

# PA Environment Digest

## An Update On Environmental Issues In PA

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### **Bills Fundamentally Change Endangered Species Protection In PA, Eliminates Others**

Bills now pending in the House and Senate would fundamentally change the way threatened and endangered species are protected in Pennsylvania putting at risk 73 existing state-designated threatened or endangered species because they would all have to be re-evaluated and put through the new adoption process outlined in the bill using new listing criteria.

The bill applies to the Game and Fish and Boat Commissions and the Department of Conservation and Natural Resources which now have the statutory authority to list threatened or endangered species.

In addition, the bill would immediately eliminate hundreds of species of special concern from environmental permit reviews entirely. These species were found by the agencies to be rare in Pennsylvania and are tracked for conservation purposes in order to prevent them from becoming threatened or endangered.

During environmental permit reviews, the Department of Environmental Protection determines whether applicants must take further action to protect or avoid these species under an [updated technical guidance](#) it adopted in June. Applicants are not required by law to do surveys or protect or avoid these species just on the recommendation of the Game and Fish and Boat Commissions or DCNR alone.

[House Bill 1576](#) (Pyle-R-Armstrong) will be the subject of a joint hearing by the House Game and Fisheries and Environmental Resources and Energy Committee on August 26 in Pottsville. The Senate companion-- [Senate Bill 1047](#) (Scarnati-R-Jefferson)-- was introduced July 3, but no committee actions have been scheduled.

The Game Commission, Fish and Boat Commission and the PA Council of Trout Unlimited have already provided the House Committees with comments raising significant concerns with the bills.

#### **Game Commission**

In a letter to the House Game and Fisheries Committee on [August 14, Carl Roe](#), Executive

Director of the Game Commission, said the legislation attempts to fix a problem that does not exist and threatens millions of dollars in federal funding from the U.S. Fish and Wildlife Service.

The bill would require all threatened and endangered species designations made by the Game and Fish and Boat Commissions to go through the regulation adoption process and the Independent Regulatory Review Commission. (Listings by DCNR already go through the regulatory process.)

This extra layer of procedure and process, Roe said, ignores the fact that both Commissions now routinely provide two public notices and opportunities to comment on proposed listings and delisting of threatened and endangered species as well as two separate votes by the boards of the respective Commissions.

The present process can take up to six months, while the regulatory process can take 18 months or longer.

The bill also makes a fundamental change in the way agencies evaluate species for listing as threatened or endangered. Instead of looking at a species range or habitat within Pennsylvania for which the agencies are responsible, it requires them to look at the entire range of habitat for a species even if it occurs across several states or in large regional areas across the United States.

In a simplified example, if there a 10 of the species in New York and only 2 in Pennsylvania, the bill would seem to direct the agencies to not protect the species in Pennsylvania because more exist outside the state.

In addition, the bill requires all species now listed to be re-listed through the regulatory process within two years of enactment of the bill. This means the Commissions would have to re-evaluate and send 73 state-designated threatened and endangered species through the two year window to protect their existing status.

The Commissions will also have to evaluate the existing listed species under the new, expanded range of habitat criteria created in the bill, draft a regulation and move it through the regulatory process in two years-- an all but impossible task with the resources the Commissions now have.

Effectively, this means the protection of 73 existing threatened and endangered species are put at risk by this bill because of the process outlined in the bill.

Roe said in his letter the Game Commission will be forced to hire new employees at substantial cost to implement the provisions of this bill, diverting existing licensing fees from their intended purposes.

Roe points out the bill may also have an effect opposite of the one intended by the sponsors of the bill. The lack of state action to protect species may prompt the U.S. Fish and Wildlife Service to list more species as federally threatened or endangered.

Over the past 10 years only three species have been added to the threatened or endangered species list by the Game Commission.

### **Fish & Boat Commission**

[Talking points circulated](#) by the Fish and Boat Commission take a similar position opposing the bills as unnecessary and harmful to existing protections offered to threatened or endangered species in Pennsylvania.

“Because these bills appear to provide protection only to federally listed T&E species, species that are rare within Pennsylvania, but not globally rare will not be protected. Effectively conserving species at the state level prevents regional and range-wide declines that require federal listings.”

The Fish and Boat Commission points out there is already a definition of “acceptable data” used by the Commission to consider listing of species by scientifically valid and defensible data. The

Commission also said the bill requires a new database to be created when there is already a database-- the PA Natural Diversity Inventory-- used for environmental reviews that is considered “one of the most advanced, and arguably the best, environmental review systems in the country.”

The Commission is also critical of the bills for opening access to specific location information for rare, threatened or endangered species which could allow anyone to pinpoint their location facilitating the potential for harm to those species.

In the last five years, the Fish and Boat Commission has added 13 species and de-listed 11 species from the state threatened, endangered and candidate species list.

### **PA Council of Trout Unlimited**

[Testimony prepared for delivery](#) on behalf of Brian Wagner, President of the PA Council of Trout Unlimited during the August 26 Committee hearing concludes, “We believe that the provisions of House Bill 1576 are directly contrary to the wishes of the anglers of Pennsylvania.”

PA Trout Unlimited says the designation of wild trout streams, also covered by the bills requiring the designations to be done by regulation, is already subject to public review and must be scientifically justified.

“The current process for designating wild trout streams is rigorous and transparent and considers public input. It is rigorous in that data are obtained via well established, scientific sampling methods, and designations are based on stringent technical criteria, including numbers of trout, biomass, and size classes represented. This rigorous, scientific process results in yes or no answers – either a stream meets the criteria for designation as one of the classes of wild trout waters, or it does not. Although designation as a wild trout stream may ultimately have regulatory consequences, it is not itself a regulatory action. It is simply a technical decision.

“(T)he Fish & Boat Commission does not make these decisions in a vacuum. It posts on its web site results from surveys indicating that streams may be eligible for designation as wild trout streams. Proposed stream designations are listed in the Pennsylvania Bulletin at least sixty days prior to any formal action, giving ample opportunity for public comment. Anglers pay attention to these listings. If you don’t believe that, simply mention Cross Fork Creek anywhere in the northern half of the State. Proposed wild trout stream listings are then acted on by the Commission’s Board of Commissioners at its quarterly meetings, at which the public has an opportunity to provide comment on any Fish & Boat Commission business, including the proposed designation of wild trout streams.”

In closing, the testimony says, “In summary, I am reminded of sage advice given to me by my boss early in my career, when I assumed my first managerial position. He said, “Hire good, well educated and trained people, give them the tools they need to get the job done, and then get the heck out of their way.” The Fish and Boat Commission is staffed by good, well qualified people, who are using sound science to make decisions about the Commonwealth’s aquatic resources. We are well advised to stay out of their way and allow them get the job done.”

The joint House Committee hearing will be held at the Empire Beauty School Auditorium, 396 Pottsville St Clair Highway, Pottsville starting at 2:00.

[Click Here](#) for a summary of House Bill 1576 by the sponsor. [Click Here](#) for a summary of Senate Bill 1047 by the sponsor.

### **NewsClips:**

[House Holds Hearing On Endangered Species Bill](#)

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[PA Audubon: No Concerns About Delisting Bald Eagle](#)  
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