

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1576 Session of 2013

INTRODUCED BY PYLE, GERGELY, MALONEY, MILLARD, KAUFFMAN, D. COSTA, BLOOM, HARHAI, RAPP, GOODMAN, CUTLER, GIBBONS, AUMENT, MARSHALL, C. HARRIS, REED, PICKETT, MATZIE, HEFFLEY, EVERETT, MASSER, M. K. KELLER, SWANGER, KNOWLES, METCALFE, DUNBAR, SONNEY, GROVE, KRIEGER, REESE, STEVENSON, NEUMAN, SANKEY, CAUSER, SACCONI, ROCK, GODSHALL, TOBASH, SCHLEGEL CULVER, P. COSTA, BURNS, P. DALEY, ENGLISH, TALLMAN, BAKER, BARRAR, CHRISTIANA, ELLIS, EVANKOVICH, KORTZ, JAMES, KULA, METZGAR, MOUL, MUSTIO, OBERLANDER, TOOHL, SNYDER, PASHINSKI, READSHAW, ROAE, SAYLOR AND HESS, JUNE 24, 2013

AS REPORTED FROM COMMITTEE ON GAME AND FISHERIES, HOUSE OF REPRESENTATIVES, AS AMENDED, NOVEMBER 13, 2013

AN ACT

1 Providing a process for the designation of certain species.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Endangered
6 Species Coordination Act.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Acceptable data." ~~Current, best available scientific and~~ <--
12 ~~commercial, empirical data as evidenced in supporting~~
13 ~~documentation, statistics, reports, studies or research. As it~~

1 ~~pertains to wild trout stream designation, such data that is~~
2 ~~replicable and testable.~~ EMPIRICAL, REPLICABLE AND TESTABLE DATA <--
3 AS EVIDENCED IN SUPPORTING DOCUMENTATION, STATISTICS, REPORTS,
4 STUDIES OR RESEARCH.

5 "Action." Any of the following activity:

- 6 (1) Promulgation of regulations.
- 7 (2) Designations ~~or listing~~ of species. <--
- 8 (3) Enforcement of rules and regulations.

9 "Acts." Any of the following:

- 10 (1) The Endangered Species Act of 1973, (Public Law 93-
11 205, 16 U.S.C. § 1531 et seq.)†. <--
- 12 (2) The act of June 23, 1982 (P.L.597, No.170), known as
13 the Wild Resource Conservation Act.
- 14 (3) 30 Pa.C.S. (relating to fish).
- 15 (4) 34 Pa.C.S. (relating to game).

16 "AUTHORIZED PERSON." THE TERM INCLUDES: <--

17 (1) PERSONS, INCLUDING ANY NATURAL PERSON, PARTNERSHIP,
18 ASSOCIATION, CORPORATION OR OTHER LEGAL ENTITY, INCLUDING
19 ASSOCIATED CONSULTANTS, SCIENTISTS AND PLANNERS, INVOLVED IN
20 COMMERCIAL ACTIVITIES INVOLVING POTENTIAL LAND DISTURBANCES
21 OR OTHER ACTIVITY FOR WHICH A PERMIT IS REQUIRED BY FEDERAL
22 OR STATE LAW AND WHICH MAY IMPACT LISTED SPECIES OR THEIR
23 CRITICAL HABITATS, AS DEFINED BY THE ENDANGERED SPECIES ACT
24 OF 1973 (PUBLIC LAW 93-205, 16 U.S.C. § 1531 ET SEQ.) OR THIS
25 ACT.

26 (2) PERSONS WITH A BONA FIDE INTEREST INVOLVED IN
27 CONSERVATION PLANNING OR INVOLVED IN RESOURCE MANAGEMENT AS
28 DETERMINED BY THE DEPARTMENT OF CONSERVATION AND NATURAL
29 RESOURCES.

30 "Centralized database." ~~The database of listed species and~~ <--

1 ~~critical habitat maintained in accordance with this act.~~ THE <--
2 DATABASE OF LISTED SPECIES AND CRITICAL HABITAT MAINTAINED IN
3 ACCORDANCE WITH THIS ACT AND OTHER DESIGNATED SPECIES OR
4 INFORMATION.

5 "Commonwealth agency." Any of the following:

6 (1) The Department of Conservation and Natural Resources
7 of the Commonwealth.

8 (2) The Pennsylvania Fish and Boat Commission.

9 (3) The Pennsylvania Game Commission.

10 "Critical habitat." The specific areas within the geographic
11 area occupied by a listed species designated in accordance with
12 the Endangered Species Act of 1973 (Public Law 93-205, 16 U.S.C.
13 § 1531 et seq.).

14 "Department." The Department of Conservation and Natural
15 Resources of the Commonwealth.

16 "Listed species." Species of fish, wildlife or plants
17 designated under the acts as "endangered," "Pennsylvania
18 endangered," "threatened" or "Pennsylvania threatened" and
19 included in the centralized database.

20 ~~"Persons." The term includes:~~ <--

21 ~~(1) Persons, including any natural person, partnership,~~
22 ~~association, corporation or other legal entity, including~~
23 ~~associated consultants, scientists and planners, involved in~~
24 ~~commercial activities involving potential land disturbances~~
25 ~~or other activity for which a permit is required by Federal~~
26 ~~or State law and which may impact listed species or their~~
27 ~~critical habitats, as defined by the Endangered Species Act~~
28 ~~of 1973 (Public Law 93-205, 16 U.S.C. § 1531 et seq.) or this~~
29 ~~act.~~

30 ~~(2) Persons with a bona fide interest involved in~~

1 ~~conservation planning or involved in resource management as~~
2 ~~determined by the Department of Conservation and Natural~~
3 ~~Resources.~~

4 "Wild trout stream." A wilderness trout stream, a Class A
5 wild trout stream or any other stream or stream segment
6 designated by the Pennsylvania Fish and Boat Commission as a
7 wild trout stream.

8 Section 3. Coordination of designation.

9 No Commonwealth agency may take action to designate or
10 consider fish, wildlife or plants as threatened or endangered
11 unless the fish, wildlife or plants are designated under the
12 Endangered Species Act of 1973 (Public Law 93-205, 16 U.S.C. §
13 1531 et seq.) or pursuant to this act.

14 Section 4. Designation process.

15 (a) Applicable law.--Any action by a Commonwealth agency to
16 designate fish, wildlife or plants as threatened or endangered
17 or to designate a stream as a wild trout stream shall be subject
18 to the requirements of the act of July 31, 1968 (P.L.769,
19 No.240) referred to as the Commonwealth Documents Law, and the
20 act of June 25, 1982 (P.L.633, No.181), known as the Regulatory
21 Review Act. NOTHING UNDER THIS SUBSECTION SHALL BE CONSTRUED TO <--
22 REQUIRE THE PENNSYLVANIA FISH AND BOAT COMMISSION OR THE
23 PENNSYLVANIA GAME COMMISSION TO COMPLY WITH THE REGULATORY
24 REVIEW ACT WITH RESPECT TO ANY RULES OR REGULATIONS OTHER THAN
25 THOSE RELATING TO THREATENED OR ENDANGERED SPECIES OR
26 DESIGNATION OF WILD TROUT STREAMS.

27 (b) Detailed reasons and summary of data and methodology.--
28 The Commonwealth agency shall provide detailed reasons and a
29 summary of the acceptable data and methodology upon which the
30 proposed designation is based, as well as the activities that

1 may be affected by such designation, to the Independent
2 Regulatory Review Commission and to the standing committees of
3 the Senate and the House of Representatives with jurisdiction
4 over the Commonwealth agency for purposes of this act.

5 (c) Inclusion in centralized database.--Upon final
6 promulgation of a regulation designating a fish, wildlife or
7 plant species as threatened or endangered, that species shall be
8 included in the centralized database.

9 ~~(d) Removal. Any species designated as threatened or~~ <--
10 ~~endangered pursuant to 30 Pa.C.S. (relating to fish) or 34~~
11 ~~Pa.C.S. (relating to game) prior to the effective date of this~~
12 ~~section shall be removed from the centralized database after a~~
13 ~~period of two years unless the Commonwealth agency redesignates~~
14 ~~the species as threatened or endangered in accordance with the~~
15 ~~provisions of this act.~~

16 Section 5. Designation determination and data.

17 (a) General rule.--All Commonwealth agency actions to
18 designate fish, wildlife or plants as Pennsylvania threatened or
19 Pennsylvania endangered species shall be promulgated as
20 regulations in accordance with this act, solely on the basis of
21 acceptable data.

22 (b) Conditions for designation.--

23 (1) Any designation of a Pennsylvania endangered species
24 shall be made only when the species is in danger of
25 extinction throughout all or a significant portion of its
26 range WITHIN THIS COMMONWEALTH. <--

27 (2) Any designation of a Pennsylvania threatened species
28 shall be made only when the species is likely to become a
29 Pennsylvania endangered species ~~throughout all or a~~ <--
30 ~~significant portion of its range~~ within the foreseeable

1 future.

2 (c) Wild trout streams.--Any Commonwealth agency action to
3 designate a stream or stream segment as a wild trout stream
4 shall be promulgated as a regulation based solely on acceptable
5 data. The designation of a stream or stream segment as a wild
6 trout stream shall not be effective until the regulation is
7 promulgated as final.

8 Section 6. Permits and approvals.

9 ~~When~~ NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF reviewing <--
10 applications for permits, approvals or other authorizations or
11 taking actions, OTHER THAN DESIGNATING SPECIES, State and local <--
12 government agencies shall consider impacts only to listed
13 species and their critical habitats included in the centralized
14 database. ~~Permits, approvals, authorizations or regulations~~ <--
15 ~~shall not require persons to conduct field surveys or other~~
16 ~~activities to determine or evaluate the presence of species or~~
17 ~~their habitats, unless acceptable data exist indicating the~~
18 ~~presence of a listed species in the area.~~ IF FIELD SURVEYS OR <--
19 OTHER ACTIVITIES TO DETERMINE OR EVALUATE THE PRESENCE OF LISTED
20 SPECIES OR LISTED SPECIES' HABITATS ARE CONDUCTED, THE
21 COMMONWEALTH AGENCY WITH JURISDICTIONAL AUTHORITY FOR PROTECTION
22 OF THE SPECIES SHALL, WITHIN 30 DAYS OF RECEIVING SURVEY
23 RESULTS, PROVIDE EITHER CLEARANCE FOR THE PROJECT, OR DETAILED
24 AVOIDANCE MEASURES, DETAILED MINIMIZATION MEASURES OR DETAILED
25 MITIGATION MEASURES TO THE APPLICANT. A REQUIREMENT OF AN
26 APPLICANT TO PERFORM A SURVEY MUST BE BASED ON ACCEPTABLE DATA
27 INDICATING THE LIKELY PRESENCE OF LISTED SPECIES IN THE AREA
28 AFFECTED BY THE PROJECT.

29 Section 7. Centralized database.

30 The department shall develop, maintain and manage the

1 operation of the centralized database. Each Commonwealth agency
2 shall provide the department with all information identified in
3 section 8.

4 Section 8. Access to data.

5 (a) General rule.--The department shall provide AUTHORIZED <--
6 persons access to data regarding the location of listed species
7 or other designated species, including:

8 (1) Geographic Information System spatial data
9 identifying specific areas in which each listed species or
10 other designated species is known to be present.

11 (2) Geographic Information System spatial data
12 identifying critical habitat areas where listed species occur
13 or sensitive habitat of other designated species.

14 (3) Geographic Information System spatial data
15 identifying buffer areas for listed species or other
16 designated species, along with a description of the
17 acceptable data, rationale and methodology used by a
18 Commonwealth agency to establish the extent of the buffer
19 areas.

20 (4) The names of all political subdivisions within which
21 the listed or other designated species, their habitats and
22 buffer areas are located.

23 (b) List of potential avoidance and mitigation measures.--
24 The department shall also provide AUTHORIZED persons a list of <--
25 potential avoidance and mitigation measures, seasonal
26 considerations or other best practices associated with each of
27 the listed species or other designated species and habitats.

28 ~~(c) Public dissemination.~~ <--

29 ~~(1) Notwithstanding any provision of law to the~~

30 (C) PUBLIC DISSEMINATION.--NOTWITHSTANDING ANY PROVISION OF <--

1 LAW TO THE contrary, the department shall provide the
2 information described in subsection (a), including records
3 identifying the location of endangered or threatened plant or
4 animal species not already known to the general public, to
5 AUTHORIZED persons who request it. <--

6 ~~(2) Persons receiving the information may only disclose~~ <--
7 ~~the information to other persons with prior written~~
8 ~~authorization from the department.~~

9 (d) Use of information.--Information obtained under
10 subsection (a) shall be used solely for:

11 (1) conservation, development planning, natural
12 resources management;

13 (2) compliance with statutory and regulatory
14 requirements for the protection of listed species applicable
15 to permits, approvals or other authorizations; or

16 (3) voluntary measures to mitigate impacts to other than
17 listed species.

18 ~~(e) Civil penalty. Any person intentionally violating the~~ <--
19 ~~provisions of subsection (c) or (d) is subject to a civil~~
20 ~~penalty of not less than \$250 nor more than \$5,000.~~

21 ~~Section 9. Repeal.~~

22 ~~All acts and parts of acts are repealed insofar as they are~~
23 ~~inconsistent with this act.~~

24 (E) CIVIL PENALTY.--THE DEPARTMENT MAY IMPOSE A CIVIL <--
25 PENALTY OF NOT LESS THAN \$1,000 NOR MORE THAN \$10,000 ON ANY
26 PERSON WHO INTENTIONALLY VIOLATES THE PROVISIONS OF SUBSECTION
27 (C) OR (D).

28 SECTION 9. USE OF FUNDS.

29 A COMMONWEALTH AGENCY THAT RECEIVES FUNDS UNDER THE PITTMAN-
30 ROBERTSON WILDLIFE RESTORATION ACT (50 STAT. 917, 16 U.S.C. 669

1 ET SEQ.) OR THE DINGELL-JOHNSON SPORT FISH RESTORATION ACT (64
2 STAT. 681, 16 U.S.C. 777 ET SEQ.), IS PROHIBITED FROM
3 TRANSFERRING TO ANOTHER STATE AGENCY REVENUES GENERATED THROUGH
4 THE SALE OF HUNTING OR FISHING LICENSES FOR THE ADMINISTRATION
5 OF THIS ACT.

6 Section ~~10~~ 20. Effective date.

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7 This act shall take effect in 90 days.