

Straight TALK

by John A. Arway

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Why do we need to protect endangered species and wild trout?

Although this question may seem rhetorical to many of us in the conservation community, there are others who can't seem to understand the reasons why it's necessary to protect endangered species and wild trout and further believe that they should be sacrificed for economic growth.

The responsibilities for protecting our Commonwealth's natural resources are included in most of our laws that deal with environmental protection, which are administered by the Pennsylvania Department of Environmental Protection (PA DEP). These laws are passed by our legislature and are further defined by the regulations promulgated by our Environmental Quality Board, of which I am a member, and approved by the Independent Regulatory Review Commission (IRRC) and the standing Committees of the House and Senate. As you can see, they go through many steps before they become final and are open for public and industry review and comment throughout the entire rulemaking process. Some of the laws that we create ourselves are Pennsylvania-specific, and others are guided by federal laws that require us to abide by certain standards for the good of our state and country. Our Keystone State has been regarded

as a leader in protecting air, water and natural resources for many years, and our state laws have often been used as models for the development of federal laws. Prime examples include our Clean Streams



The Eastern Mud Salamander is listed as an endangered species in Pennsylvania.



photo-Commissioner Patrick H. Berry, Vermont Fish and Wildlife Department

Pennsylvania Fish & Boat Commission Executive Director John A. Arway releases a giant "peeler" White Sturgeon (*Acipenser transmontanus*) caught in the Willamette River, Oregon. Sturgeon populations in all of the Columbia River system are threatened due to overfishing, so harvest will be restricted in 2014 for the first time ever. Pennsylvania waters support three different species of sturgeon, Atlantic Sturgeon, Lake Sturgeon and Shortnose Sturgeon, all of which are currently listed as state endangered species.

Law of 1937, our Surface Mining Conservation and Reclamation Act of 1945, the federal Clean Water Act of 1972 and the federal Surface Mining Control and Reclamation Act of 1977. Our laws and regulations are not developed in secret, as some might like you to think, and can be changed by our lawmakers and regulators at any time. I'll share more on that later.

We also have a broader Constitutional duty as set forth in Article 1, Section 27 of our Pennsylvania Constitution. Our forefathers amended this section into our Constitution in 1971 with overwhelming public support. I would hazard to guess that the public would still strongly support this duty if another public referendum were held today.

The Widener School of Law's Environmental & Natural Resources Law Clinic published a *Citizen's Guide* to this Constitutional Amendment (2010), which provides the following guidance about how it should be interpreted:

"A fair reading of §27 is that it created a public trust in the state government to ensure the preservation of the

state's natural resources. This means the state government is responsible for protecting Pennsylvania's environment on behalf of its citizens. The result is controlled development of the state's natural resources rather than no development at all. The job of the state is to balance the detrimental effects an activity would have on the environment against the social, economic and environmental benefits gained."

As my signature line on my e-mails, I often use the quote from former Pennsylvania Fish & Boat Commission (PFBC) Executive Director Ralph Abele, "Do your duty and fear no one." I believe that the duty of state government is assigned to us, as public servants, by the laws that we have in addition to the direction given by our State Constitution, which I swore to uphold when I took my oath of office as your Director. Furthermore, state government includes PFBC and all other state government agencies within the administrative branch of government in addition to the legislative and judicial branches of government. Together, it is our collective responsibility to conserve and maintain our air, water and public natural resources for the benefit of all of the people, including generations yet to come.

I needed to provide this background to set the stage for answering the question posed in the title of this article. There have been two bills (HB 1576 and SB 1047) introduced in the Pennsylvania House and Senate to create an Endangered Species Coordination Act. The title of the legislation sounds like a good idea. Who wouldn't support coordinating the protection and conservation of endangered species? However, it is obvious by reading the draft legislation that the bills go far beyond coordination. They create new rules for how PFBC (for fish, amphibians and reptiles and aquatic life), Pennsylvania Game Commission (for birds and mammals) and Pennsylvania Department of Conservation and Natural Resources (for plants) would list or more appropriately, not list, species as threatened and endangered (T&E) in the future. Why is this change significant? It is generally understood that unless the states protect the species at the edges of their ranges, we will continue to add more species to the federal list. In addition, the legislation also requires that the designation of wild trout streams and rare species listings go through the added review step of the IRRC.

As I write this article, the bill was just amended and passed out of the House Game and Fisheries Committee



photo-PFBC archives

Wild Brook Trout

by a vote of 16 to 8. The bill in its current form would change the jurisdictional "duty" of the natural resource agencies and turn the process from one based on science to one based on politics and economics. The legislature and industry continue to say that they want "consistency and transparency" in decision making. So do I. However, we already have a consistent and transparent process that the legislature designed when they gave us our authority almost 30 years ago. In addition, industry and the public have the right to due process if they disagree with any decision. In fact, they have two chances to disagree—one in an appeal of the listing decision and the other in an appeal of the PA DEP permit.

This effort is supported by a variety of industries that see it as a way to save time and money. If one wanted to save time and money, why would we add an additional regulatory review step that would require more time and money to get to the final decision? I see it as a way to create a pathway to a different answer. Currently, we use scientific observation and fact which creates frustration for some who are used to political horse trading coupled with "economic balancing." The question is how do you see it? I have pledged to make it my personal New Year's resolution to continue to argue that wild trout and rare species designations are scientific and not political decisions. I would like you to consider contacting your local legislators and letting them know your opinion. The future of our rare species and wild trout depends on it!

Your Director,
><(John{°>

A handwritten signature in blue ink, appearing to read "John Abele". The signature is fluid and cursive.



The mission of the Pennsylvania Fish & Boat Commission is to protect, conserve and enhance the Commonwealth's aquatic resources and provide fishing and boating opportunities.

**Get questions answered.
Share your ideas.**



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