



**Follow-Up Testimony on House Bill 1576 – the Endangered Species Coordination Act
to the Pennsylvania House of Representatives
Environmental Resources & Energy Committee and Game & Fisheries Committee
Presented by John Arway, Executive Director
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Good morning, Chairmen Causer, Haluska, Miller, and Vitali and members of the Environmental Resources & Energy Committee and Game & Fisheries Committee. Thank you for the opportunity to join you again and address some of the points that I did not have time to cover on August 26 in Pottsville.

It appears that many members support this bill because of their concerns over federally listed species, specifically the Indiana Bat. If that is the case, we do not understand why the legislature would want to change the state program that is intended to keep species off of the federal list.

At the first hearing on this issue, Representative Pyle clarified that his intent with House Bill 1576 was not to limit protection to only federally listed species, but to allow agencies to designate rare species within our borders as threatened or endangered (T&E) as well. While we appreciate that clarification, we are still concerned that the bill as written could remove the agencies' authority to list state species.

The intent to allow the continued listing of state T&E species is not mirrored in the structure laid out by the bill, which runs counter to the effective program that is already in place. I covered many of these deficiencies in my previous remarks, but one thing I did not emphasize is that the adequacy of *state* programs is part of the calculus for *federal* listings. A state with greater conservation measures in place is looked upon more favorably by federal decision-makers, since it gives them a higher level of confidence that the species will not become threatened or endangered locally and contribute to the need for a federal listing. Therefore, a weakening of Pennsylvania's T&E species program would only increase the chance of the very federal intervention that contributed to the introduction of this bill in the first place.

With respect to legislative intent, there are other provisions of the bill that are equally troubling: particularly sections 6 and 9. Section 6 provides, "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." This section goes on to state that "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." (Emphasis added.)

This approach deviates from current practice and law. The current centralized database known as the Pennsylvania Natural Diversity Inventory (PNDI) includes records of federal and state-listed T&E species. However, PNDI also contains thousands of records pertaining to unlisted, but otherwise rare, species in Pennsylvania that warrant protection. And these rare, unlisted species, often referred to as species of special concern, are given consideration, and thus

protection, under numerous Department of Environmental Protection (DEP) statutes, regulations, and policies.¹ Section 9 of House Bill 1576, however, repeals all acts or parts of acts insofar as they are inconsistent with the Endangered Species Coordination Act. Therefore, this repealer provision will effectively revoke DEP's ability to protect not only these rare and unlisted species, but also common species such as our state fish – the brook trout. I would like to repeat a point that I made in my prior testimony: If we effectively conserve species at the state level, we can prevent regional and range-wide declines that necessitate federal listings and which lead to more costly, time-consuming, and difficult federal requirements.

In my previous testimony, I also noted that it would be virtually impossible to re-evaluate the listing status of the 62 threatened and endangered species under our jurisdiction within two years. The listing process we employ includes scientific data collection by staff or our contractors, running the species through the International Union for Conservation of Nature (IUCN) model, peer review by the Pennsylvania Biological Survey (PABS), public involvement, and action by the Commission's Board at two meetings. The same staff who perform these duties also perform the PNDI searches and assist industry with consultations, site views, and negotiations.

Re-evaluating 62 species within two years using current methods is simply not feasible. In addition to the administrative and public involvement steps in the listing process, it can take

¹ These laws and regulations include the 2012 Oil and Gas Act and DEP's regulations under Chapters 105 (pertaining to dams, obstructions and encroachments), Chapters 86-90 (pertaining to mining), Chapters 271, 273, 275, 277, 279, 281, 283, 284, 285, 287, 288, 289, 293, 295, 297 and 299 (pertaining to municipal and residual waste) and Chapter 71 (pertaining to the Sewage Facilities Planning Program). See also DEP's *Policy for Pennsylvania Natural Diversity Inventory (PNDI) Coordination During Permit Review and Evaluation*.

three to five years to assess the status of one species. Some species with large ranges within the Commonwealth take close to a decade to understand their current status. It took 40 years to evaluate the 62 species on the lists, and in recent years we have removed almost as many as have been added. The workload to add or remove one species following the current method is already significant. The workload to complete the two-year process required in House Bill 1576 would overwhelm the agency. This would not serve conservation or society, but would bog down the process and whittle away the species lists, thereby eliminating any chance for effective protection and conservation. Again, this could make federal listings more likely, since federal-level listings are in part based on the sufficiency of the state program to protect the species.

Our staff is constantly looking for ways to improve program efficiency, both internally and as an active member of the Pennsylvania Natural Heritage Partnership. Whether through workload analyses or proactive improvements to environmental review systems, we seek to make the most of limited staff and financial resources while being responsive to industry. When we hear about an issue or problem that needs to be fixed, we deal with it head on. The reality is that this is becoming increasingly difficult as we face dwindling budgets and staff resources.

I have briefed the Game and Fisheries Committee and spoken with many of you personally about our agency's need for alternative funding to implement the duties assigned to us. I am hopeful that one positive outcome of the public debate sparked by House Bill 1576 will be a renewed commitment to replicating the models we have in place under Act 13 for Marcellus shale permit reviews, with the Pennsylvania Department of Transportation (PennDOT) for transportation projects, and with DEP for coal mining. In each of those three cases, we work directly with other agencies and industry from the start of the permit process, through pre-

application and project scoping field views. This allows the resource and regulatory agencies to work with applicants to discuss project details, seek clarification, and gain insight into potential regulatory concerns before permits are applied for. This early coordination leads to more timely and better permit decisions consistent with applicable laws and regulations.

Our permit review times bear this out. While it takes our staff an average of 30 days to complete PNDI reviews in general, Marcellus reviews average less than 20 days, and PennDOT reviews average less than 15 days. And because of these dedicated funding streams, we can also expedite Chapter 105 reviews, which take an average of 15 days for Marcellus and nine days for PennDOT. Our track record shows that we are not the obstacle that some have claimed us to be.

We would welcome the chance to talk with you about a similar system to enhance the services we provide to other industries, which continue to account for the bulk of our permit review load, yet whose permit reviews are paid for by angler and boater dollars rather than being incorporated as a cost of doing business.

While much of the media attention has focused on T&E species, we remain equally concerned about the prospect of subjecting wild trout stream listings to the provisions of the bill. The unnecessary delays and potential politicization of these science-based decisions would have ramifications to individuals beyond those who care about wild trout. To postpone or never require the levels of protection dictated by scientific data could lead to increased water quality degradation in headwater areas where most wild trout waters are found, which would impact downstream communities, most notably those which rely on these streams as sources of drinking water.

We were happy to have Committee members Gabler and Heffley join us in the field on recent wild trout surveys and want all of you to know you have an open invitation to join us in the field to see the rigor with which streams are assessed.

In closing, threatened and endangered species and wild trout streams deserve the utmost protection, and the current listing and designation systems should not be changed. These decisions about our most vulnerable natural resources are already being made based on sound science with the highest attention paid to detailed analysis and data, and completed using an open and transparent, public process. To pass House Bill 1576 would be to reverse 40 years of scientific, cooperative, and collaborative species conservation and the work that your predecessors produced during their tenure with our General Assembly.

Thank you again for the chance to join you today. I welcome and would be happy to answer any questions.