young children were killed and it didn't appear legislatively that the bills were going to move forward and then things went fast and there were some unintended consequences. One of those is associations such as yours, agritourism pumpkin patches and regulations of various rides. Bill was directed at larger amusement parks and traveling fairs and expects them to come back and rework that. This is a Department of Labor issue and we've tried to work with them, but they are hamstrung by what the legislature passed. Talked to representatives about the issue and in the process of developing a letter encouraging legislators to look at this issue and take action, which we expect they will, but we can't guarantee that. Riley – When we started our own fair it was to keep the price affordable, our tickets are 25 cents and one ticket per ride and we would like to keep it that way. Tyemson – The department is in agreement with your position, but it is convincing the legislature to go back and look at the issue.

B. General Discussion

1. Historic Lake Scott State Park Update – Greg Mills, park manager, presented this

update to the Commission (PowerPoint - Exhibit F). Brief overview of the park, as well as projects and updates we are working on. One of most interesting things in the park is the Steele Home, built by the first pioneers in area to set up shop. It's a house from 1880s and was recently put on the National Historic Register. It will take work to bring it up to date; the roof, foundation and clearing the walkway. I talked to Jeff Bender about this and if it goes on National Historical Register, several things will have to be done. The back is completely overgrown. There is a monument on the hill for the Steele family. The back of the house has foundation issues and we are working on that. A list of needs is roof repair, porch and awning not original may have to come off, south basement foundation is starting to crumble, gutters are not period, entrance door not original, spring house is north of home and is starting to fall apart, the sidewalk may have to be removed and some trees may have to be removed; key things we are looking at. Photo shows Mr. and Mrs. Steele and Merit Beeson, one of first game protectors for the state; his dad was Chalky Beeson, Longbranch Saloon owner in Dodge City so that ties Lake Scott to Longbranch Saloon. Have a museum in our office. The CCC camp stationed at Atwood came to rebuild the dam after it was destroyed by flood. They framed up the spillway and used a tumblebug to build up the dirt. One of our utility sites shows the foundation where the barracks were. Repair work needed on weir wall and engineering, Todd Workman and Secretary Jennison are formulating how to attack this problem. Beach house brought up to date with money raised through the community and should be good for another 75 years. Installed archery range this year, Aaron Austin (assistant Hunter Education coordinator) was vital in getting this going on the south end of the park and it has been extremely popular. Future projects: had money given to us by Scott Community Foundation and we're going to purchase new 9-hole disk golf course. There are very few Frisbee golf courses in western Kansas. Just beginning to reconfigure one of the main primitive campgrounds – increase from 16 to 33 sites, new fire rings and picnic tables. Also, received grant from Scott Community Foundation in conjunction with the (Marira) fund to buy a new playground. Buffalo owned by Richard Duff moved to new pasture so people can see them better, project Scott County and Scott Community Foundation paid for new fence. There are some whitish buffalo out there, and the goal is to have an all white one. Several us went on tour of Little Jerusalem, have short video to give people chance to see it. Commissioner Rider – How heavy will Frisbees have to be? Mills – 20 pounders. (*laughter*) Darrell Cramer - Upkeep at park is great and it is kept clean. Mills – I also have to slow down every day at Mr. Cramer's driveway because of turkeys. Cramer – Because I keep fresh clean water out every day. Mills – (*showed video- didn't play well*) Little Jerusalem will be phenomenal addition to the state park system. We invite you to come to Lake Scott. Mills introduced staff, Phil Gould, park ranger; Patsy Lisenby, administrative specialist; Larry Eberle, president of Friends Group, who has done more for the park than you can imagine, phenomenal to work with; and Dave Spalsbury is our fisheries biologist. There are a lot of fish in there and it's getting better and better.

2. Scott Riffle Beetle – Jordan Hofmeier, aquatic ecologist, Ecological Services Section, presented this report to the Commission (Exhibit G, PowerPoint – Exhibit H). We've done research on Scott Riffle beetle last couple of years, but it would not be possible without other people from ecological services, fisheries and people from U.S. Fish and Wildlife Service (USFWS) and thank Greg Mills for great work in the park and taking care of this special place. First described as a species in 1978, no one knew it existed before this and listed as state threatened right after that. Did population study in 1983-1984 to see what kind of numbers; Kansas Biological Survey did a distributional survey in 1990 to see how widespread the species was because only known to exist in Scott State Park, but after looking at several other areas in and outside of state it was determined that this is the only place on the planet it can be found. Their habitat is smaller than the room we are in right now. It was upgraded to endangered in 1993, and a recovery plan was developed in 2002. In 2013 a federal petition came through to list it as endangered on the Federal Endangered Species Act and that is in process now; set to have Species Status Assessment (SSA) process in the next year. The SSA is something the USFWS uses to get a handle on how the species is doing and whether it is warranted to be listed and are

bringing in states to get more involved in this process; one we were recently involved in was Arkansas Darter which ended in a “not warranted listing.” One of interesting things is the life history of this beetle is unstudied and no one knows how it carries out its life cycle. Other riffle beetles live one to two years as larva, bury themselves in a stream bank and pupate for a couple of weeks and emerge as adults, fly back into the stream and live for one to three years and breed a couple of times. These are pretty tiny and can be found at Big Spring, which is unique habitat in western Kansas. It is a special place. At one point this spring was channelized for human water consumption, but it now flows as a natural spring again. Threats could be non-native species, not right now but could be potential, shocked pond below the stream and found two-pound goldfish and a number of other species that weren’t helping the beetle, so have to keep eye on that. Habitat disturbance and degradation is big concern because it is so isolated. Right next to park office so they keep a good eye on it. Ground water quality also a concern because it is fed by Ogallala Aquifer and not regulated well in state and trying to address monitoring that. Biggest threat is potential dewatering of Ogallala Aquifer, only 8 feet depleted in this area, but over 100 feet depleted in parts of southwest Kansas, something to keep an eye on. Based on the research we have been doing, the population is stable. We replicated 1980s study – they found five larvae per rock and we found a few more, comparable numbers and encouraging that they are staying this stable over last 30 years. Establishing a management plan starting with no-spray area for herbicides and pesticides; remove non-native fish from spring pool as needed; looking at tree removal as they could affect flows; got bid for real time water quality monitoring equipment to be installed there, which will have alert system, may supplement area with additional rocks because they need rocks to attach to, do signage in museum if there is room and do federal programs to slow down ground water depletion. We will continue annual monitoring and intensive surveys every five years. May look at propagation in the future. Update recovery plan written in 2002. Commissioner Williams – What is reason for tree removal? Hofmeier – They weren’t there in past, but could be affecting flows in spring because of roots, they suck up more water in the spring when growing than in the fall; so to relieve pressure on the spring. Keith Sexson – What is USFWS timeline for making decision? Hofmeier – Start SSA in early 2018. Audience (possibly Dave Spalsbury) – Estimate discharge from the spring? Hofmeier – Hard to do flows coming from different directions and where they converge has a lot of vegetation; have measured from .25 to half of CFS; which is lower than historically measured. Not sure how accurate equipment was in 1940s. Greg Graff – In Leoti, GMDI looking at the same thing, getting handle on that and they take readings every 30 minutes to see how quickly going down and coming back. Hofmeier – Interesting to tie back to equipment we are looking at. Graff – Look at CREP and maybe tie together with you. Hofmeier – Sounds great.

Commissioner Gary Hayzlett came in.

3. Antelope and Elk 25-Series Regulations – Matt Peek, research game biologist, presented this report to the Commission. Antelope, KAR 115-25-7 (Exhibit I) – No significant changes expected. Have had season on pronghorn antelope since 1974 and use the same unit boundaries as deer. Units 2, 17 and 18 are open to pronghorn hunting. Most pronghorn exist in western couple of tiers of counties. Archery permits are good in all three units and these permits are unlimited and available over-the-counter for residents and nonresidents. Muzzleloader and firearm permits are unit specific so good in only one of the three specified units and are limited draw. The demand for pronghorn hunting is high; usually about 1,200 applications for 200-250 permits and typically takes 2-4 preference points or 2-4 years of applying for a general resident to draw a muzzleloader permit or 3-6 years for a general resident to draw a firearms permit. Half of the firearm and muzzleloader permits are allocated to landowners and tenants and in most cases landowners can get permits every year or every other year; occasionally it can take up to two years. Proposed hunting season dates are provided and season begins with a nine-day archery season, followed by a four-day muzzleloader-only season and four days of firearm season during which time muzzleloaders can hunt with firearm hunters. After the firearm season,

the following Saturday, archery opens back up for a little over two weeks. Typical success rates on pronghorn are 10-15 percent for archery, 60 percent for muzzleloader and 70 percent for firearm. Still gathering harvest reports from 2017 season and don't have permit allocations, but will have after we complete winter aerial surveys, usually in January. Chairman Lauber – Approximately how many antelope statewide? Peek - Approximately 3,000 or a little over. Chairman Lauber – And population is in these three areas in western Kansas? Other populations? Used to be one in the Flint Hills. Peek – There are about 30-40 animals in Flint Hills and some in Barber and Comanche county areas. Some were killed in fire in Clark County last year so a few left there. Pronghorn were also reintroduced at one time in Ellsworth County, but no longer any there. The two more isolated populations are Flint Hills and Barber/Comanche/Clark group. Chairman Lauber – Were Barber/Comanche/Clark reintroduced or natural? Peek – Yes, introduced at one time and occasionally animals from the west that moved into that herd and some have moved as far as McPherson County, believe from Ellsworth County and made their way eastward. Tymeson – Concern or comment that dealt with whether or not antelope was expanding in Lane County was visible herd and now further to the east; related by a farmer concerned about impacts. Is that herd expanding or is that relocation or dispersal of other animals? Peek – Outside of survey areas. We survey within each unit and I had not detected more harvest out of those eastern counties. Expect animals have moved from west and stayed, without hunting pressure will increase. Commissioner Williams – Do we survey areas over and over again, why not go outside those areas? Peek – Survey areas for consistencies, trying to monitor over time. It is important to survey heart of the area to know how population has changed. Can look at harvest per county to estimate the number or percentage of animals in a unit outside the area we survey. In Unit 2, 90 percent of animals harvested every year come from survey area, so as long as 10 percent stays consistent then extrapolating to assume the population outside survey area, but still within hunting unit has remained consistent. Commissioner Harrison – Since lost herd in Clark and Comanche counties, any plans to relocate or reintroduce more antelope in that area? Peek – Not that I am aware of and I am not sure we lost them all in that area. We have not discussed translocation. Chairman Lauber – What does it cost to trap and relocate? Do we do it from our own herd or try to trade with other states? Peek – Last reintroductions was in early 1990s, was from Colorado and before that Wyoming, not sure what it would cost. Chairman Lauber – An expensive proposition I would guess. Commissioner Williams – Trade for trade if that is a possibility? Peek – I'm sure there are landowners in western Kansas who would give some up now if we were to ask, so not have to go so far. Audience – How far from state line do you go before you start counting? Peek – In Unit 2, survey south of Gove. Steven Heinz - Heard you go 10 miles from state line before you start counting? Peek – Not true, transect is ½ mile, count every animal I see, we write down animals seen on Colorado side, but don't include them. Commissioner Cross – When you introduced them in Ellsworth, what happened? Peek – Just dwindled away; I don't have records of specifics. There are several places where rangeland looks good to the naked eye, but they're not good at crossing fences and coyotes can probably impact the population. Out west where population does well, we still lose 75 percent of young to coyotes every year. You get into area at edge of range, even though historically found over in Flint Hills. Fences, roads and various other barriers; it doesn't take a lot to impact a species at the edge of its range to make the difference of whether the population can persist; probably a combination of several things. LJ Coffman – In 2017, you have five national wildlife reservation parks? Peek – Five national wildlife refuges? LJ Coffman – You got permit to hunt big game? With a stationary map that does not match your brochure or your permit. Could you assist them with that funding? Chairman Lauber – Not sure what you are trying to ask. Coffman – Do you go on USFWS range? Chairman Lauber – Not very often. Coffman - What happens if your game staggers onto your land? Not wearing yellow cap or hunter safety orange. Chairman Lauber – Not sure I understand what you are saying. Don't know how we can deal with this. Coffman – I asked if you could assist with the funding. To have stationary map to match the permit? Chairman Lauber – Do we have a map that matches the permit? Coffman – Do you, last time I checked you don't? Chairman Lauber - I don't know, I

will look into that. Coffman – Thank you.

Elk, KAR 115-25-8 (Exhibits J, K, L) – Since 1999 increasing private land opportunity, where and who may hunt them. Have 6.5-month-long hunting season and unlimited hunting opportunities in most of the state. Unit 1 is unit around Cimarron National Grassland and is closed to elk hunting. It holds occasional elk but not in predictable or huntable numbers; Unit 2a is Fort Riley and Unit 2 is buffer area that includes Fort Riley and several miles of private land; and Unit 3 is remainder of the state. More hunting is provided on private land, particularly in Unit 3. The intent is to provide landowners the opportunity to maintain elk at desirable numbers on their own property while at the same time allowing the Fort Riley and Cimarron herds to be maintained. This framework has been fairly effective at limiting damage complaints, but we do have a few changes to recommend this year in order to better address a couple specific damage complaints. One is a change in the north boundary of Unit 2, the Fort Riley buffer area, and I will do that following the discussion on this regulation. The other is the establishment of an early firearm season from August 1-31, statewide except in Unit 2a, on Fort Riley, and Unit 3, Cimarron National Grasslands, which is closed to hunting. Hunters will be able to rifle elk hunt in August to better address crop damage complaints. When we've had crop damage complaints, we're often trying to get by zon guns and various scare tactics until September 1 when hunting pressure can be applied. An earlier legal hunting opportunity would allow the problem to be addressed quicker, and it would seem to have minimal downside. It seems unlikely that those who have access to elk would shift hunting pressure to this early season unless they have the incentive of damage removal. We don't think this season will draw additional hunting to people who already have access to elk; August is not the most desirable time of year to hunt big game and especially elk because you are going to have to act quickly to save the meat. This will provide an opportunity where crop damage is occurring and to be used instead of depredation permits. Chairman Lauber – If out of Fort Riley area you can get an over-the-counter statewide permit, except for those areas? Peek – Yes? Chairman Lauber – You also say bulls shed by mid-August; do they carry their antlers that long? Peek – I meant shed their velvet. Spoke to biologists in Colorado and they indicated in certain places there is some demand for killing velvet bulls and that would be the one potential demand besides for crop damage. Commissioner Cassidy – If a landowner has elk on his property and wants to shoot them, technically he would have to buy a license on Tuesday and shoot it on Wednesday? Is there a youth elk permit? Peek – Yes, there is a youth price discount. Now a landowner could see the elk, buy the permit and shoot the elk, no longer next day stipulation, now same day. Commissioner Cassidy – Now same day? I had question this morning while driving down here, he has three bull elk on property. Peek – Right, restricted by equipment right now, it would have to be a bow. Current season is ongoing and don't anticipate other changes besides August season. Tymeson – Do you have any harvest reports? Peek – On Fort Riley, seven bulls and eight cows have been harvested and off Fort Riley heard of maybe three out west.

Jack Riley – Back in 1980s when established elk hunting in this state, I was at that meeting and recommended one in a lifetime on bull elk. There is no stipulation on over-the-counter license on whether you can still obtain a bull license on Fort Riley? Peek – Correct, once in a lifetime does apply for Fort Riley; if limited draw, once in a lifetime, if antlerless elk it is once every five years. Riley – Doesn't stipulate that in regulations when you buy an over-the-counter license? Peek – Right, it doesn't apply to over-the-counter. Riley – But it doesn't say that in the instructions. Peek – I will see if we can get that corrected. Riley - In favor of August elk season, used to guide elk hunters in Colorado, season opens there August 15 for archery for bull only for same stipulation you are putting out. They can turn over sprinklers trying to rub the felt off their antlers, they are strong animals.

Steven Heinz, Coolridge, Hamilton County – We turned in for elk damage on silage corn and not sure August 1 is early enough because as soon as corn is silking the elk move in. This year we were done harvesting by September 2, as soon as corn is gone, elk are gone. Damage of \$106 an acre, which is considerable on 400 acre field. Would like to see July 15 season start. Land lies up

against Ark River and come out of sandhills to the east. The herd has 43 elk and another herd over between Syracuse and Kindle and no one knows how large it is, seeing on field cameras and tracks. Another herd between Kindle and Lakin. Had one nice bull shot this year with black powder and after that we haven't seen them. On July 17 drove down in there and irrigating and was within 100 yards of a bull in the trail. Jennison – In a typical year when do you start silking? Heinz – Middle of July. Peek – Our plan is to address elk damage that occurs before August 1 with damage control permits. So you will be able to have an agent who can assist you with removal. So there will be opportunity to remove elk when damage is occurring. Heinz – Who do I talk to? Peek – The local district biologist and I will help set you up with Kurt, but I will assist as well. Moving to 7.5 month season and permits are available over-the-counter to any general resident or half price to the landowner. We have made a series of progressive steps to allow landowners to deal with damage to property. My harvest reports I have received from Hamilton County only documented one elk per year being harvested out of that herd. There is a combination of things going on and hunting pressure needs to be applied as currently allowed under existing hunting seasons. Heinz – After corn is harvested along the river they go back to sandhills to the south and will lay down in low spots and you can't see them. Chairman Lauber – Do damage at night? Heinz – Up until this year, they knock it down when they bed down. Robin was out and seen it. Chairman Lauber – Do damage remediation. Heinz – Like to see general landowner permits be free, we are feeding them. Livestock damage, landowners and tenants control it and if cattle are out eating crops, I can collect for that, but you don't ever want to take responsibility even though you control what can happen. Chairman Lauber – We may control them, but the agency doesn't own them. I understand, I was raised with cattle. If we tried to do something like that, everybody has a permit and try to game the system, then we are without resources to protect and to ensure equitable harvest for everybody. Trying to do what we can do to minimize your damage, but to change entire structure may have unintended consequences. Heinz – I don't expect all this to happen tomorrow, food for thought. Jennison – These are dramatic steps we are taking. I rode around with Steve, they have 400 acres on Arkansas River and elk bedded down there, we went out last year to try to control them and weren't really effective. We are moving hunting opportunities to August 1 and before the agency did not use depredation permits for elk, so that will be new next year. Depredation permit will be free and they can utilize the meat. If elk move in before hunting season, they can get someone out under depredation permit and we are hoping this will take care of the problem. Heinz – Appreciate all you are doing. Peek – Notifying neighboring landowners and hunters I know that hunt close to there and told them we were looking at a depredation-type removal this summer and they will assist with that a little; one very agreeable to that.

Jack Riley – Comment on landowners behalf, if depredation, issue licenses to him to provide to hunters, they do that in Colorado. That is like years ago when we introduced elk into Morton County and they said they were going to keep the herd to 50 head, and when you fly overhead and see 48 head and issue two licenses. How many cows and calves, use good sense. Before long had representatives from Oklahoma and Colorado complaining of the damage caused and all we told them was we don't own the elk. They opened season on them with over-the-counter \$25 permits and took out 300 elk in one year, which is why we don't have elk in Morton County. He has problems and needs to be able to control it. I have tried to hunt along the river and a lot of those landowners protect the elk and it costs you \$2,000 to come in and hunt them. The ones like him who will let you come in and hunt, elk will move 20 miles a night feeding, they are not always on his land. On damage control situation, issue him five permits and he can assign to somebody to kill five elk on his land only, like in Colorado.

Peek – One more, KAR 115-4-6 establishes elk management units. This summer, we had a couple crop damage complaints about elk north of Fort Riley that have taken up permanent residence north of Leonardville and roads that run east and west of there. We want to move that buffer down south so those elk north of Leonardville so no longer restricted to landowner/tenants, but open to general residents can be used to address that herd. Boundary previously ran through middle of Tuttle Creek Reservoir and ran east and west along Green

Randolph Road and propose to move that down to Highway 24 and 77 through Leonardville. The one thing is the map says 22nd road and that should say Barton Road. Kemmis – I gave them a new map. The buffer was originally intended to see that there wasn't a firing line waiting as soon as the elk stepped across the boundary of Fort Riley, it was meant to protect that herd. Landowners that fall under stipulations can still hunt within that buffer. Audience – How many points does it take to get elk firearm permit? Peek – It is a bonus point, so every year you apply you get one chance into the draw and if you have been applying for five years you would have five chances. It is hard to calculate odds of success. Before when it was just a draw, everybody was on same level for odds of drawing, about a half percent chance of drawing a Fort Riley permit if you were a general resident. Fort Riley military personnel had a better chance. A general resident wanting to hunt Fort Riley had a .5 percent chance of drawing the any elk tag and a 1.5 percent chance of drawing an antlerless elk tag. Audience – I have been trying since I was 16. Peek – About 25-27 people draw each year.

Tymeson – On Mr. Cramer's issue brought forward earlier, the regulation allows for leftover permits to be sold on a daily basis so that is an available option on turkey permits. Youth permits are available and can be used in all units until they are 16. Cramer – What about out-of-state deal? Tymeson – The only issue you raised not covered is nonresidents being allowed to participate in the leftover draw.

Break

4. Public Land Regulations – Stuart Schrag, director, Public Lands Division, presented this report to the Commission (Exhibit M). Gave updated proposal, had last minute addition from briefing book. On certain wildlife areas we have youth mentor areas, so under age restrictions, adding weekends and holidays only to Hillsdale Wildlife Area in Region 2, open to anybody during the week to allow more access and opportunity. Under boating restrictions, no motorized boats, add Neosho Wildlife Area stating motorized watercraft permitted only during the waterfowl season, no motorized watercraft allowed in pools 4A and 4B (for some unique walk in areas) and no out-of-water propeller driven watercraft permitted any time, no airboats; and under no gasoline engine powered boats, add Tuttle Creek Wildlife Area Olsburg Marsh in Region 2. Under daily hunt permits which is iSportsman Program, for Region 1 add Talmo Marsh and for Region 2 add Blue Valley Wildlife Area and statewide section add i-WIHA. Wes Sowards – iWIHA is new program, one of agency's missions is to provide unique opportunity for use and appreciation of natural resources of Kansas consistent with the conservation of those resources. In a state that is 98 percent privately owned, that task is even more important and difficult. In 1995, with hunter participation declining nationwide, the increasing popularity of private hunting leases and liability concerns amongst other factors, the Walk-in Hunting Access (WIHA) program was born. Its sole intent was to lease hunting rights from private landowners to allow access to these properties for hunting without obtaining permission. The program grew to over one million acres by 2004 and the spring turkey hunting program and special hunts on private lands were added to address other access issues, with lack of urban access at top of that list. The Special Hunts program has only been able to offer a very limited number of opportunities near urban areas and has remained stagnate for several years. In an effort to readdress urban access, the agency has begun a pilot program called iWIHA. This program takes the limited use special hunts concept and ties it to the iSportsmen application that is currently being used by wildlife areas in the state. By tying access it will allow us to limit use by setting occupancy for each tract, increased participation with the ability to check in to see if there are still vacancies and capture harvest and use data to better manage the land. Pilot program was kicked off two weeks ago and is available in 18 urban counties near Kansas City, Lawrence, Topeka and Wichita areas. Currently one tract is enrolled and is seeing significant use by hunters. We are optimistic iWIHA will assist our efforts to provide the public with opportunities for use and appreciation of the natural resources of Kansas. Audience – Where is iWIHA located? Sowards – Osage County and

is on our website under hunting programs. We see this supplementing our regular WIHA program, especially in urban areas. LJ Coffman – Your walk-in areas you don't require permission each time? Sowards – We gain permission from the private landowners for the right for anybody to hunt. We have contracts with each individual. Coffman – (*could not hear, did not come to the microphone*) Chairman Lauber – Hard to hear when you don't come to the microphone. Coffman - Mass shooting, professor studying behavior and development of that occurring, you need to be more responsible. Sowards – I don't know see how mass shootings has anything to do with public land access.

5. Coast Guard Navigation Rules – Dan Heskett, boating law enforcement officer, presented this update to the Commission (Exhibit N - *read handout*). To provide boating infrastructures, law enforcement, public education, aids to navigation, search and rescue and administrative duties, KDWPT relies heavily on Recreational Boating Safety federal dollars administered through the United States Coast Guard, Recreational Boating Safety Division. Every three years, the U.S. Coast Guard conducts an on-site visit with the Boating Law Administrators of the states to look over the components required within the agreement between the state and the federal government and to inform the state of any inadequacies or deficiencies discovered that relate to changes in Code of Federal Regulations (CFR) or problems with program implementation. On August 8-9, 2017, an on-site review of our program was conducted. Though most of our program was found in compliance, one issue requires an action plan to be addressed in front of this commission. Language from the letter dated on August 16, 2017 from the United States Coast Guard states, “Deficiencies in the following areas were noted that require corrective action by the state: State Boating Laws and Regulations – The Kansas Boating Statutes addressing navigation must contain terminology consistent with the Inland Navigation Rules (NAVRULES) found in Title 33 CFR Part 83. This may be accomplished by adopting 33 CFR Part 83 by reference.” Today, this is the proposal brought forth in front of this commission. “By authority granted to the Secretary of KDWPT in K.S.A. 32-1119 (k), the Secretary is hereby authorized to adopt, in accordance with K.S.A. 1989 Supp. 32-805 and amendments thereto, rules and regulations required to carry out in the most effective manner, all of the provisions of this act and to alter, modify or supplement the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or with the navigation rules promulgated by the United States coast guard. Under (l) The Secretary is hereby authorized to establish and maintain, for the operation of vessels on the waters of this state, pilot rules in conformity with the pilot rules contained in the federal navigation laws or the navigation rules promulgated by the United States Coast Guard.” The proposal is to adopt 33 CFR title 83 by reference as a regulation. Chairman Lauber – In general discussion I think we all agree. Jack Riley – Understand what he is saying about CFR rules, have to deal with those in truck industry. When we adopt those and you put something out for the public to read it has to be where we can understand it. I got stopped by a game warden for pulling rubber raft behind my boat with one of my kids with a lifejacket on, he said it was because raft was not numbered. I asked about inner tube being pulled for fun, and he said this was a craft and I said it was not defined that way and he let me go, but I had to take it off the water. So it is a point of the public being able to understand what CFR rules are. Heskett – I can answer that. In 1972, collision at seas was a policy that was adopted by the coast guard, basically in two parts, ocean going and inland waters portion. In 1981, they changed that to 1981 coll. regs., which means collision regulations, but it wasn't a CFR, it was actually a policy to give states guidance in developing inland rules and navigation rules. In 2013, the Coast Guard started trying to put that policy into a CFR and they got it done. Their push now is to try to get all of the states in compliance with that CFR. They didn't change the language like in a normal CFR, which I agree with you is difficult to understand. This is written more like a policy and is almost bullet items and not everything in here will pertain to our state, but if it doesn't pertain it doesn't matter. There suggestion is to adopt it by reference so there is no discrepancy of what their CFR is. So it is much more user friendly in the language. Chairman Lauber – It doesn't add

additional rules that we don't already have? Heskett – No. Chairman Lauber – It makes sure we cover airboats with the right terminology. Heskett – If anything it covers some of the questions we get on commercial side of things we don't have, like dredging and things like that where I have to revert back to the CFR anyway because dredging occurs on navigable waters on Kansas or Missouri rivers. Chairman Lauber – It is not going to be a series of new regulations. Heskett – No. Chairman Lauber – It is making sure we agree to the same terminology. I have pulled a tube behind my bass boat and I didn't have numbers on it either, since I blew it up I didn't look at it as a craft. Riley – That is the sign of good game warden just trying to do his job, but like a police officer, they can warn you and let you go or write you a ticket. Heskett – These are set up by rule, 30-802 is rule 2 and 803 is rule 3. On rule b, it states “in construing and complying with these rules due regard shall be had to all dangers in navigation inclusion and to any special circumstances including the limitation of vessel involved which may make a departure from these rules necessary to avoid immediate danger.” Basically it says, if we were working an accident and even if rules of the road weren't followed, but done to try and avoid the collision there is no fault. It is that piece, right at the beginning that outlines how this is. Riley – That is good because safety is first.

C. Workshop Session

1. Big Game Regulations - Levi Jaster, big game research biologist, presented this report to the Commission (Exhibit O). 115-4-2, general provisions, which include registration and what information is needed on carcass tag and procedures for transferring meat to another person. In recent years we've had minor changes, last year elk hunters were given ability to electronically register their animal, Not proposing any changes for this regulation. 115-4-4, legal equipment; specifies equipment, clothing requirements and shooting hours. Typically equipment is reviewed over longer time period and as of right now there has been some interest by small handful of individuals interested in airbows, but we're not proposing changes this year. 115-4-6, management units. We want to keep those the same so we can monitor trends, see what the population is on a yearly basis so we want to avoid changing those if we can, but want to be able to do good management. No changes proposed. 115-4-11, big game and wild turkey permit applications, sets up procedures for drawing and the number and what to do when applicants exceed availability. No changes proposed. 115-4-13, deer permits descriptions and restrictions, this outlines what permits we offer and as of last year we stopped offering either-species antlerless-only permits due to growing concerns about mule deer and that led us to the lowest antlerless mule deer harvest since the 1980s. Continuing to monitor harvest rates on mule deer and if that is the case again this year there will be no further antlerless permits put out. No proposed changes. Chairman Lauber – These show no change at this time. Jaster – Wanted to provide opportunity for comments or review of issues identified. Commissioner Cassidy – Is there any tracking done on deer road kill by county? Jaster – Deer/vehicle accidents are reported by KDOT.

2. Deer 25-Series Regulations - Levi Jaster, big game research biologist, presented this report to the Commission (Exhibit P, Season Dates Chart – Exhibit Q). Sets dates based on equipment and youth and disabled season. For 2018, same framework as 2017. Biggest change is youth, youth/designated persons season which traditionally begins first Saturday of September; in 2018 the first Saturday is September 1, which is also the opening day of dove season. Proposing moving that opener back a week to start on September 8. Both archery and muzzleloader season would start on September 17 and continue same traditional length of time. You can see dates on the handout I provided. Commissioner Rider – Had emails from a couple of gentleman who wanted muzzleloader season open a week later due to extreme temperatures. Is that a week later than previous? Jaster – Yes, typically first Saturday, but because of calendar cycle a week later, typically September 1 through 4 or 5. Chairman Lauber – I agree muzzleloader season as early as it is can be really hot, but problem with trying to adjust seasons, as you begin to give a closer

date to the season they prefer they feel intrusion from other groups, muzzleloaders and archery; understand why, but will be a perennial complaint to have that earlier. Don't see how we can change without stepping on archery season. Jaster – We can take a look. Proposed change here might be opportunity to see how that is received. Chairman Lauber – We can tell constituents we got it accomplished this year. Jaster – Proposing to continue in 2018 and 2019 in areas where there is whitetail antlerless-only season in January; some of those units where only one permit is valid would get only one day in 2019 again, as occurred this year. So we are going to move the pre-rut antlerless season to the same weekend as Columbus Day and provide that Monday to allow three days during that season, which is a holiday for some hunters and give more opportunity in those areas that may only get one day. Youth and disability season: September 8-16, 2018; Early muzzleloader: September 17-30, 2018; Archery: September 17 – December 31, 2018; pre-rut WAO: October 6-8, 2018; Regular Firearm: November 28 – December 9, 2018; first Extended WAO would have one-day, six-day or thirteen-day season based on how population assessments are going. It also allows extended archery season in Unit 19, from January 14-31. These will be brought forward again at January meeting in workshop again. Jack Riley – Agree with concerns about muzzleloader and archery, needs to be respect and compromise somewhere. Youth season opening first Saturday of September is also always Labor Day weekend and you will see more traffic and more accidents because of that. Consider moving it up a week.

3. Threatened and Endangered Species Regulations – Jordan Hofmeier, aquatic ecologist, Ecological Services Section, presented this report to the Commission (Exhibit R). This is something you have seen before. There have been proposed changes to threatened and endangered species laws, KAR 115-15-3 and 115-15-4. Changes have been published in the Kansas Register and to my knowledge will be voted on at the January commission meeting. Mostly these are slight changes to permit exemptions and new requirements that any new listed species has to have a recovery plan developed within four years and now some annual reporting requirements to committees on Ag and Natural Resources. Same status as last meeting. Chairman Lauber – Do we have new species? Hofmeier – We do not. Next year we begin reviewing petitions so that will be determined next year whether species will be added or removed from the list. Chairman Lauber – This is the petition for state so we have a task force who will make those recommendations. Hofmeier – Correct.

XIII. Other Business (moved from end of evening)

A. Future Meeting Locations and Dates

January 11, 2018 – Milford, Acorn Lodge

March 22, 2018 – Topeka, Kansas Historical Society

After discussion dates were selected: April 26, Chanute; and June 21, Wichita (designation of national water trail).

Jack Riley – Lifetime licenses, if holder for hunting and/or fishing, no grandfather clause. For hunting, since 1985 when lifetime licenses became available, could shoot a bobcat on hunting license without having to have a furharvester license; now I have to buy one. What about paddlefish, I never used to have to have a permit. I have lifetime hatchery stamp on mine, one of 187. My whole family has lifetime hunting and fishing licenses. Why no provision for that, there was originally? Understood it was grandfathered and didn't have to keep paying for anything, only big game permits. Chairman Lauber – I have a lifetime license too, but never thought of that. Riley – I have gone paddlefishing twice, but the point is if I wanted to go, used to catch one and take it to a check station, now I have to buy permits, I should have been grandfathered. I have had a lifetime license for over 30 years. Chairman Lauber – I see your point, but don't

totally agree. Being a holder of a lifetime license we like all the perks that come with it, but should be some sort of limit to that. Don't know if owning a lifetime license is a constitutional right or state contract, is it subject to reasonable adjustments. Riley - When first established lifetime license availability I talked at meetings then and if my memory serves me we were told only had to purchase big game permits. Asked about what if things changed. Chairman Lauber - Wasn't the hatchery stamp the first time this came up? Chairman Lauber - I don't know, Ramburg had an article about it one time. I would be happy to appoint legal department to research that. Tymeson - Law doesn't say anything about that, only big game. Riley - Got in argument with game warden some time ago about whether I should have a trout stamp or not because that is an addition to fisheries and he said he would look into it, next time I saw him he said nobody had any answers. I still buy a trout stamp. A point of respect, I don't want to have to read the rules every time to find out I have to buy a stamp to hunt chukars, fish for trout or whatever, that was one of the reasons we talked about a lifetime license. Chairman Lauber - Don't have answer right now. Jack Riley - Didn't figure you would just need you to look at that. Chairman Lauber - I agree, we will have a response. Tymeson - I only have back to 1989 and it only says you are guaranteed the same benefits and privileges as a resident if you move out as a nonresident. Kemmis - Do you know when that was? Riley - 1985, same year we allowed pistols to be able to hunt deer. Said it would go by numbers on licenses, because of lack of money bought lifetime hunting license first, then a year later a fishing license, they were too big to carry in your wallet so I sent them to Pratt later and they combined cards onto one card, but that changed my number from under 200 to 1,167, so don't know if that was recorded either. Larry Eberle - Also, lifetime license holder and bought fishing first and my number is 22 and I am not giving that up, then hunting a year later in 1982 or 1983. When they came out with hatchery stamp, first thought was that I didn't like it. I believe, when they came out with that it was to build the Milford Hatchery, which has done great for fishing here in Kansas, so I have no problem with it. Would I like my fee back that I paid back then, yes but what is a few bucks. I have a different attitude, good or bad, and it is good to look into it. Not against that at all, but have to live until 2399 to get full use of my lifetime hunting and fishing license.

VII. RECESS AT 3:50 p.m.

VIII. RECONVENE AT 6:30 p.m.

IX. RE-INTRODUCTION OF COMMISSIONERS AND GUESTS

X. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS

LJ Coffman - Did you get letter yet? Chairman Lauber - No, but intent is to get letter the first part of the week. Coffman - Can I read a few excerpts from publication? Chairman Lauber - No, it is not necessary we have the publication. Coffman - I was told not to read this publication in its entirety, why would I be told something like that? Chairman Lauber - Do you have any comment. Coffman - On page 19, orange required "all deer hunters and persons assisting them must wear orange during an open firearm or muzzleloader season. An orange hat and at least 200 square inches of orange is required, of this 100 square inches must be visible from the front and 100 square inches must be visible from the back on upper half of the body. Camouflage orange providing the required orange is legal." Page 48, same publication, appears to be a juvenile in a yellow cap. Chairman Lauber - We went through this before, the way the picture is. Coffman - This was published in 2016 as well as 2017. Chairman Lauber - I have had law enforcement remove you from... (cut off) Coffman - My name is Miss LJ Coffman. Chairman Lauber - ...before. Coffman - I was not able to make a logical contribution to your republication. This is a kid, who are you instructing?

B. General Discussion (continued)

6. Playa Lakes Progress Update – Joe Kramer, Ducks Unlimited, presented this update to the Commission (PowerPoint - Exhibit S). Special Project Manager in Kansas, Abe Lollar, DU biologist out of Garden City. Happy to talk to Commission and staff about playa lakes here in Scott City since it is in the middle of cluster of west-central playas. There are 20,000 playa lakes in western Kansas. The Playa Lakes Joint Venture has mapped the playa lakes; we have clusters, southwest, west-central and northwest clusters. Playa lakes used to be called lagoons and buffalo wallows, and problem areas. Playa lakes are shallow, temporary wetland basins at the bottom of the watershed; clay lined, generally round in shape; rainfall and runoff-dependent, no streams, creeks or rivers run into them; provide aquifer recharge and water quality benefits; and occur in relatively arid areas, which drive the important wet/dry cycle. The ecology of a playa requires a wet/dry cycle; certain things evolve that require the playa to be dry. Important for biodiversity, they are most diverse landscape in western plains and support 185 birds, 450 plants, 13 amphibians and 37 mammal species at some point in their life cycle and lines up with Central Flyway Migratory Bird Corridor. People are interested in water quality and playas provide large percent of recharge. Water quality and quantity is another issue, wildlife does not have to be first, people care about water quality and the aquifer and water quality and quantity for the long-term growth of western Kansas. They are almost entirely on private lands; historically on short- to mid-grass prairie and have been degraded or modified by pits, ditching, land leveling and sedimentation. DU has had little presence in western Kansas until a couple of years ago, spent most of their time on public land, not private land. Historically a small number of wetland programs approved from 1995 to 2014, only 40 wetland reserve program (WRP) projects compared to 193 in the east; only two a year in western Kansas. The DU playa campaign kicked off in 2015 when they hired me as a part-time playa coordinator. We held partner meetings and landowner workshops and acquired funding from the North American Waterfowl Conservation Act (NAWCA), \$600,000 in funding and another \$900,000 in line to be approved next year. Had large workshops in Garden City in January 2017 and plan it to be an annual event. We are going to have another one in Colby January 9 and 10, 2018. Hired Abe Lollar as a full time biologist, he worked for Wildlife and Parks in Garden City and he has a lot of experience with playas. Applied for \$5 million from NRCS regional conservation priority program for the next five years.

Abe Lollar – Talk about programs we are promoting and successes. Thank partners for helping us out, especially KDWPT for partnership with DU and without help of the department, success stories would not have happened. Four big projects, some federally funded, some state funded and some are programs DU provides. The biggest one is the NRCS wetland reserve easement (WRE) program, which is a long-term conservation program for playas and other wetlands, 30 year or perpetual easements. Another program is conservation reserve program (CRP) new practice, 38B, which is migratory bird/pollinator practice, it is a 10-15 year contract, reverse bid, landowner told FSA how much their land was worth to go into a conservation practice, up to \$300 an acre. DU has cost share program that can be tied in with WRE or CRP and can go outside the area to do projects NRCS or FSA might not be able to fund; KDWPT has a similar cost share program called Habitat First as well as Walk-in Hunting Access (WIHA) program. A couple of years ago western third of state only got two WRE applications a year, now 27 in 2016/17 totaling over 900 acres offered into WRE and partners plan to break that record in the future. Numbers for 38B, FSA had 10,000 acres for first five years and for first batch period they had over 15,000 acres with 328 individuals applying to get into program. FSA had to do some changes and so far have accepted 95 applications, just under 4,000 acres and will be competitive to get into this program. KDWPT has done a great job of enrolling these lands into WIHA; close to 500 playas in the western half of the state enrolled, just over 2,000 acres; 500 opportunities for waterfowl hunters in the high plains to go hunting on a wet playa and an opportunity for upland hunters as well. DU and our partners have \$3 million for restoration projects.

Kramer - Successful because of partnerships; aggressive outreach and education, Kansas Alliance for Wetlands and Streams has excellent outreach that promotes playa lake work; Playa

Lake Joint Venture has increased public awareness; low hanging fruit, playas untapped resource before, with landowners having never heard of available conservation programs; improved funding through Farm Bill and NAWCA; one of the things that helps farmers look at this program is low commodity prices; and extended drought cycle. Deliverables: design and build playa projects already enrolled, hire PF playa biologist for Colby through RCPP, hold annual workshops, continue to increase outreach, continue to refine priorities through research and improved modeling to maximize conservation benefits, continue partnerships, in NAWCA-4 and NAWCA-5 next year. We are working on grants and match, community outreach, corporate donations, easements and acquisitions. Lollar – What makes a playa is the wet/dry cycle; dry cycle allows the wind to push out sediment which is how they are formed over time. Kramer – Ford County has some public land playas, Herron Playa, Wild Turkey Playa (first playa purchased in 1991) and Stein Playa; are good examples and well managed; agency has done excellent job to acquire playa lakes. KDWPT has been doing playa lake work for over 30 years, and agency has been leader in Playa Lake Joint Venture in six-state area.

XI. DEPARTMENT REPORT

D. Public Hearing

Notice and Submission Forms (Exhibit T).

1. KAR 115-2-1. Amount of fees – Mike Miller, chief of Information Production Section and magazine editor, presented this update to the Commission (Exhibit U). Establishing a 365-day license. Talked about at last few meetings and came out of Auto-renewal committee who felt this was a better deal for constituents. Spreadsheet shows licenses available for 365-day and auto-renewal. Still doing testing and tentatively planning on allowing purchase beginning December 15, but would not be valid until January 1. In the past could buy 2018 license December 15 and it would be good for rest of 2017 and 2018, but because of the way we do federal aid this license is going to be recorded on the day it becomes valid and we need to do that on January 1. If this is passed hunting or fishing license would be valid for 365 days from date of purchase. Commissioner Rider – Will you send email to people? Miller – If we have their email we will, but not requiring email for this one, but are for auto-renewal to be able to check if credit card is still valid and those types of things. Commissioner Rider – Talked to several people and think this is great idea. Miller – Had a young college student call me in September and he was wondering why his license was going to expire in three months and I didn’t have a good answer for him. Agency talked about adding a promo code or a discount for people who buy multiple issuances at one time. If you buy five or more items at one time you get a five percent discount off of total price; an attempt to reduce churn, we want to them buy everything they are going to need over the next year before they decide whether they are going to go or not, so giving them an incentive to do this.

Commissioner Aaron Rider moved to approve KAR 115-2-1 as presented to the Commission. Commissioner Harrison Williams second.

The roll call vote on to approve was as follows (Exhibit V):

Commissioner Cassidy	Yes
Commissioner Cross	Yes
Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	Yes
Commissioner Lauber	Yes

The motion as presented passed 6-0.

2. KAR 115-2-4. Boat Fees – Mike Miller, chief of Information Production Section and magazine editor, presented this update to the Commission (Exhibit W). We talked about this at several meetings and Chris and legislative team was able to pass legislation that raises the cap on boating registration fees. We were at that cap, \$30 for three years, and the last time it was raised was in 2006; asked to raise it to \$40 for three years. That money goes into boating fee fund, which we used to pay for boating law enforcement, navigation aids, boating education and use it to capture wildlife and sportfish restoration money and national Coast Guard grants.

Commissioner Gary Hayzlett moved to approve KAR 115-2-4 as presented to the Commission. Commissioner Ward Cassidy second.

The roll call vote on to approve was as follows (Exhibit X):

Commissioner Cassidy	Yes
Commissioner Cross	Yes
Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	Yes
Commissioner Lauber	Yes

The motion as presented passed 6-0.

3. KAR 115-2-3. Camping, utility, and other fees – Linda Lanterman, Parks Division director, presented this report to the Commission (Exhibit Y). This is to vote on seasonal camping utility increase for El Dorado State Park. For one utility, \$335.50; two utilities \$395.50; and three utilities; \$455.50. In addition would need an annual camp.

Commissioner Ward Cassidy moved to approve KAR 115-2-3 camping utilities as presented to the Commission. Commissioner Gary Hayzlett second.

The roll call vote on to approve was as follows (Exhibit Z):

Commissioner Cassidy	Yes
Commissioner Cross	Yes
Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	Yes
Commissioner Lauber	Yes

The motion as presented passed 6-0.

Lanterman – In addition to that we are going to vote on cabin fees with over 65 percent occupancy, there are 38 cabins. In the prime season right now it is very difficult to get a cabin on a weekend and we require two nights stay on a weekend and we want to increase those \$10 a night; so on a weekend that will be \$20 because you have two nights. During the weekday it will be an extra \$5 a night on those 38 cabins. (Exhibit AA – cabin list)

Commissioner Gary Hayzlett moved to approve cabin fee increase as presented to the Commission. Commissioner Aaron Rider second.

The roll call vote on to approve was as follows:

Commissioner Cassidy	Yes
Commissioner Cross	Yes
Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	Yes
Commissioner Lauber	Yes

The motion as presented passed 6-0.

3. KAR 115-2-6. Other fees – Steve Adams, special assistant, presented this update to the Commission (Exhibit BB). This regulation sets the permit fees charged for privately owned cabins and related facilities on public lands. Updating this fee structure is a condition of the master lease the department has with the Bureau of Reclamation (BOR) for all of the properties we manage a portion of in the state. Specifically this would affect three BOR properties managed by the department; Cedar Bluff, Webster and Lovewell state parks. We had a long-term master lease that expired this summer and in renewal of that master lease there was a necessity to reflect a federal regulation passed in the 1980s that requires a fair market value be for private exclusive use on public lands. The BOR contracted for appraisals to determine what those values would be and those are the values in the draft regulation. The department, hoping to lessen the impact on private cabin owners is asking to phase in this increased fee structure over a five-year period. In the future that fee structure would be adjusting according to the Consumer Price Index on a five-year cycle with first adjustment in 2023, 2028 and 2033. Chairman Lauber – As I understand this the fees are going up quite a bit and we don't have any choice. Adams – Correct. Chairman Lauber – We are obligated to collect these. We serve as a pass through. Adams – No, the fees stay with us but we are being required to update the fees by the federal regulation and it is a condition of our lease. Chairman Lauber – There are a lot of really expensive properties that have been paying a small price for a long time.

Commissioner Harrison Williams moved to approve KAR 115-2-6 as presented to the Commission. Commissioner Aaron Rider second.

The roll call vote on to approve was as follows (Exhibit CC):

Commissioner Cassidy	Yes
Commissioner Cross	Yes
Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	Yes
Commissioner Lauber	Yes

The motion as presented passed 6-0.

5. KAR 115-7-1. Fishing; legal equipment, methods of taking, and other provisions – Doug Nygren, Fisheries Division director, presented this report to the Commission (Exhibit DD). Under methods of take, each individual snagging for paddlefish shall use barbless hooks.

Commissioner Gary Hayzlett moved to approve KAR 115-7-1 as presented to the Commission. Commissioner Emerick Cross second.

The roll call vote on to approve was as follows (Exhibit EE):

Commissioner Cassidy	Yes
Commissioner Cross	Yes

Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	Yes
Commissioner Lauber	Yes

The motion as presented passed 6-0.

6. KAR 115-7-4. Fish; processing and possession – Doug Nygren, Fisheries Division director, presented this report to the Commission (Exhibit FF). Change would require donation of sportfish to be accompanied with a dated written notice that includes the donor’s printed name, signature, address and license number. Jack Dorhman – I catch a lot of fish and give them away and this is a pain. In my opinion do we really need this law? The way I read this law is, if I am out in the boat with four guys and two catch four fish and two don’t catch any, and as gentlemen we want to give the other guys two fish to take home so I am going to have to give them a signature to take with the fish. Is that right? Nygren – That is the intent, yes. Dorhman – Why do we have to have another law there. I am a fish-a-holic and catch a lot of fish and I clean a lot of fish and take it home and I give a lot of fish away. My brother passed away early this spring and since he always took fish to his wife and they distributed it his four siblings; I can bless her and she can bless her family and now she is going to have to have tags to pass it on down. It will be a complicated mess. I can do it, but I don’t really want to. Imagine an officer trying to enforce this. How is he going to know when the boat comes in who has the fish? It is going to make people tell little lies. At the cleaning station when five or six guys are cleaning fish, how are we going to keep those fish separate? Since law enforcement heard that I give my sister-in-law fish so they have to get a warrant to go check my deep freeze, it seems like a senseless law. Chairman Lauber – I get your point. The problem is there are certain times where this would prevent overharvesting of certain fish, like walleye, an unfair harvesting of certain fish. It is my hope this will be used with discretion by law enforcement in an effort to try and catch problem anglers. I am going to have to start thinking about this too because I have an old couple I give fish to. I see the reason why and I see your point.

Jay Smith, Concordia – I think the main reason for this rule is, I fish a lot and sometimes I have someone with me and we will both catch our five fish limit and I give him my five and on the way home he gets stopped by the game warden and now he has ten fish he needs to explain. I think that was the reason for this. Chairman Lauber – That is another good reason too.

Commissioner Ward Cassidy moved to approve KAR 115-7-4 as presented to the Commission. Commissioner Harrison Williams second.

The roll call vote on to approve was as follows (Exhibit GG):

Commissioner Cassidy	Yes
Commissioner Cross	Yes
Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	Yes
Commissioner Lauber	Yes

The motion as presented passed 6-0.

7. KAR 115-7-10. Fishing; special provisions– Doug Nygren, Fisheries Division director, presented this report to the Commission (Exhibit HH). This has amendments to the Aquatic Invasive Species designated waters list. I have good news, usually we come adding new lakes, but this year we want to remove Kingman State Fishing Lake from the list because we

have eradicated white perch. We renovated the lake a few years ago and have gone for five years without seeing white perch so we want to celebrate that and take it off the list. We do have some additions: Tuttle Creek reservoir detected zebra mussel population and we also detected zebra mussels in a private lake in McPherson County, don't know how they got there but we may be working with those folks to do something to eradicate them; haven't taken any action yet as it would require cooperation of the landowner, but we do want to put it on the list. Commissioner Ward – Are zebra mussels mostly transported from water to water by vessels? Nygren – It can be a lot of different ways, vegetation on the boat trailer if moved from one body of water to another. Anytime you don't, clean, drain and dry there is a potential for them to be transferred. There is some evidence that they can move on the backs of turtles if they move from one drainage to another, they could be attached to their shell. Generally are moved around by people moving water in bait containers, by boats or water caught in trailers.

Commissioner Emerick Cross moved to approve KAR 115-7-10 as presented to the Commission. Commissioner Gary Hayzlett second.

The roll call vote on to approve was as follows (Exhibit II):

Commissioner Cassidy	Yes
Commissioner Cross	Yes
Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	Yes
Commissioner Lauber	Yes

The motion as presented passed 6-0.

8. KAR 115-17-2. Commercial sale of fish bait– Doug Nygren, Fisheries Division director, presented this report to the Commission (Exhibit JJ). Proposing amendment that would allow for the legal sale of dead gizzard shad sold as bait. Currently not allowed to be sold, an oversight as they have been sold in bait stores for years and since they are dead we don't care. Rusty's Bait Shop out of Anthony is biggest supplier and we want to make it legal for him to do what he has been doing for a long time.

Commissioner Ward Cassidy moved to approve KAR 115-17-2 as presented to the Commission. Commissioner Aaron Rider second.

The roll call vote on to approve was as follows (Exhibit KK):

Commissioner Cassidy	Yes
Commissioner Cross	Yes
Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	Yes
Commissioner Lauber	Yes

The motion as presented passed 6-0.

9. KAR 115-17-3. Commercial fish bait permit; requirement, application, and general provisions– Doug Nygren, Fisheries Division director, presented this report to the Commission (Exhibit LL). Historically we have required commercial bait dealers to renew their permit annually and in discussions with my staff that oversee these bait dealer permits and applications we feel it would be better use of our time and theirs to allow them a permit good for three years

like we do for boat registrations. We will continue to do what we do with inspections and checking for invasive species, but permit will be good for three years.

Commissioner Harrison Williams moved to approve KAR 115-17-3 as presented to the Commission. Commissioner Aaron Rider second.

The roll call vote on to approve was as follows (Exhibit MM):

Commissioner Cassidy	Yes
Commissioner Cross	Yes
Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	Yes
Commissioner Lauber	Yes

The motion as presented passed 6-0.

10. KAR 115-18-12. Trout permit; requirements, restrictions, and permit duration – Doug Nygren, Fisheries Division director, presented this report to the Commission (Exhibit NN). In keeping with desire to go to a 365-day license this amendment would make a trout permit good for 365 days from the date of purchase.

Commissioner Gary Hayzlett moved to approve KAR 115-18-12 as presented to the Commission. Commissioner Aaron Rider second.

The roll call vote on to approve was as follows (Exhibit OO):

Commissioner Cassidy	Yes
Commissioner Cross	Yes
Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	Yes
Commissioner Lauber	Yes

The motion as presented passed 6-0.

11. KAR 115-18-19. Paddlefish permit, requirements, restrictions, and permit duration – Doug Nygren, Fisheries Division director, presented this report to the Commission (Exhibit PP). We wanted to make it easier for children to participate in paddlefish fishing. In the past they would have had to purchase a permit of their own. This proposal basically would allow youth to snag when accompanied by permitted adult with at least one unused tag. We do that currently with trout fishing, if an adult has a trout permit the child can contribute to creel with up to two fish. This will be good to get more youth learning about paddlefish snagging. The only permits we sell right now are to adults. LJ Coffman – These kids, where do you find them? Nygren – If there is an adult in a family who wants to take a child to one of our designated paddlefish snagging areas that is where we find them. Coffman – I was a little disappointed in your Pass It On program in this publication because I was told that you do not conduct KBI background checks for mentors. Is that true? Nygren – That is not in my shop, you will have to ask somebody else that question. Chairman Lauber – You mean, if I want to take my grandson fishing does the department run a KBI background check on me? Coffman – A mentor? Chairman Lauber – I would be his mentor. Coffman – That leaves it pretty open. Chairman Lauber – I can put my grandson in a car and drive 70 miles an hour... Heskett – Mr. Chairman, there is a motion on the floor. Chairman Lauber – I appreciate that.

Commissioner Gary Hayzlett moved to approve KAR 115-18-19 as presented to the Commission. Commissioner Emerick Cross second.

The roll call vote on to approve was as follows (Exhibit QQ):

Commissioner Cassidy	Out of the room
Commissioner Cross	Yes
Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	Yes
Commissioner Lauber	Yes

The motion as presented passed 5-0.

12. KAR 115-18-20. Tournament black bass pass; requirements, restrictions, and pass duration – Doug Nygren, Fisheries Division director, presented this report to the Commission (Exhibit RR). Similar to what we have done with other permits, this one would change from a calendar year to good one year (365 days) from the date of purchase for bass pass permittee.

Commissioner Emerick Cross moved to approve KAR 115-18-20 as presented to the Commission. Commissioner Gary Hayzlett second.

The roll call vote on to approve was as follows (Exhibit SS):

Commissioner Cassidy	Yes
Commissioner Cross	Yes
Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	Yes
Commissioner Lauber	Yes

The motion as presented passed 6-0.

13. KAR 115-25-14. Fishing; creel limit, size limit, possession limit, and open season – Doug Nygren, Fisheries Division director, presented this report to the Commission (Exhibit TT, Tuttle Creek Proposal – Exhibit UU). We have two things to do here, the actual regulation and the reference document. Talk about regulation changes first then reference document and then vote. We are going to require people being able to tell the difference between a blue catfish and channel catfish and have separate creel limits; 10 channel catfish a day and five blue catfish statewide. We can have special regulations that are different from that, but we are going to split them out and manage those populations differently. Also, we are looking at changing the wiper statewide creel which is currently two, to 5-day; we have ability to produce unlimited number of wipers and in the past we had to acquire them from other states through trades or gifts; we are self sufficient now and we can be more liberal with wiper population in lakes. Biologists will still have the ability, through the reference document, to restrict the harvest on certain lakes as needed. Currently Cedar Bluff Stilling Basin and Sandsage Bison Range are type 1 trout waters and we propose changing both of these to type 2 waters; Scott State Park is currently a type 2 water and we want to change that to a type 1 water. That covers all of the changes to the regulation. Chairman Lauber – We vote on the regulations changes, we do not vote on reference document? Tymeson – The reference document is part of the regulations you are voting on, so all at once. Chairman Lauber – You can hit on reference document. Nygren - Changes to the reference document in briefing book do not show what has readily been added or deleted: I will

do quick high level review of changes to reference document. I will not read them all, but will pick the ones that are most controversial. At Milford reservoir, adding 25- to 40-inch slot length limit and no more than one fish over 40 inches on blue catfish. At Glen Elder changing to a 21-inch minimum length limit on smallmouth bass. Cedar Bluff reservoir is part of our walleye initiative and we want to increase the length limit to 21-inch minimum and also asking to change to a 10-inch minimum length limit on crappie at Cedar Bluff. At Marion reservoir we are requesting to reduce the creel from 50-day to 20-day and the same at El Dorado. Tuttle Creek reservoir, we have a developing blue catfish population there and I sent you all a sheet of information from Eli Makings (Exhibit UU) explaining what he is trying to do there and why he feels it is important to protect those fish while we are waiting for the population to become well established in hopes that we will have natural reproduction to continue to stock it. The sheet explained some of the reasoning behind it and also answered some of the questions the public have asked about the impact of blue catfish on other species in the lake, primarily crappie. Eli is confident, based on what we know about blue catfish that the blue catfish population we are establishing at Tuttle will not be detrimental to the crappie population. Had an unusual situation out at Liberal at Arkalon Recreation Area, we had to designate that as catch and release only at the request of KDHE because most of the water going through those ponds is coming directly from the city's sewage treatment plant and they had concerns about bacteria viruses; so that lake is no longer available for people to harvest fish in but people can still fish there. We have a big list of lakes that we have, even though we have changed the creel to 5-day on wiper, there is still a long list of lakes that will still have 2-day creel limit on wipers via the reference document; there has been some question about the fact that Milford reservoir is going to 2-day to 5-day. That takes care of length and creel items but we have some additional items to discuss. We are developing a new program on some of the small ponds we have had as kids fishing ponds in the past where we have had problems with adults coming and catching the fish without any kids along; so we wanted to make a stronger program that would set those fish aside primarily for children, but we do want children to be able to fish with their family members or friends so we are proposing youth/mentor designation and that is going to be at Dodge City Demon Lake and Pratt Kids Pond outside the headquarters for this year; and have probably another dozen or so that are in the works to bring to you next year, but haven't worked out the details with state park or community lake folks that are involved. Chairman Lauber – Controversy I have been dealing with is threefold; slot limit at Milford, received comments on both sides of the argument with many of them well thought out and intentioned. Second has been putting 35-inch length limit on Tuttle Creek, a couple of guys here tonight have brought us a series of petitions and while we haven't studied them carefully for any duplicate signatures I believe they represent what the tallies provided by the surveyors say and this group is in lopsided nonsupport of department recommendation. Third item was wipers at Milford and while I understand Milford is a good wiper fishery I don't think people realize we have lots of wipers, but wipers don't reproduce and we can increase wipers or more often than not, up until this year, everyone was complaining wipers were eating everything out there because we put too many wipers in too many bodies of water. We have some people here tonight and they can speak and I think at last two meetings have heard clear crisp opinions, well presented on both sides. Asking you to limit this to some extent, I think I know what groups point are, not invalid, but also see where department is coming from. A compromise would make it worse than it is now, I think we have to go with department's recommendation or nothing, so I don't want to encourage amendments. Whatever we do somebody is going to be disappointed. Mr. Dohrman has provided the petition and has been nice to deal with so if you would come up and state your position and I am guessing group with you would agree with basically what you have to say.

Jack Dohrman – You have the survey (Exhibit VV). Are we going with Milford first or Tuttle?

Chairman Lauber – That is one vote and the two you are concerned about are both folded into the reference document. It will either be a vote to put in a slot limit and a minimum size limit, it is not going to be one or the other. Dohrman – They won't be separated? Chairman Lauber – No, they are all together in the reference document. Dohrman – On the surveys, I took that to Derek's

Bait Shop in Tuttle Creek, the only bait shop in Manhattan; they were surprised when I brought that in October 13 because they didn't know anything about this. Left survey and told them what was going on, 167 no and not one yes. On survey on Milford 72.2 percent against and 27.8 percent for it; and one of those signatures was a biologist who said they were against it because they were eating the crappie. I also talked to city commissioners and Tom Phillips, State Representative of Riley County and they are upset about it and don't like it. Clay County park in Wakefield is where my camper is for 8 months at about \$2,000 and talked to park manager there, Mark Carney and asked him how many he thought he would lose because of this and he said 15 percent, about 40 campers. Losing \$2,000 from me and I spend another \$500 around the town; 40 times \$2,500 is \$100,000 leaving Clay County park. Doing dishonor not to present to you; information on catfish venom sting, if I don't present it you will be making a decision you don't want to make. Chairman Lauber – What does catfish venom sting have to do with blue cats? Dohrman – I will read to you; catfish venom, pectoral and dorsal fins, catfish venom glands are found as sharp boney spines on edges pectoral and dorsal fins. These spines can be locked in place and when catfish is threatened, membrane is torn releasing venom into the wound, and severe tissue neurosis occurs and all materials say to seek medical attention. I was punctured by blue catfish on June 20, and my thumb swelled and is still swelled up five months later. I didn't think much about it but it bleed profusely; got a steroid shot, but doctor was concerned; I went to ER and it cost me \$744. I don't think you should make this decision without knowing this Chairman Lauber – How does that relate to blue catfish, as a kid I had bullhead sting? Dohrman – As I move along you will understand. I met a person at Wakefield and we talked about this meeting here and she said her husband was in hospital two days, Scott Francis who lives at Wakefield, from a catfish sting. A friend of mine caught a blue catfish and while measuring it had sting in foot through his rubber boots. Another man, Donald Cawker, Jr. from Hillsboro, Missouri, 44 years old, died May 29 from infection caused by catfish sting. Chairman Lauber – Does this have to do with the fact; assume for argument purposes that blue catfish are dangerous fish, but still a lot of angler want to harvest them; is your point going to ultimately be that by trying to measure them you increase the chances of getting hurt? Dohrman – Yes. Can I make one more quick point? I went to OSHA and they said you were going to probably wear a protective glove and then when I told them my friend was punctured through the boot, he said there were going to have to wear a Kevlar glove. My point is I do not think that we as citizens, can vote to make a law that is exposing the people to hazardous situations; you got to measure them and they are flopping around. Chairman Lauber – Heard fair amount of logic, more people are killed by whitetail deer than blue catfish; so we shouldn't allow people to hunt deer because they may get kicked in the head or impaled by antlers; I see your point, but for purposes of this discussion I don't think that is a meaningful argument. This detracts from position you had at the last meeting, which was we want to harvest more fish and you mentioned you hate to have your grandson catch a 15 pound fish and have to throw it back even though it was the biggest fish they had ever caught; that resonated with me. The fact that catfish and bullheads have a toxin, I don't think that can be used to influence any votes. Dohrman – I understand your point. Chairman Lauber - We get it. I can get survey and place with certain amount of posture and get desired result; we don't know that 180 people signed no because they didn't want someone mad at them; not saying that is what happened, but this is not scientific survey method. Anybody disagree with me? Commissioner Williams – Yes. Going off your last presentation from August meeting at Cheney, not what you said today, but I am disappointed that all of this ran together and made into one vote. I was assuming we would have maybe two or three votes. Tymeson – That is not how the regulatory process works, we vote on a regulation that contains the information, we don't break it up into sections. If you want to amend something that is certainly an option for Commission at any time. Commissioner Williams – Prior to the vote, correct? Tymeson – There is a process we have to follow; if the Commission desires to amend something; there would be a vote on the amendment, but ultimately you finally vote on the entire regulation. Commissioner Williams – Okay, thank you Chris. In August in Cheney your argument, as Commissioner Lauber stated, seemed to gather more support than what you were presenting today. I know you

have several other people with you and if they have anything I would like Commission to hear what they have to say on this. I have a stack of emails I received regarding complaints on that regulation.

Mike Knoblock – Here to voice concerns about new regulation for blue catfish at Milford and Tuttle Creek, and we sent each of you a lengthy email three week ago, so not going to rehash that. Our opposition was threefold: they bear no similarity to commonly employed practices in other states; we believe overpopulation of blue cats will decimate other game fish and we feel this is well underway and maybe irreversible at both Milford and Tuttle Creek; and we believe people will be in peril trying to measure them when they catch them. Rather than go over these in detail again I am going to take a different approach because I want to focus on the narrative we have heard, both oral and written by KDWPT personnel in advancing and supporting these regulations. It appears to us that puzzling statements have been made to justify what they want to do. At meeting in Pratt on August 23, included Jack and myself and Mr. Nygren, two other individuals were present, not certain who was who. One of the attendees said, “there are way too many of these smaller fish in Milford and we need you guys to thin them out,” by smaller he was talking about fish less than 25 inches in length. We responded that if that was what they wanted why didn’t they raise the creel limit 15 to 20 or 25 like the other states do; their reaction was immediate, they don’t want to do that. Talked about proceeding with caution. Considering the fact that there are several hundred thousand fish less than 25 inches, how can they be thinned out at five per person? That might work for a five-acre farm pond, but not for a lake that covers near 25 square miles and impounds over 300,000 acre feet of water. Along same line Mr. Nygren forwarded email that contained the following sentence found in the body of the forward so we assume author was someone other than Mr. Nygren himself, it said, “The proposed regulation will allow for enhanced harvest of short fish to reduce competition among the short fish length groups and improve body condition and performance of shorter fish,” the stated objective is to enhance the harvest of shorter fish, but is that how it is going to work in the real world? When people are fishing for blue cat they often keep two or three shorter fish, 23- to 25-inch fish, but not 15- to 18-inch fish because not worth fooling with. Will they do this knowing they can combine with one or two bigger fish, maybe 10-12 pounds, which makes a worthwhile daily creel limit and are content with that. If regulation is adopted we believe there is not going to be any enhanced harvest because a significant number of other people won’t be back at all. As Jack said, the manager of Clay County park said, in an informal survey, that 40 or more people won’t even come back. We also know a number of other people we know who said they are not going to be back either and that is just the ones we know about and what about the ones we don’t know about. It seems to us this will have the reverse affect and will reduce harvest of short fish. When we came in tonight we found a sheet on Tuttle Creek that goes along with this. I am going to read the third paragraph, “It is also assumed that the proposed change to a 25 to 40 inch protected slot length limit for blue catfish at Milford Reservoir could result in an increase in the harvest rate at Tuttle Creek Reservoir. Since blue catfish in the 25 to 40 inch range will be protected at Milford, then anglers seeking to harvest fish in that range may shift their efforts to the nearby Tuttle Creek Reservoir because the majority of the fish are of that size or soon will be.” Part of the justification for Milford slot is because they want to increase the harvest of the shorter fish, but now we are telling them they can just go fish at Tuttle Creek and catch a little bigger fish there. This seems to be contradictory to what you want to accomplish. You say too many less than 25-inch fish it also has to mean there can be too many of any size blues and that is what other states have concluded. I have study from state of Oklahoma done several years ago; they did a five-year in depth research program that culminated in adopting a law for one fish over 30 inches in Oklahoma in conjunction with a creel limit of 15 fish a day. It says, “A liberal creel limit is warranted. Our evidence of a density dependent growth response also suggests the need for a liberal creel limit.” What they mean by density dependent growth response is you can have too many of these fish pretty easy and they are all competing for the same food source so it stunts their growth. That explains the rationale of Oklahoma’s 15 fish a day along with one under 30 inches. Put this in different perspective, a blue catfish just under 30 inches will average about

13 pounds so 15 of these fish would have a combined live weight of 200 pounds; a fish just under 25 inches is about 6.5 pounds, which means five fish weigh 32 pounds; a huge difference. If you really want to thin them out by employing an enhanced harvest, this is how you do it. I don't know if our people are aware of this study or not. I don't know what they used to factor in their thinking. One more thing, as stated earlier, on October 17 Mr. Nygren forwarded an email to you about the meeting we attended in Pratt; Mr. Nygren's opening narrative includes the following, they want to know slot limit, propose creel limit of five fish a day and one over 32; "this would essentially be a no change recommendation as few anglers catch more than one over 32 inches". That phrase is confusing to us because it doesn't seem to support what we see and know, 32 inches is about 15 pounds. Consider statement in totality, remember whole slot limit is predicated on premise that there is too many fish being harvested inside this slot and 32 inches is right in the middle of the slot, but if Mr. Nygren believes few anglers catch more than one over 32 inches, then where is the problem? That doesn't sound like an excessive harvest. It might be for a 10-acre county lake, but for a lake that covers over 25 square miles? He says few anglers, how many is that? I went to Milford with Jack once this summer, August 2 and 3, and we weighed and measured all of the fish and plotted a graph, my records showed we measured and weighed 11 fish. Six of the 11 fish were more than 32 inches on just this one trip. Jack kept a diary for last year on trips to Milford; results of trip in August was not unique, it was typical. Sometimes he wrote several big blues, when he says that he means something more than 20 pounds; sometimes he said several over 20 pounds and one time said two companions with limits including four fish from 20-30 pounds. It is typical to catch four or more of these fish on a two-day trip to Milford, in fact that can be replicated every trip for 10 years means there has to be a whole lot more of these fish than a few. Does that mean Jack is one of few, not really because he is acquainted with a lot of people who compare results and there are a whole lot more than a few anglers who catch more than one fish over 32 inches. Two days ago we visited with a man who operates a bait shop in Salina and he voluntarily said he fished Milford and can catch more than 20 fish and we fish from the bank and can catch 20 or more fish. More to the point is there are a lot of these big fish in there, so Mr. Nygren's assertion that one over 32 inches is a no change recommendation doesn't make sense because we are saying is quite the contrary, it would be a huge change for a lot of people and greatly reduce the size of harvest inside the slot that he wants if we did that. We are not proposing a compromise. We had originally proposed a regulation similar to Oklahoma and other states be adopted, one fish over 30, 32 or 34 and no slot, but we are backing off of that now. This issue is so controversial and divisive we believe it would be wise for Commission to postpone action. Mr. Nygren's email on the 17th says that, if the proposal doesn't pass in the current form we would like to have our catfish committee regroup and make a new recommendation for next year and we support that for both Milford and Tuttle Creek. Chairman Lauber – I think that is exactly what we are going to have to do. I can take a memo and extract passages and phrases and say this is what Doug meant or didn't mean and I think what we are boiling down to is the Commission is going to vote. We are either going to vote and is going to pass or it is going to not pass. I propose Doug's recommendation and the reference document stay, but that is just my vote. Tymeson – As we move forward, talking about two narrow issues of much broader document, a bunch of other changes in reference document still recommended to go through. If it is going to be an amendment, consider it to say pass or don't pass on slot and Tuttle Creek issues, it seems trout waters and wipers and all of the other stuff is not in contention and that is still a recommendation of the department. I want to make it clear that we don't do something that will not implement all of those other things. Chairman Lauber – I see your point and don't want run-away amendments. Reference document in bulk needs to pass. Tymeson – It is an amendable document. Chairman Lauber - Harrison, what do you want to do? Commissioner Williams – I would like to see the amendment. Chairman Lauber - How would you like to amend this? Commissioner Williams – With the blue catfish length limit on Milford and Tuttle Creek; the rest of it I don't have an issue. Tymeson – Typically when we have amendments it is recommended that they come to me first so I can draft a form so we are very specific, but we can still do it because we have been discussing this the entire time and it

has been an issue of contention. If there is going to be an amendment it has to be very specific. When you are talking about Milford, for example, currently there is no length limit so you would not place a length limit on there and Tuttle Creek you would not place a length limit on there; those are the two issues, right? Commissioner Williams – Yes. Tymeson - Be very specific about what we are going to propose for amendment and then there will be a vote on that amendment to the document and a vote overall on the regulation as amended. Chairman Lauber – We will also get discussion, if we wanted, from enlightened fisherman who will also say that putting a length limit or slot limit at Milford will enhance the trophy quality and we could seek out a lot of people who will support the recommendation because what they are seeing, rather than 20 fish over 20 pounds any day of the year, what they are seeing is a reduced number of the really large fish. I am not sure I buy you can catch big fish within the slot limit at will. Probably what is happening is we are getting a lot of fish under 25 inches that are of no particular value from a hyper-breeding perspective because they are not big enough or sexually mature and it is that breeding population that we want of bigger fish to keep it self-sustaining. Nygren – I should have given more information before the discussion got underway. If you go back and think about how we came to where we are tonight; in August of last year at Herington the Commission instructed my staff, at the urging of anglers that showed up at that meeting, they wanted you to do something to protect the trophy fishery at Milford, and you instructed my staff to come up with a regulation that would do that and that is exactly what they did. You can get into some arguments about what the limits of the slot should be, but the intent was to protect those larger fish and make sure we could maintain a trophy fishery into the future. That is what our proposal was designed to do and some of these other discussions we have gotten into about the growth of fish below the slot or fish in the slot is wasn't as important as what we were instructed to do, end with more big fish and protecting big fish longer so we would have a trophy fishery there. Chairman Lauber – Only at the last two meetings have I heard serious rejection of this, before it was too many people catching too many fish at Milford and harder and harder to catch them and that is what you were directed to do. Nygren – Right. We feel it is a bold proposal, there is no other state that is trying to implement a regulation anything like this, but this regulation is really sound scientifically and has been done time and time again with other species, not been done with blue catfish before. We are going into new area in trying to manage specifically for a trophy fishery. To do that you have to make anglers sacrifice, so what it boils down to is are you willing to make anglers sacrifice in order to preserve and guarantee to have trophy fishery down the line or are we content with status quo. There are a lot of people out there who like the fishery the way that it is, but that is the instructions given to me was to come up with a proposal that would enhance the ability for the agency to protect those large blue catfish and provide a trophy fishery into the future. Knoblock – I understand what Mr. Nygren is saying, but the way we see it you have to answer a fundamental question. Why other states not doing it; I'm sure they must have at least thought about it and discarded the idea. So why don't the other states do this and then decide why Kansas wants to do this. Chairman Lauber – No other states have lake like Milford. Jay Smith, Concordia – There is other states who do this; Lake Wheeler in Alabama has a one fish over 35-inch. I gave you a list last time of top five blue catfish lakes in the nation and Wheeler was number two. Why do we need it at Milford compared to these other states? I told you at last meeting, Milford is 15,000 acres, he was incorrect when he said 300,000; all other lakes on list are 100,000 acres. We have all of these great fish and when they are biting you can go out and catch them because there is no place for them to run or hide. With social media the way it is, if a fishing guide posts a video of a day out there fishing and slaughters them, the next day or that weekend I can guarantee there are 50 boats out there just killing them; it is the way it is. The way Oklahoma's rules go, they have a different growing season then we do, as far as I know none of Oklahoma's lakes freeze over and the fish's metabolism doesn't slow down or go dormant, but that is what they do at Milford in the winter time, you can catch them, but they don't feed excessively like they do in Oklahoma, Texas and the southern states; they feed year-round and grow faster and they can sustain that population with the liberal laws they have down there. Plus most of those lakes down there, like Texoma, are 125,000 acres; they got more water

and fish. Specifically it was mentioned that the smaller fish weren't worth keeping; I went fishing at the beginning of October and I kept five fish between five and seven pounds and I got 10 ½ pounds of filets out of 25 pounds of fish and you get to keep two times the possession limit so that would be 21 pounds of fish for me. If you have a wife give them to her and go catch 21 pounds more for 42 pounds of fish for the freezer. Who says 42 pounds of fish is not enough or not worth keeping, you beg for 42 pounds of walleye or crappie, why isn't 42 pounds of blue catfish enough? 35-inch works at El Dorado and Melvern has a 35-inch limit and it works there and they don't receive the pressure Milford does. Years ago they changed the creel limit at Milford from ten to five blue cats because of survey. The reason they had done that was because they mailed out a survey to fishing license holders and the number of respondents specifically targeting blue cats had gone up by 150 percent and that is why that dropped the creel limit, to protect them; probably around 5-7 years ago and I would guess number targeting that fish has tripled again, they are under attack, there are so many people targeting that fish. As these guys were saying, all of their friends are catching all of these big fish, what are happening to them; are they releasing them, I doubt it. These guys are not in favor of slot limit or anything like that. All of these big fish that they and their friends are talking about, I assume they are taking them and you can't sustain a fishery that way. On his survey, do we know if any of those people actually have a fishing license? Those at the bait shop, they don't want to put any restrictions on fish, it is going to hurt their business. Tom Bowman is the first to notice this problem, he started the blue cats at Milford, his life's work, he is retired and still lives at Wakefield and still fishes at Milford a lot and he is the one that noticed the problem. We met with him and said we noticed this problem too and that is where this whole thing started. At that meeting, the Secretary mentioned don't let economics decide what is best for the wildlife; whether the guy at Wakefield is going to rent any camper spots or whatever, we have to look out for what is best for the fish, that is what we are trying to protect. As far as measuring fish is too dangerous then we need to take the length limit off of every fish because I have been stuck by about every fish there is. We have beat this to death and you know where my position is. Chairman Lauber – I think we have beat it to death too. We have to make a decision here and are going to have to vote. We are going to have to either add some sort of amendment to not do anything with Tuttle Creek and on blue cats or make a vote and do it. Doug is right, we lose track of the fact that it was what he was instructed to do. Chris, what would happen if we vote and it doesn't go? Could we vote to see if it goes and if it fails see if we could go back and do it with an amendment? Tymeson – That is not the Robert's Rules. Jennison – In Robert's Rules you can make a motion to reconsider you action. Tymeson – Yes, you can make a motion to reconsider if it fails. Chairman Lauber – It might just go ahead and pass and if it does, based on the department's recommendation we don't have to do it. If it doesn't pass, the reason it didn't will be because of a couple of objectionable items in the reference document and we could have a motion to reconsider. Then go forward on that. Tymeson – That is correct. Chairman Lauber – I propose we do that and if there is more discussion we could have it after, assuming I get a motion and a second. Then there will be time for more discussion.

Commissioner Aaron Rider moved to approve KAR 115-25-14 as presented to the Commission. Commissioner Ward Cassidy second.

Chairman Lauber – We have a motion and second to accept this whole thing as is, including Milford and Tuttle. Discussion?

Marvin Dorhman – Understood from the department, in regards to this, was a public opinion that came to you a year or so ago that there was a problem that needed to be fixed. I fish from the bank and like to eat fish, don't catch big fish, 40- to 50-inches like the people on the bank do. What big fish I do keep this will limit what I can take home. You can take home as many as the gentleman talked about, but again if you have four small fish and one big, we can live with one over 30- 35- or 32-inches. When they said the general public opinion was that you needed to do something, I didn't talk to one person who knew anything about this. If general public opinion,

why when we told them did the public not know about this. One of people in fish and game said we don't want everyone to know. Chairman Lauber – Who said that? Dorhman – I won't give up their name. Chairman Lauber – You are saying one of our department people said that? Dorhman – Yes. I understand his statement because issues like this come in and it becomes turmoil; and I give you credit, you have to deal with thousands of issues. I would like to see; if you pass this regulation we will live with it with a smile. Make an amendment and wait one year and get a true opinion surveys and check with guides. May the Lord bless you all. Commissioner Cassidy – I would trust Doug and our biologists because they study it and know more than we could possibly know about it. This could be done another way too, we pass this, and there is a gigantic uproar that things aren't working and we can change it next year. It can go either way, we can pass it this year. Nygren – Any time we put a length limit or creel limit on a species we monitor it to be sure it is having the intended affect and if it doesn't we can change it again. Commissioner Cassidy – I don't believe the amount of pounds you bring home is why you go fishing for anything, in my opinion. I go fishing because I like to catch fish and I put them back if I catch some. I don't think it is going to change that many people fishing Milford. I have had more comments on this than anything and I tell them I have young grandkids and when they are 30 years old I want them to go to Milford and catch a big catfish; and that is what you were directed to do.

Kyle Wright, Chapman (did not sign roster) – I fish Milford primarily about 110 times a year, for 15 years, from bank and boat. We primarily fish for blue cat and wiper. I bring a lot of my friends and family over and I noticed decline over last 5-6 years. I would like to see that fishery protected. If go to Military Marina on the north end of the lake in March you are going to be parking on road because there is no room left in the parking lot. If blue catfish are hurting people, the best thing to do is just release them, don't weight them or take them home, it will solve all of those issues. I don't think Clay County park is going to be hurting very badly, my name is still on a list to get a permanent camp ground there, next to my friends that have campers there. Question to Mr. Dorhman, he said around \$2,000 for eight months he spends; is that \$250 for one weekend a month to camp. Dorhman – That is 12 months, my camper stays there all the time. didn't see petition at bait shop. Wright – Your camper stays all the time, but during that time frame there is one weekend for \$250 or pay \$450. Dorhman – No, I am saying I spend \$2,000 a year for my camper and \$500 a year for other things; a total of \$2,500. Wright – I go to T&H General Store every Friday in Wakefield and I don't remember seeing a petition there. There are a bunch of blue cats in our lake and much smaller ones. I take my nieces and nephews out and they are happy when we catch a nice big fish, 40-50 pounds because it is getting more rare; we take a picture and we send it back. We keep smaller ones and that meal is gone the next day, but they have pictures and stories to hang on the wall. I think that is what it is all about, I go fishing, not because it is the most economical way to put food on the table, it is a hobby and a passion that gives me a little bit of reward when I go home. If I go golfing I come home with less balls than I went there with; so the amount of money I spend on fishing doesn't really make it sense to just go there to fill my freezers, but we enjoy eating fish. Thank you for your time.

The roll call vote on to approve was as follows (Exhibit WW):

Commissioner Cassidy	Yes
Commissioner Cross	Yes
Commissioner Dill	Absent
Commissioner Hayzlett	Yes
Commissioner Rider	Yes
Commissioner Williams	No
Commissioner Lauber	Yes

The motion as presented passed 5-1.

Chairman Lauber – Doug, we need to monitor this closely.

XII. Old Business

None

XIII. Other Business

A. Future Meeting Locations and Dates

Set at end of afternoon.

XIV. ADJOURNMENT

The meeting adjourned at 8:35 p.m.

(Exhibits and/or Transcript available upon request)

Exhibit XX – Ducks Unlimited Folder

Exhibit YY – KANSAS! Winter 2017 Magazine

Exhibit ZZ – Kansas Division of Tourism Annual Report FY 2017

Secretary's Remarks

Agency and State Fiscal Status
No briefing book items – possible handout at meeting

2017 Legislative Report to the KDWP Commission

2017 Bills

SB24 – This bill would designate the channel catfish as the state fish of Kansas. The bill saw no action in Senate Natural Resources.

SB25 – This bill would remove the requirement for a public hearing to set fees for cabins owned or operated by the Kansas Department of Wildlife, Parks and Tourism. This bill passed the Senate 26-14 and was referred to the House Committee on Agriculture before being re-referred to the Committee on Commerce, Labor and Economic Development. This bill was tabled in committee due to attempts to add in other provisions unrelated to the main bill.

SB26 – This bill would increase the cap on the vessel registration fee. This bill passed the Senate 35-4 and the House 79-43. The bill was signed by the Governor on April 5, 2017.

SB77 – This bill would name the bison herd kept on the Mined Land Wildlife Area in Crawford County, the "Bob Grant Bison Herd," in memory of Grant, who served 20 years in the Kansas Legislature. This bill had a hearing on January 31, 2017 and finished the session on Senate General Orders.

SB162 - This bill would amend the statutes concerning dangerous regulated animals, adding nonhuman primates and wolves (excluding hybrids) to the list. It would also remove the grandfather clauses, which allowed persons in possession of such animals before the original law went into effect to keep them. And the proposed amendment would prohibit any dangerous regulated animals to be in proximity to members of the public, no matter the size of the animal. The bill was referred to the Committee on Agriculture and Natural Resources and saw no action.

SB240 -- This bill authorizes the Department of Wildlife, Parks and Tourism to purchase a tract of land in Sherman County from Pheasants Forever. The land is adjacent to the Sherman County Wildlife Area and would be managed as a public hunting area. The bill had a hearing on April 4, 2017 and was recommended to be passed by the Committee on Ways and Means. The bill finished the session on Senate General Orders.

HB2068 – This bill deals with Child Support orders and registration of vehicles and vessels. The bill had a hearing on February 9, 2017.

HB2098 – This bill would name the bison herd in Crawford County, the "Bob Grant Bison Herd," a companion bill to SB77. The bill passed the House 115-0 and the Senate 39-0. The bill was approved by the Governor on May 10, 2017.

HB2191 – This bill relates to licenses, permits, stamps and other issuances of the Kansas Department of Wildlife, Parks and Tourism and would amend wording to clarify that if a license or permit is suspended, only a physical license would have to be surrendered. This bill passed the House 122-0 and the Senate 40-0. The bill was signed by the Governor on April 7, 2017.

HB2192 – This bill renames Lake Scott State Park to Historic Lake Scott State Park in recognition of the significant history of the property. This bill passed the House 122-0 and the Senate 40-0. This bill was signed by the Governor on March 28, 2017.

HB2193 – This bill would require anyone born on or after January 1, 1997 to complete an approved Boating Safety course before operating a motorboat or sailboat on public waters. The

current law requires those born on or after January 1, 1989 to complete an approved Boater Safety course, but it doesn't apply to anyone 21 or older. This bill had a hearing on January 31, 2017 and saw no further action.

HB2199 – This bill would authorize the board of county commissioners of any county to regulate conservation easements on property located within the county. The bill saw no action during the session.

HB2207 – This bill would require anyone hunting, shooting, fishing, furharvesting or pursuing any bird or animal on private land to have written permission from the owner or person in possession of such land or body of water. It would also prohibit any person from pursuing a wounded bird or animal on private land without written permission. The bill had a hearing on February 15, 2017. The House Committee on Agriculture passed a substitute bill that would delete language in the current statute allowing licensed hunters to pursue wounded game on land without landowner permission. The requirement for written permission by anyone hunting, shooting, fishing or trapping on private land was not included in the substitute bill. The bill passed out of committee, was re-referred back to the committee on the House floor and saw no further action during the session.

HB2208 – This bill would establish a transferable regular landowner or tenant hunt-on-your-own-land big game permit, which could be transferred to a nonresident solely for the purpose of hunting white-tailed deer. This bill had a hearing on February 14, 2017 and saw no further action in committee. However, several attempts were made to amend similar provisions into another bill as well as the budget bill but those attempts failed.

HB2276 – This is the companion bill to SB162 concerning dangerous regulated animals. This bill was referred to the House Committee on Federal and State Affairs. The bill had a hearing scheduled for March 22, 2017 and saw no further action during the session.

HB2363 – This bill concerns the disposition of state surplus real property; authorizing the Department of Administration on behalf of various state agencies to sell certain real property. The list of properties includes public lands owned by the Kansas Department of Wildlife, Parks and Tourism. The bill was referred to the House Committee on Appropriations and saw no further action during the session.

HB2407 – This bill would require prior consent of the Secretary of Administration and the Attorney General before any land could be transferred to the State of Kansas through any probate proceeding. The bill passed the House 108-17. Then, the provisions of SB240, which authorize the Department of Wildlife, Parks and Tourism to purchase a tract of land in Sherman County from Pheasants Forever, were amended into the bill. The bill, as amended, then passed out of the Senate Committee on Ways and Means and passed the Senate 35-2. There was a successful attempt to re-refer the bill back to conference committee but a subsequent efforts led to passage of the amended bill.

2018 Possible Action

All bills that did not pass previously are still alive for next year

We will certainly work the 3 Department Initiatives that did not pass, in particular, the bill dealing with cabin fee dynamic pricing

We will possibly introduce a bill regarding caps on licensing fees for a future administration and the long term fiscal health of the Department

General Discussion

Commission Permits Update

Background

In January 2006, the Kansas Wildlife and Parks Commission held the first drawing for Commission Big Game Permits when one elk and six deer permits were issued to applying conservation organizations. The program allows Kansas conservation organizations to raise money through the sale of these big game permits. By statute, one elk, one antelope or up to seven deer permits may be issued, one permit per commissioner. The types of permits issued depend on choices made by the winning applicants.

Qualified applicants include local chapters of nonprofit organizations based or operating in Kansas that actively promote wildlife conservation and the hunting and fishing heritage. An organization or chapter is eligible to receive a permit only once in a three-year period.

In 2006, permits sold for \$49,000 with 59 applications being received; 2007, \$26,973.56 with 119 applicants; 2008, \$24,200 and 113 applicants; 2009, \$34,951 with 111 applicants; 2010, \$47,000 and 108 applicants; 2011, \$41,700.00 and 100 applicants; 2012, \$41,811 with 104 applications; 2013, \$53,200 with 93 applications; 2014, \$57,515 with 101 applications; 2015, \$53,826 with 164 applications; 2016, \$64,550 with 138 applications being received; and 2017 \$72,850 with 142 applications.

In 2017 all seven permits were deer and were issued to: two National Wild Turkey Federation, Kansas Spur Hunters and Decatur County Thunder Chickens; Ducks Unlimited Maize Chapter; two Pheasants Forever chapters, Johnson County and Ringneck Renegades; and two Quail Forever chapters, Lyon County and Marion County. There were 146 applications with only 142 of those eligible and the permits sold for \$72,850.

After the permit is sold by the organization, the cost of the permit is subtracted and 85 percent of the proceeds are sent to KDWP to be used on approved projects. After the projects are approved, the money is sent back to the organization. The other 15 percent can be spent at the organization's discretion.

Since the program's beginning in 2006, 1,230 applications have been received and \$463,679 (85 percent of total) has been spent on natural resource projects. The average price of deer permits sold in 2017 was \$10,407. The highest price ever spent on a deer permit was \$14,000 in 2010, and an elk permit sold for \$23,000 in 2006. Antelope permits have only been awarded in two drawings, and both were traded for a deer permits.

Tourism Update

No briefing book items – possible handout at meeting

Five-year Review of species listed as Endangered, Threatened or Species-in-need-of-conservation (SINC)

In 2018, KDWPT will begin the five-year review process of species listed as Endangered, Threatened or Species-in-need-of-conservation (SINC). From beginning to end, this process takes about 18 months. It begins with a request for petitions that document evidence supporting a suggested change in a species listing category. Every petition is closely examined by the Threatened and Endangered Species Task Committee (T&E Task Committee) to determine if it merits a full review.

If a full review is merited, the T&E Task Committee follows up by examining recent survey and research and by identifying and reaching out to experts regarding that species. These experts are questioned and asked to complete a numerical ranking form regarding several factors that affect the population's status.

In addition, the KDWPT holds informational meetings around the state regarding those species that are under review. After the proper waiting periods and all scientific inputs are considered, final recommendations are made to the Secretary and Commission. Because these lists are in regulation form (KAR 115-15-1 and KAR 115-15-2), the Commission must vote to approve any proposed changes. The recommendations from the T&E Task Committee are focused on scientific merit and not on socio-economic factors. More information regarding this process and petition forms can be found on the KDWPT website, www.ksoutdoors.com.

Kansas Department of Wildlife, Parks & Tourism Briefing Item
Webless Migratory Game Bird Regulations
 January 11th, 2018

Background

The U.S. Fish and Wildlife Service (USFWS) develops frameworks annually, from which states are able to establish migratory game bird hunting seasons. These frameworks establish maximum bag and possession limits, season lengths, and earliest opening and latest closing dates. States must operate within these frameworks when establishing state specific migratory game bird seasons. General stability in federal frameworks allows the inclusion of webless migratory bird regulations, bag limits, and season dates as KDWPT permanent regulations.

Species	Regulation	Regulation Summary
Crow	KAR 115-25-16	Crows; open season, bag limit, and possession limit
Dove	KAR 115-25-19	Doves; management unit, hunting season, shooting hours, and bag and possession limits
	KAR 115-20-7	Doves; legal equipment, taking methods, and possession
Sandhill Crane	KAR 115-25-20	Sandhill crane; management unit, hunting season, shooting hours, bag and possession limits, and permit validation
Snipe, Rail, & Woodcock	KAR 115-25-21	Snipe, rail, and woodcock; management unit, hunting season, shooting hours, and bag and possession limits

Discussion

Federal frameworks for webless migratory game birds are unchanged for the 2018-19 season. Although staff does not anticipate any recommended changes to webless seasons, clarifications to the method of take regulation for migratory doves (115-20-7) are being considered. Staff recommendations will be presented at the March 22, 2018 commission meeting.

Proposed 2018-19 Webless Migratory Game Bird Bag Limits and Season Dates

Species	Bag/Possession Limits	Season Dates
Crow	none	November 10 - March 10
Migratory Dove	15/45	September 1 - November 29
Exotic Dove	none	year-round
Sandhill Crane	3/9	November 7 - January 3
Snipe	8/24	September 1 - December 16
Rail	25/75	September 1 - November 9
Woodcock	3/9	October 13 - November 26

Waterfowl Regulations
No briefing book items – possible handout at meeting

K.A.R. 115-25-9a. Deer; open season, bag limit, and permits; additional considerations; Smoky Hill ANG, Fort Riley, and Fort Leavenworth

Background

This regulation has typically been brought to a Public Hearing in June. Personnel at Fort Riley requested this later period to finalize the seasons because the schedule for military training activities were occasionally unknown at the time KAR 115-25-9 was approved. The regulation has also been used to address legislative actions pertaining to deer hunting that were made after KAR 115-25-9 was approved.

Discussion

This year we shall address all deer seasons on military subunits under one regulation. Personnel at Smoky Hill ANG, Fort Riley and Fort Leavenworth have been contacted and we have received preliminary information on the season dates that they prefer.

Smoky Hill ANG has requested to have deer hunting seasons at the same dates as the seasons established in KAR 115-25-9 with the following exception:

- The firearms season dates will be November 20, 2018 through December 1, 2018.

Fort Riley has requested the same seasons as those established in KAR 115-25-9 with the following exceptions:

- Additional archery days for individuals authorized by Fort Riley would include the period from September 1, 2018 through September 16, 2018, and from January 2, 2019 January 31, 2019.
- Additional days of hunting opportunity for designated persons (i.e., youth and people with disabilities) from October 6, 2018 through October 9, 2018.
 - No pre-rut firearm season for antlerless white-tailed deer.
- Firearm season dates of November 23, 2018 through November 25, 2018, and December 15, 2018 through December 23, 2018.

Fort Leavenworth has requested the same deer hunting seasons described in KAR 115-25-9 with the following exceptions:

- The open firearm season for the taking of deer shall be November 17, 2018, through November 18, 2018, November 22, 2018 through November 25, 2018, December 1, 2018 through December 2, 2018, December 8, 2018 through December 9, 2018, and December 15, 2018 through December 16, 2018.
- An extended firearm season for the taking of antlerless-only, white-tailed deer shall be from January 1, 2019 through January 13, 2019.
- An extended archery season for the taking of antlerless-only, white-tailed deer shall be from January 14, 2019 through January 31, 2019.

A deer hunter may use one antlerless-only white-tailed deer permit in Fort Riley, subunit 8A or Smoky Hill ANG, subunit 4A. A deer hunter may use up to five antlerless-only white-tailed deer permits in Fort Leavenworth, subunit 10A.

Recommendation

The proposed dates for the firearm season at the Smoky Hill Air National Guard subunit, Fort Riley subunit and at the Fort Leavenworth subunit will be reviewed at Workshop Session in March. Final action on those seasons shall be completed at the Public Hearing in June.

Workshop Session

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 firearm pronghorn season has been four days long since 1990, starting on the first Friday in October. The archery pronghorn season was nine days long from 1985 to 2004, and included the two weekends prior to the firearm season. Since 2005, the archery season has reopened on the Saturday following the firearm season and continued through the end of October. A muzzleloader season was initiated in 2001. It has begun immediately after the archery season and ran for eight days, the last four of which overlap with the firearm season. With the exception of annual adjustments in permit allocations, this regulation has basically been unchanged since 2006.

Discussion & Recommendations

No changes are recommended for this regulation at this time, including season structure, bag limits, or permits.

We propose unlimited archery permits be allocated for both residents and nonresidents. Firearm and muzzleloader permits will remain restricted to residents, with half assigned to landowner/tenants and the remainder awarded to general residents. Firearm and muzzleloader permit allocations will be determined following winter aerial surveys.

The proposed season dates are:

September 22-30, 2018 and October 13-31, 2018 for the archery season.

October 1-8, 2018 for the muzzleloader season.

October 5-8, 2018 for the firearms season.

Elk were first reintroduced onto Fort Riley in 1986, and a hunting season was initiated in 1990. Most of the hunting opportunity in the state occurs on the Fort. However, elk do exist on private lands, though unpredictably, in most of the state, with parts of southwest Kansas being the main exception. Elk also occur in the vicinity of Cimarron National Grasslands, but these elk are primarily found in neighboring states, and the Grasslands have been closed to elk hunting since 1995, following several years of heavy harvest pressure.

In most of the state, a 6.5-month-long hunting season and unlimited permitting options have been authorized to allow elk that may be causing crop damage or other conflicts on private land to be harvested. The intent is to provide landowners the opportunity to maintain elk at desirable numbers on their own property while at the same time allowing the Fort Riley and Cimarron herds to be maintained.

Discussion & Recommendations

This framework has been fairly effective at limiting damage complaints, but we do have a few changes to recommend this year in order to better address a couple specific damage situations. One is a change in the north boundary of Unit 2, which will be addressed in K.A.R. 115-4-6b; elk management units. The other is the establishment of an early firearm season from August 1-31, statewide except in Unit 2a (Fort Riley) and Unit 3 (Cimarron National Grasslands) which is closed to hunting.

The main purpose for the August season is so legal hunting can be used to better address crop damage complaints. When we've had crop damage complaints, we're often trying to get by with scare tactics until September 1 when hunting pressure can be applied. An earlier legal hunting opportunity would allow the problem to be addressed quicker, and it would seem to have minimal down side. It seems unlikely that those who have access to elk would shift hunting pressure to this early season unless they have the incentive of damage removal. An exception could be possible demand for velvet bulls. (Bulls typically shed about mid-August.) Orphaned calf survival is also generally not a concern by August 1. In damage situations, the season would also ensure the animals being removed were the ones responsible for the damage.

The current season is ongoing and other issues could arise, but at this time we do not anticipate other changes to season structure, bag limits or permit types.

KAR 115-4-6
Elk; management units.

Background

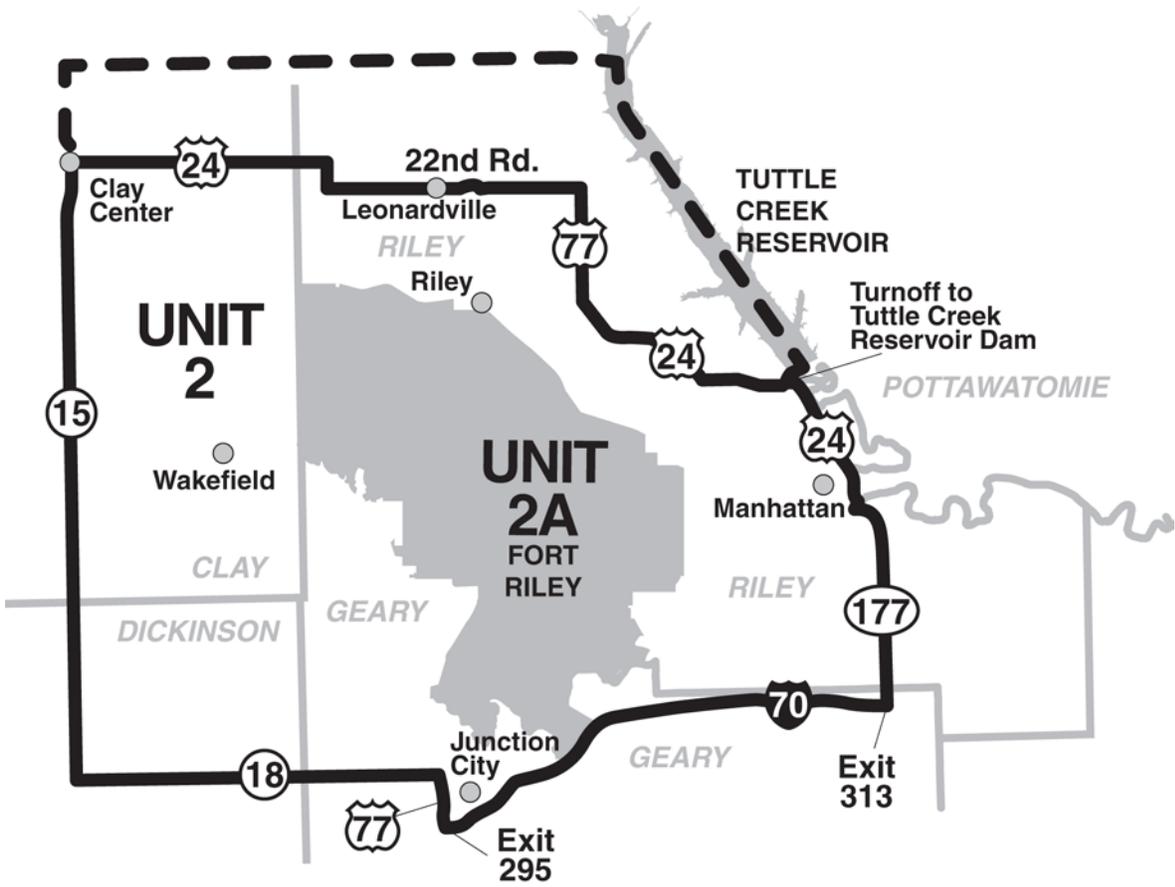
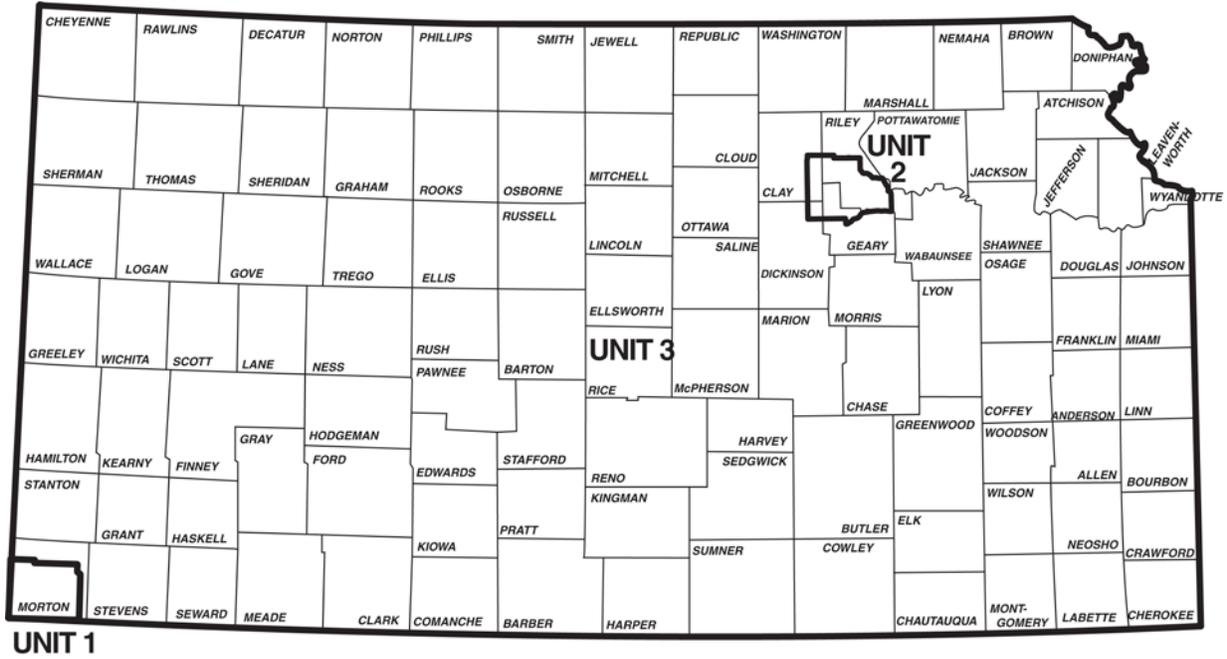
This regulation establishes elk management units.

The Department's current management strategy for elk is to provide a season structure for landowners to maintain elk at desirable numbers on their own property using legal hunting while at the same time allowing the Fort Riley and Cimarron Nation Grasslands (CNG) herds to be maintained. Since 2006, units surrounding the Fort and CNG have provided additional protection to these herds. The three existing management units were established in 2011.

Discussion & Recommendations

This summer, we had a couple crop damage complaints about elk that are staying north of Highway 24 and south of 22nd Road (the Green/Randolph Road) within the Fort Riley buffer area. The buffer was intended to provide additional protection for Fort Riley elk, but these elk are permanently residing on private land miles from Fort Riley. In order to provide landowners more options in reducing this herd, we would like to move the unit boundaries so that the location in question is shifted into Unit 3, allowing unlimited general resident permits. A minimum buffer of several miles will still be maintained around the Fort, and we don't believe this change will impact elk residing primarily on the Fort.

Proposed Elk Boundary Changes



**Additions to KDWPT Public Lands Division Special Use Restrictions
KAR 115-8-1 (e)
11-16-2017**

II.) Age Restrictions

Portions of the following properties restrict hunting to specific age groups

Region 2

*- Hillsdale WA – Big Bull wetland area, youth/mentor area – all species, all seasons, **Add – weekends and holidays only***

VI.) Boating Restrictions

a.) No Motorized Boats

(Add) Neosho WA – motorized watercraft permitted only during the waterfowl season. No motorized watercraft allowed in pools 4A and 4B. No out-of-water propeller driven watercraft permitted any time.

b.) No Gasoline Engine Powered Boats

Region 2

(Add) Tuttle Creek WA Olsburg Marsh

XV.) Daily Hunt Permits

Daily hunt permits are required on the following properties:

Region 2

(Add) Blue Valley WA

VI. DEPARTMENT REPORT

C. Workshop Session

3. Big Game Permanent Regulations.

All permanent regulations dealing with big game will be discussed together at this meeting. In recent years these regulations have been brought forward in the General Discussion portion of the Commission meeting in August to allow public comments and to determine if further review was needed.

a) K.A.R. 115-4-2. Big game; general provisions.

Background

This regulation contains the following items:

- Information that must be included on the carcass tag
- Registration (including photo check) needed to transport certain animals
- 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

Minor changes have been made to this regulation in recent years. Last year elk hunters were given the ability to electronically register their animal.

Recommendation

No change is proposed for this regulation.

b) K.A.R. 115-4-4. Big game; legal equipment and taking methods.

Background

This 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 on the use of horses or mules to herd or drive elk.

Discussion

Extensive modifications of this regulation were done in 2013. Major changes included changes to allowing any caliber center-fire rifle or handgun and adding crossbows to legal archery equipment. Additional accessory equipment was allowed.

New hunting equipment continues to be created and people request changes in the regulation to allow novel equipment. Some of the recent requests have been to allow powerful air rifles to be used for big game hunting, to use atlatl spears and to allow draw locks for bows, as is currently authorized for people with disabilities.

Historically changes in this regulation have attempted to balance a potential benefit of allowing new equipment to benefit a few people against the added complexity caused by changing the regulation, which may confuse other hunters. Typically the department has changed this regulation after a review for a period of years rather than annually.

Recommendation

No change is proposed for this regulation.

c) K.A.R. 115-4-6. Deer; firearm management units.

Background

This regulation established the boundaries for the 19 Deer Management Units in Kansas.

Discussion

No changes in deer management unit boundaries are currently being discussed within the department. Changes in the management unit boundaries complicate trend analysis of hunter participation and harvest of deer. Sub-division of units increases the need for larger sample sizes and more expense to obtain adequate information.

Recommendation

No change is proposed for this regulation and it is not scheduled for further review this year.

d) K.A.R. 115-4-11. Big game and wild turkey permit applications.

Background

This regulation describes general application procedures, including the establishment of priority drawing procedures when the number of applicants exceeds the availability of authorized permits. The regulation also authorized hunters to purchase a preference point for future applications.

Discussion

No changes in the application process of big game or wild turkey permits are currently being discussed within the department. Requests for changes in allocation of either species, either sex firearm permits for resident youth hunters have been received from the public.

Recommendation

No change is proposed for this regulation and it is not scheduled for further review this year.

e) K.A.R. 115-4-13. Deer permits; descriptions and restrictions.

Background

This regulation contains the following items:

- Creates permit types that include:
 - White-tailed deer, either-sex (WTES) permit or white-tailed deer antlerless only (WTAO) permit for residents of Kansas. These permits are valid during all seasons with equipment authorized for that season.
 - White-tailed deer, either-sex permit for nonresidents valid for one equipment type and one unit. Nonresident hunters may designate one adjacent unit where they may hunt.
 - Either-species, either-sex permit, restricted to a season or seasons and units where they may be used by resident and nonresident deer hunters.
 - Hunt-own-land permits, including resident HOL, nonresident HOL, and special HOL permits for certain direct relatives of the landowner or tenant.
- Each deer permit is valid only for the species and antler category specified on the permit.
- An antlerless deer is defined as a deer without a visible antler plainly protruding from the skull.

Discussion

Starting with the 2016 season, Either-species Antlerless Only Permits (ESAO) were no longer issued in Kansas. This was done to address the changing mule deer population to reduce harvest of female mule deer. Results from analysis of harvest data from the 2016 season indicate that this change likely resulted in the lowest estimated harvest of antlerless mule deer in Kansas since 1983. The effects, from this change in this permit allocation, on harvest rates of female mule deer and the effect of changing harvest rates on mule deer populations are being monitored.

Recommendation

No change is proposed for this regulation and it is not scheduled for further review this year.

VI. DEPARTMENT REPORT

C. Workshop Session

4. Deer 25-Series Regulations.

Background

The regulation contains the following items:

- Dates of deer seasons when equipment such as archery, firearms, or muzzleloader may be used.
- Provisions when seasons may occur on military subunits within management units.
- Dates for a special firearm deer season and extended archery seasons in urban units.
- Dates of deer seasons for designated persons.
- Dates and units when extended firearm seasons are authorized and the type of permits and changes in the species and antler categories of those permits.
- Limitations in obtaining multiple permits.

Discussion

Annual adjustments will be made in the deer hunting season dates. This review process initiates the discussion of potential changes in deer hunting seasons for 2018. The recommendations at this time follow the traditional season structure with some noteworthy situations that follow.

The designated persons season, commonly referred to as the youth and disabled season, has opened, since 2013, on the first Saturday of September. In 2018, the first Saturday in September is Sept. 1, which is also the opening day of dove season. This overlap creates the potential for deer/dove hunter conflict and may negatively impact youth hunter opportunity. The option currently being considered:

1. The youth and disabled season begins on the second Saturday in September (Sept. 8, 2018). Both archery and early muzzleloader seasons would start on September 17, 2018.

Typically the first extended white-tailed deer antlerless-only (WAO) season has started on the New Year's Holiday and was open through the first weekend in January, or during the first weekend if January 1 fell on a Saturday; but historically has been four or less days. New Year's Day falls on Tuesday in 2019. The option currently being considered follows the seasons set for 2017-18:

1. A one-day season, January 1, 2019, in DMUs where only one WAO permit is allocated. There would still be three lengths of WAO seasons (i.e., 1, 6, and 13 days). The shortest season would not have a weekend day of hunting. Additionally, shift the pre-rut WAO season one week earlier to begin October 6 and add one day to the pre-rut WAO season, making it three days long, thus allowing WAO firearms hunting during Columbus Day, which is a holiday for some hunters. This keeps the season framework similar to the 2017-2018 season.

Public comment is sought about these options.

Population indices, mortality due to disease and changes in fawn recruitment will be examined and public input will be considered in the development of a list of units where an extended firearm seasons and WAO permits will be authorized. The number of WAO permits that may be used in each unit will also be evaluated after additional data becomes available.

Recommendation

Following traditions (see attached table) the proposed season dates suggested for deer hunting during 2018-19 are as follows:

Youth and Disability	September 8, 2018 – September 16, 2018
Early Muzzleloader	September 17, 2017 – September 30, 2018
Archery	September 17, 2017– December 31, 2018
Pre-Rut WAO	October 6, 2017 – October 8, 2018
Regular Firearm	November 28, 2017 – December 9, 2018
1 st Extended WAO	January 1, 2019
2 nd Extended WAO	January 1, 2019– January 6, 2019
3rd Extended WAO	January 1, 2019 – January 13, 2019
Extended Archery (DMU 19)	January 14, 2019– January 31, 2019

This regulation will be brought to Public Hearing at the March Commission Meeting.

COMMISSION MEETING BRIEF Coast Guard Navigation Rules

Commissioners, KDWPT Staff and the public,

Kansas Department of Wildlife, Parks and Tourism (KDWPT) provides the Recreational Boating Safety Program for the State of Kansas. To provide boating infrastructures, law enforcement, public education, aids to navigation, search and rescue and administrative duties, the KDWPT relies heavily on Recreational Boating Safety federal dollars administered through the United States Coast Guard, Recreational Boating Safety Division.

Every three years, the U.S. Coast Guard conducts an on-site visit with the Boating Law Administrators of the states to look over the components required within the agreement between the state and the federal government and to inform the state of any inadequacies or deficiencies discovered that relate to changes in Code of Federal Regulations or problems with program implementation.

On August 8-9, 2017, an on-site review of our program was conducted. Though most of our program was found in compliance, one issue requires an action plan to be addressed in front of this commission.

Language from the letter dated on August 16, 2017 from the United States Coast Guard states, "Deficiencies in the following areas were noted that require corrective action by the state: State Boating Laws and Regulations – The Kansas Boating Statutes addressing navigation must contain terminology consistent with the Inland Navigation Rules (NAVRULES) found in Title 33 CFR Part 83. This may be accomplished by adopting 33 CFR Part 83 by reference."

Today, this is the proposal brought forth in front of this commission.

By authority granted to the Secretary of KDWPT in K.S.A. 32-1119 (k) The secretary is hereby authorized to adopt, in accordance with K.S.A. 1989 Supp. 32-805 and amendments thereto, rules and regulations required to carry out in the most effective manner, all of the provisions of this act and to alter, modify or supplement the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or with the navigation rules promulgated by the United States coast guard.

(l) The secretary is hereby authorized to establish and maintain, for the operation of vessels on the waters of this state, pilot rules in conformity with the pilot rules contained in the federal navigation laws or the navigation rules promulgated by the United States Coast Guard.

Major Dan Hesket

Copies of the following have been made available for your review:
August 16, 2017 USCG Site Visit Compliance Letter.
Corrective Action Plan response to the United States Coast Guard (USCG).
Title 33 CFR Part 83.

References:

Sport Fish Restoration and Boating Trust Fund.
MOU between State of Kansas and USCG for Boating Safety Program
K.S.A. 32-1119
Title 33 CFR Part 83
Site Visit Letter on Compliance Issues, August 16, 2017, USCG.
Corrective Action Plan (CAP) letter to USCG in response to site visit conducted on August 8-9,
2017.

Public Hearing

KANSAS REGISTER
SUBMISSION FORM

Agency Number -- 710-01

Agency Name -- Kansas Department of Wildlife, Parks and Tourism

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

Topeka, Kansas 66612-1233

Title of Document -- Public Hearing

Desired Date of Publication - August 31, 2017

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, Parks, and Tourism Commission

Notice of Public Hearing

A public hearing will be conducted by the Wildlife, Parks, and Tourism Commission at 6:30 p.m., Thursday, January 11th, 2018 at the Milford Lake Conference Center, 3750 Farnum Creek Road, Milford, Kansas to consider the approval and adoption of proposed regulations of the Kansas Department of Wildlife, Parks, and Tourism. The public hearing originally scheduled for October 19th in Scott City, notice of which was published in the June 1, 2017 issue of the Kansas Register, has been cancelled.

A general discussion and workshop meeting on business of the Wildlife, Parks, and Tourism Commission will begin at 1:00 p.m., January 11 at the location listed above. The meeting will recess at approximately 5:00 p.m. then resume at 6:30 p.m. at the same location for the regulatory hearing and more business. There will be public comment periods at the beginning of the afternoon and evening meeting 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 business matters, the Commission will reconvene at 9:00 a.m. January 12 at the location listed above.

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

This 90-day notice period prior to the hearing constitutes a public comment period for the purpose of receiving written public comments on the proposed administrative regulation.

All interested parties may submit written comments prior to the hearing to the Chairman of the Commission, Kansas Department of Wildlife, Parks, and Tourism, 1020 S. Kansas Ave, Suite 200, Topeka, KS 66612 or to sheila.kemmis@ks.gov 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 regulation. 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 regulation.

The regulation that will be heard during the regulatory hearing portion of the meeting is as follows:

K.A.R. 115-15-3. This permanent administrative regulation establishes provisions for threatened and endangered species special permits and enforcement actions. The proposed changes are the result of legislation passed during the 2016 legislative session.

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

K.A.R. 115-15-4. This permanent regulation establishes procedures for recovery plans for threatened and endangered species. The proposed amendments are the result of legislation passed during the 2016 legislative session.

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

Copies of the complete text of the regulation and its 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.kdwpt.state.ks.us, or by calling (785) 296-



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

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

May 19, 2017

Chris Tymeson
Chief Legal Counsel
Kansas Department of Wildlife, Parks and Tourism
1020 S. Kansas Ave., Suite 200
Topeka, KS 66612-1327

RE: K.A.R. 115-15-3 and K.A.R. 115-15-4

Dear Chris:

Pursuant to K.S.A. 2016 Supp. 77-420(b), we have reviewed the above-referenced regulations and have approved them for legality. The stamped regulations are enclosed with this letter.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
DEREK SCHMIDT

Sarah Fertig
Assistant Attorney General

Enclosures

Cc: Rep. Ron Highland, Chair, Joint Committee on Rules and Regulations
Sen. Vicki Schmidt, Vice Chair, Joint Committee on Rules and Regulations
Rep. John Carmichael, Ranking Minority Member, Joint Committee on Rules and Regulations
Raney Gilliland, Legislative Research, State Capitol, Room 68-W
Natalie Scott, Office of Revisor, State Capitol, Room 24-E

Secretary's Resolution

2018 KANSAS FREE FISHING DAYS

Under authorities contained in K.S.A. 32-906(f), the dates of June 2 and 3, 2018 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

Robin Jennison, Secretary
Kansas Department of Wildlife, Parks & Tourism

Secretary's Resolution

2018 KANSAS FREE PARK ENTRANCE DAYS

Under authorities contained in K.S.A. 32-901(f), the following dates:

Possible Blue Cross/Blue Shield Day TBD

January

20 – Milford – Eagle Days

February

No free events planned

March

No free events planned

April

21 – Cheney – Event TBD

21 – Sand Hills – Event TBD

21 – Wilson – Ok Kids Day

May

5 – Let's Camp America Day

June

2 – Cross Timbers – National Trails Day
Guided Hikes

2 – Glen Elder – Youth Fishing Tournament

2 – Perry – Free Fishing Events

2 – Prairie Dog – OK Kids Day

2 – Prairie Spirit – National Trails Day

9 – Cedar Bluff – OK Kids Day

9 – Historic Lake Scott – OK Kids Day

July

No free events planned

August

4 – Elk City – OK Kids Day

11 – Clinton – OK Kids Day

25 – Hillsdale – Kids Archery Skills Day

25 – Tuttle Creek – OK Kids Day

September

9 – Lovewell – 3D Archery Shoot

15 – Webster – Car Show

22 – Meade – Joe Robertson Memorial Car
Show

29 – Crawford – Annual Chili Cook-off
Contest

29 – Fall River – Fall River Rendezvous

October

6 – El Dorado – OK Kids Day

6 – Pomona – Fall Festival/Rush the Rails
Flint Hills National Trail

13 – Eisenhower – Trail Benefit Ride

27 – Kanopolis – Prairie Long Rifles
Rendezvous

November

23 – Black Friday - #optoutside

December

No free events planned

are established as “2015 Free Park Entrance Days.” All persons may enter Kansas state parks listed above free-of-charge on dates specified. All residents and visitors to the State of Kansas are encouraged to use this opportunity to enjoy our outdoor recreational resources.

Date

Robin Jennison, Secretary
Kansas Department of Wildlife, Parks & Tourism

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 ~~documented as currently providing essential physical and biological features and~~ supporting a ~~self-sustaining~~ 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” ~~includes~~ 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 ~~of~~ for which planning and implementation are wholly funded with monies from federal, state, or local units of government.

~~(9)~~ (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) ~~Any~~ 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 ~~such~~ these practices involve an intentional taking ~~of a threatened or endangered species.~~

(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 ~~of a threatened or endangered species.~~

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

(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) ~~Any~~ Each action permit application shall be submitted ~~no fewer than~~ 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; ~~and~~

~~(4) other relevant information required by the secretary.~~

(d) ~~Any~~ Each person sponsoring or responsible for an action for which an action permit is not required by subsection (b) and ~~which~~ that will result in the intentional destruction of ~~an individual~~ 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 ~~activities~~ any activity for which a person has obtained a scientific, educational, or exhibition permit, ~~as provided by pursuant to K.S.A. 32-952, and amendments thereto, and K.A.R. 115-18-3, and amendments thereto.~~ An action permit application shall be submitted ~~no fewer than~~ 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; ~~and~~

~~(4) other relevant information required by the secretary.~~

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

(1) Sufficient mitigating or compensating measures to ~~assure~~ 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) ~~The secretary may provide for~~ 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, ~~an~~ any action permit may be revoked by the secretary for any of ~~these~~ 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 of a ~~threatened or endangered species.~~

(i) Nothing in this regulation shall be deemed to ~~absolve~~ exempt a person from the ~~obligation~~ 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 (~~i~~) 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, and L. 1997, Ch. 113, sec. 4; implementing K.S.A. 32-960b, K.S.A. 2016 Supp. 32-961, K.S.A. 32-962, as amended by L. 1997, Ch. 113, sec. 5, and K.S.A. 32-963, K.S.A. 32-1010, K.S.A. 32-1011, and L. 1997, Ch. 113, sec. 4; effective Oct. 30, 1989; amended Dec. 29, 1997; amended P-_____.)

ECONOMIC IMPACT STATEMENT

K.A.R. 115-15-3. Threatened and endangered wildlife; special permits, enforcement actions.

REGULATION DESCRIPTION: This permanent regulation deals with special permits and enforcement actions related to threatened and endangered species. The proposed amendments are in response to legislation passed during the 2016 Kansas legislative session.

In conjunction with these proposed amendments, the department is also proposing amendments to K.A.R. 115-15-4, which deals with recovery plans and procedures for threatened and endangered 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: The Kansas legislature passed several changes to the laws dealing with threatened or endangered species in Kansas during the 2016 session. These changes are being implemented in regulation now.

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.

ECONOMIC IMPACT: The proposed changes are expected to have no substantive economic impact on the department, other state agencies, small businesses or the general public.

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 changes would be expected to be minimal.

INITIAL AND ANNUAL COSTS OF IMPLEMENTATION AND ENFORCEMENT: Annual implementation costs are borne entirely by the department, and would be expected to be

minimal. Consequently, no additional permitting or enforcement activity would be anticipated. Development of recovery plans for listed species is also 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. Funding received as a direct result of threatened and endangered species programming currently totals approximately \$40,000 annually. Otherwise, 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. 115-15-3. Threatened and endangered wildlife; special permits, enforcement actions.

REGULATION DESCRIPTION: This permanent regulation designates when special permits are needed when dealing with threatened or endangered species and their habitats. An environmental benefit statement is required by law when amending an environmental rule or regulation. A regulation adopted by the Secretary of Wildlife, Parks and Tourism concerning threatened or endangered species of wildlife is defined as an environmental rule or regulation. Consequently, this environmental benefit statement has been prepared.

In conjunction with these proposed amendments, the department is also proposing amendments to K.A.R. 115-15-4, which deals with recovery plans for threatened and endangered 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.

The current proposed amendments stem from changes the legislature made during the 2016 Kansas legislative session.

TAKINGS ASSESSMENT STATEMENT

K.A.R. 115-15-3. Threatened and endangered species; special permits, enforcement actions.

K.A.R. 115-15-4. Recovery plans; procedures.

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 first 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. 115-15-3 and K.A.R. 115-15-4, are 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. 115-15-3 identifies when special permits are needed for actions related to threatened or endangered species and enforcement actions.

K.A.R. 115-15-4 identifies requirements of recovery plans and procedures for those recovery plans.

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, as well as requirements for special permits or the development of recovery plans 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 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 or delisting, that would normally be the case.

CONCLUSION: Based on the foregoing analysis, the agency believes that the proposed amendments to K.A.R. 115-15-3 and to K.A.R. 115-15-4 do not constitute a taking of private property.

115-15-4. Recovery plans; procedures. (a) The following definitions shall apply only to this regulation.:

(1) “Recovery plan” means a designated strategy or methodology that, if funded and implemented, is reasonably expected to lead to the eventual restoration, maintenance, or delisting of a listed species.

(2) “Listed species” means those species listed in K.A.R. 115-15-1 and K.A.R. 115-15-2.

(3) “Local advisory committee” means a committee as described in K.S.A. 32-960a(~~b~~), and amendments thereto.

(b) A recovery plan shall be developed for each listed species, subject to the priority list for development of recovery plans, and shall be consistent with the amount of funds appropriated for that purpose.

(1) All listed species shall be ranked to establish priorities for recovery plan development. ~~A~~ Any recovery plan may include more than one listed species.

(2) When, using the ranked priority list, a listed species is designated for recovery plan development, notice shall be published to that effect in the Kansas register and shall be mailed to persons who have requested to be notified of the recovery plan process for that listed species or for all species.

(3) Reasonable opportunity shall be provided for individuals, organizations, ~~or~~ and other interested parties to participate and express their views about the development and implementation of a recovery plan.

(4) A local advisory committee shall be established to take part in the development of the recovery plan. The local advisory committee shall identify measures ~~which~~ that minimize adverse social and economic impacts during recovery actions.

(c)(1) Each recovery plan shall include the following:

(A) The current status of the listed species, including the existing scientific knowledge of habitat requirements, limiting factors, and distribution;

(B) additional data needs;

(C) actions and land uses affecting the listed species;

(D) specific management activities that may be included in an agreement between the secretary and a landowner;

(E) critical habitat designations required for conservation and recovery of the listed species;

(F) objectives, criteria, and budgeted actions required to recover and protect the listed species;

(G) conservation assistance programs or other incentive-based opportunities for species conservation on private lands;

(H) information and education-based opportunities for conservation of listed species on private lands;

(I) delisting date goal; and

(J) estimated implementation cost.

(2) For each species listed as of before January 1, 1998, ~~the department shall maintain~~ the existing critical habitat designation process and permitting authority shall be maintained by the department until a recovery plan is adopted for that species. The recovery plan, once adopted, shall determine the final designations for critical habitat as well as identify specific actions that are subject to permitting and enforcement authority.

(3) For newly listed species, critical habitat shall be temporarily designated by the

secretary. Each temporary designation shall expire four years after the species is listed, unless the species is listed under federal law. Final critical habitat criteria and specific actions that are subject to permitting and enforcement authority shall be determined by the adopted recovery plan.

(4) Each critical habitat established through the recovery planning process shall supersede existing criteria and designations.

(5) Each critical habitat established through the recovery planning process or temporarily designated by the secretary shall be determined on the basis of the best scientific data available while taking into consideration the economic impact of the designation.

(6) Any geographic area may be excluded from a critical habitat designation by the secretary if the secretary determines that the benefits of the exclusion outweigh the benefits of the designation, unless the secretary determines that the failure to designate the critical habitat will result in the extirpation of the species, based on the best scientific and commercial data available.

(d) To meet the requirement that real property is shall be included in management activities as part of a recovery plan, ~~according~~ pursuant to K.S.A. 79-32,203(a)(2); and amendments thereto, a each landowner shall meet ~~these~~ the following requirements:

(1) Undertake land management activities or improvements identified in the recovery plan; and

(2) be a signed party to an agreement with the secretary specifying those land management activities or improvements.

(e) Before its adoption, a draft recovery plan shall be distributed to relevant federal and state agencies, local and tribal governments that are affected by the recovery plan, and

individuals and organizations that have requested notification of department actions regarding threatened or endangered species.

(f) After adoption of a recovery plan, cooperation with other state and federal agencies, local and tribal governments, and affected landowners for implementation of the recovery plan shall be sought by the secretary.

(g) ~~When~~ If a listed species is also designated as a federal threatened or endangered species, or is a candidate for federal designation, the recovery plan for that listed species shall be submitted to the secretary of the interior.

(h) Each recovery plan shall be reviewed at least once every five years, and the status of the listed species addressed by the recovery plan shall be monitored in the interim. The ~~department shall consult with the~~ local advisory committee shall be consulted by the department during the review. This review shall take into account any new scientific knowledge or data since the original adoption of the recovery plan, as well as current population trends of the listed species.

~~(i) This regulation shall take effect on and after January 1, 1998.~~ (Authorized by K.S.A. 32-960b L. 1997, Ch. 113, Sec. 3; implementing K.S.A. 32-960a L. 1997, Ch. 113, Sec. 2, L. 1997, Ch. 113, Sec. 3, and K.S.A. 32-960b L. 1997, Ch. 113, Sec. 6; effective Jan. 1, 1998; amended P-_____.)

ECONOMIC IMPACT STATEMENT

K.A.R. 115-15-4. Recovery plans; procedures.

REGULATION DESCRIPTION: This permanent regulation deals with recovery plans and procedures related to threatened and endangered species. The proposed amendments are in response to legislation passed during the 2016 Kansas legislative session.

In conjunction with these proposed amendments, the department is also proposing amendments to K.A.R. 115-15-3, which deals with special permits and enforcement for threatened and endangered 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: The Kansas legislature passed several changes to the laws dealing with threatened or endangered species in Kansas during the 2016 session. These changes are being implemented in regulation now.

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.

ECONOMIC IMPACT: The proposed changes are expected to have no substantive economic impact on the department, other state agencies, small businesses or the general public.

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 changes would be expected to be minimal.

INITIAL AND ANNUAL COSTS OF IMPLEMENTATION AND ENFORCEMENT: Annual implementation costs are borne entirely by the department, and would be expected to be

minimal. Consequently, no additional permitting or enforcement activity would be anticipated. Development of recovery plans for listed species is also 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. Funding received as a direct result of threatened and endangered species programming currently totals approximately \$40,000 annually. Otherwise, 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. 115-15-4. Recovery plans; procedures.

REGULATION DESCRIPTION: This permanent regulation designates recovery plan procedures for threatened and endangered species. An environmental benefit statement is required by law when amending an environmental rule or regulation. A regulation adopted by the Secretary of Wildlife, Parks and Tourism concerning threatened or endangered species of wildlife is defined as an environmental rule or regulation. Consequently, this environmental benefit statement has been prepared.

In conjunction with these proposed amendments, the department is also proposing amendments to K.A.R. 115-15-3, which deals with special permits and enforcement actions for threatened and endangered 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.

The current proposed amendments stem from changes the legislature made during the 2016 Kansas legislative session.

TAKINGS ASSESSMENT STATEMENT

K.A.R. 115-15-3. Threatened and endangered species; special permits, enforcement actions.

K.A.R. 115-15-4. Recovery plans; procedures.

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 first 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. 115-15-3 and K.A.R. 115-15-4, are 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. 115-15-3 identifies when special permits are needed for actions related to threatened or endangered species and enforcement actions.

K.A.R. 115-15-4 identifies requirements of recovery plans and procedures for those recovery plans.

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, as well as requirements for special permits or the development of recovery plans 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 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 or delisting, that would normally be the case.

CONCLUSION: Based on the foregoing analysis, the agency believes that the proposed amendments to K.A.R. 115-15-3 and to K.A.R. 115-15-4 do not constitute a taking of private property.