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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

GAME AND FISHERIES COMMITTEE/ENVIRONMENTAL RESOURCES &
ENERGY COMMITTEE JOINT PUBLIC HEARING

EMPIRE BEAUTY SCHOOL AUDITORIUM
396 POTTSVILLE-ST. CLAIR HIGHWAY
POTTSVILLE, PENNSYLVANIA

MONDAY, AUGUST 26, 2013
2:02 P.M.

GAME & FISHERIES COMMITTEE

BEFORE: HONORABLE MARTIN T. CAUSER, MAJORITY CHAIR
HONORABLE GREGORY S. LUCAS
HONORABLE JOE EMRICK
HONORABLE GARTH D. EVERETT
HONORABLE KEITH GILLESPIE
HONORABLE MARCIA M. HAHN
HONORABLE DAVID M. MALONEY, SR.
HONORABLE DAN MOUL
HONORABLE DOYLE HEFFLEY
HONORABLE DEBERAH KULA
HONORABLE PAM SNYDER
HONORABLE GERALD MULLERY
HONORABLE MARC GERGELY

ENVIRONMENTAL RESOURCES & ENERGY COMMITTEE

HONORABLE RON MILLER, MAJORITY CHAIR
HONORABLE MATT GABLER
HONORABLE JEFFREY P. PYLE
HONORABLE DONNA OBERLANDER
HONORABLE TOMMY SANKEY
HONORABLE BECKY CORBIN
HONORABLE GREG VITALI, MINORITY CHAIR
HONORABLE STEPHEN MCCARTER
HONORABLE BRYAN BARBIN
HONORABLE JARET GIBBONS

ALSO
PRESENT: HONORABLE MIKE TOBASH

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COMMITTEE STAFF PRESENT:
GREG RAFFENSPERGER
EXECUTIVE DIRECTOR OF GAME & FISHERIES COMMITTEE

JOHN LUTZ
MAJORITY EXECUTIVE DIRECTOR FOR HOUSE REPUBLICAN
ENVIRONMENTAL RESOURCES & ENERGY COMMITTEE

SARAH CLARK
MAJORITY EXECUTIVE DIRECTOR OF ENVIRONMENTAL
RESOURCES & ENERGY COMMITTEE

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P R O C E E D I N G

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2 -----
3 CHAIRMAN CAUSER: Good afternoon. I'd like to call
4 the meeting of the House Game & Fisheries Committee and the
5 House Environmental Resources & Energy Committee to order and
6 ask you to join me in the Pledge of Allegiance.

7 PLEDGE OF ALLEGIANCE RECITED

8 CHAIRMAN CAUSER: I'd like to welcome everyone and
9 thank everyone for coming today. We have an excellent turnout
10 of members. And I think, first and foremost, we should thank
11 Representative Tobash for hosting us here today and also the
12 Empire Beauty School. We really appreciate the hospitality of
13 them allowing us to use their facility. And we're glad to be
14 here in Schuylkill County.

15 I'd like to start out by asking the members to
16 introduce themselves. My name is Mark Causer. I represent the
17 67th District, in McKean, Potter and Cameron Counties, and I'm
18 the Republican Chairman of the House Game & Fisheries
19 Committee. And we'll move to the left.

20 ROLL CALL TAKEN

21 CHAIRMAN CAUSER: I want to thank all the members
22 for coming today. We're here today to conduct a joint public
23 hearing on House Bill 1576. And at this point I would like to
24 ask the prime sponsor of this House bill to offer opening
25 comments. Representative Pyle?

1 REPRESENTATIVE PYLE: Thank you, Mr. Chairman. Mr.
2 Chairman, I thank all the other members. In Pennsylvania, the
3 word we hear most often is diversity. I see we have every
4 corner of the state represented here, and I want to thank them.

5 House Bill 1576 addresses how the Pennsylvania Game
6 Commission and Fish & Boat Commission deal with endangered
7 species. Under the current system we have now in the industry
8 that requires the outdoors for natural resources, and where I
9 live is very, very heavy in that. In fact, a lot of people
10 will tell you Armstrong County is the state's treasure chest.
11 There are no identifiable resources the state owns that we
12 don't have.

13 Now, why we filed this had nothing to do with that.
14 Why we filed this was a recent incident in which the Armstrong
15 School District, a public entity, for the first time in a
16 hundred years decided to build a high school. Because we live
17 in the Indiana Bat range, studies were required that we do a
18 biological index of what living creatures were on the site.
19 After quite a bit of time hanging nets, they found we have
20 none.

21 Now, why I framed this bill is I discovered there is
22 no way to appeal that. We hung the nets. We spent \$20,000,
23 \$30,000 of taxpayers' money to go looking for things that
24 essentially weren't there. Why then was there a requirement
25 that they find this offset acreage somewhere else if we didn't

1 have these things?

2 So to get to the crux of it, what 1576 says, it
3 makes them show proof, show us what you are telling us is there
4 is there. Right now, we've got a very expensive high school
5 going up. For us, we're small like Pottsville is, not very big
6 at all. It's the first time we built a school in a hundred
7 years. And for some reason, somebody decided that this is such
8 a good idea, we should just throw a little extra money into the
9 pot to protect things that weren't there. And I feel that's
10 wrong. I feel anybody, whether it's a company or individual,
11 that has to deal with these regulations be able to ask for the
12 simplest of constitutional requirements, habeas corpus, show
13 your proof. Right now, we don't have that.

14 In an age of openness and transparency in this
15 Commonwealth, and I've been a seated House member for ten
16 years, I've gone through Right to Know, I've gone through all
17 the public hearings. And frankly, I agree with it,
18 Pennsylvania is an open state. And we should be. Thomas
19 Jefferson once said government exists only by consent of the
20 government, which implies the right to due process, to
21 challenge the decisions made by your government without fear of
22 retribution. Right now that does not exist. And I feel that
23 if we are truly to live up to what we claim we are, an open and
24 transparent body, a bill like 1576 is necessary. A government
25 agency should have to show its evidence. If they do not, we

1 take it to an outside third-party independent arbiter, the
2 Independent Regulatory Review Commission.

3 As fact would have it, there are only two regulatory
4 agencies in the entire state that are not subject to review by
5 the Independent Regulatory Review Commission. Those two are
6 the Fish & Boat Commission and the Game Commission. The
7 Historic Museum Commission used to be on that list. They were
8 taken off a few years ago. They, too, are subject to the
9 independent rules of IRRC.

10 Mr. Chairman, without getting real longwinded,
11 that's about what it does.

12 CHAIRMAN CAUSER: Thank you, Representative Pyle.
13 I'd also like to offer our host, Representative Tobash, the
14 opportunity for brief comments.

15 REPRESENTATIVE TOBASH: Thank you very much, Mr.
16 Chairman. I appreciate the Chairman of both committees having
17 their hearings here in Pottsville. And I'd like to reiterate
18 your comments about Empire Education. They're a private-sector
19 national organization. They've got their headquarters right
20 here, and they have helped create really probably hundreds of
21 thousands of careers with the work they do throughout
22 Pennsylvania and the nation. So we appreciate it very much.

23 Representative Pyle, my colleague, and I have worked
24 together on this issue because we've seen firsthand the
25 conflicts between agencies like DEP and the Game Commission and

1 PennDOT, when they represent similar districts, districts rich
2 in outdoor recreation, hunting and fishing. Both districts
3 have coal mining heritage. So we certainly welcome you here to
4 the western part of the side. I'm on the right side of the
5 state; you're on the left. I think ---.

6 REPRESENTATIVE PYLE: That's the first time
7 anybody's ever told us they were on the left.

8 REPRESENTATIVE TOBASH: So welcome to Schuylkill
9 County. We're to work to strike a balance between government
10 regulation, private and public sector job creation,
11 environmental improvements and concerns while at the same time
12 doing our very best to make sure that tax dollars are being
13 spent as effectively and efficiently as possible. I'm not sure
14 what direction you've come from to get here today, but it's
15 likely that we have witnessed some remnants of bad
16 environmental policy. You may have seen some column or waste
17 coal banks, you may have seen some stripping pits that were
18 never reclaimed. But environmental policy has changed today.
19 We need active industry to re-mine and reclaim areas where
20 surface minings from the '30s and '40s have caused damage.
21 Without an active industry, we will just not be able to afford
22 to repair our roads and deteriorating bridges.

23 The core function of state government is the
24 protection of our citizens and its resources, but it's also a
25 core function of government to provide the services at a cost

1 that our hardworking taxpayers in this state can afford. We
2 have to be good stewards of every tax dollar that we ask our
3 citizens to pay. So today we're here to hear testimony on this
4 important issue, striking a balance between wildlife, our
5 environment and our need to provide the services that
6 Pennsylvania can expect. We need to continue to look for ways
7 to reasonably manage projects and cut costs. And as a sound
8 bite, we're looking for ways to get government out of the way
9 and cut back on red tape. I think that many of you will draw
10 the conclusion that I've seen replayed many times. The way it
11 stands in Pennsylvania today, we suffer under an environmental
12 policy that is often stopping us from cleaning up our
13 environment. That is environmental policy that is stopping us
14 from cleaning up our environment. If a mine reclamation
15 project is too costly for an operator to engineer and complete
16 and we have to wait for government funds, then reclamation
17 projects just won't get completed. If a bridge needs to be
18 replaced and the dozens of regulatory hoops that contractors
19 have to jump through drive up the costs so high that we can
20 only replace one bridge instead of three, then we have to be
21 prepared to face bridge closings or pay higher taxes.

22 So I thank you again for your participation in
23 today's hearing. I want to thank our testifiers in advance for
24 their testimony and their expertise. Thank you.

25 CHAIRMAN CAUSER: Thank you, Representative Tobash.

1 I'd also like to recommend two other members that are here with
2 us, Representative Jerry Knowles and Representative Bryan
3 Barbin, who joined us. Thank you, gentlemen, for being here.

4 Our first testifier is Sarah Miller. She's a
5 regulatory specialist with the Pennsylvania Builders
6 Association. Each of the testifiers have been given ten
7 minutes for their testimony and then with the questions after
8 that. So welcome. You're free to proceed.

9 MS. MILLER: Good afternoon. My name is Sarah
10 Miller. I'm currently the regulatory specialist with the
11 Pennsylvania Builders Association. However, until very
12 recently, I spent 14 years working for the Independent
13 Regulatory Review Commission, first as a regulatory analyst,
14 then subsequently as a communications manager for the
15 Commission.

16 PBA strongly supports a fair and open and especially
17 a standardized process with a listing of endangered species in
18 Pennsylvania. We are fully supportive of House Bill 1576. We
19 believe requiring the Fish & Boat Commission and the Game
20 Commission to undergo the process of regulatory review as
21 evaluated by IRRC will result in better administrative law for
22 Pennsylvania with regards to endangered species listings.

23 Currently and under House Bill 1576, we believe that
24 our responsibilities will not change. So this bill will not
25 change any way that we have to operate when we require a permit

1 from DEP. They would still have to go through the PNDI listing
2 and still have to --- if there is an endangered species that
3 has been identified, we will still have to hire consultants to
4 research to get our permit. So that's not what the bill does.
5 This will not change any of the requirements for us with the
6 client --- with the listing of endangered species.

7 Historically, there have been many instances of
8 misunderstandings when it comes to the regulatory review
9 process in Pennsylvania and actually what the Independent
10 Regulatory Review Commission does. And in an effort to help
11 clarify some of those issues, I'd like to address some of those
12 misconceptions, and they may pertain to House Bill 1576.

13 First, this bill will not take away the statutory
14 requirement of the Fish & Boat Commission or the Game
15 Commission to either list or de-list endangered species in
16 their regulations.

17 IRRC cannot require an agency to promulgate a
18 regulation. IRRC cannot tell an agency what to put in their
19 regulations. IRRC cannot bar a regulation from being
20 promulgated by an agency. By law they cannot do that. Only
21 the General Assembly can bar a regulation from implementation,
22 period.

23 Second, IRRC, as an independent agency, is charged
24 with providing a thorough and objective review of regulations.
25 And they do so based on a very specific set of criteria that

1 have been given to them by the General Assembly. To comply
2 with the criteria in the Regulatory Review Act, agencies must
3 disclose all data they use when writing their regulation. They
4 need to explain why the data is invalid, consider utilizing
5 other methods of using their regulatory authority, consider
6 minimizing adverse impacts to small businesses, identify the
7 financial and economic issues that will be associated with the
8 regulatory promulgation, and then describe how the regulation
9 will affect the public health, safety and welfare. And more
10 importantly, agencies under the Regulatory Review Act must
11 respond to all comments they receive, called a comment response
12 document. So they must tell commentators that we've read your
13 comment, this is what we understand you're saying, these are
14 the reasons why we are not going to adopt or these are the
15 reasons why we do not agree with you. So there's a
16 give-and-take with the agency.

17 One of the most important things to realize about
18 the Regulatory Review Act is there are no statutory timelines
19 contained in the Regulatory Review Act that require a two-year
20 promulgation process. Agencies have up to two years. The
21 timeline on promulgation of regulations are specifically and
22 only controlled by the agencies promulgating those regulations.

23 As I understand it, for instance, currently the Fish
24 & Boat Commission must comply with the Commonwealth Documents
25 Law, so they have to promulgate --- publish regulations in the

1 Pennsylvania Bulletin and provide for a 30-day public comment
2 period. They also are required under the Attorney General's
3 Act to submit their regulations to the Attorney General for a
4 review of form and legality. The Attorney General at the
5 proposed stage is statutorily required to do that review within
6 30 days.

7 IRRC review of a proposed regulation would only add
8 30 days to the process at the proposed stage. IRRC only has 30
9 days after the close of the public comment period to submit
10 their comments, and that's it.

11 PBA could not support any proposal that would add an
12 unrealistic extension on any type of regulatory review.
13 Efficiency and expediency are at the heart of the construction
14 process in Pennsylvania, and to advocate for any additional
15 delays when we get to a site --- our members get to a site and
16 it's sitting empty and not being able to work and cost them
17 thousands of dollars every day. We don't do that.

18 It's our opinion that the regulatory review process
19 would create an open and accountable process which regulations
20 would be allowed to be critically examined by an independent
21 agency. The process will allow the regulated community, the
22 General Assembly and IRRC to become intimately involved in the
23 development of oversight regulation. And we believe that
24 IRRC's involvement in the process really helps to assure the
25 agency's accountability and the judicious use of regulatory

1 authority that will also help keep from imposing hidden or
2 sometimes unseen costs from trickling down to small businesses.

3 On behalf of the Pennsylvania Builders Association,
4 if you have any questions, I'd be happy to answer them.

5 CHAIRMAN CAUSER: Thank you for your testimony. I'd
6 also like to recognize two other members that joined us,
7 Representative Jaret Gibbons and Representative Doyle Heffley.
8 Thank you for being here with us today.

9 First question will be from Representative Pyle.

10 REPRESENTATIVE PYLE: Thank you very much for your
11 testimony today. If I could steer away from PBA and back into
12 the realm of IRRC. I'm a back bench rank-and-file member. I'm
13 not leadership. I don't deal with IRRC a whole lot. When we
14 say an independent third-party review, am I using that
15 description correctly?

16 MS. MILLER: Yes. IRRC is classified as a
17 legislative services agency. They are completely independent
18 of every other branch of government.

19 REPRESENTATIVE PYLE: One other question. And put
20 your PBA hat back on. I'm told that during certain times of
21 the year when endangered species are either mating, migratory
22 periods, it's common to shut down big groups of land. I
23 imagine that will affect the builders, people who would be in
24 growth areas, putting up new housing, renovating old housing.
25 Can you tell us your experience with the Endangered Species Act

1 and any building that may or may not have begun or been stopped
2 or --- just give me a broad picture.

3 MS. MILLER: I think, for instance, shutting down a
4 construction based on migratory patterns or mating habits of a
5 specific species, absolutely. Because apparently, from what I
6 understand, you cannot go out and do your independent studies
7 to find out if the species are, in fact, present but for
8 certain times of the year. So those times of the year are only
9 May and June, but you want to start the project in October.
10 You want to start the planning for that project and apply for
11 DEP permits. You may have to wait until the next spring to
12 actually do your study, your PNDI review, because you need your
13 PNDI review before it needs to be attached to apply for your
14 DEP permit.

15 REPRESENTATIVE PYLE: Thank you. That's --- a lot
16 of folks didn't know how that works. I appreciate it. Thank
17 you.

18 CHAIRMAN CAUSER: Thank you, Representative Pyle.
19 Chairman Vitali?

20 CHAIRMAN VITALI: Thank you, Mr. Chairman. Thank
21 you for your testimony, Sarah. And to be clear, you're being
22 paid for by the Builders Association today?

23 MS. MILLER: Correct.

24 CHAIRMAN VITALI: And IRRC has no position on this
25 bill?

1 MS. MILLER: As far as I know, no.

2 CHAIRMAN VITALI: Well, if I was to tell you they
3 told me that, you would believe that?

4 MS. MILLER: Absolutely.

5 CHAIRMAN VITALI: And also, IRRC has no scientific
6 --- IRRC brings no particular scientific expertise to issues,
7 this issue or any other issue. You don't have scientists on
8 staff.

9 MS. MILLER: No, they do not.

10 CHAIRMAN VITALI: One of the provisions of this bill
11 talks about a requirement that a --- well, let me ask you this.
12 Can you name any species currently listed as endangered or
13 threatened in Pennsylvania that should not be on that list?

14 MS. MILLER: No. I would trust that the Fishing &
15 Boat Commission and the Game Commission and DCNR that their ---
16 things are correct and trust with their science.

17 CHAIRMAN VITALI: Okay. Okay. And would you agree
18 that they do have --- the Fish & Boat Commission, the Game
19 Commission, DCNR, do do good science?

20 MS. MILLER: I don't --- I will not comment on
21 whether their science is good or bad. I have not had the
22 opportunity, nor am I qualified to review that information.
23 However, like any other agency, I would assume that they are
24 vested with specific authority and expertise to fulfill their
25 mission.

1 CHAIRMAN VITALI: I think you're correct on that.
2 If this bill has a provision that threatened and endangered
3 species, if I'm getting this correct, have to be relisted every
4 two years or they lose their standing, what would be the
5 benefit of having an agency have to go through this process to
6 maintain the listing of a --- is that a good use of taxpayer
7 dollars, in your opinion, to require that a Fish & Boat
8 Commission, Game Commission or DCNR, with regard to all of the
9 76 endangered species on that list have to go through the
10 process with those same species again every two years? Does
11 that make any sense to you?

12 MS. MILLER: The way I understand the bill is that
13 the first --- the requirement for all species to be relisted
14 within two years is a one-time requirement. And from my
15 understanding that science --- I would assume that that science
16 has already been completed, if the Fish & Boat Commission, the
17 Game Commission, has done their science and that science is
18 readily available and would be ready to be resubmitted if they
19 wanted a proposed regulation. You wouldn't have to do 76
20 proposed regulations. It would be one regulatory package.

21 CHAIRMAN VITALI: Why would it make sense to do that
22 again?

23 MS. MILLER: Because the bill is going to require
24 it, and you will be requiring this ---.

25 CHAIRMAN VITALI: Well, it will only be required to

1 be passed ---.

2 REPRESENTATIVE PYLE: I believe the question is ---.

3 CHAIRMAN VITALI: Why was that provision of the bill
4 never explained to us?

5 CHAIRMAN CAUSER: That would be more appropriate to
6 question the prime sponsor of the legislation rather than the
7 Pennsylvania Builders Association.

8 CHAIRMAN VITALI: With regard to the trout --- wild
9 trout designation, if you're around in two hours, you'll hear
10 Trout Unlimited say the current process of designating wild
11 trout screening is transparent and considers public input. It
12 is rigorous with data obtained due to well-established
13 scientific standards and designation based upon strict
14 technical criteria. Do you have any reason to disagree with
15 that?

16 MS. MILLER: I have no reason to disagree with that.
17 However, I will tell you that IRRC currently reviews
18 regulations for screening designations for the Department of
19 Environmental Protection. Reviews almost exactly the same
20 criteria for designating high-quality exceptional value
21 streams. Those regulations come through the regulatory review
22 process.

23 CHAIRMAN VITALI: You will hear, if you're here in
24 two hours, from the Game Commission --- they will say, among
25 other things, the listing of species through IRRC's process is

1 too time consuming to respond to the immediate crisis that may
2 be caused by a significant decline in population from disease
3 or other population limiting factors, allowing this species to
4 become extinct by the time IRRC acted. Would it be safe to say
5 that the IRRC process is about two years, give or take?

6 MS. MILLER: I would disagree with that statement.

7 CHAIRMAN VITALI: On average, if you look at your
8 14-year career there or however long that was, what's about the
9 average time frame?

10 MS. MILLER: Each individual agency --- you can't
11 --- I do not lump all those regulations together and say it
12 takes X amount of time because each agency deals with
13 regulations on a different expediency level. For instance,
14 recently the Department of Conservation and Natural
15 Resources --- we're talking from a time period of publication
16 for public comment in March of this year until the time IRRC
17 approved the regulations at its public meeting in June of this
18 year took four months to do a proposed and final regulation
19 that would --- that moved the Ginseng harvest from August 1st
20 to September 1st. And they were complying with the federal
21 requirement from USFW. So they were able to move a regulation
22 through the process within four months. And in addition, there
23 are two other methods for regulatory review outside of the
24 proposed ---.

25 CHAIRMAN VITALI: Is four months below average,

1 above average, average?

2 MS. MILLER: Below average. However ---.

3 CHAIRMAN VITALI: What's the average?

4 MS. MILLER: I would say for an agency that has to
5 do a regulation for federal requirements or a timeline and you
6 have to take into consideration, I'm not trying to split hairs,
7 that you are an agency under the Governor's jurisdiction, you
8 have to go through the Governor's policy office. The
9 Governor's policy office is the one piece of the puzzle that
10 doesn't have a statutory timeline associated with them. They
11 can keep regulations for 90 days, 120 days. How long is the
12 regulation in the Governor's policy office?

13 CHAIRMAN CAUSER: Chairman Vitali, this is not an
14 interrogation. The other members would like to ask questions.

15 CHAIRMAN VITALI: One more question, then I'm done.
16 Again, this is testimony of the Fish & Boat Commission. The
17 Fish & Boat Commission adopts threatened and endangered species
18 lists and regulations and, accordingly, adheres to Commonwealth
19 Documents Law, which requires publications in the Pennsylvania
20 Bulletin and affords the public an opportunity to comment or
21 offer additional data for at least 60 days. Proposed
22 regulations now are also reviewed for legality and form by the
23 Attorney General's Office required by the Commonwealth and
24 frankly do not understand why we need an additional regulatory
25 review step in a process that currently provides an ample

1 opportunity for public comment and review. What is the current
2 problem here if this is being done?

3 MS. MILLER: The problem is I don't know what the
4 Fish & Boat Commission or the Game Commission, why they have
5 not accepted my recommendations. They don't have to respond to
6 me. They don't have to respond to the standing committees.
7 They don't have to go through an independent agency. As we
8 come before you today, we have --- we all, as you politely
9 reminded me, we are working for someone. The Independent
10 Regulatory Review Commission doesn't work for anyone but for
11 the Commonwealth and administrative law, under the consistency
12 of administrative law. So therefore, providing an independent
13 review really helps us all.

14 CHAIRMAN VITALI: My question is, what's wrong with
15 the current process?

16 MS. MILLER: There's not an independent agency
17 providing the same review for these regulations that they
18 provide for the Department of Environmental Protection or for
19 the Department of Public Welfare. There's no one looking at
20 the clarity, at the reasonableness. When I say no one, I say
21 an independent agency.

22 CHAIRMAN VITALI: Which has no scientific ---
23 scientists on staff; is that correct?

24 MS. MILLER: That is correct. We, as commentators,
25 gave them information. That includes PBA. That includes Trout

1 Unlimited. That includes Penn Future. That includes any
2 interested party is able to send and submit comments to IRRC
3 for review, including the regulatory standing committees.

4 CHAIRMAN VITALI: Thank you.

5 CHAIRMAN CAUSER: Thank you, Chairman Vitali.

6 Chairman Miller?

7 CHAIRMAN MILLER: Ms. Miller, as I understand it, a
8 lot of the past questions that you just addressed were how much
9 this might extend going through the IRRC review process the
10 ability to put a certain species on the endangered list. Based
11 on your testimony and I believe your responses, it really only
12 will add about 30 days or so. The key point is how long it
13 takes for any agency, whether it's a department in the state or
14 the Fish & Boat Commission or the Game Commission to get
15 everything in line. So if we're talking 60 days or two years
16 or three years, it has more to do with the agency promulgating
17 their regs and not so much as the IRRC review process. Is that
18 not what I was hearing you tell me?

19 MS. MILLER: That's correct. IRRC cannot go beyond
20 their statutory timelines.

21 CHAIRMAN MILLER: So it's in the statute they cannot
22 go beyond that timeline, so this can only ever add those 30
23 days?

24 MS. MILLER: Correct, at the proposed stage. At the
25 final stage there would be an additional 30 to 45 days.

1 CHAIRMAN MILLER: So we're looking at maybe 60 to 75
2 days, something along those lines?

3 MS. MILLER: Correct.

4 CHAIRMAN MILLER: I just wanted to get the proper
5 perspective. Thank you. Thank you, Mr. Chairman.

6 CHAIRMAN CAUSER: Thank you, Chairman Miller.
7 Representative Dan Moul?

8 REPRESENTATIVE MOUL: Thank you, Mr. Chairman. In
9 the interest of time, just a couple real quick clarifying
10 things. Sarah, thank you for your testimony. IRRC does
11 recommendations only; correct?

12 MS. MILLER: IRRC submits comments.

13 REPRESENTATIVE MOUL: You submit recommendations and
14 comments, but you have no authority to change anything, to hold
15 anything. You just simply recommend. So if a particular
16 department said IRRC said this, but that was IRRC.

17 MS. MILLER: Correct. All an agency has to do is
18 respond to IRRC's comments. They do not have to change ---.

19 REPRESENTATIVE MOUL: They don't have to change
20 anything. Okay.

21 MS. MILLER: No.

22 REPRESENTATIVE MOUL: And just so I'm clear, so
23 everyone else in this room is clear, currently --- in what the
24 bill will do, but currently IRRC doesn't even involve
25 themselves with the Fish & Boat or Game; correct?

1 MS. MILLER: Correct.

2 REPRESENTATIVE MOUL: They do everything internally?

3 MS. MILLER: Yes.

4 REPRESENTATIVE MOUL: No one oversees their
5 regulations that they're about to promulgate or implement as it
6 stands today?

7 MS. MILLER: I only know that there's no IRRC review
8 of the Fish & Boat Commission.

9 REPRESENTATIVE MOUL: That will be a question then
10 when they get up, I'll ask them if there's somebody that
11 oversees their regulations. And what's essentially the
12 timeline? You guys have a timeline. Do the departments that
13 you do oversee have --- do all the other departments have
14 timelines with which to do their work?

15 MS. MILLER: Each agency has their own way of
16 promulgating regulations. For instance, I know DEP has to go
17 through some advisory boards and they have to go to the policy
18 --- the Governor's policy office, and then they have to go
19 through the Environmental Quality Board. So that adds time on
20 the front end to their review process, the proposed or final
21 regulation. But I will submit every agency has different
22 internal workings of how they promulgate their regulations.

23 REPRESENTATIVE MOUL: Again, I guess that's going to
24 be a question for them. Thank you. Thank you, Mr. Chairman.

25 CHAIRMAN MOUL: Thank you, Representative Moul.

1 Representative McCarter?

2 REPRESENTATIVE MCCARTER: Thank you very much, Mr.
3 Chairman. Thank you very much for your testimony. I'm trying
4 to, as a freshman, new to the process here in Harrisburg,
5 trying to understand the IRRC process a little bit better, if
6 you can help me with that.

7 And let's go back historically first. Back in 1982,
8 when the IRRC process was created by statute, there were three
9 agencies, as we heard earlier, that were excluded from that.
10 Why did they exclude those three agencies?

11 MS. MILLER: Well, that's the million-dollar
12 question. And to this day, I still can't give you an answer
13 for that.

14 REPRESENTATIVE MCCARTER: Well, in their description
15 it talks about public policy. And one would assume, as I have
16 gone back and looked at a little bit of this, that in terms of
17 the environmental areas, it seems as if they excluded that
18 because they didn't want the scientific community to have to
19 battle out, if you will, in terms of in the public arena and
20 politicize the process when it came to endangered species and
21 other areas. Would that be correct, in your understanding?

22 MS. MILLER: I would remind you that DEP, who does a
23 ton of scientific studies and is required to provide that
24 science and data also to IRRC, that --- I understand where
25 you're going, but I mean, DEP does the exact same promulgation

1 process through IRRC, but that's ---.

2 REPRESENTATIVE MCCARTER: Correct. They do that.

3 And DEP --- well, if we can say that each of these particular
4 things in the process, as I understand it, are now coming
5 forward. If a species is specified to become on the list as
6 threatened or endangered, we go through the IRRC process, a
7 committee would make recommendations. Those recommendations
8 now go to the standing committees; is that correct? In the
9 process, if there's a disapproval resolution that would come
10 forward, I assume it would go to the committees. Is that what
11 happens?

12 MS. MILLER: I think you're confusing two steps. At
13 the proposed stage, IRRC submits comments, and those comments
14 go to the standing committees that have the regulatory
15 oversight for those agencies. At the final stage, IRRC can
16 approve or disapprove the regulation.

17 REPRESENTATIVE MCCARTER: But their regulation,
18 their move, their decision, is subject back to the committees;
19 correct? It gets moved to the committees?

20 MS. MILLER: The standing committee?

21 REPRESENTATIVE MCCARTER: The standing committee.

22 MS. MILLER: IRRC's recommendation or ---?

23 REPRESENTATIVE MCCARTER: I'm trying to understand
24 that process. Isn't that how it moves forward, that there
25 would be a recommendation? Let's assume that IRRC says, yes,

1 there should be this, whatever, this goat should be put on the
2 list for endangered species.

3 MS. MILLER: Does IRRC ---? I think I understand
4 now. I apologize for not following you. IRRC would never
5 provide an opinion about a specific endangered species, for
6 instance, a turtle, a horse. That's not --- IRRC only reviews
7 a regulation based on clarity, reasonableness, acceptable data,
8 small business amendments, whether a standing committee has a
9 concern to the agency or the statutory authority to promulgate
10 legislative intent ---

11 REPRESENTATIVE MCCARTER: But ---.

12 MS. MILLER: --- compliant with IRRC regulations.

13 REPRESENTATIVE MCCARTER: I'm trying to look --- I'm
14 trying to understand the chart in terms of what it is and what
15 it says. It says on the flowchart, the IRRC acts at its public
16 meeting, then it has 20 days to come up with whatever it's
17 suggesting. It approves or disapproves.

18 MS. MILLER: Right.

19 REPRESENTATIVE MCCARTER: And at that particular
20 time then the regulation is moved forward because --- it can be
21 withdrawn, okay, or it can move forward and it acts at its
22 second public meeting. And at that point, it goes to another
23 review period, and then it ends up being an approval ---
24 disapproval resolution or it reports an approval of the
25 resolution that ends up going to the Attorney General.

1 MS. MILLER: The chart that you've been provided,
2 that is what happens to a regulation that completely falls off
3 the rails. IRRC --- say IRRC disapproves at its first public
4 meeting, the agency then has options to return the regulation
5 with changes, to not return the regulation with changes, or to
6 withdraw the regulation completely. IRRC gets a second bite at
7 the apple. There's a second public meeting, should they choose
8 to return the regulation. Once IRRC either approves it or
9 disapproves it, at that point IRRC is completely out of the
10 process.

11 REPRESENTATIVE MCCARTER: How does it then get to
12 the --- you know, to the committees in terms of the standing
13 committees? What is the role of the standing committees,
14 therefore, in the process?

15 MS. MILLER: Sure. At the proposed stage, the role
16 of the standing committee is to provide comments on the
17 regulations to IRRC and back to the agency. At the final form
18 stage, the standing committees either vote to approve the
19 regulation, vote to disapprove the regulation or vote to
20 request additional time for review.

21 REPRESENTATIVE MCCARTER: But in the --- going to
22 the specific part of the bill then, because it says in here, to
23 be affected by such designation through the Independent
24 Regulatory Review Commission and to the standing committees of
25 the Senate and House representatives, with jurisdiction over

1 the Commonwealth agency for the purposes of this Act. So it
2 does go to the standing committees who then have the time, have
3 the opportunity, as I understand this, to decide whether, in
4 fact, they're in favor of this or not in favor of this.

5 MS. MILLER: Correct.

6 REPRESENTATIVE MCCARTER: And if it moves forward
7 --- then if they're not in favor, then it goes back to that
8 disapproval resolution, which would then be voted on the House
9 and --- House floor and Senate floor.

10 MS. MILLER: Right.

11 REPRESENTATIVE MCCARTER: And then move on to the
12 Governor?

13 MS. MILLER: Correct.

14 REPRESENTATIVE MCCARTER: Now, you're suggesting to
15 me and I'm hearing --- there's two different things here.
16 Number one, that this all could happen within 30 days or 60
17 days. The House and Senate are not always in session. So once
18 this moves forward, this process, it's not going to be in 30
19 days. There's no way that it could be. Nor could it be
20 getting to the Governor, who then has a chance to veto and not
21 veto. And if the Governor vetoes, then it would be a potential
22 override in terms of what happens. All this process is going
23 to be time consuming.

24 MS. MILLER: The process you describe in the past 31
25 years has happened twice, twice, that entire process you just

1 described, twice. And there have been over 3,000 regulations
2 IRRC has reviewed in its entire history.

3 I can also tell you even if IRRC approves ---
4 historically, IRRC has approved 92 to 95 percent of all
5 regulations at its first public meeting. I can also tell you
6 in the past five to eight years the number of times the
7 standing committee has either disapproved a regulation prior to
8 IRRC action or has requested 14 extra days to review the
9 regulation, maybe three, four specific instances. This process
10 would not obviously take 30 days. However, if this process is
11 invoked, legislative intent of the Regulatory Review Act was to
12 provide the General Assembly to have authority and oversight
13 over a regulatory agency.

14 REPRESENTATIVE MCCARTER: Let me ask one final
15 question just to save some time here. At the end it talks
16 about if a regulation is permanently barred. What does that
17 mean? Can you define that for us?

18 MS. MILLER: It means that the General Assembly has
19 passed a law disallowing the agency from promulgation of the
20 regulation.

21 REPRESENTATIVE MCCARTER: So in other words, if a
22 species is put forward and it gets through this entire process
23 and it is permanently barred, that means that that species
24 cannot be brought up again for how long?

25 MS. MILLER: There is no time limit on that. I

1 mean, that would be --- that is the General Assembly saying we
2 believe this is our law and the Governor has signed that law to
3 bar a regulation, absolutely.

4 REPRESENTATIVE MCCARTER: That particular returned
5 to the legislature, could be reentered or ---?

6 MS. MILLER: Well, until a bill would be taken up to
7 obviously rescind that legislation.

8 REPRESENTATIVE MCCARTER: Thank you very much.
9 Thank you, Mr. Chairman.

10 CHAIRMAN CAUSER: Thank you, Representative
11 McCarter. And much of --- many of the questions that you're
12 asking deal with the actual IRRC process itself. And
13 obviously, Sarah is not testifying on behalf of IRRC. However,
14 I will say, in addition to your testimony on behalf of the
15 Builders Association, it's been very helpful that you have a
16 great deal of experience with working with --- in IRRC. So
17 that's been very helpful. But thank you for your testimony,
18 and we appreciate it.

19 MS. MILLER: Thank you.

20 CHAIRMAN CAUSER: Our next testifier is Mr. Thomas
21 Au, the Conservation Chair of the Sierra Club Pennsylvania
22 Chapter. Welcome, sir, and you may proceed.

23 MR. AU: Thank you. Good afternoon. My name is
24 Thomas Au. I am the Conservation Chair of the Pennsylvania
25 Chapter of the Sierra Club. I'm here today on behalf of the

1 Sierra Club. The Sierra Club wishes to thank the committees
2 for inviting us to testify.

3 The Sierra Club was founded in 1892 to explore,
4 enjoy and protect our planet. The Sierra Club has now 24,000
5 Pennsylvania members. Our members include hunters and anglers,
6 birders, plant lovers, hikers and ordinary citizens who enjoy
7 the outdoors. Nationally and locally, the Sierra Club has been
8 a leader in conservation practices and environmental
9 protection.

10 Pennsylvania is unusually endowed with wonderful
11 natural wildlife, aquatic life and plant species, and we should
12 make the extra effort to protect them. We should protect these
13 creatures and plants because they are part of the complex
14 biology of our region and provide important biologic functions,
15 such as controlling insect populations and filtering pollution.
16 We do not know everything about how the ecosystem works, but we
17 do know that many of these plants, wildlife and aquatic
18 organisms provide valuable biological services to all of us.

19 The Sierra Club was --- is concerned about the
20 consequences if HB 1578 were enacted. We are concerned with
21 Section 5 of HB 1576, which, as was explained earlier, that any
22 action by a Commonwealth agency to designate fish, wildlife or
23 plants as threatened or endangered or to designate a stream as
24 a wild trout stream should be subject to the Regulatory Review
25 Act. This would bring all acts by the agencies to list any

1 fish and wildlife as threatened or endangered or list a wild
2 trout stream under the jurisdiction of the Independent
3 Regulatory Review Commission.

4 The Pennsylvania Game Commission is charged by the
5 General Assembly to protect wildlife, including wild birds and
6 other avian creatures. The Pennsylvania Fish & Boat Commission
7 is charged by the General Assembly to protect fish, reptiles,
8 amphibians and other aquatic life. The DCNR is charged to
9 protect plant life by compiling the Pennsylvania Natural
10 Diversity Index, which identifies areas where rare plants live.

11 The proposed provision would add an additional layer
12 of government bureaucracy and second guessing which species of
13 fish, wildlife or plants the Commonwealth should protect.

14 When the General Assembly established the
15 administrative agencies, it entrusted these agencies'
16 professional and scientific judgment to design, to make a
17 impact and enhance the Commonwealth's natural resources.

18 The state agencies which have the oversight or
19 responsibilities already coordinate their activities. The Fish
20 & Boat Commission, the Game Commission and DCNR call each other
21 regularly about the species which are threatened or endangered,
22 as well as the best ways to protect them. The establishment of
23 a centralized database would be helpful, but only if it is
24 actually funded and substantively maintained. Such a
25 centralized database would require a substantial investment of

1 time and resources by the Commonwealth, which has not been made
2 to date. The proposed legislation does not provide funding for
3 such a robust centralized database.

4 The state agencies already publish the listings of
5 the proposed actions in the Pennsylvania Bulletin. The
6 agencies make available the scientific data that they possess
7 in support of their actions.

8 In addition, the agencies hold public hearings and
9 public meetings to gather the views of interested stakeholders
10 before taking action. I believe all these agencies know that
11 public input is important and make great efforts to facilitate
12 it.

13 Equally important is the need to act quickly when
14 threats to these resources materialize. Disease, blights and
15 invasives can quickly spread and extinguish what was once
16 thriving plant, fish and wildlife populations. At its normal
17 pace, the Independent Regulatory Review Commission process can
18 take up to two years to complete. During this period, a
19 threatened or endangered species can become extinct. More
20 advocacy and protection of wildlife, aquatic life and plants at
21 the state level before the damage becomes irreversible is
22 necessary to protect Pennsylvania's natural heritage.

23 The proposed legislation requires only federally
24 listed threatened and endangered species to be listed by the
25 Pennsylvania agencies. The provision ignores the fact that

1 Pennsylvania is the home to many rare and special species and
2 wildlife, aquatic life and plants, which may not be threatened
3 elsewhere in the United States, such as the Great Egret, the
4 Long-Eared Owl and the Osprey. These species will receive no
5 protection under the proposed bill.

6 The proposed legislation also requires action by the
7 agency to be supported by acceptable data. Acceptable data, as
8 defined in the bill, is current, that's available, scientific
9 and commercial empirical data, as evidenced in supporting
10 documentation, statistics, reports, studies or research. As it
11 pertains to wild trout stream designation, such data that is
12 replicable and testable.

13 The question remains, data acceptable by whom? It's
14 commonly recognized that the members of the Independent
15 Regulatory Review Commission do not possess scientific
16 expertise. I believe that this is an open invitation to second
17 guess the judgment of the scientists and professional staff in
18 the Game Commission, Fish Commission and the DCNR.

19 Section 4(d) of the proposed legislation would also
20 require an agency to remove currently designated or listed
21 threatened and endangered species unless the agency
22 redesignates the species within two years. The promulgation of
23 threatened and endangered species could consume all the
24 agency's time and resources during the next two years.

25 Finally, Section Five --- or Section Six of the

1 proposed legislation seeks to limit the effect of threatened
2 and endangered species and permit these actions by Commonwealth
3 agencies. When reviewing applications for permits, approvals
4 and other authorizations or taken actions, state and local
5 governments shall consider impacts only to the listed species
6 and their critical habitats included in the centralized
7 database.

8 Permit approvals, authorizations or regulations
9 shall not require a person to conduct field surveys or other
10 activities to determine or evaluate the presence of species or
11 the habitats. Basically, this provision exempts applicants
12 from having to physically look at the location of proposed
13 activity. It would be shocking if any of the agencies
14 identified in this legislation failed to conduct field studies
15 to determine the presence of species prior to listing.
16 However, in this provision, the sponsor is seeking to consent
17 operators from conducting any kind of field work to determine
18 the effect of their proposed activities on threatened and
19 endangered species or on wild trout streams. Such a failure to
20 actually inspect the site of the proposed activity leads to
21 environmental harm. We have pictures of well beds situated in
22 flood plains and wetlands. While this provision may expedite a
23 permit, it violates the common sense warning that we actually
24 look before we leap.

25 We also have proposed construct pipelines which are

1 scores of miles long, we regularly encounter wetlands, streams
2 and habitat that has not been previously surveyed by these
3 commissions. And it makes sense to have someone actually go
4 out and look at the site before proceeding.

5 In summary, the Sierra Club believes that the
6 proposed legislation takes a step backwards in our efforts to
7 protect wildlife, fish and plants currently entrusted to the
8 expertise of the Game Commission, the Fish Commission and the
9 Department of Conservation and Natural Resources. Without
10 substantial changes, the Sierra Club would have to oppose this
11 legislation. Thank you.

12 CHAIRMAN CAUSER: Thank you for your testimony. The
13 first question is from Representative Pyle.

14 REPRESENTATIVE PYLE: Thanks, Chairman. I
15 appreciate your testimony. This may come as a surprise, I
16 agree with pretty much everything you're saying. I have a
17 little glitch. What happens if they don't find any of them
18 there?

19 MR. AU: If they don't find any of these species?

20 REPRESENTATIVE PYLE: That's happening repeatedly.
21 I live 300 miles from here.

22 MR. AU: If they don't find them, then the project
23 can proceed.

24 REPRESENTATIVE PYLE: Why then would requirement for
25 money for offset acreage be required if no species were found

1 on the permit site?

2 MR. AU: I don't know the ---.

3 REPRESENTATIVE PYLE: That's common practice right
4 now. Now, you identified that this was going to be cumbersome,
5 slow everything down, and we'd have a big, big problem pop up
6 immediately, like --- and you identified disease, blight. Can
7 you give me an example? Like what?

8 MR. AU: We have a honey bee population in decline
9 in the state right now. It hasn't reached the stage where the
10 bee population could be, you know ---.

11 REPRESENTATIVE PYLE: It's a big concern at home.

12 MR. AU: Okay. Well, for instance, the Game
13 Commission scientists discovered that it was to the point where
14 the species could go extinct, it may be time for them to act
15 quickly to protect the population. Now, you know, you
16 mentioned, well, quickly is how fast the agency can put
17 together a regulation, put together the signs, make
18 recommendations, consult with the public, and all that. Now, a
19 previous testifier said, oh, it can be done in four months. It
20 depends. Absolutely. More likely it will take quite a bit
21 longer.

22 REPRESENTATIVE PYLE: Well, faster is better than
23 slower when you're dealing with lives of any ---. I have a
24 question. Using your example of honey bees, assuming that, you
25 know, DCNR and Fish & Boat, and the Game Commission, everybody

1 studies this and they say, yeah, you're right, the bees are all
2 screwed up, we got to fix this, what if they can't find a cure?

3 MR. AU: Well, ---.

4 REPRESENTATIVE PYLE: What would happen in that
5 case?

6 MR. AU: Well, one of the things, as science
7 actually progresses over time, they do find cures for lots of
8 things.

9 REPRESENTATIVE PYLE: We've known about the honey
10 bee issue for a while ---

11 MR. AU: Yes.

12 REPRESENTATIVE PYLE: --- and despite all the
13 world-class research institutions we have, we haven't been able
14 to fix it.

15 MR. AU: Yes. But the scientists are getting closer
16 to ---.

17 REPRESENTATIVE PYLE: Like federal stuff?

18 MR. AU: Problems, yeah. Well, you know, we listed
19 the Bald Eagle without knowing what was causing the Bald Eagle
20 decline. And you know, eventually the cause of the decline was
21 found, and we were able to protect the Bald Eagle.

22 REPRESENTATIVE PYLE: That was our official and that
23 was manmade introduction of DDT, making eggshells thin, the
24 eagles --- what if this is a naturally-occurring thing that we
25 cannot cure?

1 MR. AU: Okay. If it ---.

2 REPRESENTATIVE PYLE: Oh, there's one out there
3 we've been working on for ten years and never gotten anywhere.
4 Keep going.

5 MR. AU: If it's something that we can't cure, the
6 population will go extinct despite our best efforts.

7 REPRESENTATIVE PYLE: Well, that's --- that's --- we
8 don't --- nobody wants that, obviously. We don't want to be
9 the one that's in charge of seeing an entire species leave the
10 Earth, but what if we just can't fix it? Something like, God
11 forbid, Hantavirus or Ebola would get loose in the city core.
12 We can't fix that. What would we do?

13 MR. AU: Well ---.

14 REPRESENTATIVE PYLE: In regards --- if that was a
15 --- I'm sorry. I wasn't wishing that on anybody. What would
16 we do?

17 MR. AU: Well, you know, the current machine for
18 protecting endangered species is to protect the critical
19 habitat.

20 REPRESENTATIVE PYLE: Make a radius, like
21 quarantine?

22 MR. AU: The habitat where they reproduce, they
23 would be able to regrow the populations.

24 REPRESENTATIVE PYLE: I'm assuming this has pretty
25 close to a hundred percent mortality rate, the one I'm thinking

1 of. I'm dying to hear how we fix this.

2 MR. AU: Well, I'm, you know, not a wildlife
3 biologist, so I can't say --- I don't have any idea about honey
4 bees as to what is necessary to protect them, but I think, you
5 know, some of the best scientists are working on it, and we
6 can, you know, make progress. And initially by listing a
7 species as threatened or endangered, that doesn't mean we have
8 to have all the answers.

9 REPRESENTATIVE PYLE: When we're talking about jobs
10 and public school districts paying huge sums to build a school,
11 yeah, we kind of are talking about the human condition and how
12 we're interacting with the animal condition. What I'm saying
13 is we know an animal population has seen nearly 100 percent
14 more disease, wiping them out right now. And even though we
15 had the best minds at Penn State working on this forever and a
16 day, we have no cure. How long do we let them quarantine our
17 areas, which you just said was what they do? How long do we
18 let them quarantine them? I don't think they're coming back.

19 MR. AU: Well, if that happens, then, you know, they
20 will be becoming extinct, and, you know, the areas --- you
21 know, the rules that we set aside to protect them will be
22 extinguished as well.

23 REPRESENTATIVE PYLE: Well, nobody wants that to
24 happen to the honey bees. I live in an agricultural area
25 myself. Thank you, Mr. Chairman. Thank you, Representative

1 Pyle. Representative Moul?

2 REPRESENTATIVE MOUL: Thank you, Mr. Chairman. And
3 again, in the interest of time, I'll make this pretty quick.
4 If I'm --- and I'm trying to catch up mentally here with
5 everything that's going on, but it's --- let me preface this by
6 saying I appreciate what the Sierra Club is doing, that you've
7 got somebody out there trying to look after the environment for
8 our future generations, and I get all that. Your concern is
9 the health of our Earth and the species on Earth. And at some
10 point you've got to say that I think that human --- humans'
11 intent and purpose for being here sometimes can outweigh over
12 regulations, is what I'm starting to get out of this. And the
13 health of humans is extraordinary important, correct, as in
14 your health would be extremely important to you, correct, as
15 all of ours would be. So if you went to the doctor and the
16 doctor said to you, you know, you've got X, Y, Z, and you're
17 going to --- oh, my God, the first thing you're going to do is
18 go do what? Get a second opinion. So why is that this health
19 on Earth, all of a sudden, we don't want a second opinion?

20 MR. AU: Well, in this case, we've actually have,
21 you know, second and third opinions when multiple people weigh
22 in on the decisions whether to list a species as endangered.

23 REPRESENTATIVE MOUL: But with these two
24 organizations, with these two departments, Fish & Boat and
25 Game, they do everything internally. And as we heard

1 testifying a while ago, even if there is an independent review
2 looking at it, they have no teeth. And I can tell you I've
3 been in the House of Representatives for seven years now. I
4 sit on four committees every year. I've never once voted on a
5 regulation. Maybe that's the problem we have. But I'm
6 starting to think maybe second opinions would be good not just
7 for us but for the health of our planet as well. Thank you,
8 Mr. Chairman.

9 CHAIRMAN CAUSER: Thank you, Representative Moul.
10 Representative Heffley?

11 REPRESENTATIVE HEFFLEY: Thank you. Thank you for
12 coming here today.

13 CHAIRMAN CAUSER: Can you move the microphone over?

14 REPRESENTATIVE HEFFLEY: Thank you. Thank you for
15 coming here today. I know earlier Representative Vitali had
16 asked --- commented about the Builders --- the testifier from
17 the Builders Association who they worked for. The Sierra Club,
18 who exactly do you work for? Where do you get your funding
19 from? I see your ads. I know you have an agenda. But exactly
20 who is paying you today and who funds the Sierra Club?

21 MR. AU: Well, the Sierra Club is a --- is funded by
22 its members. We're a national organization. We are member
23 driven. We have a board of directors, national board of
24 directors. And we also have the state chapter, an executive
25 board. So we have specific campaigns that are funded also by

1 some foundations.

2 REPRESENTATIVE HEFFLEY: And in those campaigns,
3 that would be opposed to certain types of industries and
4 development, is that part of the campaigns?

5 MR. AU: Yes.

6 REPRESENTATIVE HEFFLEY: And can you list a couple
7 of those industries? Do you know what campaigns you have
8 against certain industries throughout the world, throughout our
9 state?

10 MR. AU: We have, you know, a lot of campaigns. You
11 know, our newest campaign is our Wild American, which seeks to
12 protect wildlife in wild places. We have Beyond Gas, a
13 campaign that tries to move us beyond natural gas. We have a
14 Beyond Oil campaign, which tries to move us beyond petroleum.
15 And we have a Beyond Coal campaign, which tries to move us
16 beyond ---.

17 REPRESENTATIVE HEFFLEY: So you're actively against
18 the coal industry and the natural gas industry, and you would
19 pretty much promote anything that would inhibit either the
20 developments of those domestic energy here in Pennsylvania? Am
21 I correct in saying that statement? I mean, I've seen ads on
22 TV.

23 MR. AU: Yeah. I understand. Yeah, we are --- we
24 want to move ---.

25 REPRESENTATIVE HEFFLEY: You want to stop the

1 development of coal and natural gas in Pennsylvania; correct?

2 MR. AU: Well, development in, I guess, the sense of
3 new sources.

4 REPRESENTATIVE HEFFLEY: Yeah. So like we can use
5 up the coal we have now, but couldn't get any more?

6 MR. AU: Well, yeah, I believe that's ---.

7 REPRESENTATIVE HEFFLEY: Well, I think in your
8 testimony, obviously, you're very passionate about protecting
9 species, as I think a lot of us are. I know a lot of coal
10 miners in my district are also hunters and avid fishermen. But
11 I think it's really clear in that you have an agenda against a
12 lot of the domestic production of energy, which I think is
13 vital that we strike a balance rather than saying, no, no, no
14 all the time. I think the consumers also, as the voters, that
15 we're all reflected to represent their views. So I do believe
16 that in the process with IRRC reviewing some of these plans ---
17 in one of your comments, you said that it would add another
18 level of bureaucracy. Sir, I would ask you to speak with any
19 business out there and talk about the bureaucracy in the
20 permitting process right now. That's why we have the
21 unemployment rates we do.

22 Another one, you had said that IRRC didn't have any
23 scientists. I guess I would think that only scientists in your
24 mind are allowed to make decisions for people. I think we have
25 elective folks here in the House and Senate that do a pretty

1 good job making informed decisions. I do thank you for your
2 testimony today.

3 CHAIRMAN CAUSER: Thank you, Representative Heffley.
4 Questions from any of the other members? Chairman Vitali?

5 CHAIRMAN VITALI: Just to clear a point up, I think
6 the point I was trying to make is Sarah Mills (sic) is being
7 paid by the Builders Association to testify. You're a
8 volunteer; is that right?

9 MR. AU: That is correct.

10 CHAIRMAN VITALI: That is correct.

11 MR. AU: Okay. Thank you.

12 CHAIRMAN CAUSER: And the point taken by the
13 Builders Association and also about the Sierra Club, I think
14 it's a relevant question and appreciate Representative Heffley
15 asking the question. Thank you for your testimony.

16 MR. AU: You're welcome.

17 CHAIRMAN CAUSER: Our next testifier is Mr. Mike
18 Welch, the Environmental Director of the Glenn O. Hawbaker and
19 the representative of the Pennsylvania Aggregates and Concrete
20 Association. Welcome, sir.

21 MR. WELCH: Thank you.

22 CHAIRMAN CAUSER: And you may proceed.

23 MR. WELCH: I would first mentioned that the texts
24 you were provided I modified only slightly, not in substance,
25 but you will notice some slight changes.

1 Good afternoon. I would begin by thanking the
2 committees of Game and Fisheries and Environmental Resources
3 and Energy for the opportunity to offer testimony on behalf of
4 the Pennsylvania Concrete and Aggregates Association. The
5 information I will present is in support of the proposed
6 Endangered Species Coordination Act.

7 By way of introduction, my name is Michael Welch.
8 And since 2010, I have been employed by Glenn O. Hawbaker
9 Corporation in State College as the company's Director of
10 Environmental Services. In this capacity I am responsible for
11 the coordination of all environmental projects and
12 authorizations required for the land development and mining
13 activities pursued by our company throughout Pennsylvania,
14 which is presently about 29 counties. Hopefully, you will also
15 recognize the unique perspective I offer today, since I am not
16 a lifelong industry representative, but rather as an
17 environmentalist who has spent over 33 years of my career
18 working for Commonwealth agencies, such as DER and DEP, most
19 recently retiring in 2010 as the Assistant Regional Director of
20 the North Central Region. There, I was charged with protecting
21 our state's natural resources, a priority which I have carried
22 over into my current position.

23 Drawing from past and present experience, I am
24 confident that industry truly wants to meet the expectations
25 and regulatory requirements of the agencies overseeing the

1 Pennsylvania Natural Diversity Index process. In addition, I
2 don't believe that industry and government have opposing views
3 on the importance of protecting endangered species and their
4 critical habitats. But in order for companies, such as Glenn
5 O. Hawbaker, and those represented by PBA and other industries
6 throughout the state to protect and preserve our natural
7 resources and yet successfully compete and grow our economy,
8 regulatory review agencies must recognize that the role they
9 play is not only critical environmentally but economically.

10 To offer for consideration --- and just a moment
11 previous to this, you were talking about oversight and the
12 bureaucracy. To offer for consideration the level of review
13 and oversight which goes into review and permitting of an
14 average-sized non-coal mining operation requires various levels
15 of involvement with over 20 outside review and regulatory
16 agencies, not including public comment. As this committee is
17 aware, the PNDI process itself controls the oversight of four
18 agencies, three state and one federal.

19 The development of business plans and the ability of
20 industry to be responsive to the needs of their customers is
21 dependent upon receiving timely, complete and consistent
22 responses from the regulatory review agencies.

23 The existing environmental review screening tool
24 administered by the Pennsylvania Natural Heritage Program is
25 useful in identifying whether a potential or actual impact for

1 the planned activity exists under the jurisdiction of any of
2 the review agencies within the project area.

3 In cases where the screening does not identify any
4 hits, the process is fairly straightforward. There is no
5 further contact required. It can, however, become considerably
6 more complicated, time consuming and costly when a potential or
7 known impact is highlighted. As the Representative had
8 mentioned, highlighted doesn't necessarily mean present. When
9 the screening returns with a known or potential impact, the
10 Applicant is directed to a C agency response document. The
11 current process does not have the ability to offer what the
12 exact species of concern is in all cases or the specific
13 location where it might be located. In addition, it does not
14 have the program depth to coordinate between the agencies or
15 offer mitigation options for the business.

16 The proposed legislation, as I read it, offered as
17 the Endangered Species Coordination Act, sets out a consistent
18 framework for review that would compliment the goals and
19 objectives of both the regulating force and the regulated
20 entities. For the resource agencies, I believe it upholds
21 their regulatory authority. It continues to highlight the
22 importance of identifying and protecting the state's endangered
23 and threatened species and habitats. It affords the oversight
24 agencies the opportunity to eliminate duplicative reviews,
25 saves costs and also gives them a vehicle to make

1 communications and interplay between the agencies more
2 seamless. Related to compliance, it also has a penalty
3 component built in to address violators.

4 For industry and private developers, the uniform
5 framework for each review includes utilizing a centralized
6 database comprised of the information from all agencies
7 involved and, most importantly, a single point of contact to
8 coordinate the searches and responses. By also adopting an
9 independent review element to guide decisions related to
10 additions to the database, there is accountability and
11 consistency. These modifications to the search and response
12 process should make this a much more timely exercise and more
13 cost effective, in my opinion.

14 The other major benefit included in this legislation
15 is the requirement to assist in the preparation of avoidance
16 and mitigation measures. If we know what we're to be avoiding,
17 we can avoid it.

18 In summary, by enacting this legislation, the
19 longstanding requirements of the Endangered Species Act would
20 be met. The government agencies and the industry applicant
21 would see financial benefit from the streamlined process. The
22 regulatory agencies would have the benefit of pooling their
23 knowledge and information into a common repository, the public
24 would have ease of access to information, and regulated
25 industries would have the ability to identify challenges and

1 costs far sooner, allowing them to not only budget but
2 potentially modify their plans in a more predictable manner.

3 Thank you for the opportunity of addressing you
4 today. If I can answer any questions, I will try to do so.

5 CHAIRMAN CAUSER: Thank you, Mr. Welch. We
6 appreciate your testimony. The first question is
7 Representative Vitali.

8 CHAIRMAN VITALI: Thank you, Mr. Welch. You
9 testified about being in support of the centralized database.
10 And if you'll be here around 4:30 or so, you will hear someone
11 from the Game Commission testify about some problems they have
12 with that. They say, you know, the natural resource agencies
13 already maintain a database on location for threatened and
14 endangered species. So here's the concern. And information on
15 that database is shared with outside entities when needed in
16 order to protect those species. They say this increasing
17 access to that database will increase the risk of unlawful
18 taking of threatened and endangered species, as many of those
19 species have substantial value in the Black Market. This
20 legislation required that natural resource agencies to provide
21 a virtual roadmap to the location of the species that are often
22 targeted for illegal sale and trade. Do you have any concerns
23 in that regard?

24 MR. WELCH: I've been out on --- over the past 30
25 years, have been out on many site reviews, and I've heard that.

1 I'm not sure exactly what the Black Market opportunities are.
2 I do know that the concern is similar to when we went through
3 the threats that we had during the WMD days, where we were
4 isolating the location of nuclear and tank facilities in
5 Pennsylvania to avoid the consequences of the public knowing
6 them. I guess I can recognize that they do have a concern.
7 I'm not sure how they would eliminate those species or
8 habitats, though.

9 CHAIRMAN VITALI: Here's another concern. Did you
10 say you were here 33 years? Did you say a 33-year figure is
11 your experience level?

12 MR. WELCH: I worked for DEP and DER for 33 years.

13 CHAIRMAN VITALI: That's interesting, because here's
14 the testimony of John Arway of the Fish & Boats Commission. He
15 says, in 35 years --- in 33 years, with the Fish & Boat
16 Commission, I cannot site one example where we have not been
17 able to resolve a conflict with industry on threatened and
18 endangered species issues. Can you think of an example or
19 conflict that couldn't be resolved?

20 MR. WELCH: I think the perspective I was trying to
21 offer isn't that we can't come to an accommodation, it's rather
22 that why can't we come to one more timely or why can't we be a
23 little more transparent. I've known Mr. Arway for many, many
24 years. We're acquaintances. I don't disagree that we can't
25 find --- why can't we do a little of that up front?

1 CHAIRMAN VITALI: Yeah. I guess he feels they're
2 already doing that. Can you think of any --- I think this is a
3 dynamic process. I think in the past five years 13 species
4 have been added to the threatened/endangered and 11 have been
5 taken off, so it's a give-and-take process. Can you think of a
6 single species on the threatened and endangered species list
7 now that shouldn't be there?

8 MR. WELCH: Again, not to avoid your question, but
9 we employ wetland biologists, botanical biologists. We have
10 employed very expensive talents to help us identify those
11 sources so that we can develop our plans to avoid them. So I'm
12 not here to argue or even debate the science of what goes on
13 the list, it's rather can't we come with a list so that we know
14 what to avoid and where to avoid it. It would make our
15 industries function much, much smoother.

16 CHAIRMAN VITALI: Yeah. And what I'm trying to get
17 at in relationships you can sometimes try to solve problems
18 that don't exist. So I'm trying to get at is there a real
19 problem here, and I'm hearing from a lot of people that there's
20 not. Thank you.

21 MR. WELCH: In addition to what the State
22 Representative has said, I happen to be a sitting school board
23 president for ten years. And in going through the voting
24 process, I happen to go through a like event. So it's not that
25 they're not important to be there or not to be there, it's more

1 can we find a way for us to work in concert so that there's a
2 little bit more operational value.

3 CHAIRMAN VITALI: Thank you.

4 MR. WELCH: Thank you.

5 CHAIRMAN CAUSER: Thank you, Chairman Vitali. I'd
6 also like to thank Representative Marc Gergely for attending
7 today. Welcome, Representative Gergely.

8 Next question is from Representative Doyle Heffley.

9 REPRESENTATIVE HEFFLEY: Thank you. To follow up on
10 the other question, in your tenure with --- you said you were
11 with DEP and DCNR and your tenure now with the Concrete
12 Aggregate Association?

13 MR. WELCH: I work for a private business. Glenn O.
14 Hawbaker, Incorporated, is a privately-owned aggregate in
15 transportation out of the state.

16 REPRESENTATIVE HEFFLEY: And do you feel that there
17 are --- we could do better with our permitting process? Do you
18 feel that this legislation would help?

19 MR. WELCH: I do.

20 CHAIRMAN CAUSER: Mr. Welch, can you pull the
21 microphone ---?

22 MR. WELCH: I'm sorry. The answer was I do.

23 REPRESENTATIVE HEFFLEY: What is the average, do you
24 have an average time of, say, a basic permit that you would be
25 applying for just for a basic land development? What would be

1 that average time to go through the process to get that from
2 the permit process to the time you start developing and
3 creating jobs?

4 MR. WELCH: In responding more on the mining side of
5 it, the DEP has gone through several renditions of the permit
6 guarantee, money-back guarantee. And presently, we're into a
7 process that --- from application to issuance or final
8 decision, we're looking at 180 days basically. But that
9 doesn't include the time that the application is off the clock
10 of the agency or when we have a dispute that needs to be
11 resolved. Many mining permits have been --- have lapsed into a
12 one-year-plus time frame.

13 MR. HEFFLEY: Thank you very much.

14 CHAIRMAN CAUSER: Thank you, Representative Heffley.
15 Chairman Miller?

16 CHAIRMAN MILLER: Not for this round. Thank you.

17 CHAIRMAN CAUSER: Thank you, sir, for your
18 testimony.

19 MR. WELCH: You're welcome. Thank you.

20 CHAIRMAN CAUSER: Our next testifier is Mr. Brian
21 Wagner, the president of PA Trout Unlimited. Welcome, sir, and
22 you can proceed.

23 MR. WAGNER: I want to thank the committees for
24 having me here today. The Pennsylvania council of Trout
25 Unlimited, as I said, I wanted to thank you for the opportunity

1 to provide testimony regarding House Bill 1576. Nationally,
2 Trout Unlimited is the premier conservation organization
3 working to protect cold water fisheries and their habitats.
4 The Pennsylvania Council, we have over 13,000 members and 48
5 local chapters spread across the Commonwealth, both urban and
6 rural chapters. Our mission is to conserve, protect, restore
7 and sustain Pennsylvania's cold water fisheries and their
8 watersheds, especially our wild trout resources.

9 Given our mission, it comes as no surprise that we
10 are greatly concerned about the provisions of House Bill 1576.
11 Although PATU is concerned about the impacts of this bill on
12 both wild trout and threatened and endangered species, my
13 comments today will be just dealing with wild trout waters.

14 The current process of designating wild trout
15 streams we feel is rigorous, it's transparent, and it already
16 considers public input. It is rigorous that data is obtained
17 via well-established, scientific sampling methods, and
18 designations are based on stringent technical criteria,
19 including numbers of trout, biomass and size classes
20 represented. This rigorous, scientific process results in yes
21 or no answers. Either a stream meets the criteria for
22 designation as one of the classes of wild trout waters or it
23 does not. Although designation as a wild trout stream
24 ultimately has regulatory consequences, it is not itself a
25 regulatory action. It is simply a technical decision.

1 The Fish & Boat Commission does not make these
2 decisions in a vacuum. It posts on its website the results
3 from surveys indicating that streams may be eligible for
4 designation as wild trout streams. Proposed stream
5 designations are listed in the Pennsylvania Bulletin at least
6 60 days prior to any formal action --- I believe the time
7 period is 30 days --- giving ample opportunity for comment. As
8 anglers, we pay attention to these listings. If you don't
9 believe that, simply mention Cross Fork Creek anywhere in the
10 northern half of the state. Proposed wild trout stream
11 listings are then acted on by the Commission's Board of
12 Commissioners at its quarterly meetings, at which the public
13 again has an opportunity to provide comment on any business,
14 including that of the designation of wild trout streams.

15 So we already have a rigorous technical process
16 that's transparent to the public, in our opinion, with decision
17 making by a Board of Commissioners appointed by the Governor
18 and the legislature. It is difficult to imagine what added
19 value will be contributed by the Independent Regulatory Review
20 Commission. Rather, subjecting wild trout designations to the
21 regulatory review process will impose a significant and
22 unnecessary administrative burden on the Fish & Boat
23 Commission. Given budget constraints throughout state
24 government, now is not the time to insert more administrative
25 inefficiencies into the process. IRRC review also will lead to

1 unnecessary delays in wild trout stream designations,
2 potentially leading to the denial of protections for a valuable
3 resource shared by all residents of the Commonwealth.

4 We believe that the provision of House Bill 1576 are
5 directly contrary to the wishes of the anglers of Pennsylvania.
6 The sport of fishing relies on good water quality, and wild
7 trout designations and good water quality go hand in hand. Any
8 decline in the quality of fishing will lead to a decline in
9 license sales. Last year, over three-quarters of a million
10 Pennsylvanians purchased fishing licenses. I believe there's
11 just shy of half --- excuse me, just shy of a half a million
12 trout stamps. Large numbers of non-residents also purchased
13 fishing licenses in Pennsylvania. This is a significant
14 constituency that accounts for a great deal of economic
15 activity. During 2011, which was the last data that was
16 compiled, that was, I believe, a federal study, anglers
17 directed nearly \$500 million to Pennsylvania's economy. And
18 because much of this activity takes place in rural areas of the
19 Commonwealth, many small business owners benefit from these
20 expenditures.

21 Implementing constraints on wild trout stream
22 designations contradicts efforts throughout Pennsylvania to
23 restore streams to conditions that support wild trout. Trout
24 Unlimited, Conservation Districts, watershed associations, and
25 other organizations have invested untold hours and millions of

1 dollars in restoring water quality to streams that have been
2 degraded by our legacy of water pollution. Much of that work
3 has been funded by the DEP, DCNR, Fish & Boat, and various
4 federal agencies.

5 Designation as a wild trout stream is confirmation
6 that many of these efforts have been successful. Saddling the
7 wild trout designation process with added layers of bureaucracy
8 could mean that between the time a stream has been identified
9 as having wild trout present and achieves the actual
10 designation, less protection is afforded to the stream,
11 allowing progress that may have been achieved by non-profit,
12 government, and other partners to backslide.

13 In summary, I am reminded of some advice given to me
14 by my boss early in my career, when I assumed my first
15 managerial position. He said, hire good, well-educated and
16 trained people, give them the tools they need to get the job
17 done, and then get out of their way. The Fish & Boat
18 Commission is staffed by good, well-qualified people, who are
19 using sound science to make decisions about the Commonwealth's
20 aquatic resources. We are well advised to stay out of their
21 way and allow them to get the job done. This testimony is
22 respectfully submitted by --- on behalf of our 13,000-plus
23 members here in Pennsylvania. Thank you.

24 CHAIRMAN CAUSER: Thank you, sir, for your
25 testimony, for the information that you provided. One

1 question, though, I wanted to ask you. You note in your
2 testimony that the current regulations dealing with designated
3 wild trout streams go through the Fish & Boat Commission and
4 are voted on by the Board. What --- looking at that process,
5 what if the Fish & Boat Commission wanted to designate a stream
6 and a majority or a significant number of the public didn't
7 want it to be designated, what process could they actually use?
8 Other than putting pressure on the Fish & Boat Commission
9 Board, what other process could they use to prevent that from
10 being designated?

11 MR. WAGNER: They could provide public comment,
12 like, you know, any citizens or industries.

13 CHAIRMAN CAUSER: They can certainly provide
14 comment, but in all reality, the Fish & Boat Commission could
15 continue to move forward with the regulations. And the only
16 other avenue that I know of right now is the legislation could
17 actually pass legislation to abrogate a regulation. But that's
18 a significant process in itself. And I think that's something
19 we need to think about as we move forward with this discussion.

20 MR. WAGNER: I think the Fish & Boat Commission does
21 take all the comment into its decision, which I'm sure we'll be
22 talking about that later.

23 CHAIRMAN CAUSER: Something to think about. First
24 question is Representative Tobash.

25 REPRESENTATIVE TOBASH: Thank you. Thank you, Mr.

1 Chairman. And I appreciate you being here today, Mr. Wagner.
2 I'm one of your members. I'd like to think I'm an avid
3 fisherman. At least in my mind I'm an avid fisherman. Quite
4 the time, I work very closely with the --- with our Waterways
5 Conservation Department here, Schuylkill County Conservation
6 Department. And I continue to hear conversations from them in
7 our conservation district about how important it is and what a
8 benefit an active industry, coal mining industry, has had to
9 clean up our water resources here in the county. I can tell
10 you we've got some wild trout water right here. When I was a
11 child, we wouldn't have believed that we had the resources that
12 were available. And as I have those conservations, they
13 oftentimes, you know, turn to the difficulty in the permitting
14 process. And we heard a testifier earlier talk about
15 predictability.

16 In fact, I was at a hearing, Senate hearing, at the
17 end of last week at Sweet Arrow lake. And at that hearing they
18 talked about the permitting process and coal mining silt
19 flowing into the Schuylkill River, which is now an active
20 fishery. And at that hearing, what we found, what we concluded
21 was that the permitting process is causing us to not be able to
22 afford to remove some silts along the banks of the Schuylkill
23 River, and that ends up in the fishery and deteriorates the
24 fish that we have right now.

25 With that said and your experience and your

1 experience with Trout Unlimited, would you agree that the
2 mining industry that and the standards that we now operate
3 under are improving our waterways of the Commonwealth.

4 MR. WAGNER: I would say so. We're not against, you
5 know, responsible energy development by any means, just like in
6 responsive manner all of the regulations.

7 REPRESENTATIVE TOBASH: You know, we have
8 regulations in place. And one of the things that you mentioned
9 before is that, at the expense of DEP and our taxpayers, we've
10 gone in and reclaimed a lot of streams, okay, but we have an
11 active mining industry, and we have the ability to do that
12 through the industry and current regulations. But doesn't it
13 make sense to you that there should be some regulatory review?
14 Doesn't it make sense to you that if we have a number of
15 agencies that totally are unchecked without the ability of our
16 constituents to weigh in on those matters, for someone else to
17 take a second look at that, that that's problematic to keeping
18 an industry that is proving our waterways vital.

19 MR. WAGNER: From our testimony, I don't believe ---
20 you have the proper oversight now. To be honest with you, I
21 don't think, you know, adding the other step is really going to
22 be beneficial.

23 REPRESENTATIVE TOBASH: I'm hoping that we're going
24 to hear from some testifiers a little bit later on in this
25 hearing that I'm going to hear some specific examples of how

1 the permitting process and the unpredictability is stopping us
2 from cleaning up our streams. Once again, thank you for your
3 testimony here today, and I appreciate the good work that you
4 do. I appreciate the fact that we're working together to try
5 to come up with some common-sense approach to make sure that we
6 keep going as the industry expects us to go while maintaining
7 our good waters in the Commonwealth.

8 CHAIRMAN CAUSER: Thank you, Representative.
9 Representative Pyle?

10 REPRESENTATIVE PYLE: Thanks, Chairman. I'm sorry
11 you keep hearing from me. It's my bill, and I'm kind of
12 attached to it. I would --- more so a comment, Chairman, if I
13 could. I tip my hat to Fish & Boat, I really do. Trout
14 Unlimited, I think I might be a member, too, if my
15 grandfather's promise of a lifetime membership years ago was
16 true.

17 In regards to Representative Tobash's question, I
18 think I can lend a little bit more clarity. In Cambria County
19 right now, from --- not too far from Johnstown, the worst acid
20 mine discharge in the entire state, abandoned prior to 1960 and
21 the existence of the EPA. As we sit here, in one hour 36,000
22 gallons of iron water, 140 million parts per thousand. It's
23 literally orange, is going to come flying out of a mountainside
24 at St. Michael's. It's going to hit the Little Conemaugh
25 basin, and for about the first 200 yards, it's bright orange.

1 As you go, the white starts from all the aluminum, and keep in
2 mind, this is a mining operation that was walked away from in
3 1962, before there was anybody there to make them clean it up.

4 Fast forward to present. Modern-day mining company
5 based out of my district in Kittanning finds a metallurgic
6 coal, good stuff. Thirty (30) years. Life-sustaining, family
7 jobs. For them to go get it, they have to make a submission to
8 the powers that be. Would you let us go get it? Yeah, we want
9 you to clean up the water. And they instituted water
10 techniques that took the iron content of that water from 149
11 down to 3. They dropped 146 parts per million. That's huge.
12 Now, considering nobody's ever tried this since 1962, the
13 question comes up why have we not already done this considering
14 we can clean 60 miles of river basin, the Little Conemaugh, the
15 Conemaugh where it goes through Johnstown at the Point to the
16 Kiski that forms the whole southern border of Indiana County,
17 into Armstrong, where it flows into the Allegheny, which, by
18 the way, is where they hold the bass pro fishing event every
19 year. I don't think our water's that bad.

20 Here's what we're running into, coordination of
21 agencies. Our Fish & Boat guys go, wow, 149 down to 3.
22 That's awesome. Go for it. Well, when the feds step in and
23 say, yeah, 149 to 3 is impressive, but we want you down under
24 .1, which they can do, if they're allowed to use lime to draw
25 the metals out of the water. But that throws the heat on the

1 TDS content, doesn't it? So you can't use that technique to
2 clean a 50-year surge, okay.

3 What Representative Tobash is talking about is all
4 too familiar to me. This is one of the ones where the
5 government should get out of the way or at least be able to
6 appeal what you feel is an unjust decision. I would agree with
7 you, sir. I tip my hat to Fish & Boat and to Trout Unlimited.
8 As far as protecting fishes and boats and trouts, they're very,
9 very good at what they do. We, however, are in charge of a
10 much, much greater gem in just that we're not allowed to focus
11 on one aspect. We have to look at the welfare of 62,000 people
12 over various sized districts.

13 The coordination of government efforts that
14 Representative Tobash brought up is very real and one that I
15 feel this bill will help cut through. My dad told me a long
16 time ago an honest man has nothing to hide. You make a good
17 decision. What's the harm in throwing it in front of IRRC?
18 Thank you, Mr. Chairman.

19 CHAIRMAN CAUSER: Thank you, Representative Pyle.
20 Representative McCarter?

21 REPRESENTATIVE MCCARTER: Thank you, Mr. Chairman.
22 Just two quick questions, really. How many streams are
23 currently designated as wild trout streams in Pennsylvania?

24 MR. WAGNER: I'd rather defer. I don't know the
25 number.

1 REPRESENTATIVE MCCARTER: Approximately?

2 MR. WAGNER: I don't know, to be honest with you,
3 exactly how many it is.

4 REPRESENTATIVE MCCARTER: Ten?

5 MR. WAGNER: Oh, no, it's more than that.

6 REPRESENTATIVE MCCARTER: A hundred?

7 MR. WAGNER: I'm sure the Fish & Boat Commission
8 will be able to answer that.

9 REPRESENTATIVE MCCARTER: If, in fact, this bill
10 passed, as I read the bill, and maybe someone can correct me if
11 I'm wrong, but again, the trout designated streams would have
12 to undergo basically the same review process over the two-year
13 period as the endangered species as well. So each of these
14 streams would have to go through and be reevaluated again as to
15 why they are listed. And as a result of that, can you tell me
16 --- I mean, obviously, it would seem in going through that,
17 it's hard to believe that some of them are not going to be
18 de-listed, if you will, through that process. What is the
19 effect that you would think would happen on these streams as a
20 result of being de-listed?

21 MR. WAGNER: If they would be de-listed? Well, they
22 would lose their protection. I mean, you know, the Class A
23 water --- Class A trout waters, basically that's one of the
24 ways to get to high-quality cold water fisheries that DEP ---
25 so you know, any high-quality stream, you know, has certain ---

1 has certain protections that are afforded to it, as well as
2 exceptional amounts ---.

3 REPRESENTATIVE MCCARTER: Could you describe some of
4 the protections for --- as part of the testimony? I mean, what
5 are some of the protections that are most valuable as part of
6 that?

7 MR. WAGNER: Yeah. For the high quality --- well,
8 basically, you know, if there's development, you have to ---
9 there's a process. It's Chapter 93 rules. There's a process
10 where, you know, you can't be anti --- there can't be
11 degradation to the waterway. And if there is, there's a
12 process of how you can --- you can submit an alternate way of
13 doing something that would mitigate that. It's in the Chapter
14 93 regulations, but you know, basically, I think there's an
15 appeal if you can't --- I think if you can't show there's
16 actually degradation, there's a process to go through DEP.

17 REPRESENTATIVE MCCARTER: Thank you very much.

18 CHAIRMAN CAUSER: Thank you, Representative.
19 Representative Gillespie?

20 REPRESENTATIVE GILLESPIE: Thank you, Mr. Chairman.
21 Thank you, Mr. Wagner, for your testimony. You mentioned in
22 your testimony --- I'm from the extreme southern part of the
23 state, down near Maryland. So, you mentioned about this Cross
24 Fork Creek anyway in the northern part of the state. You want
25 to elaborate on how ---?

1 MR. WAGNER: That was just an example of how anglers
2 pay attention to these listings. You know, obviously, we're
3 all interested, you know, in a lot of trout and streams. Cross
4 Fork is actually one I think that didn't make the Class A
5 criteria. This one is of interest of Trout Unlimited. Anglers
6 pay attention to these things. I would say, you know,
7 especially a lot of Trout Unlimited members. And I probably
8 fish probably 99 percent of the time Class A trout waters.

9 REPRESENTATIVE GILLESPIE: Did something happen up
10 in Cross Fork or was it just the fact that it did get listed?

11 MR. WAGNER: It just didn't meet the criteria for
12 Class A. It's Class B.

13 REPRESENTATIVE GILLESPIE: Okay. Thanks.

14 CHAIRMAN CAUSER: Thank you, Representative
15 Gillespie. Representative Heffley?

16 REPRESENTATIVE HEFFLEY: Thank you for your
17 testimony. Looking over your testimony, I have a couple of
18 quick questions. The Trout Unlimited, what is the platform for
19 Trout Unlimited when it comes to fishing nurseries and
20 hatcheries? Is that something that you would be opposed to?

21 MR. WAGNER: No, we're not ---.

22 CHAIRMAN CAUSER: Mr. Wagner, you have to talk into
23 the mic.

24 MR. WAGNER: Yes. We're certainly not opposed to
25 hatcheries or co-op nurseries. We're basically a wild trout

1 organization.

2 CHAIRMAN CAUSER: So you would be for fishing wild
3 trout, not for fishing stocked trout?

4 MR. WAGNER: No, we're not against fishing for
5 stocked trout by any means.

6 REPRESENTATIVE HEFFLEY: Would you agree in several
7 instances the cost drivers in operating nurseries and
8 hatcheries for both the Fish & Boat, the co-ops and other
9 private entities has skyrocketed due to the regulations that
10 are being put into effect through the Class A designation, also
11 the EB designation of streams?

12 MR. WAGNER: I would --- I believe the cost probably
13 has gone up, but ---.

14 REPRESENTATIVE HEFFLEY: Significantly.

15 MR. WAGNER: Yeah. The thing is you really don't
16 --- sometimes hatcheries, they degrade the stream the effluent
17 is flowing into, so you're basically --- wild trout --- I mean,
18 I guess what I'm trying to say why would you want to diminish,
19 you know, a wild trout stream?

20 REPRESENTATIVE HEFFLEY: What if there was a
21 hatchery that was in operation for 111 years and the stream was
22 designated exceptional value while the hatchery was in
23 operation and then received the Class A designation, but yet
24 that hatchery is still going to have to invest significant
25 amounts of money, I mean, do you think that's good for the

1 fishermen in the area or do you think that's bad?

2 MR. WAGNER: If it's a Class A stream, it has the
3 highest level of trout population for the stream, so I would
4 hope that the hatchery would --- it would have to meet
5 anti-degradation statutes.

6 REPRESENTATIVE HEFFLEY: So what you're saying then
7 is you would disagree with the Fish & Boat Commission on that
8 --- in that instance?

9 MR. WAGNER: Could you clarify that? I'm not
10 sure ---.

11 REPRESENTATIVE HEFFLEY: So you're saying that you
12 would disagree with the Fish & Boat Commission because in their
13 operating their hatcheries, they haven't put in those --- no
14 settling ponds and the Fish & Boat Commission --- or would you
15 agree with them that those requirements aren't always
16 necessary?

17 MR. WAGNER: I'm sure it depends on what the
18 effluent coming out of the hatchery is, but you know, I
19 think ---.

20 REPRESENTATIVE HEFFLEY: In the cases that I heard,
21 it was actually the fish --- there was more abundance of brown
22 fish --- or trout downstream and fish with the nursery in
23 operation than without it.

24 MR. WAGNER: Well, I wouldn't want to see the ---
25 you know, the stream --- you know, any degradation to the

1 stream, I mean, if --- you know, if we can put safeguards in
2 place.

3 REPRESENTATIVE HEFFLEY: Well, those safeguards are
4 very cost effective. I just would go on record as saying while
5 I love the name Trout Unlimited and have been a fisherman most
6 of my life, not a very good one, but in talking with most of
7 the clubs and fishermen and the sportsmen organizations in my
8 area, they have found Trout Unlimited --- maybe not the members
9 themselves, but the organization itself has been backing a lot
10 of restrictive regulations that are really prohibiting fishing
11 opportunities and stocking opportunities. But I thank you for
12 coming here today.

13 MR. WAGNER: I would disagree with that.

14 CHAIRMAN CAUSER: Thank you, Representative Heffley.
15 Representative Maloney?

16 REPRESENTATIVE MALONEY: Thank you, Mr. Chairman,
17 Mr. --- Representative Tobash. Good place to be here. I have
18 a sister who actually graduated from this school. Now she's
19 all very proud of herself. Thank you for having us here.
20 Thank you, testifiers.

21 I'm going to keep this short. Representative
22 Heffley actually did ask a few questions and brought up a few
23 concerns of mine. I think what I'm hearing here today and,
24 quite frankly, as an avid sportsman and member of Trout
25 Unlimited, by the way, I think what's really important here is

1 to find this balance that many members have talked about with
2 respect to how we work with our agencies and the Commonwealth
3 of Pennsylvania works together, being able to either use a
4 property, create jobs, whatever that might be.

5 I think --- I think what troubles me, hearing ---
6 well, I guess one Representative did quote quite a bit what's
7 going to be testified from the Game Commission and the Fish
8 Commission, but you know, part of your testimony was \$500
9 million into the Pennsylvania economy. I have a lot of data
10 with respect to how we have lost hundreds of millions, even
11 into the billions of dollars of money that our sportsmen would
12 have provided in this state alone. So we know it's a problem.

13 I think, in my mind, what we have to do is recognize
14 that there has to be a balance, there has to be a cohesion.
15 And I want to give you a couple examples that have been
16 difficult for me to comprehend. I have stocked trout in a lot
17 of the east and a lot of the north central part of the state
18 with the Fish Commission. I think they do a fantastic job. I
19 have been part of gun clubs and fishing clubs that have bought
20 thousands of fish for us to help to influence the younger
21 generation, which I'm afraid is going to be our endangered
22 species, because we are losing them at a tremendous rate.
23 Quite frankly, as Representative Heffley brought up, if we
24 don't have the help of the Fish Commission to help to entice
25 the young people into these streams with trout that we are

1 raising on our own and stocking in our own --- in our own
2 streams --- we have proven that we have protected many of our
3 streams and waterways to exceptional value is not a problem.
4 So I guess when I have a bridge, let's just say, for instance,
5 in my district, that can't be worked on and I know, quite
6 frankly, it's during the trout season, and I get that. But why
7 can't we --- like, for instance, I had a resident that wanted
8 --- if I wanted 10,000 trout in that stream, he said I'll buy
9 them and put them in there. There aren't any in there now.
10 But we have regulations that don't let us construct a bridge
11 because of a DEP regulation and/or a possible trout that might
12 be in this small stream that none of us will go fish because
13 there aren't any there.

14 So I think what you're hearing is a little
15 frustration on the part of members who are sportsmen, members
16 who hear from their constituents all the time, contractors who
17 can't move forward. And I credit you with a lot of --- a lot
18 of passion, I'll say, with respect to something that we all, I
19 think, agree with that we want to see happen and have here in
20 Pennsylvania. But I think what I'm hearing here today, which
21 really frustrates me, as I really help my constituency to try
22 to deal with the interests that we have, is we do have special
23 interests, and I think it should be Pennsylvania. So to
24 basically say that we might degradate a stream because of the
25 stocked trout I have a little problem with. I know what the

1 millions of dollars is costing the Fish Commission to purify
2 the water so that they can continue their operations. For us,
3 to only help our young people --- when I see those little kids
4 on the side of the stream, it's what I think is our future. If
5 we can't continue that with some sort of common sense, to me,
6 we're going in the wrong direction. So I'm going to leave it
7 at that.

8 MR. WAGNER: Can I respond to that?

9 REPRESENTATIVE MALONEY: Certainly.

10 MR. WAGNER: I wanted to make a few clarifications.
11 One, I don't want people to go away with thinking that Trout
12 Unlimited is against stocking trout or hatcheries. We just ---
13 you know, I don't want you to go away thinking that, because
14 there are certain --- for streams that --- that, you know,
15 stocking trout is definitely a benefit to the sportsmen and
16 youth. I agree with that.

17 And I also wanted to just mention that Trout
18 Unlimited is very involved with our youth. Matter of fact,
19 I'll be at a --- this Saturday I'll be at our local state park
20 doing a family fishing program. So I just want to make it
21 clear that Trout Unlimited is very youth oriented. We do a lot
22 of youth activities. And we're not against stocking or
23 hatcheries. We just --- you know, if you're talking about
24 high-quality watershed, you don't really want to see
25 degradation. And you know, that's --- then there's the cost of

1 doing something that you don't want to degradate the water
2 quality.

3 REPRESENTATIVE MALONEY: I don't know anybody who
4 would want that. If you want to talk about degradation, I can
5 go off on that subject myself. But the fact of the matter is
6 it seems to me that that is what you're saying. I don't know
7 why --- I don't know --- the part I'm missing here is what
8 you're assuming is degradating the streams. Do you have an
9 answer to that?

10 MR. WAGNER: Can you clarify that, please?

11 REPRESENTATIVE MALONEY: Yeah. What are --- am I to
12 get out of the reason for the degradation?

13 MR. WAGNER: I was asked about degradation from
14 hatcheries. I think it's basically the effluent that comes out
15 of the hatchery needs to be treated in some way. You know, I
16 don't have the specifics, but that's basically --- someone
17 asked me about hatcheries, so I was just referring to that as
18 far as, you know, the effluent from the hatcheries, you know,
19 could possibly degrade the stream quality. I'm not inferring
20 that we're against stocked fish. I mean, I fished for
21 decades ---

22 REPRESENTATIVE MALONEY: Thank you, Mr. Chairman.

23 MR. WAGNER: --- stocked fish.

24 CHAIRMAN CAUSER: Thank you, Representative.

25 Representative Moul.

1 REPRESENTATIVE MOUL: Thank you, Mr. Chairman. I
2 will be brief. I promise. Brian, thank you. And I appreciate
3 what Trout Unlimited does. I truly do. Definitely a sportsman
4 myself. But I just want to get clear --- and we're talking ---
5 I'll try to --- I'm going to try to relate this back to this
6 bill. Trout Unlimited and its 13,000 members are saying we
7 don't want an extra set of eyes overseeing what goes on,
8 because that's kind of what this bill does.

9 MR. WAGNER: We don't see the need for that. You
10 know, the Fish & Boat Commission do basically --- you know,
11 using science to come up with, you know, the biomass of the
12 stream. We don't really see the need for, you know, an
13 x-ray ---.

14 REPRESENTATIVE MOUL: DEP is full of experts also.
15 Recently, I'll say this year, and I'm not going to name names,
16 I had the privilege of touring the hatchery, one that was on
17 the chopping block to be shut down. And while talking with the
18 biologist, he was telling me that part of the reason why it was
19 shut down --- that it was on the chopping block to be shut down
20 is because DEP, their regulations had made it so expensive to
21 keep it operating. And to top that off, he said, we're almost
22 putting distilled water back into the stream, which is very
23 unhealthy for the stream itself.

24 And I was standing there talking to him, closer than
25 I am to you right now. Wouldn't it be good to have an extra

1 set of eyes on DEP when they come out with those regs? And if
2 not --- and I don't know if the Fish & Boat took that off the
3 chopping block or not. That's up to them. I would hate to see
4 that. But because of overburdensome, overreaching regulations
5 by some departments, you guys could possibly lose tens of
6 thousands or hundreds of thousands of fish each year that's
7 being produced by that hatchery because they've gone overboard.
8 And you're telling me, as representing 13,000 members, that you
9 wouldn't just like an extra free set of eyes to take a look at
10 what's going on?

11 See, I think we're in the era of accountability and
12 openness, and I really truly believe that everyone should say
13 we want open eyes and openness and an extra set of eyes
14 wherever we can get it, not that they're doing anything wrong.
15 But remember, not too long ago there was an expert that knew
16 more about global warming than anybody else in the country
17 right here at Penn State University. They come to find out all
18 his data was flawed. He made it up. Not that I'm saying that
19 anybody in Pennsylvania, in any of these departments do, but
20 extra eyes could always be a good thing. And I think that's
21 the direction of this bill. I would certainly hope that you
22 would rethink it. Thank you.

23 CHAIRMAN CAUSER: Thank you, Representative Moul.
24 Representative Gabler?

25 REPRESENTATIVE GABLER: Thank you very much, Mr.

1 Chairman. And Mr. Wagner, thank you for being here. I really
2 just wanted to take the opportunity. I've been very quiet
3 because I'm here to listen and learn, and I appreciate the
4 opportunity, but I do think there was something that was said
5 maybe 10, 15 minutes ago that was a little bit technically
6 inaccurate with regard to the bill.

7 There was an assertion made that the designation of
8 a wild trout stream in the bill would cause those wild trout
9 streams to become de-designated in two years unless
10 re-designated. That's technically not correct. The way the
11 bill reads, page four, lines 15 through 21, this centralized
12 database actually only relates to species designated as
13 threatened or endangered. It does not relate to the listing of
14 a wild trout stream. So I just think that's important, that if
15 there's anybody who was concerned in this room that this bill
16 would cause any trout stream to become de-listed, that's not a
17 valid concern because the bill does not speak to the de-listing
18 of any trout stream. So I just wanted to add that to the
19 order. Appreciate the indulgence --- the indulgence, Mr.
20 Chairman. And Mr. Wagner, I thank you for your testimony.

21 CHAIRMAN CAUSER: Thank you, Representative Gabler.
22 That's an important one to point out. Thank you. Mr. Wagner,
23 thank you for your testimony and for standing for questions,
24 and we appreciate your testimony.

25 MR. WAGNER: Thank you.

1 CHAIRMAN CAUSER: Our next testifier is Mr. William
2 Parulis, with WJP Engineers and representing the PA Anthracite
3 Council. Welcome, sir, and you may proceed.

4 MR. PARULIS: Thank you to the Committee for
5 allowing me to testify here today. My name is William J.
6 Parulis. I'm a Registered Professional Engineer and Land
7 Surveyor in Pennsylvania and president of WJP Engineers,
8 Pottsville, Pennsylvania.

9 I have been involved as an engineer in the
10 anthracite coal industry for almost 40 years. I'm testifying
11 today on behalf of the members of the Pennsylvania Anthracite
12 Council. The Pennsylvania Anthracite Council is a trade
13 organization, representing surface and mine and preparation
14 plant operators, as well as the suppliers that produce
15 anthracite coal mined in the Commonwealth. Our organization
16 serves about a dozen mining and coal preparation companies,
17 representing 90 percent of all the anthracite coal production.
18 In addition, my consulting engineering firm provides
19 engineering services to several dozen small mining companies
20 and also represents their interests in this testimony.

21 Currently, the anthracite coal industry produces
22 about two million prepared tons of coal annually and directly
23 employs about a thousand workers who contribute direct payroll
24 of \$445 million to the Pennsylvania economy.

25 The anthracite industry is greatly concerned about

1 the impact of the Endangered Species Act on mining properties
2 throughout the anthracite region, in particular, in the
3 designation of habitat areas which adversely affect the mining
4 of coal on those properties. Having had the opportunity to
5 review the bill as presented, we agree with the intent of the
6 bill to add more structure and transparency to the designation
7 and reporting of endangered species and also the designation of
8 wild trout streams.

9 Of special interest to the anthracite industry is
10 Section 6 of the bill, concerning permits and approvals and
11 it's the main focus of my testimony today. The specific issues
12 being faced on a regular basis today are mostly centered on the
13 Pennsylvania Game Commission protocols which require
14 significant effort in research, field studies, analysis and
15 interpretation to confirm the presence or absence of endangered
16 species and their habitat or potential habitat.

17 The implementation of the protocols is time
18 consuming and expensive and are cost prohibitive to small coal
19 operations and place a significant burden on larger operations.
20 Several studies potentially required are time restricted to
21 certain periods of the year, which also places a further burden
22 both on the applicant and the permit process. These
23 requirements are being initiated on new permit applications and
24 are also being related to revisions to existing permits which
25 are required for the industry's compliance with state and

1 federal law and the Pennsylvania DEP regulations.

2 The impact of the studies themselves is significant,
3 but the overall impact on the mining properties throughout the
4 region can be monumental. The studies are not limited to areas
5 now being used by endangered species, but are targeted toward
6 areas that have the potential to be used as habitat for
7 endangered species.

8 As examples of the problem, my engineering firm is
9 currently working on two specific anthracite coal operations,
10 one existing permit outside of Mount Carmel, PA, and a new
11 permit for operations at a site near Eckley in Luzerne County.
12 Both illustrate specific concerns of the industry. Both
13 permits were subject to the current PA Natural Diversity Index,
14 PNDI, Review and received comments from the Pennsylvania Game
15 Commission regarding potential habitat for protected bat
16 species.

17 Most mining properties in the anthracite region have
18 been previously mined with abandoned stripping pits, spoil
19 piles, culm and refuse piles prevalent features throughout the
20 area. Large areas of second-growth trees are also present on
21 these properties, some of the areas which are considered
22 potential bat habitat. The area at Eckley is a prime example,
23 as portions of the area have been identified to potentially
24 have summer roosting habitat, such as various types of trees,
25 rock piles, abandoned strip mining pits, et cetera. The

1 problem is that these features are not truly unique to this
2 area. They are indicative of almost any mining property or
3 potential mining property throughout the anthracite region.
4 While we are working through the details of an approval on this
5 site with the Game Commission, the major concern here is that
6 the same type of habitat likely exists and could adversely
7 affect any mining property.

8 Any areas identified as habitat which are disturbed
9 must be mitigated by constructing replacement habitat. The
10 Game Commission policy requires that any potential habitat
11 disturbed must have restrictions placed on it or be mitigated
12 at a 2:1 ratio. Further, after the habitat is mitigated, a new
13 habitat is restricted from being affected in the future and
14 studies to the effectiveness of this mitigated habitat are
15 required.

16 The other significant potential problem is habitat
17 for winter hibernation, which is relevant to the second permit
18 we are working with. Mines have always been habitat for
19 hibernating bats, but without the restriction of being
20 protected areas. A specific problem with this type of habitat
21 is abandoned mine openings and crop falls, which are mine
22 subsidence areas where the surface has collapsed into shallow
23 mine workings and, in the most severe cases, are open to the
24 abandoned workings below. These openings are also prevalent
25 throughout the anthracite region, with many mining properties

1 potentially containing multiple openings. The Game Commission
2 protocol considers these openings as potential hibernating
3 habitat areas. The designation of these areas as habitat will
4 restrict them from being disturbed. That protection will
5 restrict the coal operator's ability to strip mine the areas,
6 backfill and restore the areas. Crop falls are also hazardous
7 areas with documented cases of injuries or deaths. There can
8 be multiple openings on a property and the protocol is
9 requiring that all must be investigated. This is time
10 consuming and expensive. A further complication is that if
11 studies are needed to trap bats to determine if they are using
12 the openings for hibernating, the protocol limits these studies
13 to one month out of the year, September 15th to October 15th.
14 This can cause serious delays to the property owner and the
15 coal operator.

16 The designation of these areas as protected habitat
17 can have significant effects on mining properties and also on
18 the abandoned mining properties, making effective abandoned
19 mine reclamation projects more difficult. Our concerns are for
20 the procedures to be implemented in defining habit and the
21 overall effect of the determination for restricting activities
22 in the designated areas.

23 We agree with the proposed bill, which would limit
24 the consideration of impact only to those areas which have been
25 identified as critical habitats of listed species. It would

1 further limit the requirement for testing and analysis for
2 potential areas.

3 We request that the legislature give consideration
4 to this testimony in that potential habitat areas being
5 identified and restricted from disturbance unfairly limits
6 planned activity with the potential result in significant loss
7 of economic and environmental benefits on those areas. Thank
8 you for the opportunity to present this testimony today, and we
9 welcome the opportunity to discuss any questions today or in
10 the future, as the legislative process proceeds.

11 CHAIRMAN CAUSER: Thank you, sir, for your
12 testimony. The first question will be from Representative
13 Tobash.

14 REPRESENTATIVE TOBASH: Thank you, Bill. I
15 appreciate your testimony here today. Do you believe that the
16 reclamation projects are not getting completed because of
17 overregulation? Do you believe that the reclamation projects,
18 the clean up ---?

19 MR. PARULIS: My understanding is that there are
20 reclamation projects that have been delayed or passive because
21 of issues like this.

22 REPRESENTATIVE TOBASH: And you believe that this
23 bill would add some consistency to the process in us being able
24 --- some of these projects to get completed?

25 MR. PARULIS: Yes.

1 REPRESENTATIVE TOBASH: And do you think that with
2 those jobs, with backing off on some of these regulations, at
3 least adding some consistency in the process, that we're going
4 to be able to maintain more jobs in the region?

5 MR. PARULIS: I believe so, yes.

6 REPRESENTATIVE TOBASH: And do you think that, in
7 the end, that some consistency in this process, in the
8 regulatory climate, is going to help us clean up our
9 environment?

10 MR. PARULIS: Absolutely.

11 REPRESENTATIVE TOBASH: Thank you very much.

12 CHAIRMAN CAUSER: Thank you. Representative Pyle?

13 REPRESENTATIVE PYLE: Thank you, Mr. Chairman. For
14 the audience gathered, I'd like to make you aware that one of
15 the reasons this bill was framed was when Representative Tobash
16 brought Mr. Parulis' case to me. For those of you who are
17 unfamiliar with some of the terms being used, reclamation,
18 that's called a bony pile. These are typically gigantic
19 clusters of rock left in place from before EPA and DEP existed.
20 And what would happen in the '60s and '50s and '40s and times
21 of our grandfathers, they would go mine coal out of a
22 mountainside and leave the rock laying there. And there was no
23 governmental agency to require them to clean it up. So Mr.
24 Parulis --- actually, Representative Tobash brought your case
25 to my attention, and it just defies logic.

1 You're saying you're willing to bring your company
2 into an old bony pile right here in Schuylkill and clean that
3 thing up, haul that all off to a co-gen somewhere that's going
4 to mix it with limestone and burn the carbon out of it, but
5 you're going to clean up this massive, massive pile of rust and
6 old rocks, and you're going to employ people, good, gainful,
7 living wages to do that, but --- was it Game Commission or Fish
8 & Boat?

9 MR. PARULIS: Game Commission.

10 REPRESENTATIVE PYLE: So as I'm informed, you made
11 federal application; yes?

12 MR. PARULIS: Yes.

13 REPRESENTATIVE PYLE: And you have the permit
14 already from them?

15 MR. PARULIS: Actually, we received the clearance
16 from U.S. Fish & Wildlife on the permit.

17 REPRESENTATIVE PYLE: To go ahead and work the ---?

18 MR. PARULIS: Well, and start the operation.

19 REPRESENTATIVE PYLE: So what did you have to do to
20 get that okayed from the feds?

21 MR. PARULIS: On this particular operation, there
22 was a study done for, in particular, the federal Indiana bats.
23 It was cleared, that there were no Indiana bats within the
24 area. There were a few unprotected bats found. And they found
25 one juvenile Pennsylvania protected species in the area. U.S.

1 Fish & Wildlife signed off within probably about 30 days after
2 the study was presented to them, which was a little over a year
3 ago, actually.

4 At that point, the Game Commission said, well, we
5 still want the area investigated for Pennsylvania endangered
6 species habitat. We started working on that the beginning of
7 last year, and we're still in the process of pinning down the
8 Game Commission sign-up on that. Part of the problem is we ---
9 you know, we have a plan moving forward. The coal operator
10 that is going to do the operation is different than the
11 landowner in this case, and the landowner has raised some
12 objections to the mitigation that we would have to put in place
13 for the Pennsylvania protected species. So it's --- you know,
14 we've been working on this probably for a year-and-a-half.

15 REPRESENTATIVE PYLE: Now, you said something. This
16 is the one that's banging a bell for me, Chairman. Future
17 potential habitats?

18 MR. PARULIS: Yes.

19 REPRESENTATIVE PYLE: Okay. I'm not questioning him
20 anymore. Mr. Chairman, if I could make a comment to you. You
21 know, if you go to Kiskiminetas Township, Armstrong County,
22 you'll run into people back on Route 56 who swear up and down
23 they've seen Bigfoot running around. I don't doubt it. Where
24 I live is perfect habitat, broad-blanket forest, ample water
25 supplies.

1 CHAIRMAN CAUSER: Representative, the Chair is not
2 taking questions.

3 REPRESENTATIVE PYLE: Well, if we're going to go to
4 future potential habits, Chairman, bring them up in your
5 district. Thank you, Mr. Parulis.

6 MR. PARULIS: If I could just respond to
7 Representative Pyle's comment. That's one of our main
8 concerns, is that in a lot of the areas on these mining
9 properties we're dealing with potential habitat, where, you
10 know, certain sections of the property is deemed to be really
11 suitable habitat. But then I, as a non-bat expert, which I'm
12 not, I can look at what he says is habitat and what --- I
13 looked all over the other sections of the property, and it
14 looks like the same areas to me. So you know, it's the
15 potential for a monumental acreage of potential areas. And
16 we're talking about small areas on the --- I think we have
17 about 500 acres of active permit that is --- has had maybe an
18 acre-and-a-half of habitat identified, but it severely
19 restricts what the operator can do, including filling in some
20 abandoned stripping pits.

21 REPRESENTATIVE PYLE: Mr. Chairman, thank you.
22 Thank you, Mr. Parulis.

23 CHAIRMAN CAUSER: Thank you, Representative Pyle.
24 Representative Maloney?

25 REPRESENTATIVE MALONEY: Thank you, Mr. Chairman.

1 One question for you, sir. With respect to costs or regulation
2 changes in the last several years --- or I guess the question,
3 the way I should put it is, have you seen an increase of recent
4 years to regulations and/or costs of the company --- I know you
5 answered the quarries, but with respect to your type of
6 business, I really don't know the answer to that.

7 MR. PARULIS: With respect to permitting in the
8 anthracite coal industry, over the past several years the cost
9 of permitting has risen distinctly. Some of the items we're
10 spending, I'm going to say, four or five times as much time in
11 getting the permit approved as we were five years ago. And
12 that --- that also relates to other sections. Our consulting
13 firm is not just in the anthracite coal industry. We do a lot
14 of work with storm water and other permits and the like. Storm
15 water has increased fivefold since 2006, and that's no
16 exaggeration.

17 REPRESENTATIVE MALONEY: Thank you. Just a couple
18 comments with respect to some of the comments I made earlier
19 about the lack of common sense. And I think what we're seeing
20 here is, again, a concern. I'll just give you a couple
21 for-instances.

22 Back home and some of the places where I do business
23 in the past, you may have been required to do a bog turtle
24 study. And I had several people in the business and myself
25 where the individual who had to be contacted to come to these

1 studies would say, sorry to tell you, this isn't the habitat of
2 a bog turtle, but that will be \$2,500, please. I think this is
3 some of what the real world deals with out there and I think
4 some of what I'm hearing from.

5 I'll give you another for-instance. I have an
6 exceptional value stream in my area that, in light of what was
7 talked about earlier, where individuals have been pretty much
8 directed by DEP to do a study on the effluent that might be
9 coming from bad septic systems into that stream. So the fix to
10 it would be to put holding tanks in to stop the effluent and
11 let the people haul those tanks out so we would not pollute the
12 stream. Guess what the DEP said? You can't put them in. So
13 13 years later, the effluent is still going in the stream.

14 MR. PARULIS: There's a lot of examples of that
15 throughout the state, I'm sure.

16 REPRESENTATIVE MALONEY: Thank you. Thank you, Mr.
17 Chairman.

18 CHAIRMAN CAUSER: Thank you. Representative Snyder?

19 REPRESENTATIVE SNYDER: Thank you, Mr. Chairman.

20 And thank you for being here to testify. You said it's taken
21 you about a year-and-a-half to try to get through the process
22 to do the reclamation job. Have you been given any indication
23 of how much longer it might take before you may be able to
24 start that work?

25 MR. PARULIS: No. There is no indication of an

1 ending date. Hopefully, we're going to get it resolved soon,
2 but you know, it --- as we proceed through the permit process,
3 there's no guarantee. Regardless of the permit guarantee
4 that's, you know, touted by certain people in the state, there
5 is no permit guarantee timeline. You know, we submit an
6 application. We get comments back from DEP or whatever agency
7 we're dealing with, respond to those comments, usually at least
8 two or three times, you know, back and forth until we get to
9 the point where it's ready to be issued.

10 Part of the problem we've been having with the Game
11 Commission, they have some very specific protocols, but the
12 methods to go about to answer those protocols are subject to
13 interpretation by people who are looking at them and people who
14 are doing studies also. And that has caused us some problems,
15 too.

16 REPRESENTATIVE SNYDER: So this could go on for a
17 while yet?

18 MR. PARULIS: This could go on for a while yet, yes.

19 REPRESENTATIVE SNYDER: Thank you.

20 CHAIRMAN CAUSER: Thank you, Representative Snyder.

21 Thank you, Mr. Parulis, for your testimony. We greatly
22 appreciate it.

23 Our next testifier is a panel of the three agencies
24 that actually are dealt with in this legislation. Mr. Dan
25 Devlin will be testifying on the Pennsylvania Department of

1 Conservation & Natural Resources. Dan is the Director of the
2 Bureau of Forestry. And we also have with us today Ms. Ellen
3 Ferretti, the Secretary --- Acting Secretary of the Department.
4 Thank you, Madam Secretary, for being here today. In addition,
5 we have Mr. Carl Roe, the Executive Director of the
6 Pennsylvania Game Commission, and Mr. John Arway, the Executive
7 Director of the Pennsylvania Fish & Boat Commission. Did the
8 three of you decide who wants to go first.

9 MR. DEVLIN: As listed.

10 CHAIRMAN CAUSER: As listed?

11 MR. DEVLIN: No pun intended.

12 CHAIRMAN CAUSER: Dan? We'll hear first from Dan
13 Devlin, who is at DCNR. Welcome, Dan.

14 MR. DEVLIN: Thank you, Chairman Causer, Chairman
15 Miller, Chairman Vitali and Committee members. Thank you again
16 for the opportunity to respond to House Bill 1576.

17 I'd also like to highlight the Department of
18 Conservation & Natural Resources' involvement with Threatened
19 and Endangered Species listings.

20 As was stated, I'm Dan Devlin. I'm the Director of
21 the Bureau of Forestry and DCNR. DCNR's mission is to conserve
22 and sustain Pennsylvania's natural resources and to guard them
23 for future generations. Part of our responsibility is to
24 maintain an inventory of the Commonwealth's ecological and
25 geologic resources and make a survey of wild plants, which do

1 include threatened and endangered species. DCNR is the largest
2 plant steward in the state, actively managing more than 2.5
3 million acres of state forests and state parks.

4 DCNR actually has two main roles regarding
5 threatened and endangered species in Pennsylvania. First, the
6 Wild Resource Conservation Act directs DCNR to determine the
7 status of wild plants. It creates an important system to
8 detect endangered, threatened and multiple wild plant species.
9 It creates a permanent procedure for persons interested in wild
10 plant management. It creates a commercial license procedure
11 for persons who purchase vulnerable plants, such as ginseng.
12 We've heard that earlier today. And it authorizes DCNR to
13 create a statewide system of private wild plant sanctuaries.
14 DCNR has gone through regulations through the requirements of
15 the Regulatory Review act to implement this program.

16 DCNR's second main role regarding threatened and
17 endangered species is through Act 18 of 1995, and it mandates
18 the Department create and maintain an inventory of the
19 Commonwealth's ecological resources. Section 305 states that
20 DCNR shall have the power and its duty to obligate the study
21 and protect the Commonwealth's ecological and geologic
22 resources. So DCNR's responsibility is to conduct surveys of
23 significant ecological resources and provide this information
24 for reference.

25 Currently DCNR works in partnership with other

1 Commonwealth agencies through what's known as the Pennsylvania
2 Natural Heritage Program. We've heard about it a little bit
3 already. We do this to collect the biological and ecological
4 information throughout the state. PNHP is a partnership
5 between DCNR, the Game Commission, the Fish & Boat Commission
6 and the Western Pennsylvania Conservancy to conduct inventories
7 and collect, analyze and distribute data to describe the
8 Commonwealth's rarest and most significant ecological features.
9 That information is stored in a centralized database and shared
10 with individuals and organizations. Those individuals and
11 organizations use the information for conservation, development
12 planning and resource management.

13 The Pennsylvania Natural Diversity Inventory, as
14 it's been called affectionately today PNDI, is an environmental
15 review function of the Pennsylvania Natural Heritage Program.
16 The PNDI system is managed by DCNR in order to provide
17 conservation information, which, among other things, is used
18 for development planning, resource management and also
19 permitting. Anything interested --- anyone, including property
20 owners, environmental consultants, industry staff, project
21 planners, conservation planners and Department of Environmental
22 Protection can access the tool for PNDI project screening.

23 The PNDI program review tool is used during any
24 project pre-plan phase prior to submitting an application to
25 DEP or for other state or federal funding requirements. The

1 PNDI environmental review tool screens projects and provides
2 the user with instant responses regarding species and resources
3 of concern in their project area of interest, including, as
4 we've heard earlier, an instant no impact response, again,
5 where nothing else is required; listing of species occurrences
6 known within the project area; avoidance measures to mitigate
7 the impacts; and conservation measures, which are voluntary
8 measures to minimize impacts to non-listed species and
9 resources.

10 House Bill 1576 standardizes a state process for
11 listing threatened or endangered species, consolidating the
12 listing into a centralized database managed by DCNR, and
13 granting access to information in the database to outside
14 persons, as defined in the legislation.

15 As I stated earlier, DCNR already has a process
16 established, which includes the Independent Regulatory Review
17 Commission, to list species under our jurisdiction as
18 threatened or endangered. While the Department has not taken
19 an official position on the legislation, we do have
20 recommendations for the Committee. And our recommendations
21 revolve around definitions for persons and listing species, and
22 specifically the terminology used for both those definitions.
23 We hear that the terminology is somewhat ambiguous, and we are
24 concerned about the significant access to sensitive data.

25 As I have explained, there is a robust system in

1 place to inventory and disseminate ecological information to
2 those who need it. As the needs of the users constantly
3 change, DCNR continues to adapt its tools and policies to meet
4 the needs of the user while still fulfilling our statutory
5 obligation of protecting the species.

6 The protection of natural heritage species and
7 resources can be accomplished in harmony with development needs
8 across Pennsylvania. The PNHP and its PNDI environmental
9 review tool can help guide, planning and development, avoiding
10 impacts to biological diversity and exemplary ecological areas.
11 Thank you.

12 CHAIRMAN CAUSER: Thank you, Dan. We'll hold
13 questions until the end of the three testimonies. So we'll
14 move next to Mr. Carl Roe.

15 MR. ROE: Chairman Causer, Chairman Miller, good to
16 see you again, Chairman Vitali, members of the House Game &
17 Fisheries Committee and members of the Environmental Resources
18 & Energy Committee, as always, it's a pleasure to appear before
19 the House committees to offer testimony on important public
20 policy. I could easily provide testimony for an hour or more
21 as to why this piece of legislation does not service the public
22 nor the wildlife resources. But since we only have a few
23 minutes, I will address a couple of the most important aspects.

24 Clearly, the protection of our natural resources is
25 a prime concern of the citizens of the Commonwealth. And

1 repeated survey results indicate that over 90 percent of the
2 public expect us to manage the threatened and endangered
3 species to preclude the extirpation of those species. It is
4 one of the primary missions of the Pennsylvania Game Commission
5 and a key element of our strategic plan to preclude additional
6 species being placed on the list, and we do also our best to
7 improve species populations to take them off the list. In the
8 past ten years we've only added only three species to the list,
9 and we'll be removing one this year. The ability to manage the
10 species through the classification system is critical to their
11 survival. The resource agencies have the expertise and the
12 will to best manage the threatened and endangered species
13 program. However, in doing so, we work with industry and other
14 interested parties to find a balance on the criteria we
15 establish for those species.

16 The next element addresses the idea of using federal
17 criteria. We, as state agencies, have fought for a long time
18 to keep federal requirements out of the state's right to manage
19 wildlife. This is a constant battle and we believe that states
20 have a much better idea of the species inside our boundaries
21 than the federal government has. If we can list species at the
22 state level, we can, in many cases, preclude them from becoming
23 a federally-listed species. Additionally, in most cases, the
24 federal requirements are much more onerous than the state
25 requirements. And let me give you an example.

1 As you heard earlier, the Indiana Bat is a
2 federally-listed species. I'm sure you've received letters,
3 emails and phone calls on the strict and uncompromising
4 restrictions of the Indiana Bat. We, as a state agency, must
5 also comply with the federal restrictions on Indiana Bat and
6 they have hampered our operations. Have any of you received a
7 call on the Small-Footed Myotis, the Small-Footed Bat, a
8 state-listed species of bat? We can better control the
9 requirements and the avoidance, minimization and mitigation
10 factors at the state level. Once it gets into federal listing,
11 we have virtually zero ability to make compromises to
12 facilitate agreements.

13 I have even sat in negotiations on behalf of
14 industry and tried to facilitate compromises with the U.S. Fish
15 & Wildlife Services on Indiana Bat issues. Leaving the
16 decisions or letting species get to the federal level of
17 listing takes away the control from the states and limits our
18 ability to find a compromise. And herein lays the great irony
19 with this legislation. The one species that is commonly
20 referred to as the catalyst for this bill is the Indiana Bat.
21 However, that is a species that is federally listed. This
22 legislation will make it more difficult for agencies to list
23 species as threatened and endangered, which will guarantee that
24 the Fish and Wildlife Service will take a more active role in
25 listing species. Thus, instead of preventing restrictions like

1 those associated with the Indiana Bat, this legislation will
2 ensure that more species are federally listed and more burdens
3 are placed upon entities which apply for permits.

4 One of the issues addressed in the proposed
5 legislation is the sharing of data in the Pennsylvania Natural
6 Diversity Inventory. In fact, we already shared that data, and
7 I'll get into a little bit of that later on with some members.
8 The PNDI system is in place to help facilitate the issuance of
9 permits and at the same time protect the species. The system
10 allows the identification of areas that have T/E species and
11 how we can assist in the avoidance, mitigation or --- impact
12 minimization, mitigation of those conflicts. With good
13 communication we have assisted many companies in their
14 preplanning goals that have, in fact, saved them considerable
15 costs. We have great concerns in the opening of point data for
16 general use as there are considerable risks in that data. If
17 you wish, I can provide specific instances where once the point
18 data was done, entities have altered the sites to eliminate the
19 T/E/ species. As an agency, we feel we are a facilitator in
20 this getting this process through the system, and we work to
21 ensure both the industry and the species concerned are
22 protected.

23 It is clear that the Pennsylvania Game Commission
24 does not support this legislation. It is an increase in
25 bureaucracy that results in totally inefficient and ineffective

1 governance. Having an independent regulatory commission review
2 the actions of another independent regulatory commission ---
3 and I want to reiterate the Pennsylvania Game Commission is an
4 independent regulatory commission, and I'll answer some of the
5 questions, if necessary, we will answer them now. The Board of
6 Commissioners is separate from the agency. The agency has no
7 authority to promulgate regulations on their own. They go
8 before a board that is appointed by the Governor, ratified by
9 the Senate, those members, not dissimilar to your IRRC process
10 and your appointed IRRC members. They're appointed independent
11 of the agency.

12 So our process is already reviewed by an
13 independent, appointed commission, which is the Board of
14 Commissions for the Pennsylvania Game Commission. So in
15 essence, we'll have another independent regulatory review
16 commission review the actions of an independent --- an already
17 independent regulatory commission, which is clearly redundant
18 and I think will have a negative impact on your constituents in
19 getting things through. And certainly that will have a
20 negative impact on our wildlife. I'll be glad to answer any
21 questions when the time is allowed.

22 CHAIRMAN CAUSER: Thank you, Mr. Roe. Mr. John
23 Arway, Fish & Boat Commission.

24 MR. ARWAY: I feel like this is the bottom of the
25 ninth and there's two outs, and I'm up to bat. So good

1 afternoon, Chairman Causer, Miller, Vitali, and members of the
2 Environmental Resources & Energy Committee and Game & Fisheries
3 Committee. For those of you who don't know me, my name is John
4 Arway, and I'm the Executive Director of the Pennsylvania Fish
5 & Boat Commission.

6 On behalf of our Board of Commissioners, over one
7 million anglers, over 330,000 registered boat owners, 62
8 species of state threatened and endangered fish, reptiles,
9 amphibians and mussels, and the trout and other aquatic
10 resources that live in 13,295 --- 94 miles of wild trout
11 streams --- that should answer a question that was posed before
12 --- throughout the Commonwealth, thank you for this opportunity
13 to explain our agency's effective and efficient procedures for
14 conserving Pennsylvania's most vulnerable species and the
15 streams that produce and sustain trout better than any hatchery
16 ever could.

17 In my 33 years with the Agency, this is the first
18 time that I can recall an Executive Director is being asked to
19 testify before a joint hearing of your two committees. I can
20 think of no issue more important and fundamental to our mission
21 than that which we are discussing today.

22 Our Commission lists and de-lists threatened and
23 endangered species and designates wild trout streams pursuant
24 to authority included in the Fish & Boat Code. This authority
25 and supporting policies and regulations have fulfilled the dual

1 purposes of protecting rare species and wild trout streams
2 while allowing for responsible business and growth.

3 Since our founding in 1866, the Pennsylvania Fish
4 and Boat Commission has worked judiciously to protect, conserve
5 and enhance our Commonwealth's aquatic resources. The
6 executive and legislative branches have always looked to us for
7 our scientific and professional expertise, vesting us with the
8 responsibility to look after the welfare of our waters and to
9 conserve our fish, reptiles, amphibians and other aquatic
10 organisms.

11 In 1974, your predecessors had the foresight to
12 empower our agency to, and I quote, promulgate rules and
13 regulations governing the taking, catching, killing, and
14 possession of endangered species within the classifications of
15 fish, amphibians and reptiles. This action was Pennsylvania's
16 necessary follow-up to the 1973 enactment of the federal
17 Endangered Species Act. In 1980, your General Assembly adopted
18 the current definitions of threatened and endangered species in
19 the Fish & Boat Code. I would argue that our state legislation
20 is even more important than the federal Endangered Species Act,
21 since protecting species at the state level is the most
22 proactive way for us to prevent their extinction.

23 Because House Bill 1576 appears to provide
24 protection only to federally listed T&E species, species that
25 are rare within Pennsylvania but not globally rare would not be

1 protected, effectively, conserving species at the state level.
2 Conserving species at the state level prevents regional and
3 range-wide declines that require federal listings. This is ---
4 the same is true at the state scale. It is important to
5 provide state protection because most state-listed species are
6 located on the edges of their respective ranges.

7 Many experts, including myself and my staff, believe
8 that if the states properly protected the rare species within
9 our state borders, there would be no need for the federal
10 Endangered Species Act. Again, your predecessors in the House
11 got it right 39 years ago when they voted 186 to 1, followed by
12 a unanimous Senate vote, to give our agency the authority to
13 take action to prevent the need to resort to the more costly,
14 time-consuming, and difficult federal requirements.

15 The testimony that you have before you is 12 pages
16 and reflects our official agency position on this legislation.
17 In spite of the fact that Director Roe yielded his remaining
18 time to me, I won't take that up. And since I won't have time
19 today to deliver the entire statement, I can, however,
20 summarize our comments on scientific and public policy problems
21 House Bill 1576 would create and will be available to answer
22 questions about these issues, should you have them.

23 So first, we currently use the best available
24 science, and that's actual science, not political science, for
25 threatened and endangered species listings and wild trout

1 stream designations. Our rule-making process is transparent
2 and consistent with current law. We welcome all data and
3 public comment, and we don't need more regulatory oversight.
4 The methods we use are peer reviewed and developed in concert
5 with experts from academia, business and industry and other
6 government agencies.

7 Four, we have always been able to work out
8 differences with industry for the benefit of the species, their
9 critical habitats and jobs. We are committed to determine the
10 appropriate listing levels for all species under our
11 jurisdiction. In fulfilling this charge, we are constantly
12 refining the list based on sound, scientific data. This leads
13 to removing as well as adding species.

14 Conservation of species at the edge of the range has
15 always been recognized as one of the most important things we
16 can do to prevent their extinction. Reporting to only federal
17 listings will cause more species to become federally listed.
18 States have the obligation and parent authority to protect
19 species that are not currently on the federal list. We can
20 choose whether we exercise that authority, but we believe it is
21 our duty as trustees of our natural resources, yours and mine,
22 and this administration's, under Article I, Section 27, of our
23 State Constitution, to preserve the people's right to clean
24 air, clean water and the preservation of our natural resources.
25 After all, they are the common property of all the people,

1 including generations yet to come.

2 Pennsylvania is a trout state. We have more anglers
3 that fish for trout than any other species of fish. The Brook
4 Trout is our state fish. We are all proud of our trout fishing
5 heritage. Identified streams that support good trout fisheries
6 leads to special protection of water quality and wetlands,
7 which protects everyone in Pennsylvania whose water comes from
8 a stream or river. As an update to our written testimony,
9 about 12 percent of our wild trout streams are Class A, with
10 the best of our best, which is about two percent of all the
11 streams we have in Pennsylvania.

12 The old notion of environmental protection competing
13 with economic prosperity has proven to be unfounded. In his
14 1992 and 1993 papers entitled Environmentalism and Economic
15 Prosperity, Dr. Stephen Meyer, a professor of political science
16 from MIT, observed, quote, after examining five primary
17 indicators of economic growth and prosperity that figured most
18 prominently in the public policy debate, no negative effects
19 could be detected. It was simply not true that states with
20 stronger environmental standards fared less well than those
21 with weaker environmental standards. The analysis uncovered a
22 consistent and systematic positive correlation between strong
23 environmentalism and stronger economic performance. I can
24 testify to that because where I grew up near Pittsburgh, all
25 the buildings had windows that faced away from the river.

1 Today you build buildings with windows facing the river.

2 From our experience, the same is true here in
3 Pennsylvania. Well, my staff and I sometimes hear anecdotal
4 reports of how we are impediments to business, critics are hard
5 pressed to come up with specific examples. This reliance on
6 science is at the heart of the national --- of national
7 environmental policy and dates back to one of our countries
8 foremost conservationists, President Teddy Roosevelt. The next
9 time you pass the marker at the State Capitol commemorating
10 Roosevelt's trip to Harrisburg, remember that he believed that
11 only the best available science should be used to make natural
12 resource management decisions. That is exactly what we do.

13 Ultimately subjecting the Fish & Boat Commission's
14 listings and designations to review by outside entities will
15 have the effect of eroding our agency status as an independent
16 administrative agency and allow others to influence how our
17 Commonwealth's aquatic resources are protected and managed.

18 In closing, no one has been able to explain to me
19 what the problems are with Pennsylvania's current system for
20 protecting threatened and endangered species and designating
21 wild trout streams. There are issues that need to be
22 addressed. We have already repeatedly shown that we are always
23 ready and willing to work with legislators, businesses and
24 other partners to find solutions.

25 I leave you with a final conclusion from Dr. Meyer's

1 paper, which reads, quote, those who live and work in states
2 that have vigorously pursued environmental quality and are now
3 contemplating rolling back environmental standards, just as
4 House Bill --- this House bill does, as a quick fix to
5 jump-starting their economies out of recession should
6 reconsider. Based on the evidence, there is no reason to
7 expect that loosening environmental standards will have any
8 effect on the pace of state economic growth, end of quote.

9 Thank you again for the opportunity to share our perspectives.
10 I welcome your questions both today and after this hearing. I
11 would also welcome the chance to have you join us in the field
12 sometime to see our staff experts in action or join me in
13 sampling the health of one of those wild trout streams, using
14 our own sampling sticks. Thank you.

15 CHAIRMAN CAUSER: Thank you, gentlemen, for your
16 testimony. The first question will be from Representative
17 Pyle.

18 REPRESENTATIVE PYLE: Actually, Chairman, I was
19 trying to make a point of clarity. Gentlemen, I filed two
20 bills. You're commenting on the other one. The one that
21 limits you to the federal endangered list has nothing to do
22 with House Bill 1576. Nothing. It's a totally separate bill.
23 And to call out your challenge, just like Allegheny, that's 60
24 jobs. How many you got? Yeah. I'm really torqued about that.
25 And for the record, I don't know who ordered the divers out on

1 Freeport Bridge, filing and scraping mussels off there. I'm a
2 non-expert, and even I know that's an 80 percent mortality rate
3 when you dislodge them from their original attachment place.
4 But what do I know? But since we're asked. Thank you, Mr.
5 Chairman.

6 CHAIRMAN CAUSER: Thank you. Chairman Miller?

7 CHAIRMAN MILLER: Thank you. Mr. Roe, I just have a
8 question on part of your testimony. If you'll let me read it,
9 it says, if you wish, I can provide specific instances where,
10 once the point data is known, entities have altered the sites
11 to eliminate the T/E species. Are you saying that because they
12 knew where these were, they eliminated the species or they
13 eliminated the conflict with the species?

14 MR. ROE: They eliminated the species or the
15 condition for the species to be there. An example, a
16 hibernacula was at issue a few years ago. Somehow they went
17 down to check it a little bit later and found burnt tires
18 inside the hibernacula. So clearly there were no more bats in
19 the hibernacula.

20 REPRESENTATIVE MILLER: What confused me is the next
21 sentence says, as an agency, you will be our facilitator in
22 this process.

23 MR. ROE: Facilitator in the PNDI process and
24 assisting as early as we can in the pre-planning process, not
25 in the process.

1 REPRESENTATIVE MILLER: Okay. I looked at that and
2 I thought maybe the first sentence was miswritten and they were
3 able to use the data to not impact the T/E species.

4 MR. ROE: I apologize.

5 REPRESENTATIVE MILLER: Thank you for that
6 clarification. That's it, Mr. Chairman.

7 CHAIRMAN CAUSER: Thank you, Mr. Chairman.
8 Representative Barbin.

9 REPRESENTATIVE BARBIN: Thank you for your testimony
10 today. I just want to try to put this in context because I
11 think it was somewhat fair to say what this bill does and what
12 this bill doesn't do. What this bill does, according to the
13 testimony this afternoon, is to ask a fundamental question as
14 to why --- why isn't the Game Commission, why isn't the Fish &
15 Boat Commission subject to the same rules that DEP is or that
16 DCNR is, since they all have scientists? Can you answer that
17 question for me?

18 MR. ROE: I'll answer for the Game Commission
19 because, as the system is designed, there is already
20 independent Board of Commissioners, separate from the agency,
21 that provides that regulatory control. Our Board Commissioners
22 have voted down different things. They said we're not going to
23 bring those things forward. So that independent regulatory
24 action that the IRRC would provide is already there. DCNR
25 doesn't have that. DEP doesn't have that, all the other

1 agencies. No other agencies that I know of have the
2 Independent Regulatory Commission, separate from the agency,
3 for doing their process.

4 MR. BARBIN: Do you believe that the state of our
5 regulations, as it relates to both the environment and to
6 business issues that need to be balanced, do you believe it's
7 different today than it was 39 years ago, when the bill was
8 passed that excluded the Fish Commission and the Game
9 Commission from the independent regulatory review process? Do
10 you believe it's different today? Do you think there's more
11 regulation?

12 MR. ARWAY: Let me take a crack at that first
13 because I think we don't operate any differently today than we
14 did 39 years ago, and I think ---.

15 REPRESENTATIVE BARBIN: I didn't ask that question.
16 The question I asked was, do you think that there's more
17 regulation today from multiple agencies as it relates to
18 environmental and business issues? That's the question I want
19 answered.

20 MR. ARWAY: Outside of our agency, there is. Inside
21 of our agency, there is not. And I --- if I can clarify what I
22 mean by that.

23 REPRESENTATIVE BARBIN: I think you have.

24 MR. ARWAY: Our decisions are factually based.
25 They're driven by how many wild trout are in a stream and how

1 rare a species might be. What flows from those regulations has
2 greatly increased over the last 39 years. There are a variety
3 of regulatory programs that we have today that we didn't have
4 39 years ago that use the information we produce to make other
5 regulatory judgments. You passed laws since then that used the
6 information that you've asked us to produce through our
7 rule-making process. Our rule-making process hasn't changed.
8 It's still based on facts, sound science, and we believe we
9 still produce that for other agencies to use in their
10 regulatory programs.

11 REPRESENTATIVE BARBIN: I have a problem with that.
12 And until this hearing, I was inclined to sit on the sideline,
13 but there are two things that bother me about your answers
14 today. Number one is you're saying that the Game Commission
15 and the Fish & Boat Commissions are the only agencies in the
16 United States that really shouldn't be subject to checks and
17 balances. And number two, what you're saying is the people
18 that have other maybe differing points of view that are also
19 supposed to be regulating business in the environment, their
20 science isn't as good as yours.

21 Now, our country was based on checks and balances.
22 And the other thing it's based on is that the collective wisdom
23 of all people are better than the wisdom of any one person.
24 That's what the country is based on. What you've done is you
25 basically said because you appointed us, you appointed these

1 commissions, you can't question our --- you know, our judgment.
2 And the problem with that is today it takes two years to get a
3 reclamation project going.

4 Now, yes, I'm incredibly mindful of the fact that we
5 need to protect our waterways for fishermen. I'm also --- I
6 live in Johnstown and I saw what happened at St. Michael's.
7 And today we actually have clean water coming to the Point,
8 where the Conemaugh and the Stonycreek come together, because
9 there was a compromise made on what the water quality issues
10 should --- how they should be resolved.

11 So I'm --- I'm sitting here listening to DCNR say
12 this is a good bill. I'm here listening to you and Director
13 Roe say it's a bad bill, and I don't understand your position.
14 I don't think you should be worried about having somebody look
15 at it, another person look at it. And I don't think that the
16 real question on the permit time has anything to do with
17 whether you should be reviewed or not. I think you should be
18 reviewed, and I think the permit process should be sped up.
19 And if you do that, I think our waters get cleaner and our fish
20 get better.

21 MR. ARWAY: Well, if I can just respond a little
22 bit. The first part of your statement about us being open to
23 full disclosure for information, we are that. We don't need
24 another review board to develop more information to make that
25 decision. We take public comment subject to all the rules and

1 regulations that are in place now, the Commonwealth Document
2 Review Law. We're open to public comment even after we do the
3 listings, because the more information we get, the better
4 decisions we can make.

5 Our decisions --- there is an appeal process. Some
6 of you questioned whether there's an appeal process or not for
7 those decisions. There's certainly an appeal process. We have
8 an internal appeal process, and then we go to Commonwealth
9 Court if somebody disputes the data we use to make those
10 decisions. We've never gone to Commonwealth Court in our wild
11 trout designation listing or on our threatened and endangered
12 species listing. So that tells me that we're doing a pretty
13 good job with the information we have. Because if we weren't,
14 we'd be challenged at least once and over the course of
15 history. But we haven't been. So with that, I'll turn it back
16 to Carl.

17 MR. ROE: The situation you're describing with
18 permits, I would offer that regulatory process does not fall
19 under the Game Commission, it falls under IRRC. DEP falls
20 under IRRC. DCNR falls under IRRC. All that process, in fact,
21 was approved by the IRRC environment. So to say that it's the
22 Pennsylvania Game Commission and Fish & Boat Commission, we
23 don't get to say no. We offer any comments to the permitting
24 process. The ultimate decision is made in DEP under a
25 regulatory process approved by IRRC somewhere along the line.

1 REPRESENTATIVE BARBIN: But it's the cost of these
2 wild trout designations and it's the cost of the lists that
3 you're preparing that you don't want to have anybody else have
4 a say in. And those costs are real to business. They are.

5 MR. ROE: Well, let me give you an example. As you
6 drove up 61 today and you looked out across the horizon, how
7 many wind turbines did you see out there. Quite a few on the
8 ridge line if you go on 61, took the right-hand corner to
9 Frackville. For a cooperative wind energy agreement that we
10 established with wind energy, we were able to expedite the
11 review process on many of those sites to allow those turbines
12 to go up. It was a cooperative agreement entered voluntarily by
13 parties. We only have two companies in the state that aren't
14 part of that agreement. We allowed for --- we have the
15 pre-planning data. We worked with them. We facilitated the
16 process to have that industry move forward in Pennsylvania. So
17 when we work together, have good communication, it works.

18 REPRESENTATIVE BARBIN: Thank you, Mr. --- thank
19 you, Mr. Chairman. Thank you for your testimony today.

20 MR. DEVLIN: Can I respond real quickly? And I
21 thought I made it clear in my testimony that DCNR does not have
22 a position on the bill at this point in time, so I just wanted
23 to make sure the record showed that.

24 CHAIRMAN CAUSER: You made that clear. Chairman
25 Vitali?

1 CHAIRMAN VITALI: There's just a point in the
2 beginning that I was a little confused on that the maker of the
3 bill made. And I'm just looking at the bill, page three, it
4 says coordination of designation. No Commonwealth agency may
5 take action to designate or consider fish, wildlife or plants
6 as threatened or endangered unless the fish, wildlife or plants
7 are designated under the Endangered Species Act or pursuant to
8 this act. So when I was reading Mr. Arway's testimony, it
9 seemed like he was commenting on the right bill. So I don't
10 really understand what the maker of the bill was saying as far
11 as testifying. Mr. Arway, it just seemed like you were
12 testifying with regard to that paragraph. It doesn't seem like
13 there's anything wrong with the testimony here. It's just page
14 3, lines 19 through 24.

15 MR. ARWAY: Because that's --- although we're
16 troubled by the IRRC provisions, we're really troubled by the
17 fact that this bill sets different rules by which we determine
18 how a species is listed or not. And by looking at the global
19 range rather than the state range, which this bill changes
20 those standards, it really limits the universal species that
21 would be on the list to those that are federally listed.

22 REPRESENTATIVE PYLE: That's a different bill.
23 That's what I'm telling you.

24 CHAIRMAN VITALI: Take a look at your bill, page 3,
25 lines 19 through 25, and tell me what you see. Take a look,

1 page 3, lines 19 to 25, of House Bill 1576. Here it is.

2 REPRESENTATIVE PYLE: Again, your cite, sir?

3 CHAIRMAN CAUSER: Chairman Vitali, if you'd like him
4 to look at that section, we have a number of questions. We'll
5 move on and we'll come back to this if you'd like to. You have
6 additional questions?

7 CHAIRMAN VITALI: I do not.

8 CHAIRMAN CAUSER: We'll give Representative Pyle a
9 chance to look at that. And we'll move to Representative
10 Tobash.

11 REPRESENTATIVE TOBASH: And I appreciate the
12 Director's --- your testimony, Director Arway. One of the
13 comments here, one of the quotations from your testimony,
14 Director Arway, in 1974 your predecessors had the foresight to
15 empower our agency to, and I quote, promulgate rules and
16 regulations governing the taking, catching, killing and
17 possession of endangered species within the classification of
18 fish, amphibians and reptiles.

19 As an interpretation of what someone is thinking in
20 1974, I know my predecessor, I think I know him pretty well,
21 I'm going to go seek him out after his testimony and ask
22 Representative Heffley what he was thinking at that point in
23 time, but when I read this, it could have been very well
24 something that I voted for, if I was there in 1974, because to
25 me it sounds like you're empowering the Commission to take

1 action against individuals who take, catch, kill or have
2 possession of endangered species. But we've gone far beyond
3 that.

4 And for that reason, it's more a comment than a
5 question, I think that within this regulation, within this
6 legislation, we should be allowing the House of Representatives
7 as well as an independent regulatory commission to give us a
8 second opinion. I think it's only reasonable. Your
9 interpretation is that you can promulgate these rules. And
10 that may not be the interpretation of the body or the citizens
11 of the Commonwealth at this point in time.

12 Your point, Director Roe, about working well with
13 people who are putting up windmills or alternate energy in the
14 Commonwealth is fine. But what we've also heard here today is
15 that we're looking for some level of consistency. I mean, I
16 see it as a process that's continually managed by exception.
17 And maybe you can cite examples where the exceptions have
18 worked well, but we've heard testimony that says we need to be
19 more consistent with our policies, and I think we really need
20 to get this legislation passed, have some consistency within
21 the law and allow us to take a second opinion when rules come
22 about and regulations. So thank you again for your testimony.
23 We appreciate you being here.

24 CHAIRMAN CAUSER: Thank you, Representative Tobash.
25 And we'll return to Representative Pyle, if you could address

1 that question by Chairman Vitali.

2 REPRESENTATIVE PYLE: Thank you, Chairman. Thank
3 you for the question, Chairman Vitali. The section you're
4 referring to, if you look towards the end, the phrase is or
5 they may use either the Endangered Species Act of 1973, which
6 is already currently force de jure, or pursuant to this act.
7 They can use either, sir. It's not a mandate.

8 MR. ARWAY: Again, I'd just say, pursuant to this
9 act means that the species that we list, if this legislation
10 were passed, would be restricted to those species that were
11 globally rare, not rare just within the boundaries of
12 Pennsylvania. So that --- that's the concern that we have,
13 that we have rare --- data that are gathered throughout the
14 species --- the range of the species. The range of the species
15 would then extend far beyond the boundaries of Pennsylvania.
16 That's our interpretation of the act. The act suggests that
17 we're still going to use the same standards as we used today,
18 then we would draw a different opinion. But right now, with
19 the way we read the Act, the legislation is that we would
20 extend the analysis of whether a species is rare or not beyond
21 the boundaries of our state.

22 CHAIRMAN CAUSER: There appears to be a
23 misinterpretation of the language. I'm going to ask Greg
24 Raffensperger, who's reviewed this bill extensively, to speak
25 to it.

1 MR. RAFFENSPERGER: The thing to remember here is
2 under the language of this bill, the agency must file a
3 provision required in the bill to designate the streams, fish,
4 wildlife, et cetera. Unless they are already designated, the
5 Federal Endangered Species Act does not limit the agencies to
6 designating something within a certain range. All it does,
7 under this language, is puts those regulations when you make
8 those specific designations under the process set out in the
9 bill, which means evidence, so forth, why the regulations has
10 to be forwarded to IRRC and forwarded to the standing
11 committees, and they have to be reviewed by IRRC, just like
12 DCNR does, just like DEP does. It does not limit you to only
13 designating these that are already federally listed. You can
14 still protect them as you always did, it's just another set of
15 eyes on those regulations.

16 MR. DEVLIN: Can point to the language on page four,
17 conditions for designation, which says any designation for
18 endangered species shall be made only when the species is in
19 danger of extinction by all or significant portion of its
20 range. Well, that really extends the rule to not just
21 Pennsylvania, but a species range would extend across the
22 globe, not just Pennsylvania. So that really limits our
23 ability then to look at the species that just serve as home ---
24 serves Pennsylvania as their home. Twenty-eight (28), 29, 30,
25 then extends to page five. So bringing some clarification of

1 that, we'd be happy to talk about exactly what that means and
2 how it applies to what we do now.

3 MR. ARWAY: Actually, I think there might be some
4 language missing there. I'm thinking that has an effect ---.

5 REPRESENTATIVE PYLE: I'm thinking you might have
6 slipped out into Pennsylvania. If you'd like to, I'd love to
7 have you on the bill.

8 MR. ARWAY: That would be a start, Jeff. That would
9 be a start. That's a major one.

10 REPRESENTATIVE PYLE: It's all about finding a
11 minute, John.

12 MR. ARWAY: Your point is well taken.

13 MR. ROE: I would like to --- Representative Pyle
14 said about finding the middle. I would offer throughout recent
15 years, in particular, we've routinely found the middle. I
16 mean, you've heard a few stories here today that may be
17 exceptions to the norm, I would offer. The Marcellus Shale
18 industry in Pennsylvania is going boom. We have on our game
19 lands --- Representative Evert was with us last week on Game
20 Land 57. We've got a mine reclamation going on that's been
21 there for 40 years. We got Marcellus Shale gas on state game
22 lands. All this is keeping up with the permitting process, to
23 be very honest with you, particularly on pipelines. We have
24 miles and miles and miles of pipeline, I need to go through the
25 process, and we have a minimal staff to achieve that. We've

1 expedited that process. We've moved people into that process
2 to be able to make those things go faster. So I would offer
3 --- I mean, I hope --- Chairman Vitali says --- excuse me,
4 Representative Vitali says, you know, what problem are we
5 facing here?

6 CHAIRMAN CAUSER: Next question, Representative
7 Moul.

8 REPRESENTATIVE MOUL: Thank you, Mr. Chairman. And
9 again, I will try to be brief. Carl, I heard you say just a
10 little while ago that you already have an independent review
11 board called your commissioners who review and approve. I
12 would assume it's done exactly the same way, Fish & Boat. What
13 are the qualifications to become a commissioner of either one?

14 MR. ARWAY: I believe the law says you have a
15 sportsman interested, parties, people concerned, not too much
16 different than the qualifications to become an IRRC
17 commissioner.

18 REPRESENTATIVE MOUL: So you don't have ---?

19 MR. ARWAY: They're pretty broad.

20 REPRESENTATIVE MOUL: Pretty broad. So ---.

21 MR. ARWAY: Pretty broad.

22 REPRESENTATIVE MOUL: So they're pretty much going
23 to take the word --- like in your case, they're going to take
24 the word of your deer biologist or, in your case, your
25 waterways biologist. So he's pretty much --- I mean, if I'm on

1 the board and a biologist that works for me is saying, Dan,
2 this is the way it is, I know nothing about --- I might be a
3 good angler, I might be on the board, I might be a good
4 sportsman and friend of the Governor, he puts me on your board,
5 but I know zero about what that biologist is talking about. I
6 have no choice but to take his word. I mean, he works for me.
7 So what am I going to do? I take his word.

8 MR. ARWAY: He doesn't work for the commissioners.
9 He works for the Executive Director. And I will tell you ---.

10 REPRESENTATIVE MOUL: And you report to ---?

11 MR. ARWAY: It's been some heated discussion between
12 commissioners and biologists. It's not always a clean, smooth
13 process.

14 REPRESENTATIVE MOUL: I'm not trying to be funny. I
15 was just trying to make a point here.

16 MR. ARWAY: But IRRC works the same way. They have
17 regulatory review analysts that advise the Commission of what
18 position they should take on issues. Then the board decides
19 what position they take on issues.

20 REPRESENTATIVE MOUL: Let me take it one step
21 further. Do you guys ever go outside to get an independent ---
22 let's say another biologist or another expert in the field and
23 say I'm not sure I want to go with this, I want to hear from
24 somebody else instead? Has that ever happened?

25 MR. ARWAY: Absolutely. We use the Pennsylvania

1 Wildlife Survey as our advisory committee for all the T/E
2 species designation issues that we deal with. And they
3 developed an advisory report to our staff that then uses that
4 to go to the commissioners. So in the --- the PABS --- PABS is
5 comprised of industry, of government, and academia of the
6 species-specific experts on the technical committee.

7 MR. ROE: And I would offer most species get
8 nominated by somebody else besides people in the Game
9 Commission. There's a process they use to bring that
10 nomination forward to go through the process for nomination we
11 review. And in fact, if the data's correct, either validate or
12 find problems with the data. That's how the process works.
13 It's --- most of them don't come from inside the agency, those
14 request for listings.

15 REPRESENTATIVE MOUL: One quick little story. And
16 again, this is going to go back to a timeline, because I'm real
17 big on that. I've spent 25 years in the construction industry.
18 I think you guys --- I told you guys several times I've been on
19 the receiving end on waiting on permits in the past. Let me
20 just give you a little quick story of something that happened
21 in my district just this past year, PennDOT replacing an old,
22 rusty, worn-out pipe running under a two-lane road with a brand
23 new concrete pipe because they're getting ready to resurface
24 the road. Obviously, that's the right thing to do. You do it
25 first, then you pave. And one of the lists of criteria to get

1 the permitting done was to look for a Bog Turtle. I've been
2 looking for a few years. We haven't found any Bog Turtles down
3 there yet, but we're still looking.

4 But the bottom line is why would we waste the
5 state's money, the taxpayers' money looking for something when
6 it's not going to change the job one iota. The job always was,
7 always will be, to take out the old pipe and to bed in a new
8 pipe. When did we say common sense must prevail, but yet they
9 had to do that study? And whether the study showed a Bog
10 Turtle there or not, they're still going to have to do that job
11 no matter what, unless you want cars to fall due to the old,
12 rusty pipe down the road. When do we get to a point where we
13 say this makes no sense.

14 MR. ARWAY: Since that animal is a cold-blooded one,
15 I guess I have to take this one?

16 CHAIRMAN CAUSER: I think so.

17 MR. ARWAY: This legislation would not change that,
18 Dan.

19 REPRESENTATIVE MOUL: I'm talking a point as in, you
20 know, we need something built into legislation for time,
21 because we heard another gentleman back here saying he's been
22 waiting a year-and-a-half for a permit from PGC. Mr. Palutis
23 was it, is the last name?

24 MR. PALUTIS: First year was federal.

25 REPRESENTATIVE MOUL: Okay. But the bottom line is

1 no matter whether you call it tax dollars, whether it's state
2 or federal, it's still tax dollars. No matter whether it's
3 permits, it's still costing taxpayers a ton of money, costing
4 private industry a ton of money, causing job delays, all this
5 stuff. And if we don't start somewhere with working on getting
6 permits back in a timely manner to people, whether it's us or
7 them, you know, this is why this legislation is here, so we
8 start thinking about these things.

9 MR. ARWAY: The Bog Turtle is a federally listed
10 endangered species. So this wouldn't do it.

11 The other part --- the real reason for the time
12 delay is because DEP controls the permit. Fish & Boat, Game
13 Commission, DCNR, have nothing to do with time delays and
14 permits. We're an advisor to DEP, and they can tell us to go
15 away, you know. Industry can go to DEP and say, Fish & Boat,
16 Game, DCNR, they're not right in their own data; therefore, you
17 issue a permit. DEP has to sit on the fence because the rules
18 and regs require them to make T/E species are protected.

19 So if they believe that any of the resource agencies
20 are not telling the truth or are trying to delay the project on
21 purpose, they can move forward with the permit any time, any
22 day. They're at risk of either an appeal from the resource
23 agencies or the developer, which is why it takes so long to
24 reconcile the conflict. Because they've got to resolve all the
25 concerns, not just one concern.

1 MR. ROE: Okay. Let me give you an example of
2 working with PennDOT, because we've been over the same issue
3 with them. We've gone through a land program with them, where
4 they'll purchase land, give it to us as mitigation for future
5 activities. So they'll come down and come into a situation
6 where they may have an incidence where they have PNDI, primary
7 wetlands, which is the most common. They've already backed
8 wetlands for us. It affected, let's say, three or four, five
9 acres. They've already gotten a bank. They moved through the
10 --- they premedicated --- premitigated the service. That's the
11 program we still have with PennDOT, and it's worked out very
12 well on an ongoing basis.

13 REPRESENTATIVE MOUL: I wonder how many people in
14 private industry can afford to do what PennDOT can afford to
15 do? Thank you, gentlemen.

16 CHAIRMAN CAUSER: Thank you, Representative Moul.
17 Follow-up a little bit on that same line of questioning to kind
18 of put it in perspective. And it keeps recurring here today.
19 What is wrong with extra checks in the system? And I think
20 Representative Barbin hit on that extensively. And when you
21 --- we've heard a lot here today about the Game Commission
22 Board and the Fish Commission Board being independent boards.
23 But when you --- when you really look at it, to look at it in
24 perspective, the Game Commission has eight members of their
25 board. Fish & Boat Commission has ten. They're appointed by

1 the Governor and confirmed by the Senate, and they serve
2 eight-year terms, something that I personally feel is way too
3 long. We actually passed legislation in the House to reduce
4 those terms to four years, which both commissions have been
5 very opposed to. I think we should reduce the terms to four
6 years for accountability. I think an eight-year term is way
7 too long.

8 But getting back to the issue, what if people
9 disagree with the Fish Commission, with the Game Commission,
10 what other avenue do they have? What's wrong with a second set
11 of checks and balances in this system? And I think that is
12 something we need to --- we need to think about and consider as
13 we move forward with this issue.

14 IRRC --- we're hearing a lot today about IRRC and
15 how that's just redundancy, adding another layer. But IRRC is
16 not providing the scientific data. IRRC is providing the
17 process. IRRC is just making sure that the process is
18 followed. So I'm not sure that that's a bad thing. It's about
19 a system of checks and balances, and it's about making sure
20 that there are checks and balances in the system before we move
21 forward with regulations, regulations that affect many, many
22 people. So I think we need to think about that as we move
23 forward. And I know there are a number of other questions, so
24 I'll move forward. Representative McCarter?

25 REPRESENTATIVE MCCARTER: Thank you, Mr. Chairman.

1 Could someone of the three of you, either one, does this
2 legislation in your minds or in anybody else's mind, for that
3 matter, have implications for loss of revenue in the federal
4 government?

5 MR. ARWAY: Well, we asked that question of the
6 federal government. And Carl's staff sent a letter to the
7 northeast region of Fish & Wildlife Service, where we receive
8 our sport fishing and boating restoration funds and
9 Pittman-Robertson funds, which the federal excise tax that are
10 on fishing and boating and hunting and trapping equipment that
11 the federal government receives for all the states and then
12 allocates back to states based on how many hunting licenses and
13 fishing licenses you sell. So we asked that very question
14 because we were concerned about how, you know, the legislator
15 reaching in and authority might have some impact on how the
16 federal government views us spending their money.

17 And they told us they had serious concerns about how
18 that money --- or how the legislature is going to --- how this
19 bill is going to affect how that money is going to be used.
20 And I'm not real clear, nor are they, about, you know, what the
21 fiscal impact of this legislation will have and what the
22 federal interpretation will eventually be if this legislation
23 is passed. There's --- there's essentially about \$8 million
24 game funds at risk and ---.

25 MR. ROE: \$20 million a year Pittman-Robertson.

1 MR. ARWAY: And for the ---?

2 MR. ROE: For Pittman-Robertson funds. \$20 million
3 between last year and this year in Pittman-Robertson funds.

4 MR. ARWAY: And we're looking at over \$10 million
5 for D-J, Wallop-Breaux, Sporting Fishing Restoration Fund. So
6 really, it all would depend upon how, you know, the program
7 would be designed to handle the changes that are in this
8 legislation and then how to best review it.

9 REPRESENTATIVE MOUL: So this could cost up to \$30
10 million to the federal government, potentially?

11 MR. ARWAY: I'm not sure, you know, what influence
12 that would have on this.

13 REPRESENTATIVE MCCARTER: If I could go back to the
14 question I asked earlier, and maybe you can give me a little
15 help with that as well. One of the original IRRC process was
16 designed back in the early '80s and it did exclude the agencies
17 involved. Can you comment as to why you thought the agencies
18 were excluded?

19 MR. ARWAY: I was back there in the early '80s, when
20 that discussion was being --- I was a rank-and-file fish
21 biologist, so I did listen a lot to what was going on in
22 Harrisburg. And my view was that it was because we had our own
23 independent review process, regulatory review process, in
24 place. We do have public interest review. We have an
25 independent Board of Commissioners. We have --- we follow the

1 public --- you know, the proposed rule making and the final
2 rule making as part of the public review process. So I think
3 we do everything that IRRC does right now, except we do it in a
4 slightly different way.

5 REPRESENTATIVE MCCARTER: And one final question. I
6 guess it's more, really, a statement than --- is the bill
7 currently constituted --- and again, we're having some
8 discussion as to what's actually in terms of interpretation
9 here as to what the range is, et cetera. It seems to me, and
10 it's only from somebody who's not an expert, readily admit
11 that, but at the same time we're looking at legislation that
12 moves to shift the balance. As you're describing what's taking
13 place, there may be examples that I told my colleagues here.
14 There may be examples that we can cite here and there and so
15 forth, the problems that are taking place with interpretations
16 or, let's say, in terms of process, are too lengthy.

17 But overall, the nature of this particular bill
18 shifts to a regulatory agency of non-experts. It takes away
19 the basis of scientific explanation, except for what takes
20 place in the initial part, and now we're looking at one set of
21 the eyes on the commissions themselves, the independent
22 commissions attached to your agencies, puts it through an IRRC
23 process that begins then with another set of eyes that are not
24 experts, moves then potentially into the House and into the
25 Senate with another set of eyes --- and I don't think too many

1 of my colleagues would disagree with the fact that we're not
2 experts in these particular areas --- and moves it through that
3 process over something that may last us up to a few years,
4 surely longer than 30 days.

5 There are species --- and I know this question was
6 asked earlier about the nature of something that might happen
7 pretty dramatically and come about in that. And we do have
8 species already that are threatened to the point that they're
9 98, 99 percent already, you know, gone, and yet they haven't
10 even made it onto the list. As someone said, we have a rubber
11 stamp of the agencies here that automatically do that. That
12 surely hasn't happened with those species, and many of the
13 concerns have been addressed here. It seems to me that this is
14 pushing this far too along the path of going back to a time
15 before Teddy Roosevelt where we had robber barons who made all
16 the decisions for us, in the industries here in Pennsylvania
17 even, and ended up with many of the other things that we look
18 upon still today.

19 We need to --- it seems to me that the balance is
20 there. And if we don't want to go so far back, that we should
21 be able to reach accommodations or accommodate those particular
22 concerns that have come up in ways in which we can balance
23 habitat environment in a much better way than using a hammer to
24 solve a problem that probably needs a flyswatter, in this
25 particular case. Thank you, Mr. Chairman.

1 CHAIRMAN CAUSER: Representative Sankey?

2 REPRESENTATIVE SANKEY: Thank you, Mr. Chairman.

3 You actually asked my question, so I will move to Mr. Pyle or
4 whoever's next. Thank you.

5 CHAIRMAN CAUSER: Representative Maloney?

6 REPRESENTATIVE MALONEY: Thank you, Mr. Chairman.

7 Well, in the interest of time, I'll try to be blunt. I think I
8 do the best that way. We heard a lot about disagreements
9 within agencies, biologists, if it's scientific, if it's not
10 scientific. Mr. Roe, you mentioned the windmills. I
11 understand there's a collaborative effort, as you said, to work
12 with landowners and/or agencies. But I'll also remind you that
13 in looking in the woods, most people would like to see deer and
14 not necessarily windmills.

15 I bring that up for the reasons that, you know, I
16 think we forget what the mission of some of the agencies are
17 when we talk about mixing these oversights or getting a
18 separate set of eyes. You know, I have to bring up deer
19 management because, as another Representative asked about the
20 fiscal impact, the money loss, the revenue that's typically
21 generated, we know we're in hundreds of millions of dollars
22 lost. Hundreds of millions. So I'm not so sure why we would
23 be so concerned about the possibility when we already know that
24 there's hundreds of millions of dollars lost. It's interesting
25 DCNR doesn't take a position on this. You stated it yourself.

1 Places in Pennsylvania, the deer has to bring his lunch if he
2 lives there. People tell me the habitat isn't good. DCNR says
3 that that's part of their mission. I'm not so sure why we're
4 not seeing that improvement. Yet we still have DMAPs. If you
5 don't have deer in an area, why do you still continue DMAPs?
6 And you're not concerned about why we need an extra set of
7 eyes? I mean, your own people said it wasn't done under
8 science. How many times have I heard science today? You
9 people don't manage our deer herd under science. We weren't
10 born yesterday.

11 Mr. Roe, I have to bring something up with respect
12 to what you said, that there aren't any decisions made without
13 the Commission, yet you told me emphatically you write the
14 checks with your executive power to the tune of \$250,000 apiece
15 for a couple. I mean, there's such an irritation here to me
16 that the people of Pennsylvania are trusting agencies to do the
17 right thing. They put pressure on us to clean house, and all's
18 we get is stonewalled. Thank you, Mr. Chairman.

19 CHAIRMAN CAUSER: Representative Heffley?

20 REPRESENTATIVE HEFFLEY: In regard to some of the
21 comments that were made earlier as to why this --- why we need
22 the extra set of eyes, I would say it's because I'm hearing
23 from all of my constituent bases, doesn't matter if we're
24 talking to the sportsmen, the business community or the folks
25 at work referring to people that want to simply open up a trout

1 hatchery and are stonewalled because of different stream
2 designations. I don't refer to the family-run businesses as
3 robber barons. I refer to them as family-run businesses,
4 trying to hire a few people. And we continue to mount more and
5 more regulations. This code set up in the '70s, it worked well
6 up until now. But because we're hearing it --- I'm hearing it
7 from every angle, from the sportsmen, from the business
8 community, from private citizens, and just from the guy who
9 wants to take his grandkid fishing on the weekend. I do
10 believe that something needs to be done. I think to have this
11 House bill is a first start.

12 As far as comments made earlier by my colleagues
13 that we don't know everything about all issues we deal in,
14 that's true. However, I try to get versed and learn as much as
15 I can, going on trips. And I think the Fish & Boat Commission
16 did a study of trout designations. It was very enlightening.
17 I learned a lot. And my hat's off. I really commend the work
18 that you do in the field, and I think you do a good job.
19 However, I do have some concerns if we don't have that layer of
20 oversight. We live in a democracy, and I have to answer to the
21 people that I represent. And when I come back and say my hands
22 are tied, I can't do anything, that's frustrating.

23 And I think we've had several conversations. One of
24 my issues right now in the designations of streams and how that
25 impacts nurseries and hatcheries, and I believe you're

1 sympathetic to some of those views. But I believe that
2 oversight would help in some of those cases and that we give
3 the legislative branch a voice in these matters. And that's
4 what I'm asking for in the legislation, that we propose the
5 term limits to the Fish & Boat Commission, and this here ---.

6 People aren't stupid. People entrust us with the
7 tax dollars. If an agency's suing another state agent, guess
8 what, it's all the taxpayers footing the bill. If PennDOT has
9 to move a bridge, and God knows, we need to build a lot of
10 bridges, I don't think it's appropriate to ask for a 30-cent
11 gas tax. I think it's more appropriate that we look for
12 solutions at how we can build these things cheaper. And this
13 is one of those solutions of how can we work together? As
14 Representative Moul said, not everything needs to be
15 incorporated into this legislation, but I think it's a good
16 step-off spot on how we can get started in rectifying some of
17 these wrongs. Because the taxpayers are broke. They're losing
18 their homes and they're losing their jobs. And we can give tax
19 breaks and we can work on the tax bill, but until we work on
20 the regulatory process that's in our state, then we need to ---
21 that's what we need to do to bring back to economy so people
22 can work and afford to live here.

23 And doing that in the most environmentally friendly
24 way is the way --- the approach I'd like to see. And I think I
25 would speak for myself in saying that I love the outdoors. I

1 was an Eagle Scout. I used to walk miles of the Appalachian
2 Trail, and I go hunting and fishing, but I'm not very good at
3 it. But I thank you for your testimony today. And I think a
4 lot of the frustration you're hearing from members is just
5 frustration that we feel that we don't have a voice and that
6 the people expect us to have a voice. That's why we were voted
7 in.

8 CHAIRMAN CAUSER: Thank you, Representative Heffley.
9 Thank you, gentlemen, for your testimony. There's been a lot
10 of information presented here today. I want to thank Chairman
11 Miller and our staff for working together to be able to host
12 this meeting. As I said, we collected a lot of information.
13 We're actually planning a second joint public hearing in the
14 western part of the state, and we're going to be getting that
15 information out very soon. I also want to thank Representative
16 Tobash and the Empire Beauty School for hosting us here today.
17 And this meeting is adjourned. Thank you.

18 MEETING ADJOURNED AT 5:26 P.M.

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CERTIFICATE

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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