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State Endangered Species Act Statutes:

Kansas



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Nongame and endangered species conservation act K.S.A. 32-957 – 32-963; 32-1006 – 32-1012; 32-1033; 32-960a and 32-960b

Current through acts received as of June 5th from the 2020 Legislative Session

§ 32-957. Nongame and endangered species conservation act; title.

K.S.A. 32-957 through 32-963, 32-1009 through 32-1012, 32-1033 and K.S.A. 32-960a and 32-960b, and amendments thereto, shall be known and may be cited as the nongame and endangered species conservation act.

§ 32-958. Same; definitions.

As used in the nongame and endangered species conservation act:

(a) "Conserve," "conserving" and "conservation" mean the use of all methods and procedures for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such numbers. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, regulated taking and, when and where appropriate, the periodic or total protection of species or populations of wildlife. With respect to threatened species and endangered species, the terms mean the use of all methods and procedures, including but not limited to those described above, which are necessary to bring any threatened or endangered species to the point at which the methods, procedures and measures provided for such species pursuant to the nongame and endangered species conservation act are no longer necessary.

(b) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

(c) "Endangered species" means any species of wildlife whose continued existence as a viable component of the state's wild fauna is determined to be in jeopardy. That term also includes any species of wildlife determined to be an endangered species pursuant to Pub. L. No. 93-205 (December 28, 1973), the endangered species act of 1973, and amendments thereto.



(d) "Nongame species" means any species of wildlife not legally classified a game species, furbearer, threatened species or an endangered species by statute or by rule and regulation adopted pursuant to statute.

(e) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

(f) "Threatened species" means any species of wildlife which appears likely, within the foreseeable future, to become an endangered species. That term also includes any species of wildlife determined to be a threatened species pursuant to Pub. L. No. 93-205 (December 28, 1973), the endangered species act of 1973, and amendments thereto.

(g) "Wildlife" means any member of the animal kingdom, including, without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg or offspring thereof, or the dead body or parts thereof.

§ 32-959. Same; nongame species.

(a) The secretary shall conduct investigations on nongame species in order to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data to determine conservation measures necessary for their continued ability to sustain themselves successfully. On the basis of such information and determinations, the secretary shall adopt rules and regulations pursuant to K.S.A. 32-963 which contain a list of the nongame species deemed by the secretary to be in need of conservation and shall develop conservation programs pursuant to K.S.A. 32-962 which are designed to insure the continued ability of such nongame species to perpetuate themselves successfully. The secretary shall conduct ongoing investigations of nongame species.

(b) The secretary shall adopt such rules and regulations pursuant to K.S.A. 32-963 which establish limitations relating to taking, possessing, transporting, exporting, processing, selling, offering for sale or shipping as are deemed necessary by the secretary to conserve such nongame species.

§ 32-960. Same; threatened or endangered species.

(a) The secretary shall determine whether any species of wildlife indigenous to the state is a threatened species or an endangered species in this state because of any of the following factors:

- (1) The present or threatened destruction, modification or curtailment of its habitat or range;
- (2) the overutilization of such species for commercial, sporting, scientific, educational or other purposes;
- (3) disease or predation;
- (4) the inadequacy of existing regulatory mechanisms; or



(5) the presence of other natural or man-made factors affecting its continued existence within this state.

(b) (1) The secretary shall make the determinations required by subsection (a) on the basis of the best scientific, commercial and other data available to the secretary and after consultation, as appropriate, with federal agencies, other interested state agencies and interested persons and organizations.

(2) In determining whether any species of wildlife is a threatened species or an endangered species in this state, the secretary shall take into consideration those actions, if any, being carried out or about to be carried out by the federal government, by other states, by other agencies of this state or political subdivisions thereof, or by nongovernmental persons or organizations which may affect the species under consideration.

(3) Species of wildlife which occur in this state and which have been determined to be threatened species or endangered species pursuant to Pub. L. No. 93-205 (December 28, 1973), the endangered species act of 1973, and amendments thereto, shall receive full consideration by the secretary to determine whether each such species is a threatened or an endangered species in this state.

(c) (1) The secretary shall adopt, in accordance with K.S.A. 32-805, and amendments thereto, rules and regulations pursuant to K.S.A. 32-963, and amendments thereto, which contain a list of all species of wildlife indigenous to this state which have been determined to be endangered species pursuant to this section and a list of all such species which have been determined to be threatened species pursuant to this section. Each list shall refer to the species contained therein by their scientific and common names, if any, and shall specify with respect to each such species the portion of the range of such species within this state in which it is threatened or endangered.

(2) The secretary may not add a species to nor remove a species from any such list unless the secretary has first:

(A) Published a public notice of such proposed action;

(B) notified the governor of any state which shares a common border with this state and in which the subject species is known to occur that such action is being proposed; and

(C) (i) in cases where the secretary determines that an emergency situation exists, published a public notice that such an emergency situation exists, together with a summary of facts that support such determination; or (ii) in all other cases, conducted public informational meetings to coincide with the scientific review outside the agency which will recommend action with regard to the addition of the species to or removal of the species from the list. All documents within the control and custody of the secretary that pertain to adding the species to or removing the species from the list shall be made available to the public in a local repository, such as a public library, courthouse or regional office of the department. The secretary shall also mail a notice of the proposed addition of the species to or removal of the species from the list to federal and state agencies and local and tribal governments that are or may be affected by results of the review and to all individuals and organizations that have requested notification of department action regarding the administration of this act. The secretary shall also issue news releases to publicize the proposed addition of the species to or removal of the species from the list.



(3) Upon the petition of an interested person, the secretary shall conduct a review of any listed or unlisted species of wildlife proposed to be removed from or added to either of the lists adopted pursuant to this subsection (c), but only if the secretary makes a determination and publishes a public notice that such person has presented substantial evidence which warrants such a review. Once the secretary has made a determination that a review is warranted, the process described in subsection (c)(2), including the conducting of a public information meeting, shall apply.

(d) Every five years the secretary shall conduct a review of the species listed pursuant to this act (except for those species listed pursuant to the federal endangered species act of 1973, as amended) and shall submit any proposed changes in the listings to the following for consideration: (1) Federal and state agencies and local and tribal governments that are or may be affected by results of the change; and (2) all individuals and organizations that have requested notification of departmental action regarding administration of this act. After at least 90 days for comment by the agencies, governments, individuals and organizations to which the proposed changes are submitted, the secretary shall submit to the commission proposed rules and regulations making any changes that the secretary determines should be made in the listings.

§ 32-960a. Same; recovery plans; advisory committees, duties.

(a) On or before January 1, 1998, the secretary shall adopt, in accordance with K.S.A. 32-805, and amendments thereto, rules and regulations establishing procedures for developing and implementing recovery plans for all species listed as in need of conservation, threatened or endangered. The secretary shall give priority to development of recovery plans for particular species based on a cumulative assessment of the scientific evidence available. Based on the priority ranking, the secretary shall develop and begin implementation of recovery plans for at least two listed species on or before January 1, 1999.

(b) Whenever a species is added to the list of threatened or endangered species, the secretary shall establish a volunteer local advisory committee composed of members broadly representative of the area affected by the addition of the species to the list. Members shall include representatives of specialists from academic institutions, agribusiness and other trade organizations, state environmental and conservation organizations and other interested organizations and individuals. In addition, the membership shall include, if appropriate, landowners and public officials representing state, local and tribal governments. To the maximum extent possible, committee membership shall evenly balance the interests of all potentially affected groups and institutions.

(c) The advisory committee shall: (1) Work with the secretary to adapt the listing of the species and the recovery plan for the species to the social and economic conditions of the affected area; and (2) disseminate information to the public about the scientific basis of the decision to list the species, the regulatory process and incentives available to landowners pursuant to this act.

(d) If a species in need of conservation receives a priority ranking to develop and begin implementation of a recovery plan, the secretary shall establish a volunteer local advisory committee in the same manner as provided by subsection (b) to work with the secretary to adapt the recovery plan and disseminate information to the public.



(e) In implementing a recovery plan for a species, the secretary shall consider any data, recommendations and information provided by the advisory committee.

(f) The secretary shall cause each developed and implemented recovery plan to be published and maintained on the official website of the department of wildlife, parks and tourism.

§ 32-960b. Same; guidelines for enforcement and permit requirements.

The secretary shall adopt, in accordance with K.S.A. 32-805, and amendments thereto, rules and regulations establishing those guidelines prescribed in the operational directive of the secretary dated January 18, 1996, as the guidelines for law enforcement actions and permit requirements relating to the species listed as threatened or endangered pursuant to the Kansas nongame and endangered species conservation act and based on a determination of "intent" as it relates to lawful activities associated with normal farming and ranching practices. In addition, such rules and regulations incorporating the operational directive shall establish guidelines for enforcement activities related to development of residential and commercial property on privately owned property financed with private, nonpublic funds.

§ 32-961. Same; special permits; recovery plan, reports.

(a) Whenever any species is listed as a threatened species pursuant to K.S.A. 32-960, and amendments thereto, the secretary shall adopt such rules and regulations pursuant to K.S.A. 32-963, and amendments thereto, as the secretary deems necessary and advisable to provide for the conservation of such species. By rules and regulations adopted pursuant to K.S.A. 32-963, and amendments thereto, the secretary may prohibit with respect to any threatened species included in a list adopted pursuant to K.S.A. 32-960, and amendments thereto, except as provided in subsection (c), any act which is prohibited under subsection (b).

(b) Except as otherwise specifically provided by this section or rules and regulations adopted pursuant to this section, a special permit is required for any person subject to the jurisdiction of this state to:

(1) Export from this state any endangered species included in a list adopted pursuant to K.S.A. 32-960, and amendments thereto;

(2) possess, process, sell, offer for sale, deliver, carry, transport or ship, by any means whatsoever, any such endangered species; or

(3) act in a manner contrary to any rule and regulation adopted by the secretary pursuant to authority provided by K.S.A. 32-957 through 32-963 and 32-1009 through 32-1012, and amendments thereto, which pertains to such endangered species or to any threatened species of wildlife included in a list adopted pursuant to K.S.A. 32-960, and amendments thereto.

(c) The provisions of subsection (b)(3) shall not apply to:

(1) Normal farming and ranching practices, including government cost-shared agriculture land treatment measures, unless a permit is required by another state or federal agency or such practices involve an intentional taking of a threatened species under K.S.A. 32-



1010, and amendments thereto, or involve an intentional taking of an endangered species under K.S.A. 32-1011, and amendments thereto;

(2) 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 species under K.S.A. 32-1010, and amendments thereto, or involves an intentional taking of an endangered species under K.S.A. 32-1011, and amendments thereto; or

(3) activities for which a person has obtained a scientific, educational or exhibition permit, as provided by K.S.A. 32-952, and amendments thereto.

(d) For the purposes of this section, a permit required by another state or federal agency shall not include a certification or registration.

(e) Subsection (b) shall not apply to any endangered species listed pursuant to K.S.A. 32-960, and amendments thereto, and any species of wildlife determined to be an endangered species pursuant to Pub. L. 93-205 (December 28, 1973), the endangered species act of 1973, and amendments thereto, entering the state from another state or from a point outside the territorial limits of the United States and being transported to a point within or beyond the state in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(f) The secretary may issue special permits to authorize, under such terms and conditions as the secretary prescribes, any act described in subsection (b) or any act which is otherwise prohibited by rules and regulations adopted pursuant to subsection (a), for scientific purposes or to enhance the propagation or survival of the affected species. Application for such permit shall be made to the secretary or the secretary's designee and shall be accompanied by the fee prescribed pursuant to K.S.A. 32-988, and amendments thereto. The secretary shall maintain a list of permit applications under this subsection. Where such applications have been approved and special permits have been issued, the secretary shall maintain a list of such permits, including therein the name and address of the permittee and the terms and conditions prescribed for each such permit. The secretary shall keep such lists current and shall file copies thereof, along with any additions or amendments, with the secretary of the interior of the federal government.

(g) Threatened or endangered species included in a list adopted pursuant to K.S.A. 32-960, and amendments thereto, may be captured or destroyed without a permit by any person in an emergency situation involving an immediate and demonstrable threat to human life.

(h) (1) For all new species listed as endangered or threatened by the secretary pursuant to this act on and after July 1, 2016, recovery plans for such species shall be completed within four years after the species is listed. If such recovery plan is not completed within four years, no permit shall be required by the secretary for any activity that would otherwise require a permit pursuant to this act until the recovery plan is complete. The provisions of this paragraph shall not apply to any species listed as endangered or threatened under the endangered species act of 1973 (Pub. L. No. 93-205).



(2) The secretary shall annually submit a report on all species listed as endangered or threatened as of June 30, 2016, to the senate committee on natural resources and the house committee on agriculture and natural resources. Such report shall include:

- (A) The status of species with a completed recovery plan;
- (B) the status of species with a recovery plan currently in process, but not yet complete; and
- (C) future goals for completing recovery plans for any listed species that does not yet have a recovery plan.

§ 32-962. Same; programs for conservation.

(a) The secretary shall establish such programs, including acquisition of land or aquatic habitat, as are deemed necessary for the conservation of nongame, threatened and endangered species. The secretary shall utilize all authority vested in the secretary by the laws of this state to carry out the purposes of this section with the exception that the secretary shall not utilize the power of eminent domain to carry out such programs unless a specific authorization and appropriation is made therefor by the legislature.

(b) (1) In carrying out programs authorized by this section, the secretary may enter into agreements with federal agencies, other states, other state agencies, political subdivisions of this state or private persons for administration and management of any area established under this section or utilized for conservation of nongame species, species in need of conservation or threatened or endangered species. Such programs shall include, but not be limited to, the following conservation agreements:

(A) Prelisting conservation agreement: An agreement identifying land where the contracting entity agrees to carry out management activities that increase the likelihood of species survival before a species is listed as threatened or endangered. The intent of such agreement would be to allow the contracting entity to carry out management activities specified in the agreement during the life of the agreement without penalties of law enforcement action or permitting requirements if the species is listed at a later date.

(B) Safe harbor agreement: An agreement in which the contracting entity agrees to maintain or enhance suitable, but currently unoccupied, habitat for a species listed as in need of conservation, threatened or endangered so as to increase utilization of the habitat by a listed species. The intent of such agreement would be to protect the contracting entity from any restrictions on land use that might otherwise occur if a listed species immigrates into the habitat.

(C) No take agreement: An agreement allowing the contracting entity to implement voluntary management activities that maintain, enhance, set aside or create habitat for species listed as in need of conservation, threatened or endangered. The intent of such agreement would be to provide assurance that the management activities specified in the agreement would not lead to penalties of law enforcement action or permitting requirements if future changes in land use are needed.



(2) The initial term of any agreement pursuant to subsection (b)(1) shall be five years. An agreement may be continued, with or without modification, after the five-year term, subject to review and determination by all parties. In the absence of a mutually satisfactory determination by the parties that an agreement should continue, the agreement will terminate.

(c) The governor shall review other programs administered by the governor and utilize such programs in furtherance of the purposes of the nongame and endangered species conservation act. All state agencies shall cooperate with the secretary in furtherance of the conservation of nongame, threatened and endangered species.

§ 32-963. Rules and regulations.

The secretary may adopt, in accordance with K.S.A. 32-805, and amendments thereto, such rules and regulations that the secretary deems necessary to implement and administer the provisions of the nongame and endangered species conservation act.

§ 32-1009. Nongame species.

Except as provided in rules and regulations adopted pursuant to K.S.A. 32-963, and amendments thereto, it shall be unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship nongame species deemed by the secretary to be in need of conservation pursuant to K.S.A. 32-959, and amendments thereto. Subject to the same exception, it shall further be unlawful for any common carrier knowingly to transport or receive for shipment nongame species deemed by the secretary to be in need of conservation pursuant to K.S.A. 32-959, and amendments thereto.

§ 32-1010. Threatened species.

Except as otherwise specifically provided in K.S.A. 32-961 or in a special permit issued under K.S.A. 32-961 or in any rules and regulations adopted pursuant to K.S.A. 32-961, the intentional taking of any threatened species indigenous to this state, which has been determined by the secretary to be a threatened species in this state and is included in a list of such threatened species adopted pursuant to K.S.A. 32-960, shall constitute unlawful taking of a threatened species.

§ 32-1011. Endangered species.

Except as otherwise specifically provided in K.S.A. 32-961 or in a special permit issued under K.S.A. 32-961 or in any rule and regulation adopted pursuant to K.S.A. 32-961, the intentional taking of any endangered species indigenous to this state, which has been determined by the secretary to be an endangered species in this state and is included in a list of such endangered species adopted pursuant to K.S.A. 32-960, shall constitute unlawful taking of an endangered species.

§ 32-1012. Application of prohibitions regarding nongame or endangered species.

(a) Nothing in the nongame and endangered species conservation act shall be construed to:

(1) Apply retroactively to any occurrence prior to July 1, 1975;



(2) prohibit importation into the state of wildlife which may be lawfully imported into the United States or lawfully taken and removed from another state; or

(3) prohibit entry into the state or possession, transportation, exportation, processing, sale or offer for sale or shipment of any species of wildlife which is deemed to be threatened or endangered in this state but not in the state where originally taken, if the person engaging therein demonstrates by circumstantial evidence that such species of wildlife was lawfully taken and lawfully removed from such state.

(b) The provisions of this section shall not be construed to permit the possession, transportation, exportation, processing, sale or offer for sale or shipment within this state of any species of wildlife determined to be a threatened species or endangered species pursuant to Pub. L. No. 93-205 (December 28, 1973), the endangered species act of 1973, and acts amendatory thereof, except as permitted in K.S.A. 32-961.

§ 32-1033. Unlawful taking of endangered species.

Unlawful taking of an endangered species, as defined in K.S.A. 32-1011, is a class A misdemeanor.

