

LEGAL NOTICE



In accordance with Neb. Rev. Stat. 84-907, a public hearing, conducted by the Nebraska Game and Parks Commission, will be held Wednesday, January 22, 2020, at the Nebraska Game and Parks Headquarters Building, Third Floor, 2200 North 33<sup>rd</sup> Street, Lincoln, Nebraska, prior to consideration and/or enactment of the following:

Pursuant to the provisions of Neb. Rev. Stat. 37-301, 37-801 - 37-810, a public hearing will be held at 8:30 a.m., to consider amendments to Chapter 4, Wildlife Regulations, Section 004, Regulations regarding the addition of the "Sickelfin Chub" to the Endangered List; the addition of the "McCown's Longspur" and the "Timber Rattlesnake" to the Threatened List; the deletion of the "River Otter" from the Threatened List; and the provision for the lawful take of timber rattlesnakes if it is done for the immediate protection of the health of humans, livestock or pets.

Copies of any proposed regulations and fiscal impact statements shall be available for public inspection at the Game and Parks Commission office and the Office of the Secretary of State.

All interested persons may attend and testify orally or by written submission at the public hearing. Interested persons or organizations may also submit written comments prior to the hearing, which will be entered into the hearing record if they: 1) include a request to be included as part of the hearing record; 2) include the name and address of the person or organization submitting the comments; and 3) are received by 1:00 p.m. CT, January 20, 2020 by Sandra Paice at the Lincoln office, 2200 North 33<sup>rd</sup> Street, Lincoln, NE 68503-0370.

James Douglas, Director

NOTICE OF RULEMAKING  
COMMENT PERIOD

NOTICE is hereby given that the Nebraska Game and Parks Commission is accepting written comments on working drafts of proposed amendments, Title 163, Nebraska Administrative Code Chapter 4, entitled REGULATIONS Wildlife, Section 004 – Threatened and Endangered Species, regarding the addition of the “Sickelfin Chub” to the Endangered List; the addition of the “McCown’s Longspur” and the “Timber Rattlesnake to the Threatened List; the deletion of the “River Otter” from the Threatened List; and the provision for the lawful take of timber rattlesnakes if it is done for the immediate protection of the health of humans, livestock or pets.

All interested persons are invited to obtain draft copies of the proposed regulations from and submit their written comments to Sandra Paice, Division of Administration, Nebraska Game and Parks Commission, 2200 North 33rd, P.O. Box 30370, Lincoln, NE 68503, or FAX 402/471-5528. The comment period will end at the close of business on January 21, 2020.

If auxiliary aids or reasonable accommodations are needed to review the drafts or participate in this process, please call the above-named person at (402) 471-5432 or, for persons with hearing impairments, (402) TDD or Nebraska Relay System, (800) 833-7352 TDD by no later than January 14, 2020.

DEC 18 2019

## DRAFT FISCAL IMPACT STATEMENT

Agency: Nebraska Game and Parks Commission	
Title: 163	Prepared by: Sandra Paice
Chapter: 4	Date prepared: December 18, 2019
Subject: Section <u>004</u> , Regulations governing the protection, conservation, and management of endangered and threatened wildlife species.	Telephone: 402/471-5432

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & Description of Impact:

State Agency:       \$0  
 Political  
     Subdivision:     \$0  
 Regulated  
     Public:           \$0

If indeterminable, explain why:

NEBRASKA ADMINISTRATIVE CODE

Last Approved Date: ~~April 30, 2009~~ November 30, 2015

Title 163 - Nebraska Game and Parks Commission

Chapter 4 - Wildlife Regulations

004 THREATENED AND ENDANGERED SPECIES

The following regulations are prescribed by the Game and Parks Commission, State of Nebraska in accordance with Neb. Rev. Stat. §§ 37-301, 37-314, 37-316, 37-418, 37-540, 37-542, 37-548 through 37-549, and 37-801 through 37-811. For purposes of these regulations, unless context otherwise requires, the definitions found in Chapter 37, sections 202 through 247 of the Game Law, are used. ~~These regulations are effective following enactment by the Commission, approval by the Attorney General and Governor, and when five days have elapsed since filing with the Secretary of State.~~

004.01 ENDANGERED SPECIES

<u>Common Name</u>	<u>Scientific Name</u>	<u>Location</u> <sup>1</sup>
<u>Birds</u>		
*Whooping crane	<u>Grus americana</u>	Entire
*Eskimo curlew <sup>2</sup>	<u>Numenius borealis</u>	Entire
*Interior least tern	<u>Sternula antillarum athalassos</u>	Entire
<u>Mammals</u>		
*Black-footed ferret	<u>Mustela nigripes</u>	Entire
Swift fox	<u>Vulpes velox</u>	Entire
<u>Plants</u>		
*Blowout penstemon	<u>Penstemon haydenii</u>	Entire
**Colorado butterfly plant	<u>Gaura neomexicana ssp. coloradensis</u>	Entire
Saltwort	<u>Salicornia rubra</u>	Entire
<u>Fishes</u>		
*Topeka shiner	<u>Notropis topeka</u>	Entire
*Pallid sturgeon	<u>Scaphirhynchus albus</u>	Entire
Blacknose shiner	<u>Notropis heterolepis</u>	Entire

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Sturgeon chub	<u>Macrhybopsis gelida</u>	Entire
<b>Sicklefin Chub</b>	<b><u>Macrhybopsis meeki</u></b>	<b>Entire</b>
<b>Invertebrates</b>		
*American burying beetle	<u>Nicrophorus americanus</u>	Entire
*Salt Creek tiger beetle	<u>Cicindela nevadica lincolniana</u>	Entire
*Scaleshell mussel	<u>Leptodea leptodon</u>	Entire
*Also listed as endangered in Nebraska under the Federal Endangered Species Act.		
**Also listed as threatened in Nebraska under the Federal Endangered Species Act.		
<sup>1</sup> Portion of Nebraska where endangered or threatened.		
<sup>2</sup> Last reported Nebraska sighting was made in 1926, no documented sighting anywhere since 1962. Species likely extinct.		
<sup>3</sup> There are recent (not historical) records of this species in Nebraska. However, there are no known breeding populations and/or Nebraska does not provide an important stopover or migratory path for this species.		

004.02 THREATENED SPECIES

<u>Common Name</u>	<u>Scientific Name</u>	<u>Location</u> <sup>1</sup>
<b>Birds</b>		
Mountain plover	<u>Charadrius montanus</u>	Entire
**Piping plover	<u>Charadrius melodus</u>	Entire
**Red knot	<u>Calidris canutus rufa</u>	Entire
<b>McCown's Longspur</b>	<b><u>Rhynchophanes mccownii</u></b>	<b>Entire</b>
<b>Mammals</b>		
Southern flying squirrel	<u>Glaucomys volans</u>	Entire
<b>River otter</b>	<b><u>Lontra canadensis</u></b>	<b>Entire</b>
**Northern long-eared bat	<u>Myotis septentrionalis</u>	Entire
<b>Plants</b>		
**Ute ladies'-tresses orchid	<u>Spiranthes diluvialis</u>	Entire
**Western prairie fringed orchid	<u>Platanthera praeclara</u>	Entire
American Ginseng	<u>Panax quinquefolius</u>	Entire
Small white lady's-slipper	<u>Cypripedium candidum</u>	Entire

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<u>Fishes</u>		
Lake sturgeon	<u>Acipenser fulvescens</u>	Entire
Northern redbelly dace	<u>Chrosomus eos</u>	Entire
Finescale dace	<u>Chrosomus neogaeus</u>	Entire
<u>Reptiles</u>		
Massasauga	<u>Sistrurus catenatus</u>	Entire
<b>Timber Rattlesnake</b>	<b><u>Crotalus horridus</u></b>	<b>Entire</b>
*Also listed as endangered in Nebraska under the Federal Endangered Species Act.		
**Also listed as threatened in Nebraska under the Federal Endangered Species Act.		
<sup>1</sup> Portion of Nebraska where endangered or threatened.		
<sup>3</sup> There are recent (not historical) records of this species in Nebraska. However, there are no known breeding populations and/or Nebraska does not provide an important stopover or migratory path for this species.		

004.03 General Regulations

It shall be unlawful to:

004.03A Take, export, possess, process, sell or offer for sale, deliver, carry, transport, or ship by any means whatsoever any threatened species, except as specifically provided by state or federal law, with the following exceptions:

004.03A1 Accidental taking of any lake sturgeon or pallid sturgeon through commercial operations or by hook and line will not be considered unlawful if returned to the water immediately.

004.03A2 ~~Accidental taking of river otter through legal furbearer trapping activity will not be considered unlawful if released immediately (if individual is viable) or remains are delivered to the Nebraska Game and Parks Commission.~~ Taking of massasauga or timber rattlesnake will not be considered unlawful if it is done for the immediate protection of the health of humans, livestock or pets.

~~004.03A3 Taking of massasauga will not be considered unlawful if it is done for the immediate protection of the health of humans, livestock or pets.~~

004.03A4 004.03A3 Possession, processing, sale or transport of cultivated (non-wild) ginseng, or wild ginseng that is legally harvested outside of Nebraska, shall not be considered unlawful.

~~004.03A5~~ 004.03A4 Unintentional taking of plants resulting from normal agricultural practices shall not be considered unlawful.

004.03B Take by seine or trap any fish in any of the streams listed below:

Brush Creek west of Brownlee in Cherry County  
Cottonwood Creek in Keya Paha County  
East Holt Creek in Keya Paha County  
Gordon Creek west of Highway 61 in Cherry County  
Holt Creek in Keya Paha County  
Niobrara River east of Box Butte Reservoir and west of  
Highway 385 in Dawes County  
Taylor Creek west of Highway 81 in Madison County

~~The Commission is authorized under state law to permit any act otherwise prohibited by these regulations for scientific purposes or to enhance the propagation or survival of the affected species.~~

~~Habitat improvement and maintenance programs administered by the Commission may be utilized to provide incentives or otherwise assist landowners in the protection of species affected by these regulations.~~