



Sierra Club Testimony before Game and Fisheries Committee/Environmental Resources and
Energy Committee Joint Public Hearing on House Bill 1576

Good afternoon. My name is Thomas Au. I am Conservation Chair of the Pennsylvania Chapter of the Sierra Club and I am appearing here today on behalf of the Sierra Club.

The Sierra Club was founded in 1892 to explore, enjoy, and protect our planet. The Sierra Club has about 24,000 Pennsylvania members. Our members include hunters, anglers, birders, plant lovers, hikers, and ordinary citizens who enjoy the outdoors. Nationally and locally, the Sierra Club has been a leader in conservation practices and environmental protection. Pennsylvania is endowed with wonderful natural wildlife, aquatic life, and plant species and we should make the extra effort to protect them. We should protect these creatures and plants because they are part of the complex biology of our region and provide important biologic functions, such as controlling insect populations and filtering pollution. We do not know everything about how the ecosystem works, but we know that many of these plants, wildlife and aquatic organisms provide valuable biological services.

The Sierra Club is concerned about the consequences of HB 1576 if it were enacted. We are concerned with Section 5 of HB 1576, which states: "Any action by a Commonwealth agency to designate fish, wildlife or plants as threatened or endangered or to designate a stream as a wild trout stream shall be subject to the requirements of the act of July 31, 1968 (P.L.769, No.240) referred to as the Commonwealth Documents Law, and the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act." This would bring all actions by the agencies to list any fish and wildlife as threatened or endangered or to list a wild trout stream under the jurisdiction of the Independent Regulatory Review Commission.

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

The proposed provision would add an additional layer of governmental bureaucracy in second-guessing which species of fish, wildlife, or plant the Commonwealth should protect. When the General Assembly established administrative agencies such as the Fish and Boat Commission, Game Commission, and the Department Conservation and Natural Resources, it entrusted to the agencies' professional and scientific judgment the design of the mechanisms for protecting and enhancing the Commonwealth's natural resources

The state agencies which have oversight over threatened and endangered species already coordinate their activities. The Fish and Boat Commission, the Game Commission and the DCNR talk to each other regularly about the species which are threatened and endangered, as well as the best ways to protect them. The establishment of a centralized database would be helpful, but only if it is adequately funded and sustainably maintained. Such a centralized database would require a substantial investment of time and resources by the Commonwealth which has not been made to date. The proposed legislation provides no funding for such a centralized database.

The state agencies already publish these listings and proposed actions in the Pennsylvania Bulletin. The agencies make available the scientific data they possess in support of their actions. In addition, the agencies hold public meetings and hearings to gather the views of interested stakeholders before taking action. The agencies know that public input is important and make great efforts to solicit it.

Equally important is the need to act quickly when threats to these resources materialize. Disease, blight, and invasives can quickly spread to extinguish what were once a thriving plant, fish, and wildlife populations. At its normal pace, the Independent Regulatory Review Commission process can take two years to complete. During this period, a threatened or endangered species can become extinct. Proactively protecting wildlife, aquatic life, and plants at the state level before the damage becomes irreversible is necessary to protect Pennsylvania's heritage.

The proposed legislation requires that only federally listed threatened or endangered species can be listed by the Pennsylvania agencies. This provision ignores the fact that Pennsylvania is the home to many rare and special species of wildlife, aquatic life, and plants which may not be threatened elsewhere in the United States, such as the great egret, the long eared owl, and the osprey. These species would receive no protection under state law.

The proposed legislation also requires that any action by these agencies be supported by acceptable data. "Acceptable data" is defined by the bill as "Current, best available scientific and commercial, empirical data as evidenced in supporting documentation, statistics, reports, studies or research. As it pertains to wild trout stream designation, such data that is replicable and testable." The question remains: data acceptable by whom?

It is commonly recognized that the members of the Independent Regulatory Review Commission do not possess scientific expertise. I believe this is an open invitation to second guess the judgment of scientists and professional staff in the Game Commission, Fish Commission, and the DCNR.

Section 4(d) of the proposed legislation would also require an agency to remove currently designated or listed threatened and endangered species, unless the agency redesignates the species within two years. The repromulgation of threatened and endangered species lists could consume all the agencies time and resources during the next two years.

Finally, Section 6 of the proposed legislation seeks to limit the effect of threatened and endangered species in permit actions by Commonwealth agencies.

“When reviewing applications for permits, approvals or other authorizations or taking actions, State and local government agencies shall consider impacts only to listed species and their critical habitats included in the centralized database. Permits, approvals, authorizations or regulations shall not require persons to conduct field surveys or other activities to determine or evaluate the presence of species or their habitats, unless acceptable data exist indicating the presence of a listed species in the area.”

Basically, this provision exempts applicants from having to physically look at the location of their proposed activity. It would be shocking if any of agencies identified in this legislation failed to conduct field studies to determine the presence of species prior to listing. However, in this provision, the sponsors are seeking to exempt operators from conducting any kind of field work to determine the impact of their proposed activity on an endangered or threatened species or wild trout stream.

Such failure to actually inspect the site of a proposed activity leads to environmental harm. We have pictures of wellpads situated in floodplains and wetlands. While this provision may expedite a permit, it violates the common sense warning to actually look before you leap.

In summary, the Sierra Club believes that the proposed legislation takes a step backward in our efforts to protect wildlife, fish, and plants currently entrusted to the expertise of the Game Commission, Fish Commission, and Department of Conservation and Natural Resources. Without substantial changes, the Sierra Club would have to oppose this legislation.