

HOUSE GAME & FISHERIES and ENERGY & ENVIRONMENTAL RESOURCES
COMMITTEES
Hearing on HB 1576 – Endangered Species Designation
September 17, 2013

Thank you Chairman Causer, Miller, Haluska and Vitali, and members of the committees for the opportunity to testify on HB 1576. My name is George Jugovic, Jr. and I am Chief Counsel for Citizens for Pennsylvania's Future, or PennFuture. I have a background in biology, and have practiced environmental law in Pennsylvania for nearly thirty years. I've also taught Wildlife Law at the University of Pittsburgh, School of Law for several years.

For the past fifteen years, PennFuture has advocated for a healthy environment and a clean energy future where the economy and nature thrive. As the National Wildlife Federation state affiliate in Pennsylvania, PennFuture represents thousands of supporters who are dedicated to protecting the ecosystems that are most critical to the survival of our native plants and wildlife.

PennFuture opposes the passage of HB 1576 because it will grievously harm the Commonwealth's ability to conserve native plants and wildlife. While I have many concerns about HB 1576, I focus my testimony on its major flaws, using the federal Endangered Species Act (ESA) to both illustrate the differences in approach between the two laws, and highlight the very real possibility that federal funding could be lost with passage of this legislation.

HB 1576 would interject politics and other non-science based considerations into listing decisions made by the Commissions, in stark contrast to the federal ESA.

I understand why it is tempting for you to want to compromise the independence of the Commissions' listing decisions. These are difficult decisions that have the potential to affect important constituencies. Protecting rare and endangered species imposes costs on businesses that provide employment in your districts, pay taxes, and support your campaigns. I am sure that the pressure on you to be responsive to those interests is substantial. Streams, plants and animals do not vote, and the substantial economic benefit that they provide is harder to measure than the balance sheet of a coal mine or gas well. And that is exactly why this legislation is such a bad idea.

When enacting the ESA in 1973, Congress extensively debated the role politics and economics should play in listing decisions. Congress recognized that in the short term, the political deck would always be stacked against protecting endangered wildlife and in favor of protecting the economic interests of business. For that reason, Section 4 of the ESA required that listing decisions be based *solely* on the "best scientific and commercial data available" without regard to economics or politics. I would note that Congress struck a balance by allowing economics to be considered when setting the bounds of critical habitat, but not in the initial listing decision. HB 1576 unwisely interjects considerations other than science into the process by ensuring that the General Assembly and Independent Regulatory Review Commission, an agency comprised of persons that have no particular expertise in science or wildlife conservation, review the Commissions decisions before they are finalized.

The ESA is designed to *conserve* and not *preserve* threatened and endangered species, but HB 1576 prevents the commissions from managing habitat for species recovery.

The purpose of the federal ESA is to *conserve* endangered species by protecting sufficient habitat that will promote species *recovery*. As with the bald eagle, the point is not to protect dwindling numbers, but to manage habitat in a way that grows their numbers so that the species recovers and can be delisted.

In addition to invasive species and over-harvesting, habitat destruction is the single most significant cause of species extinction. That is why Congress defined “critical habitat” to be that geographic area “essential to species conservation.” As such, critical habitat typically includes habitat *not* currently occupied by the species but that needs special management to aid in species recovery. This quoted phrase is missing from HB 1576. While the language is a bit confusing, HB 1576 seems to define “critical habitat” to mean either (1) that only the area currently occupied by the species may be conserved, or (2) that only critical habitat already designated under the federal ESA may be conserved. In either case, HB 1576 prevents the commissions from achieving the primary goal of the ESA, which is to properly manage the habitat needed for species recovery.

HB 1576 violates the public trust doctrine and the Pennsylvania Constitution.

Section 5 of HB 1576 would prevent the commissions from listing a species as threatened or endangered unless its population was limited throughout its range. By obligating the commissions to consider the species’ entire range rather than that portion in Pennsylvania, Section 5 prevents the commissions from conserving wildlife populations at risk in Pennsylvania but not elsewhere. The state Constitution and the public trust doctrine provide that the Commonwealth holds our natural resources in trust for the citizens of the state – both present and future generations – and it imposes an obligation on the state to conserve those resources. The obligation applies to *Pennsylvania’s* natural resources, regardless of the bounty or scarcity of those resources in Ohio, West Virginia or New York. Furthermore, the idea that it is okay to allow species habitat to be impacted in Pennsylvania so long as there are adequate populations elsewhere is simply bad policy. It makes no economic sense; it makes no ecologic sense; and if each state took the same approach it would only hasten the imposition of more burdensome federal restrictions on Pennsylvania businesses.

HB 1576 does not impose an affirmative obligation on persons to protect listed species and habitat, as does the ESA.

The ESA imposes substantial responsibility on persons to ensure that their conduct does not affect listed species or critical habitat. For example, the ESA makes it unlawful for persons to “take” an endangered species or to adversely affect critical habitat. The ESA imposes *criminal* penalties on violators based on *strict liability*, meaning that the ESA puts the responsibility on the person to ensure that their conduct will not harm an endangered species or habitat. Importantly, this obligation even applies to government agencies and their individual employees when exercising their ordinary duties such as issuing permits.

HB 1576, in contrast, relieves persons of any obligation to protect species unless the government has data to support a permit condition that tells the person where and how their conduct may affect a species known to exist in the project area. This plainly shifts responsibility off of individuals for their own conduct; persons would be allowed to shut their eyes to the impacts of their activities on listed species and habitat unless the government told them otherwise. As such, Section 6 completely undermines one of the fundamental premises of the federal scheme for protecting listed species and critical habitat.

This is not just about saving a pretty plant or fuzzy critter; species are worth protecting because they provide esthetic, ecologic, educational, historical, recreational, economic and scientific value to the Nation.

There are many scholars who will attest to the value of protecting endangered species, and I urge you to gather that testimony. It is known that the loss of a single species can set off a chain reaction of events affecting other species. Though the total impact of extinction is difficult to predict, it is clear that conserving biological diversity is essential to maintain a healthy ecosystem - the key is not protecting the one, but protecting the many that are interdependent on one another. A healthy ecosystem benefits society and the economy. When someone complains about the increased costs of conserving a small, furry bat or native plant, consider that at least 25 per cent of all prescription drugs dispensed in the United States contain active principals that are still extracted from wild plants. Consider that Pennsylvania has spent millions of dollars attempting to control the West Nile Virus by spraying for black flies and mosquitoes, and that a single little brown bat will eat thousands in a night, and a pregnant mom will eat thousands in an hour. Consider that it was a lowly mold that gave us penicillin – a discovery that saved the lives of thousands of soldiers during and after World War II. Consider that when President Ronald Reagan was nearly assassinated and fighting for his life, his blood pressure was stabilized with a drug derived from an Amazonian bush viper.

So I understand the pressure to increase employment and reduce costs on business. But the risk and reward here is high. And the cost of being wrong is extraordinary. That is why we insulate persons responsible for making these decisions from politics, and require that they make their decision based on sound science.

You will be asked to cast a vote on this legislation. And when you are, I would ask that each of you ask yourselves, how confident are you that you are the one who can accurately predict which plant or animal is *not* worth saving?

Thank you again for inviting me to participate. I hope that I have provided you with some thoughts and information worth considering.

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