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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1047 Session of  
2013

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INTRODUCED BY SCARNATI, WAUGH, GORDNER, ERICKSON, HUTCHINSON,  
WHITE, RAFFERTY, MENSCH, BRUBAKER, KASUNIC, FONTANA,  
BREWSTER, TARTAGLIONE, YUDICHAK AND HUGHES, JULY 3, 2013

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REFERRED TO GAME AND FISHERIES, JULY 3, 2013

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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  
14 pertains to wild trout stream designation, such data that is  
15 replicable and testable.

16 "Action." Any of the following activity:

17 (1) Promulgation of regulations.

1 (2) Designations or listing of species.

2 (3) Enforcement of rules and regulations.

3 "Acts." Any of the following:

4 (1) The Endangered Species Act of 1973, (Public Law 93-  
5 205, 16 U.S.C. § 1531 et seq.);

6 (2) The act of June 23, 1982 (P.L.597, No.170), known as  
7 the Wild Resource Conservation Act.

8 (3) 30 Pa.C.S. (relating to fish).

9 (4) 34 Pa.C.S. (relating to game).

10 "Centralized database." The database of listed species and  
11 critical habitat maintained in accordance with this act.

12 "Commonwealth agency." Any of the following:

13 (1) The Department of Conservation and Natural Resources  
14 of the Commonwealth.

15 (2) The Pennsylvania Fish and Boat Commission.

16 (3) The Pennsylvania Game Commission.

17 "Critical habitat." The specific areas within the geographic  
18 area occupied by a listed species designated in accordance with  
19 the Endangered Species Act of 1973 (Public Law 93-205, 16 U.S.C.  
20 § 1531 et seq.).

21 "Department." The Department of Conservation and Natural  
22 Resources of the Commonwealth.

23 "Listed species." Species of fish, wildlife or plants  
24 designated under the acts as "endangered," "Pennsylvania  
25 endangered," "threatened" or "Pennsylvania threatened" and  
26 included in the centralized database.

27 "Person." The term includes:

28 (1) A natural person, partnership, association,  
29 corporation or other legal entity, including any associated  
30 consultant, scientist and planner, involved in commercial

1 activities involving potential land disturbances or other  
2 activity for which a permit is required by Federal or State  
3 law and which may impact listed species or their critical  
4 habitats, as defined by the Endangered Species Act of 1973  
5 (Public Law 93-205, 16 U.S.C. § 1531 et seq.) or this act.

6 (2) A person with a bona fide interest involved in  
7 conservation planning or involved in resource management as  
8 determined by the Department of Conservation and Natural  
9 Resources.

10 "Wild trout stream." A wilderness trout stream, a Class A  
11 wild trout stream or any other stream or stream segment  
12 designated by the Pennsylvania Fish and Boat Commission as a  
13 wild trout stream.

14 Section 3. Coordination of designation.

15 No Commonwealth agency may take action to designate or  
16 consider fish, wildlife or plants as threatened or endangered  
17 unless the fish, wildlife or plants are designated under the  
18 Endangered Species Act of 1973 (Public Law 93-205, 16 U.S.C. §  
19 1531 et seq.) or pursuant to this act.

20 Section 4. Designation process.

21 (a) Applicable law.--Any action by a Commonwealth agency to  
22 designate fish, wildlife or plants as threatened or endangered  
23 or to designate a stream as a wild trout stream shall be subject  
24 to the requirements of the act of July 31, 1968 (P.L.769,  
25 No.240) referred to as the Commonwealth Documents Law, and the  
26 act of June 25, 1982 (P.L.633, No.181), known as the Regulatory  
27 Review Act.

28 (b) Detailed reasons and summary of data and methodology.--  
29 The Commonwealth agency shall provide detailed reasons and a  
30 summary of the acceptable data and methodology upon which the

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

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

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

17 Section 5. Designation determination and data.

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

23 (b) Conditions for designation.--

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

28 (2) Any designation of a Pennsylvania threatened species  
29 shall be made only when the species is likely to become a  
30 Pennsylvania endangered species throughout all or a

1 significant portion of its range within the foreseeable  
2 future.

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

9 Section 6. Permits and approvals.

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

19 Section 7. Centralized database.

20 The department shall develop, maintain and manage the  
21 operation of the centralized database. Each Commonwealth agency  
22 shall provide the department with all information identified in  
23 section 8.

24 Section 8. Access to data.

25 (a) General rule.--The department shall provide persons  
26 access to data regarding the location of listed species or other  
27 designated species, including:

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

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

4           (3) Geographic Information System spatial data  
5 identifying buffer areas for listed species or other  
6 designated species, along with a description of the  
7 acceptable data, rationale and methodology used by a  
8 Commonwealth agency to establish the extent of the buffer  
9 areas.

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

13          (b) List of potential avoidance and mitigation measures.--  
14 The department shall also provide persons a list of potential  
15 avoidance and mitigation measures, seasonal considerations or  
16 other best practices associated with each of the listed species  
17 or other designated species and habitats.

18          (c) Public dissemination.--

19           (1) Notwithstanding any provision of law to the  
20 contrary, the department shall provide the information  
21 described in subsection (a), including records identifying  
22 the location of endangered or threatened plant or animal  
23 species not already known to the general public, to persons  
24 who request it.

25           (2) No person receiving the information may disclose the  
26 information to any other person without prior written  
27 authorization from the department.

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

30           (1) conservation, development planning, natural

1 resources management;

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

5 (3) voluntary measures to mitigate impacts to other than  
6 listed species.

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

10 Section 9. Repeal.

11 All acts and parts of acts are repealed insofar as they are  
12 inconsistent with this act.

13 Section 10. Effective date.

14 This act shall take effect in 90 days.