

LEGISLATIVE COMMITTEE MINUTES

SB129

Bill as Introduced

SB 129 - AS INTRODUCED

2021 SESSION

21-1076
04/05

SENATE BILL **129**

AN ACT relative to minimizing environmental impacts on the habitats of endangered or threatened species.

SPONSORS: Sen. Bradley, Dist 3

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill requires all state departments and agencies to take actions designed to minimize environmental impacts to endangered or threatened species habitats. The bill also authorizes the executive director of fish and game to accept payment for the unavoidable loss of such habitat.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to minimizing environmental impacts on the habitats of endangered or threatened species.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Endangered Species Conservation Act; Conservation Programs. Amend RSA 212-A:9, III to
2 read as follows:

3 III. All other state departments and agencies, to the extent possible, consistent with their
4 authorities and responsibilities, shall assist and cooperate with the executive director in the
5 furtherance of the purposes of this chapter for the conservation of endangered or threatened species.
6 They shall take such action as is reasonable and prudent to insure that actions authorized, funded,
7 or carried out by them do not ***significantly*** jeopardize the continued existence of such species or
8 result in the destruction or modification of habitat of such species which is determined by the
9 executive director to be critical, ***by requiring that all such action is designed to avoid and***
10 ***minimize harm to endangered and threatened species and habitat designated as critical.***
11 The provisions of RSA 212-A or any rule promulgated under this chapter shall not be applicable to a
12 state department or agency when that state department or agency, in the process of undertaking an
13 action, is required by federal law or regulation to address the environmental impact on wildlife or
14 wildlife habitat, of that action.

15 2 New Section; Fish and Game Fund; Funds Paid as Mitigation for Unavoidable Impacts to
16 Wildlife or Habitat of Wildlife. Amend RSA 206 by inserting after section 33-f the following new
17 section:

18 206:33-g Funds Paid as Mitigation for Unavoidable Impacts to Wildlife or Habitat of Wildlife.
19 The executive director is authorized to accept funds paid as mitigation for unavoidable impacts to
20 wildlife or habitat of wildlife within the state of New Hampshire. Notwithstanding any other
21 provision of law to the contrary, the executive director may accept and receive such funds without
22 the approval of the governor, the governor and council, or the commission. All moneys received
23 under this section for mitigation of impacts to nongame species or the habitat of nongame species
24 shall be deposited in the nongame species account established under RSA 212-B:6 and used solely for
25 the purposes set forth therein. All other moneys received under this section shall be deposited into
26 the fish and game fund established under RSA 206:33 and used solely for the purposes set forth in
27 RSA 206:34-a.

28 3 Effective Date. This act shall take effect 60 days after its passage.

SB 129 - AS AMENDED BY THE SENATE

02/18/2021 0416s

2021 SESSION

21-1076

04/05

SENATE BILL **129**

AN ACT relative to minimizing environmental impacts on the habitats of endangered or threatened species.

SPONSORS: Sen. Bradley, Dist 3

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill requires all state departments and agencies to take actions designed to minimize environmental impacts to endangered or threatened species habitats. The bill also authorizes the executive director of fish and game to accept payment for the unavoidable loss of such habitat and establishes a threatened and endangered species compensatory mitigation fund.

Explanation: Matter added to current law appears in ***bold italics***.
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5 furtherance of the purposes of this chapter for the conservation of endangered or threatened species.
6 They shall take such action as is reasonable and prudent to insure that actions authorized, funded,
7 or carried out by them do not *appreciably* jeopardize the continued existence of such species or
8 result in the destruction or modification of habitat of such species which is determined by the
9 executive director to be critical, *by requiring that all such action is designed to avoid and*
10 *minimize harm to such species and habitat designated as critical. For the purpose of this*
11 *statute, "appreciably jeopardize the continued existence of such species" shall be defined in*
12 *rules adopted by the executive director pursuant to RSA 541-A.* The provisions of RSA 212-A
13 or any rule promulgated under this chapter shall not be applicable to a state department or agency
14 when that state department or agency, in the process of undertaking an action, is required by federal
15 law or regulation to address the environmental impact on wildlife or wildlife habitat, of that action.

16 2 New Section; Fish and Game Fund; Funds Paid as Mitigation for Unavoidable Impacts to
17 Wildlife or Habitat of Wildlife. Amend RSA 206 by inserting after section 33-f the following new
18 section:

19 206:33-g Funds Paid as Mitigation for Unavoidable Impacts to Wildlife or Habitat of Wildlife.
20 The executive director may accept funds paid as mitigation for unavoidable impacts to wildlife or
21 habitat of wildlife within the state of New Hampshire. Notwithstanding any other provision of law
22 to the contrary, the executive director may accept and receive such funds without the approval of the
23 governor, the governor and council, or the commission. All moneys received under this section for
24 mitigation of impacts shall be deposited as follows:

25 I. For impacts to nongame species or the habitat of nongame species that are not considered
26 threatened or endangered, moneys shall be deposited in the nongame species account established
27 under RSA 212-B:6 and used solely for the purposes set forth in that section.

28 II. For impacts to threatened and endangered species or the habitats of threatened and
29 endangered species, moneys shall be deposited in the threatened and endangered species

1 compensatory mitigation fund established under RSA 212-A:16 and used solely for the purposes set
2 forth in that section.

3 III. All other moneys received under this section shall be deposited into the fish and game
4 fund established under RSA 206:33 and used solely for the purposes set forth in RSA 206:34-a.

5 3 New Section; Endangered Species Conservation Act; Threatened and Endangered Species
6 Compensatory Mitigation Fund. Amend RSA 212-A by inserting after section 15 the following new
7 section:

8 212-A:16 Threatened and Endangered Species Compensatory Mitigation Fund. There is hereby
9 established in the state treasury a separate fund to be known as the threatened and endangered
10 species compensatory mitigation fund into which payments made pursuant to this section shall be
11 credited. The fund shall be non-lapsing and continually appropriated to the department, for the
12 purpose of funding projects that facilitate a net conservation benefit to threatened and endangered
13 species, including, but not limited to critical habitat creation or restoration and the monitoring and
14 maintenance of such areas. The state treasurer shall invest the fund as provided by law and any
15 interest received on such investment shall be credited to the fund. Notwithstanding any other
16 provision of law to the contrary, the executive director may accept payment for deposit into the fund
17 for an unavoidable loss of critical habitat from a proposed activity without the approval of the
18 governor, the governor and council, or the commission. The executive director shall approve
19 disbursements from the fund following consultation with the commissioner of the department of
20 environmental services. The department shall submit an annual report by October 1, 2022, and
21 every year there after, to the fiscal committee, the speaker of the house of representatives, the
22 president of the senate, the house clerk, the senate clerk, the governor, and the state library,
23 summarizing all deposits and expenditures from the fund. The report shall include, but not limited
24 to a description of all projects undertaken. The executive director shall adopt rules under RSA 541-
25 A for the threatened and endangered species compensatory mitigation fund no later than one year
26 following the effective date of this section.

27 4 New Subparagraph; Application of Receipts; Threatened and Endangered Species
28 Compensatory Mitigation Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (364) the
29 following new subparagraph:

30 (365) Moneys credited to the threatened and endangered species compensatory
31 mitigation fund established in RSA 212-A:16.

32 5 Effective Date. This act shall take effect 60 days after its passage.

CHAPTER 203
SB 129 - FINAL VERSION

02/18/2021 0416s
06/24/2021 2051EBA

2021 SESSION

21-1076
04/05

SENATE BILL **129**

AN ACT relative to minimizing environmental impacts on the habitats of endangered or threatened species.

SPONSORS: Sen. Bradley, Dist 3

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill requires all state departments and agencies to take actions designed to minimize environmental impacts to endangered or threatened species habitats. The bill also authorizes the executive director of fish and game to accept payment for the unavoidable loss of such habitat and establishes a threatened and endangered species compensatory mitigation fund.

Explanation: Matter added to current law appears in ***bold italics***.
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CHAPTER 203
SB 129 - FINAL VERSION

02/18/2021 0416s
06/24/2021 2051EBA

21-1076
04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to minimizing environmental impacts on the habitats of endangered or threatened species.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 203:1 Endangered Species Conservation Act; Conservation Programs. Amend RSA 212-A:9, III
2 to read as follows:

3 III. All other state departments and agencies, to the extent possible, consistent with their
4 authorities and responsibilities, shall assist and cooperate with the executive director in the
5 furtherance of the purposes of this chapter for the conservation of endangered or threatened species.
6 They shall take such action as is reasonable and prudent to insure that actions authorized, funded,
7 or carried out by them do not **appreciably** jeopardize the continued existence of such species or
8 result in the destruction or modification of habitat of such species which is determined by the
9 executive director to be critical, **by requiring that all such action is designed to avoid and**
10 **minimize harm to such species and habitat designated as critical. For the purpose of this**
11 **statute, "appreciably jeopardize the continued existence of such species" shall be defined in**
12 **rules adopted by the executive director pursuant to RSA 541-A.** The provisions of RSA 212-A
13 or any rule promulgated under this chapter shall not be applicable to a state department or agency
14 when that state department or agency, in the process of undertaking an action, is required by federal
15 law or regulation to address the environmental impact on wildlife or wildlife habitat, of that action.

16 203:2 New Section; Fish and Game Fund; Funds Paid as Mitigation for Unavoidable Impacts to
17 Wildlife or Habitat of Wildlife. Amend RSA 206 by inserting after section 33-f the following new
18 section:

19 206:33-g Funds Paid as Mitigation for Unavoidable Impacts to Wildlife or Habitat of Wildlife.
20 The executive director may accept funds paid as mitigation for unavoidable impacts to wildlife or
21 habitat of wildlife within the state of New Hampshire. Notwithstanding any other provision of law
22 to the contrary, the executive director may accept and receive such funds without the approval of the
23 governor, the governor and council, or the commission. All moneys received under this section for
24 mitigation of impacts shall be deposited as follows:

25 I. For impacts to nongame species or the habitat of nongame species that are not considered
26 threatened or endangered, moneys shall be deposited in the nongame species account established
27 under RSA 212-B:6 and used solely for the purposes set forth in that section.

28 II. For impacts to threatened and endangered species or the habitats of threatened and
29 endangered species, moneys shall be deposited in the threatened and endangered species

CHAPTER 203
SB 129 - FINAL VERSION
- Page 2 -

1 compensatory mitigation fund established under RSA 212-A:16 and used solely for the purposes set
2 forth in that section.

3 III. All other moneys received under this section shall be deposited into the fish and game
4 fund established under RSA 206:33 and used solely for the purposes set forth in RSA 206:34-a.

5 203:3 New Section; Endangered Species Conservation Act; Threatened and Endangered Species
6 Compensatory Mitigation Fund. Amend RSA 212-A by inserting after section 15 the following new
7 section:

8 212-A:16 Threatened and Endangered Species Compensatory Mitigation Fund. There is hereby
9 established in the state treasury a separate fund to be known as the threatened and endangered
10 species compensatory mitigation fund into which payments made pursuant to this section shall be
11 credited. The fund shall be non-lapsing and continually appropriated to the department, for the
12 purpose of funding projects that facilitate a net conservation benefit to threatened and endangered
13 species, including, but not limited to critical habitat creation or restoration and the monitoring and
14 maintenance of such areas. The state treasurer shall invest the fund as provided by law and any
15 interest received on such investment shall be credited to the fund. Notwithstanding any other
16 provision of law to the contrary, the executive director may accept payment for deposit into the fund
17 for an unavoidable loss of critical habitat from a proposed activity without the approval of the
18 governor, the governor and council, or the commission. The executive director shall approve
19 disbursements from the fund following consultation with the commissioner of the department of
20 environmental services. The department shall submit an annual report by October 1, 2022, and
21 every year there after, to the fiscal committee, the speaker of the house of representatives, the
22 president of the senate, the house clerk, the senate clerk, the governor, and the state library,
23 summarizing all deposits and expenditures from the fund. The report shall include, but not be
24 limited to a description of all projects undertaken. The executive director shall adopt rules under
25 RSA 541-A for the threatened and endangered species compensatory mitigation fund no later than
26 one year following the effective date of this section.

27 203:4 New Subparagraph; Application of Receipts; Threatened and Endangered Species
28 Compensatory Mitigation Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (364) the
29 following new subparagraph:

30 (365) Moneys credited to the threatened and endangered species compensatory
31 mitigation fund established in RSA 212-A:16.

203:5 Effective Date. This act shall take effect 60 days after its passage.

Approved: August 10, 2021
Effective Date: October 09, 2021

Amendments

Sen. Bradley, Dist 3
February 8, 2021
2021-0260s
04/06

Amendment to SB 129

1 Amend the bill by replacing section 1 with the following:

2

3 1 Endangered Species Conservation Act; Conservation Programs. RSA 212-A:9, III is repealed
4 and reenacted to read as follows:

5 III. All other state departments and agencies, to the extent possible, consistent with their
6 authorities and responsibilities, shall assist and cooperate with the executive director in the
7 furtherance of the purposes of this chapter for the conservation of endangered or threatened species.
8 They shall take such action as is reasonable and prudent to insure that actions authorized, funded,
9 or carried out by them do not significantly jeopardize the continued existence of such species or
10 result in the destruction or modification of habitat of such species which is determined by the
11 executive director to be critical, by requiring that all such action is designed to avoid and minimize
12 harm to endangered and threatened species and habitat designated as critical. The provisions of
13 RSA 212-A or any rule adopted under this chapter, or any rule which refers to the requirements of
14 this chapter, shall not be applicable to a state department or agency when that state department or
15 agency, in the process of undertaking an action, is required by federal law or regulation, or which
16 has adopted internal policies or procedures, to address the environmental impact on endangered or
17 threatened wildlife or wildlife habitat designated as critical.

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7 furtherance of the purposes of this chapter for the conservation of endangered or threatened species.
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10 result in the destruction or modification of habitat of such species which is determined by the
11 executive director to be critical, by requiring that all such action is designed to avoid and minimize
12 harm to endangered and threatened species and habitat designated as critical. For the purposes of
13 this statute, "significantly" shall be defined by the fish and game department and the department of
14 environmental services through RSA 541-A. The provisions of RSA 212-A or any rule adopted under
15 this chapter, or any rule which refers to the requirements of this chapter, shall not be applicable to a
16 state department or agency when that state department or agency, in the process of undertaking an
17 action, is required by federal law or regulation, or which has adopted internal policies or procedures,
18 to address the environmental impact on endangered or threatened wildlife or wildlife habitat
19 designated as critical.

Floor Amendment to SB 129

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Endangered Species Conservation Act; Conservation Programs. Amend RSA 212-A:9, III to
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Floor Amendment to SB 129

- Page 2 -

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20 environmental services. The department shall submit an annual report by October 1, 2022, and
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22 president of the senate, the house clerk, the senate clerk, the governor, and the state library,
23 summarizing all deposits and expenditures from the fund. The report shall include, but not limited
24 to a description of all projects undertaken. The executive director shall adopt rules under RSA 541-
25 A for the threatened and endangered species compensatory mitigation fund no later than one year
26 following the effective date of this section.

27 4 New Subparagraph; Application of Receipts; Threatened and Endangered Species
28 Compensatory Mitigation Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (364) the
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Floor Amendment to SB 129

- Page 3 -

2021-0416s

AMENDED ANALYSIS

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Committee Minutes

SENATE CALENDAR NOTICE

Energy and Natural Resources

Sen Kevin Avard, Chair
Sen Bob Giuda, Vice Chair
Sen James Gray, Member
Sen David Watters, Member
Sen Rebecca Perkins Kwoka, Member

Date: February 3, 2021

HEARINGS

Tuesday	02/09/2021	
(Day)	(Date)	
Energy and Natural Resources	REMOTE 000	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m. SB 129	relative to minimizing environmental impacts on the habitats of endangered or threatened species.	
9:20 a.m. SB 115	establishing greenhouse gas emission reduction goals for the state and establishing a climate action plan.	
9:40 a.m. SB 114-FN	relative to the enjoyment of publicly-accessible and publicly-funded recreation areas.	

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/91981817225>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: +13126266799,,91981817225# or +19292056099,,91981817225#
4. Webinar ID: [919 8181 7225](https://www.zoom.us/j/91981817225)
5. To view/listen to this hearing on YouTube, use this link: <https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: <http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 129

Sen. Bradley

SB 115

Sen. Prentiss

Sen. Watters

Sen. Perkins Kwoka

Sen. Bradley

SB 114-FN

Sen. Whitley
Rep. Espitia

Sen. Prentiss
Rep. Harriott-Gathright

Sen. Perkins Kwoka
Rep. Perez

Rep. Alicea
Rep. Wazir

Griffin Roberge 271-3042

Kevin A. Avard
Chairman

Senate Energy and Natural Resources Committee
Griffin Roberge 271-3042

SB 129, relative to minimizing environmental impacts on the habitats of endangered or threatened species.

Hearing Date: February 9, 2021.

Time Opened: 9:04 a.m.

Time Closed: 10:42 a.m.

Members of the Committee Present: Senators Avard, Giuda, Gray, Watters and Perkins Kwoka.

Members of the Committee Absent: None.

Bill Analysis: This bill requires all state departments and agencies to take actions designed to minimize environmental impacts to endangered or threatened species habitats. The bill also authorizes the executive director of fish and game to accept payment for the unavoidable loss of such habitat.

Sponsors:
Sen. Bradley

Who supports the bill: Gary Abbott, Associated General Contractors of NH; Laura Aronson; Cindy Balcius, NH Association of Natural Scientists; Adam Bates, Weaver Brothers Construction Company, Inc.; John Bosen; Senator Jeb Bradley, NH Senate District 3; Marc Brown, The Owl's Nest Resort and Golf Club; Amy Charbonneau, Continental Paving, Inc.; Eric Chinburg, Chinburg Properties; Daniel Church; Ronald Ciotti; Jeff Cloutier; Dylan Cruess; Christopher Danforth; Richard DeMark; Nicole Fordey; Representative Sherry Frost, Strafford - District 16; Donna Gamache, Eversource Energy; Colton Gove; James Gove; Scott Gove; Michael Green; Richard Green; Anne Grossi; Alex Koutroubas, American Council of Engineering Companies of NH; Ruth Larson; Joshua Manning; Alexxandre Monastiero, The Gove Group Real Estate, LLC; Wayne Morrill, Jones and Beach Engineers, Inc.; Chris Norwood, NH Association of Realtors; Kevin Nyhan, NH Department of Transportation; Jim O'Brien, The Nature Conservancy; Patty O'Brien, The Gove Group Real Estate, LLC; Brian Pratt, Fuss & O'Neill, Inc.; Ken Rhodes, Fuss & O'Neill, Inc.; Art Rose, A.W. Rose Construction, LLC; Christian Smith, Beals Associates, PLLC; Erik Stevenson, Brox Industries, Inc.; Samuel Tamposi, Jr.

Who opposes the bill: Sherry Bezanson; Weldon Bosworth; Meade Cadot; Karolyn Campbell; Elise Caplan; Paul Cunningham; Denis Dionne; Linda Dionne; Sandra Dombrowski; Kathryn Doyle; Maralyn Doyle; Paula Dunlavey; Dave Elliot; Andrew Finlayson; Patricia Finos; Linda Foss; Suzanne Fournier; Pam Freilich; David Fritts; Lindsey Gabrielson; Tom Gardner; Cynthia Glenn; James Glover; Liz Herrick; Michael Hummel; John Hurley; Margaret Hurley; Catherine Joly; Julie Loosigian; Elizabeth Marino; Susan McDowell; Pamela Michael; Trois Moore; Daniel Moran, Webster Conservation Commission; Emily Murphy; Evelyn Nathan; Elisa O'Neill; Michael Quilici; Linda Rauter; Donna Raycraft; Representative Ellen Read, Rockingham - District 17; Judith Reed; Isaks Ruth Tanner; Leaf Seligman; R. Scott Semmens; Jean Slepian;

Laura Slitt; Sybil Sloan; Kristina Snyder; Cynthia Stave; Mimi Tam; Helen Tam-Semmens; Shaw Tilton; Rick van de Poll; BJ Wahl; Angela Warner; Katrina Yurenka.

Who is neutral on the bill: Paul Sanderson, NH Fish and Game Department; Jasen Stock, NH Timberland Owners Association.

Summary of testimony presented in support:

Senator Jeb Bradley

NH Senate District 3

- SB 129 is the result of a NH Supreme Court order from Case No. 2018-0617. The court strictly interpreted RSA 211-A:9, III to mean that any actions taken by the NH Fish and Game Department (NHFG) and other state agencies shall not jeopardize endangered or threatened (T&E) wildlife or species. The court's ruling slowed the State's alteration of terrain (AOT) permitting process, hindering the timely completion of construction projects across the state. SB 129 seeks to create flexibility and balance the needs of conservation and development.
- Section 1 amends RSA 212-A:9, III to require that any action by state agencies and departments do not significantly jeopardize the continued existence of T&E species by requiring that all such action is designed to avoid and minimize harm to those species. Section 2 authorizes NHFG to accept funds paid as mitigation for unavoidable impacts to wildlife or habitat of wildlife in the state. These funds will be placed in the nongame species account under RSA 212-B:6.
- Construction is a large part in NH's economy and the slowing of the AOT permitting process is highly problematic. SB 129 may not be the only way to resolve this issue. Currently, there is only one staffer at NHFG who reviews AOT permits. Additional staff may be needed and could be addressed through the FY22-23 state budget. If SB 129 became law, NHFG may need to define "significantly" in its administrative rulemaking process.
- Senator Perkins Kwoka asked if any discussion had taken place in Section 2 about creating an in-lieu fee.
 - Senator Bradley said he was not aware of any discussion on that topic but deferred to others to address the question.
- Senator Giuda asked who would define "significantly" – the NH General Court, NHFG, the Joint Legislative Committee on Administrative Rules (JLCAR)?
 - Senator Bradley deferred the question to others to answer.

Ari Pollack

Shareholder – Director, Gallagher, Callahan, and Gartrell, representing the NH Homebuilders Association

- SB 129 addresses a permitting bottleneck that is threatening land development and economic growth.
- Most development projects require an AOT permit, which is issued by the NH Department of Environmental Services (NHDES). An AOT permit regulates changes to land grade, drainage, runoff, and stormwater management.
- NH's Endangered Species Act under RSA 212-A is a broadly worded conservation-oriented statute that requires the consideration of wildlife impacts whenever the State acts or permits an activity. Therefore, RSA 212-A requires NHDES and other state agencies to consider the protection of T&E species when AOT permits are applied for.
- In Case No. 2018-0617, the NH Supreme Court case ruled that RSA 212-A:9, III prohibited NHDES from issuing AOT permits that jeopardized T&E species and their habitats. The court found that state statute was absolute, that there was no statutory flexibility to balance conservation and development interests.
- Following the court case, NHDES adopted an administrative rule that created a specific, robust wildlife screening to their AOT permitting process. NHFG and NHDES are pursuing additional rulemaking to address this bottleneck. These rules must be conformance with state statute. However, administrative rulemaking is a very lengthy process.
- Due to the backlog in AOT permitting, NH's construction industry is seeing very significant delays in project development and completion. The AOT permitting process used to have a predictable review clock of roughly 50 days. The current permitting bottleneck has caused AOT reviews to slow significantly. NH's construction industry cannot wait for legislative studies or additional review.
- SB 129 revises RSA 212-A:9, III to clarify legislative intent and give state agencies like NHDES the necessary flexibility to review wildlife impacts and streamline the AOT permitting process.
- Senator Giuda said it was his understanding that all state agencies are affected by RSA 212-A:9, III.

- Mr. Pollack said RSA 212-A:9, III requires that state agencies that are conducting activities or permitting activities be mindful of impacts on T&E species and their critical habitats. This is a good policy, but the State cannot completely stop land development due to wildlife considerations.
- Senator Giuda asked if each state agency must examine the potential impact of their respective project, or if there was a central agency under which the examinations of potential impacts would take place.
 - Mr. Pollack said each agency conducting the activity or permitting an activity has tried to include wildlife screening into their process. For example, NHDES has created an administrative rule on how this wildlife review should occur. NHFG may need to adopt rules to review wildlife considerations, but these considerations should take place in either a central agency or its each state agency.
- Senator Giuda asked if it made sense to have one state agency review wildlife considerations and to define the term “significantly” as proposed in SB 129.
 - Mr. Pollack said it may make sense. There are several ways to address the administrative rule aspect of the problem. However, on the statutory level, more flexibility is needed so that administrative rulemaking can move forward.
- Senator Avarad asked what state agencies are primarily affected by RSA 212-A:9, III.
 - Mr. Pollack said NHDES is primarily affected as they issue many land and wetland permits. Other agencies include the NH Department of Transportation (NHDOT). RSA 212-A:9, III would apply to any state agency, business, or individual that requires a permit for a land activity.

Christopher Norwood

President, NAI Norwood Group, representing the NH Association of Realtors

- The threshold for an AOT permit is 100,000 square feet, or two and a half acres of land. Therefore, AOT permits are a very common permit needed for land projects such as a condominium, industrial building, or a single-family subdivision.
- Permitting timelines are important. While municipal permitting can take several months, AOT permits can be turned around in roughly two months. However, since the 2019 NH Supreme Court order, AOT permits have been bottlenecked in the state’s permitting process, leaving common and simple projects on hold.

Jim O'Brien – provided written testimony

Director of External Affairs, The Nature Conservancy

- Opposes inclusion of the word “significantly” on page 1, line 7. NHFG is required to determine whether an action will or will not jeopardize the continued existence of a species. Inclusion of the term “significantly” only confuses the issue and may lead to increased litigation of these decisions.
- Currently, there are no administrative rules or other publicly available documents that establish a clear process, guidelines, criteria, or other replicable method for the NHFG Executive Director to use to reach conclusions under RSA 212-A. Without such criteria, applicants and the public have no clear and consistent understanding of how these decisions are made. Department staff are using a process and guidelines, but without a clear, publicly articulated process and guidelines there is no assurance of consistent practice over time, adding to the potential for litigation of a decision.
- Suggested an amendment to SB 129 to require NHFG undertake a rulemaking process to define the terms and decision-making process articulated in RSA 212-A. That rulemaking should begin as soon as possible and be completed not more than a year following SB 129’s passage. While current statute provides NHFG the ability to propagate rules under RSA 212-A, NHFG has not chosen to do so; therefore, we believe that the NH General Court needs to mandate, rather than suggest, that rules be developed.
- It is critical that NHFG develop rules to clearly articulate how it interprets “critical habitat” for T&E species, and how NHFG will decide whether projects have sufficiently avoided or minimized impacts to these habitats. This level of transparency is essential if the NH General Court chooses to create policy that allows project developers to mitigate impacts through a cash payment. The public needs assurances that the mitigation hierarchy – avoid, minimize, mitigate – is being applied consistently and in a way that prioritizes protection of these imperiled species held in the public trust.
- Mitigation payments are a last resort when discussions with an applicant fail to identify project modifications that could avoid or minimize impacts that jeopardize a T&E species.
- Section 2 of the bill authorizes NHFG to accept such payments where avoidance and minimization of impacts cannot be achieved. This section needs additional language to segregate mitigation payments from or within the nongame species account, and to ensure clarity around how those funds will be administered to advance the protection of T&E species.

- Mitigation funds are intended for use to replace habitat lost or damaged by the impacts of development. These funds should not be used for any other purposes which may be allowed under the existing non-game program. Additional language is needed in the bill to ensure that these funds are used effectively to conserve and protect the specific habitat of the impacted T&E species.
- Suggested an amendment to have additional language to mandate that the NHFG engage in rulemaking to create this mitigation fund so that the public is aware of how decisions will be made directing the use of these funds. Again, we believe that this rulemaking should begin as soon as possible and be completed not more than a year following passage of the bill.
- The state has current examples of successful mitigation programs, such as NHDES's Aquatic Resources Mitigation (ARM) program. The ARM program "aims to sustain the functions and values of aquatic resources in New Hampshire through protection, enhancement and restoration of wetlands and streams, to compensate for the aquatic resources lost from development and other impacts." While ARM is specific to wetland impacts, its purpose, structure, and implementation may serve as a model for the NH General Court and NHFG to consider. In addition, several states have specific mitigation programs for T&E species that could be used as examples.
- The NH Fish and Game Department has successfully managed several large mitigation payments to date, including the Karner Blue restoration project in Concord and the Granite Reliable mitigation efforts in Coos County. Articulating clear guidelines for use of mitigation funds will ensure successful efforts in the future.
- Senator Perkins Kwoka clarified that NH does not have a public website or a uniform system that identifies T&E habitats that may be under threat across the state, that one must be in conversations with NHFG on a specific project.
 - Mr. O'Brien said NHFG has a process, but it is unclear how NHFG conducts its review of T&E habitats. It is important for developers, conservationists, and the public to understand how decisions are made on development projects. If mitigation is to be used, what efforts are being used and what habitats are affected?
- Senator Perkins Kwoka clarified that there was confusion on what a "critical habitat" is, as well as consequences in having a critical habitat near a development project.
 - Mr. O'Brien agreed with Senator Perkins Kwoka. There are many topics that remain unclear.
- Senator Perkins Kwoka asked if there were any conversations to create an in-lieu fee in Section 2.
 - Mr. O'Brien said there were programs in other states specifically for T&E species. A lot of in-lieu programs like the ARM program have a set formula for how money is allocated and how much the fees are. Information on what other states are doing could be brought forward for consideration.
- Senator Watters asked if SB 129 may be unnecessary if NHFG undertook an administrative rulemaking process, which would allow for a deeper consideration on how NH approaches critical habitats.
 - Mr. O'Brien said having NHFG undertake rulemaking will help define various terms in statute. Putting the mitigation hierarchy into state statute (avoid, minimize, mitigate) would help as well.
- Senator Watters noted that the use of mitigation funds should be more detailed as T&E species are mobile and do not remain in a specific area. These species and their habitats should be viewed as part of an ecosystem.
 - Mr. O'Brien agreed with Senator Watters. Habitats and species should be preserved as close to the impact as possible.
- Senator Watters asked if SB 129 did not adequately address what it is to minimize or avoid harm.
 - Mr. O'Brien said the Nature Conservancy and NHFG want to ensure that species and their habitats are not deemed T&E. This issue should be approached holistically. The more clarity that can be reached on defining terms like "critical habitat" and on how state agencies are making their decisions would be helpful to all parties.
- Senator Watters noted that The Nature Conservancy offered conditional support to SB 129 and wanted to be sure that the NH General Court gets SB 129 right.
 - Mr. O'Brien said any administrative rulemaking process would be helpful to define statutory terms to help balance conservation and development and end the AOT permitting bottleneck.
- Senator Avarad noted previous testimony in stressing the need to resolve the AOT permitting bottleneck. He asked if Mr. O'Brien was aware of how long the administrative rulemaking process can take.
 - Mr. O'Brien said he was aware of how long and arduous administrative rulemaking can be.
- Senator Avarad said relying solely on an administrative rulemaking process for a solution to the AOT permitting process would lengthen the AOT permitting bottleneck that is currently occurring.
 - Mr. O'Brien said a balance is needed. T&E species are not common species. Not every AOT permit would encounter a T&E species. When NHDES worked through their rules, there were roughly 40

AOT permits that dealt with T&E species. AOT permits can continue to be reviewed and approved during an administrative rulemaking process.

- Senator Avard clarified that SB 129 maintained the balance between development and conservation while looking into administrative rulemaking.
 - Mr. O'Brien said the mitigation language in SB 129 is good to have. NHFG has done mitigation for impacts. NHFG can continue to do that while putting administrative rules in place so that the public understands how decisions are being made.
- Senator Avard asked what the ARM program was.
 - Mr. O'Brien said the ARM program is managed by NHDES. If a development project impacts wetlands, NHDES will want to avoid or minimize those impacts first. If a development project cannot completely avoid or minimize those wetlands impacts, then a developer pays into the ARM program to mitigate their impacts. Those ARM dollars go into an account overseen by NHDES. A committee helps make resource decisions on wetland restoration or conservation to mitigate the impacts done by the development.

*James Gove – provided written testimony
President, Gove Environmental Services, Inc.*

- To date, Gove Environmental Services has conducted 60 wildlife studies for AOT permits and submitted 30 of those studies. NHFG looks at these studies after NHDES has done its review of the AOT permit. NHFG conducts a draft review, and NHFG provides feedback to the developer on what can be done to avoid or minimize impacts to wildlife. The developer makes some adjustments and sends the AOT back to NHFG for a final review. This process is burdensome. To date, only 6 of those AOTs have been issued.
- The same protections to T&E species that were taking place before the NH Supreme Court's order in Case No. 2018-0617 are the same measures that are currently taking place. T&E species and their habitats were being protected prior to the order and using the same measures as recommended now by NHFG.
- Despite the additional studies and drawn out AOT permitting process, there is no empirical evidence to indicate that greater protection to T&E species and their habitats are taking place.
- Senator Watters asked if the issue was less the proposed language in SB 129 than it is the capacities of NHFG to handle the AOT permit requests based on their staffing.
 - Mr. Gove said NHFG is unable to address the large number of AOT permit requests. NHFG must review every single AOT permit request in a draft review and a final review, slowing down development.
- Senator Watters said it appeared that NHFG did not have enough staff to address AOT permits in a timely manner and allow developers to move forward with their projects.
 - Mr. Gove said developers are not opposed to additional wildlife studies. Developers object to the length of time to get a AOT permit.
- Senator Watters asked if it made sense to implement a hard deadline for NHFG to finish its review of AOT permits.
 - Mr. Gove said it would be helpful to put such a timeline into NHFG's administrative rules. NHDES meets its timeline of AOT reviews, but deadlines are extended because NHDES and the developers are waiting on feedback from NHFG.
- Senator Avard referenced Mr. Pollack's testimony and clarified that a timeline for AOT permit reviews do exist.
 - Mr. Gove said Senator Avard was correct. Mr. Gove is in support of SB 129 because it will bring NH's review of AOT permits to the way it was before the NH Supreme Court's order in Case No. 2018-0617.
- Senator Avard asked how long the AOT permitting review process was taking.
 - Mr. Gove said developers are being told that AOT permitting could take as long as 6-9 months. This timeline is not normal. Normally, an AOT is turned around in 50 days.

*Gary Abbott – provided written testimony
Executive Vice President, Associated General Contractors of NH*

- AOT permits are usually reviewed within 50 days unless an AOT permit involves a T&E species. In 2020, there were over 220 AOT permit applications. A small percentage of those applications were triggered by RSA 212-A:9, III and had to be reviewed by NHFG. Therefore, a majority of AOT permits never left NHDES for review and a small minority were reviewed by NHFG.
- In reference to Senator Perkins Kwoka's question to Mr. O'Brien, the Natural Heritage Bureau within the NH Department of Natural and Cultural Resources conducted a review and listed where T&E species were

located around the state. This review helped identify which AOT permit applicant was to be directed to NHFG for review.

- RSA 212-A:9, III has been in place since 1979 and remained unchanged since that time. AOT permits were reviewed by NHFG and NHDES in a timely fashion. However, the NH Supreme Court interpreted the statute more strictly in its order in Case No. 2018-0617. The term “do not jeopardize” was a major component of that case. SB 129 inserts the term “significantly” into RSA 212-A:9, III to return the AOT permitting process to the way it was before the 2019 lawsuit.
- In response to the NH Supreme Court order in Case No. 2018-0617, NHDES adopted new administrative rules that required NHFG review on every AOT permit application NHDES received. Under the new rules, NHDES does not consider whether an AOT permit applicant’s proposed project impacted a species based on the Natural Heritage Bureau’s review – NHDES sent all AOT permit applications to NHFG for review. This new process overwhelmed NHFG.
- AOT permit applicants agreed, in NHDES’s administrative rulemaking process, to have a wildlife biologist review their project to help NHFG’s reviews. This is an additional cost on the AOT permit applicant.
- Some 99 AOT permit applications have been filed since June 2020. Only roughly 25-30 AOT permits have been approved. Contractors and developers do not have a year of rulemaking to wait for the AOT permitting process to resolve itself.
- Passing SB 129 will allow administrative rulemaking to follow the intent of the statute. Without SB 129, any administrative rulemaking will leave state agencies guessing at legislative intent.
- Senator Watters asked if Mr. Abbott could distinguish whether the delays in AOT permitting was due to the new review process or due to the COVID-19 pandemic.
 - Mr. Abbott said NHDES’s new administrative rules require all AOT permits to have NHFG review, regardless of whether the applicant’s project comes near a species or habitat based on the Natural Heritage Bureau’s review. This has more than tripled NHFG’s workload. It could be argued that the COVID-19 pandemic disrupted communication between state agencies and stakeholders during that rulemaking process. In hindsight, Mr. Abbott said he would have opposed those new rules.
- Senator Avard asked what the genesis of the lawsuit was.
 - Mr. Abbott deferred to others to answer Senator Avard’s question.
- Senator Giuda clarified that all AOT permit applications are being reviewed by NHFG, regardless of whether there was a T&E species within the proposed area of a development.
 - Mr. Abbott said Senator Giuda was correct.
- Senator Avard noted that NHFG has a very tight budget. He asked if NHFG received any fee revenues or other revenues from reviewing AOT permits. If not, it appeared NHFG had to commit staff to review these applications.
 - Mr. Abbott said he was not aware of any revenues that NHFG received in reviewing AOT permit applications. The fact that NHFG did not have appropriate staff to handle all AOT permit applications seemed to be acknowledged in the rulemaking process as NHDES’s rules required AOT permit applicants to hire a wildlife biologist to help NHFG’s reviews.

Kevin Nyhan

Administrator, Bureau of Environment, NH Department of Transportation (NHDOT)

- RSA 212-A:9, III, as currently written, does not go far enough in recognizing that there are state agencies that do operate and comply with the Endangered Species Act. There are sections of administrative rules that refer to the requirements of RSA 212-A, such as AOT and Wetlands rules. Reiterated the need for flexibility as raised by Mr. Pollack.
- Over the last two and a half years, NHDOT has conducted 264 projects. 144 of those projects had to comply with the Endangered Species Act. The remaining 120 projects, which were funded by the state, use an internal policy to follow the Endangered Species Act. Therefore, all NHDOT comply with the Endangered Species Act.
- NHDOT worked with Senator Bradley on amendment 2021-0260s. NHDOT supports SB 129 with the amendment.

Cindy Balcius

Legislative Committee Chair, NH Association of Natural Resource Scientists

- Support SB 129 as it will help relieve the AOT permitting bottleneck.
- Concerns with Section 2:
 - Not sure if SB 129 should be a vehicle for addressing NHFG’s budgetary issues.

- Section 2 refers to “Wildlife or Habitat of Wildlife.” This does not direct the funding to T&E species exclusively. Any fund could be set up like the ARM program.

Amy Charbonneau
Continental Paving, Inc.

- Continental Paving, Inc. has two projects stuck in the AOT permitting bottleneck, causing Continental Paving to lay off 20-30 people because there is uncertainty about when the projects will begin.

Summary of testimony presented in opposition:

Rick van de Poll – provided written testimony
Principal, Ecosystems Management Consultants of New England

- The term “significantly” should be removed from SB 129 as it cannot be defined: RSA 212-A clearly spells out the value that the state places on protecting T&E species as they are in the public trust. RSA 212-A:3 states these species “should be afforded such protection as is necessary to maintain and enhance their numbers.” Any qualifier on the term “jeopardize the continued existence of” must be addressed administrative rule, not in law. The term “significantly” will bring more lawsuits.
- The requirement that NHFG review all AOT permit applications makes sense as NHDES and NHFG know little about T&E species: The Natural Heritage Bureau database knowledge is very limited. This does not need to slow the process down.
- NHFG should be compensated for their review time: creating a fee may help fund another staffer at NHFG to review AOT permits and help get review time back within 50 days.
- An in-lieu fee program needs to be authorized in statute but spelled out in rulemaking.
- Any monies derived from such mitigation fees should be placed in a dedicated mitigation fund at NHFG: this type of dedicated account could then be used to permanently protect habitat for T&E species. It should not go to other NHFG funds as they are not specific to T&E species or critical habitat.
- “Critical habitat” needs to be defined: NHFG Executive Director has never defined this term in administrative rule, as he can under statute. Defining this term will establish a mitigation offset for destruction of habitat that is known to support a T&E species.

Suzanne Fournier – provided written testimony
Milford, NH

- SB 129 would cause serious harm to some of the most desperate wildlife species in NH by weakening RSA 212-A that is intended to protect them.
- The Natural Heritage Bureau’s database is not a complete record. The Bureau missed the presence of T&E species on sites. A wildlife biologist is hired to help make an assessment and determine if NHFG review is needed.
- The NH Supreme Court’s order in Case No. 2018-0617 admonished NHDES and NHFG for approving projects that cause harm to T&E wildlife. These agencies were allowing harm to occur that had been minimized, but not eliminated. However, RSA 212-A:9, III required them to avoid adverse impacts altogether. Development projects can be designed to create no adverse impact to endangered species.
- Section 2 allows developers to pay for the harm they would do to endangered species instead of being required to design their projects to do no harm to T&E species. The money would go to nongame species account, not directly for T&E species mitigation.

Neutral Information Presented:

Rene Pelletier
Assistant Director, Water Division, NH Department of Environmental Services (NHDES)

- The Natural Heritage Bureau’s database identifies species that people have seen. It does not provide total coverage of the state. Administrative rules required a AOT permit applicant to hire a wildlife biologist as that biologist could make an assessment and put any necessary findings into the database.
- When a AOT permit application is submitted to NHDES, a wildlife assessment is submitted to NHFG. NHDES reviews the engineering aspects of the application. NHFG reviews the wildlife aspects of the application. Once NHDES completes its review, it waits for NHFG to complete its review of any threat to T&E species. Once NHFG signs off on the wildlife aspects, NHDES issues the AOT permit.

- For many years, NHDES has had a 50-day timeframe to review AOT permit applications. NHDES wants to ensure wildlife is protected, but NHDES does not have trained staff in wildlife matters. RSA 212-A is overseen by NHFG. NHDES would hope that any statutory or administrative rule change is thoroughly reviewed to ensure that T&E species are protected.
- Senator Watters asked if there was anyway to adjust SB 129 to ensure that not all AOT permit applications go to NHFG for review.
 - Mr. Pelletier said the Natural Heritage Bureau database does not have an adequate coverage of the state. Protecting T&E species is important and NHFG review is needed to comply with RSA 212-A.
- Senator Avar asked if SB 129 allowed for an administrative rulemaking process.
 - Mr. Pelletier said SB 129 allowed for an administrative rulemaking process. When state agencies draft administrative rules, those rules must comply with state statute.

GJR

Date Hearing Report completed: February 9, 2021.

Speakers

Name	Title	Representing	Position	Testifying
Norwood Chris	A Member of the Public	NH Association of REALTORS	Support	Yes
OBrien Jim	A Lobbyist	The Nature Conservancy	Support	Yes
Bradley Jeb	An Elected Official	Myself SD 3	Support	Yes
Gove James	A Member of the Public	Myself	Support	Yes
Abbott Gary	A Lobbyist	Associated General Contractors of NH	Support	Yes
Balcus Cindy	A Member of the Public	MH Association of Natural Scientists	Support	Yes
Nyhan Kevin	State Agency Staff	Kevin Nyhan - DOT	Support	Yes
Van de Poll Rick	A Member of the Public	Myself	Oppose	Yes
Fournier Suzanne	A Member of the Public	Myself	Oppose	Yes
Cunningham Paul	A Member of the Public	Myself	Oppose	No
Gardner Tom	A Member of the Public	myself	Oppose	No
Fordey Nicole	A Member of the Public	Myself	Support	No
Snyder Kristina	A Member of the Public	Myself	Oppose	No
Rose Art	A Member of the Public	A W Rose Construction	Support	No
Bates Adam	A Member of the Public	Weaver Bros. Const. Co. Inc.	Support	No
Green Richard	A Member of the Public	Myself	Support	No
elliott dave	A Member of the Public	Myself	Oppose	No
Joly Catherine	A Member of the Public	Myself	Oppose	No
Murphy Emily	A Member of the Public	Myself	Oppose	No
Gamache Donna	A Lobbyist	Eversource Energy	Support	No
Freilich Pam	A Member of the Public	Myself	Oppose	No
Moran Dr. Daniel T.	A Member of the Public	The Webster Conservation Commission	Oppose	No
hummel michael	A Member of the Public	Myself	Oppose	No
Finos Patricia	A Member of the Public	Myself	Oppose	No
Fritts David	A Member of the Public	Myself	Oppose	No
Reed Judith	A Member of the Public	Myself	Oppose	No
Moore Trois	A Member of the Public	Myself	Oppose	No
Hurley John	A Member of the Public	Myself	Oppose	No
Dionne Denis	A Member of the Public	Myself	Oppose	No
MCDOWELL SUSAN	A Member of the Public	Myself	Oppose	No
Stave Cynthia	A Member of the Public	Myself	Oppose	No
Ruth tanner Isaks	A Member of the Public	Myself	Oppose	No
Loosigian Julie	A Member of the Public	Myself	Oppose	No

Seligman Leaf	A Member of the Public	Myself	Oppose	No
Slepian Jean	A Member of the Public	Myself	Oppose	No
cadot meade	A Member of the Public	Myself	Oppose	No
BOSWORTH WELDON	A Member of the Public	Myself	Oppose	No
Glover James	A Member of the Public	Myself	Oppose	No
sloan sybil	A Member of the Public	Myself	Oppose	No
Caplan Elise	A Member of the Public	Myself	Oppose	No
Rauter Linda	A Member of the Public	Myself	Oppose	No
Finlayson Andrew	A Member of the Public	Myself	Oppose	No
Cloutier Jeff	A Member of the Public	Pike Industries Inc.	Support	No
Ciotti Ronald	A Member of the Public	Myself	Support	No
gove scott	A Member of the Public	member of public	Support	No
Larson Ruth	A Member of the Public	Myself	Support	No
Morrill Wayne	A Member of the Public	Jones and Beach Engineers Inc.	Support	No
Stock Jasen	A Lobbyist	NH Timberland Owners Association	Neutral	No
Monastiero Alexandre	A Member of the Public	The Gove Group Real Estate	Support	No
Frost Sherry	An Elected Official	Myself	Support	No
Pratt Brian	A Member of the Public	Fuss & O'Neill	Support	No
Rhodes Ken	A Member of the Public	Fuss & O'Neill Consulting Engrs Inc.	Support	No
DeMark Richard	A Member of the Public	Myself	Support	No
Manning Joshua	A Member of the Public	Myself	Support	No
Brown Marc	A Lobbyist	The Owl's Nest Resort and Golf Club	Support	No
Danforth Christopher	A Member of the Public	Myself	Support	No
Green Michael	A Member of the Public	Green & Company	Support	No
Smith Christian	A Member of the Public	Beals Associates PLLC	Support	No
Stevenson Erik	A Member of the Public	Brox Industries Inc.	Support	No
Gove Colton	A Member of the Public	Myself	Support	No
Tamposi Jr. Samuel	A Member of the Public	Myself	Support	No
Bosen John	A Member of the Public	Myself	Support	No
chinburg eric	A Member of the Public	Chinburg Properties	Support	No
O'Neill Patty	A Member of the Public	The Gove Group RE	Support	No
Church Daniel	A Member of the Public	Myself	Support	No
Grossi Anne	A Member of the Public	Myself	Support	No
Aronson Laura	A Member of the Public	Myself	Support	No

Yurenka Katrina	A Member of the Public	Myself	Oppose	No
Read Ellen	An Elected Official	Rockingham 17	Oppose	No
michael pamelâ	A Member of the Public	Myself	Oppose	No
Dionne Linda	A Member of the Public	Voices of Wildlife in NH	Oppose	No
Marino Elizabeth	A Member of the Public	Myself	Oppose	No
Tam-Semmens Helen	A Member of the Public	Myself	Oppose	No
Dombrowski Sandra	A Member of the Public	Myself	Oppose	No
Doyle Kathryn	A Member of the Public	Myself	Oppose	No
Bezanson Sherry	A Member of the Public	Myself	Oppose	No
Quilici Michael	A Member of the Public	Myself	Oppose	No
doyle maralyn	A Member of the Public	Myself	Oppose	No
Gabrielson Lindsay	A Member of the Public	Myself	Oppose	No
Raycraft Donna	A Member of the Public	Myself	Oppose	No
nathan evelyn	A Member of the Public	Myself	Oppose	No
Slitt Laura	A Member of the Public	Myself	Oppose	No
GLENN CYNTHIA	A Member of the Public	Myself	Oppose	No
Hurley Margaret	A Member of the Public	Myself	Oppose	No
Campbell Carolyn	A Member of the Public	Myself	Oppose	No
DUNLAVEY Paula	A Member of the Public	Myself	Oppose	No
Tilton Shaw	A Member of the Public	Myself	Oppose	No
Semmens R. Scott	A Member of the Public	Myself	Oppose	No
Oâ€™Neill Elisa	A Member of the Public	Myself	Oppose	No
Sanderson Paul	State Agency Staff	NH Fish and Game	Neutral	No
Herrick Liz	A Member of the Public	Myself	Oppose	No
Warner Angela	A Member of the Public	Myself	Oppose	No
Koutroubas Alex	A Lobbyist	American Council of Engineering Companies of NH	Support	No
Charbonneau Amy	A Member of the Public	Continental Paving Inc	Support	No
Tam Mimi	A Member of the Public	Myself	Oppose	No
Wahl BJ	A Member of the Public	Myself	Oppose	No
Foss Linda	A Member of the Public	Myself	Oppose	No
Cruess Dylan	A Member of the Public	TFMoran Inc. - Dylan Cruess	Support	No

Testimony

Griffin Roberge

From: Gary Abbott <gabbott@agcnh.org>
Sent: Saturday, February 06, 2021 12:26 PM
To: Griffin Roberge
Subject: Position Paper for SB 129 Wildlife in Senate Energy Committee
Attachments: SB 129 Wildlife Review.docx

Dear Senate Energy Committee,

Attached is the Associated General Contractors of NH position paper in support of Senate Bill 129.

If you have any questions please feel free to contact me.

Sincerely,

Gary Abbott
Executive Vice President
Associated General Contractors of NH
603-225-2701



The Associated General Contractors of New Hampshire, Inc.

**48 Grandview Road ▼ Bow, New Hampshire 03304
603/225-2701 ▼ Fax 603/226-3859**

**In support of Senate Bill 129
Relative to minimizing environmental impacts on the habitats of endangered or
threatened species.
February 9, 2021**

The Associated General Contractors of New Hampshire (AGC of NH) strongly supports Senate Bill 129, which clarifies the statute regarding NH Fish & Game's review of impact to endangered species. We believe this language will give Fish & Game more flexibility in avoiding and minimizing harm. Currently, an increasing number of projects are being referred to NH Fish & Game for wildlife impact reviews, causing extensive delays. This bill would allow for the necessary clarification that would help keep projects on schedule. We look forward to working with DES and Fish & Game further on this issue.

**The AGC of NH requests that the Senate Energy and Natural Resources Committee
vote in favor of Senate Bill 129.**

Respectfully submitted,

Gary Abbott
Executive Vice President
Current Map of a Prime Wetland

Griffin Roberge

From: Jim Gove <jgove@gesinc.biz>
Sent: Monday, February 08, 2021 11:00 AM
To: Kevin Avard; Bob Giuda; James Gray; Rebecca Perkins Kwoka; David Watters; Griffin Roberge
Subject: Senate Bill 129
Attachments: Senate Bill 129.docx

Please see my attached Testimony.

Thank you

Jim Gove

Sent from [Mail](#) for Windows 10

Senate Bill 129

I support Senate Bill 129 for the following reasons:

- 1- The original legislation RSA 212-A became effective in 1979.
- 2- Since that time, 212-A:9 Conservation Programs, were interpreted by the state agencies as avoiding or minimizing impacts to endangered or threatened species and/or their habitats.
- 3- A recent decision by the NH Supreme Court has changed the interpretation to no impact to endangered or threatened species and/or their habitats.
- 4- The implication of the decision has negatively impacted the processing of applications at state regulatory agencies. The ripple effect is being a negative impact upon development and redevelopment activity.
- 5- Extensive wildlife studies of sites, large or small, residential or commercial, new or redevelopment, has increased costs.
- 6- More importantly, the state regulatory agencies and the Fish & Game Department does not have the resources to review the studies.
- 7- Despite the additional studies and drawn out application review time, there is no empirical evidence to indicate greater protection to endangered or threatened species and/or their habitat is taking place.
- 8- Anecdotally, within the projects that we have worked on, the same protections to endangered species that were taking place before the Supreme Court decision are that same measures that are now taking place.
- 9- The same buffers to vernal pools are being added to plans, the same erosion control measures to protect hognosed snakes are being implemented, the same removal of sumps to protect Blandings turtles are being designed, the same critter crossings to provide connectivity are being added. Endangered and threatened species and/or their habitats were being protected prior to the Supreme Court decision, and using the same measures as recommended now by Fish & Game.
- 10- The proposed legislation would reinstate the methodology used by state agencies in the past to avoid or minimize impacts to endangered or threatened species and/or their habits.

- 11- More importantly, the legislation provides mitigation for unavoidable impacts, something which was not in the original law.
- 12- This would provide funds for meaningful habitat restoration or preservation for unavoidable impacts to endangered or threatened species.
- 13- We need to recognize that the economy of NH needs to grow.
- 14- We also need to recognize that anything we do has an impact on some species, whether non-endangered or endangered.
- 15- The proposed legislation will allow for the continued protection of endangered and threatened species but allow for the NH economy to have necessary and needed growth.
- 16- The proposed legislation will avoid significant impacts to endangered species and provide funds to afford even greater protections to endangered and threatened species.

James Gove

Gove Environmental Services, Inc.

8 February 2021

Griffin Roberge

From: Thomas Gardner <td503@juno.com>
Sent: Monday, February 08, 2021 8:26 PM
To: Griffin Roberge
Subject: Opposition to SB129

Dear Griffin Roberge,

This bill is bad for wildlife because:

--- This bill makes a mockery of RSA 212-A (NH's Endangered Species Conservation Act) whose purpose is to maintain and enhance the populations of threatened & endangered (T&E) species. This bill would allow developers to pay penalties (called "compensatory mitigation") when they actually harm the endangered wildlife or their habitat. The harm would be called "minimum" but that does not make it less harmful to T&E animals.

--- Such harm is actually prohibited by another section of RSA 212-A that prohibits "take" of all kinds. The harm done to T&E species through this compensatory mitigation scheme is not allowed by the rest of the statute.

--- This is an ill-conceived bill to benefit development while condoning harm to T&E species, making it more difficult for these species to maintain and enhance their populations.

Respectfully

Tom Gardner
53 Tarry Lane
Milford, NH 03055
603-672-2629

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Griffin Roberge

From: Jim OBrien <jim_obrien@tnc.org>
Sent: Monday, February 08, 2021 9:05 PM
To: Griffin Roberge
Cc: Sheila Vargas
Subject: RE: SB 129
Attachments: 2-9-21_SB129_TE_joint_testimony - conservation.pdf

Griffin – my apologies – please find attached a revised letter of testimony. The text of the letter is the same as the one I sent earlier, the only difference is the addition of another organization who has sign the letter – the NH Rivers Council.

My apologies for the late addition.

Thank you,

Jim

From: Griffin Roberge <Griffin.Roberge@leg.state.nh.us>
Sent: Monday, February 8, 2021 5:33 PM
To: Jim OBrien <jim_obrien@tnc.org>
Cc: Sheila Vargas <sheila.vargas@TNC.ORG>; Griffin Roberge <Griffin.Roberge@leg.state.nh.us>
Subject: RE: SB 129

Jim:

Thanks for the e-mail. Just confirming that I received the written testimony and will share it with the committee members. At this time, I do not see you or Sheila signed in on the bill or any indication that you would like to testify. Please be sure to sign in on SB 129 at least an hour before the start of the committee tomorrow morning.

Very best,

Griffin Roberge
Legislative Aide to Senator Bob Giuda
Legislative Aide to the Senate Energy & Natural Resources Committee
Phone: (603) 271-3042
E-mail: griffin.roberge@leg.state.nh.us

From: Jim OBrien <jim_obrien@tnc.org>
Sent: Monday, February 08, 2021 5:17 PM
To: Griffin Roberge <Griffin.Roberge@leg.state.nh.us>
Cc: Sheila Vargas <sheila.vargas@TNC.ORG>
Subject: SB 129

Griffin –

Please find attached written testimony for SB 129 on behalf of NH Audubon, Appalachian Mountain Club, The Nature Conservancy and the Society for the Protection of NH Forests.

If you are able to forward to the members of the Energy and Natural Resources Committee that would be very much appreciated. We also plan on providing brief testimony at the public hearing tomorrow morning.

Thanks!

Jim

Jim O'Brien

Director of External Affairs

@jim_obrienNH

(603) 224-5853 Ext. 228 (Phone)

(603) 856-5378 (Mobile)

(603) 228-2459 (Fax)

jim_obrien@tnc.org

Find us on [facebook!](#)

The Nature Conservancy

New Hampshire

22 Bridge Street

4th Floor

Concord, NH 03301

nature.org



**THE FUTURE
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**The Natu
Conservar**



February 8, 2021

Hon. Kevin Avard
Chair, Energy and Natural Resources Committee
Concord, NH 03301

RE: SB 129, AN ACT relative to minimizing environmental impacts on the habitats of endangered or threatened species.

Dear Senator Avard and Members of the Committee,

Thank you for this opportunity to provide testimony in qualified support of SB 129. While we support the concept of the bill, we believe important changes are needed to ensure that the intent of the legislation is met. These changes include providing needed transparency around the Fish and Game Department's decision-making process concerning project impacts to threatened and endangered species, and how a mitigation fund would advance the protection of these species.

We oppose inclusion of the word "significantly" on page 1 line 7 of the legislation. The Department is required to determine whether an action will or will not jeopardize the continued existence of a species. Inclusion of the term "significantly" only confuses the issue and may lead to increased litigation of these decisions.

Currently, there are no administrative rules or other publicly-available documents that establish a clear process, guidelines, criteria, or other replicable method for the Director of Fish and Game to use to reach conclusions under RSA 212-A. Without such criteria, applicants and the public have no clear and consistent understanding of how these decisions are made. Department staff are *using* a process and guidelines, but without a clear, *publicly articulated* process and guidelines there is no assurance of consistent practice over time, adding to the potential for litigation of a decision.

We strongly urge the Committee to amend SB 129 to require the Department of Fish and Game undertake a rulemaking process to define the terms and decision-making process articulated in RSA 212-A. We believe that this rulemaking should begin as soon as possible and be completed not more than a year following passage of the bill. We understand that current statute provides the Department the ability to propagate rules under RSA 212-A, but it has not chosen to do so; therefore, we believe that the Legislature needs to mandate, rather than suggest, that rules be developed.

It is critical that the Department develop rules to clearly articulate how it interprets "critical habitat" for threatened and endangered species, and how the Department will decide whether or not projects have sufficiently avoided or minimized impacts to these habitats. We believe this level of transparency is essential if the legislature chooses to create policy that allows project developers to mitigate impacts through a cash payment. The public needs assurances that the mitigation hierarchy – avoid, minimize, mitigate – is being applied consistently and in a way that prioritizes protection of these imperiled species held in the public trust.

Mitigation payments are a last resort when discussions with an applicant fail to identify project modifications that could avoid or minimize impacts that jeopardize a threatened or endangered species.

Section 2 of the bill authorizes the Department to accept such payments where avoidance and minimization of impacts cannot be achieved. This section needs additional language to segregate mitigation payments from or within the non-game species account, and to ensure clarity around how those funds will be administered to advance the protection of threatened and endangered species.

Mitigation funds are intended for use to replace habitat lost or damaged by the impacts of development. These funds should not be used for any other purposes which may be allowed under the existing non-game program. Additional language is needed in the bill to ensure that these funds are used effectively to conserve and protect the specific habitat of the impacted threatened or endangered species.

In addition, we believe that additional language is needed to mandate that the Department engage in rulemaking to create this mitigation fund so that the public is aware of how decisions will be made directing the use of these funds. Again, we believe that this rulemaking should begin as soon as possible and be completed not more than a year following passage of the bill.

The state has current examples of successful mitigation programs, such as the Department of Environmental Services' Aquatic Resources Mitigation (ARM) program. The ARM program "aims to sustain the functions and values of aquatic resources in New Hampshire through protection, enhancement and restoration of wetlands and streams, to compensate for the aquatic resources lost from development and other impacts."¹ While ARM is specific to wetland impacts, its purpose, structure and implementation may serve as a model for the Legislature and Department to consider. In addition, several states have specific mitigation programs for threatened and endangered species that could be used as examples. We are available and willing to assist the Committee and the Department with language and additional concepts for best deploying such a fund to protect impacted T&E species and their habitats.

The NH Fish and Game Department has successfully managed several large mitigation payments to date, including the Karner Blue restoration project in Concord and the Granite Reliable mitigation efforts in Coos County. Articulating clear guidelines for use of mitigation funds will ensure successful efforts in the future.

Thank you for this opportunity to provide testimony on SB 129. We look forward to working with the Committee, the Department, and other stakeholders to ensure appropriate protections for T&E species and habitat under this bill.

Sincerely,

Susan Arnold
Vice President of Conservation
Appalachian Mountain Club

Jim O'Brien
Director of External Affairs
The Nature Conservancy

Carol R. Foss
Senior Advisor for Science and Policy
New Hampshire Audubon

Matt Leahy
Public Policy Manager
Society for the Protection of New Hampshire Forests

Michele L. Tremblay
President, Board of Directors
New Hampshire Rivers Council

¹ <https://www4.des.state.nh.us/arm-fund/>

Griffin Roberge

From: Katrina Yurenka <kyurenka@gmail.com>
Sent: Monday, February 08, 2021 10:41 PM
To: Griffin Roberge
Subject: Oppose SB 129 that Weakens NH's Endangered Species Conservation Act

This bill makes a mockery of RSA 212-A whose purpose is to maintain and enhance the populations of threatened & endangered (T&E) species. This bill would allow developers to pay penalties (called "compensatory mitigation") when they harm endangered wildlife or their habitat. The harm would be called "minimum" but that does not make it less harmful to T&E animals.

--- Such harm is prohibited by another section of RSA 212-A that prohibits "take" of all kinds. The harm done to T&E species through this compensatory mitigation scheme is not allowed by the rest of the statute.

--- This is an ill-conceived bill to benefit development while condoning harm to T&E species, making it more difficult for these species to maintain and enhance their populations.

The earth is at a crossroads; we need to be SAVING all Wildlife, not destroying it. Morality is essential - not monetary gain and the destruction of the planet.

Katrina Yurenka, Jaffrey, NH

Griffin Roberge

From: Maralyn Doyle <maralynruth@hotmail.com>
Sent: Tuesday, February 09, 2021 6:10 AM
To: Griffin Roberge
Subject: SB129

I oppose this bill which will gut the Endangered Species Act and threaten endangered and threatened animals. Plus it provides a financial incentive to Fish and Game to accept money from developers who violate habitat protections.

We need to protect our state's natural resources not sell them off in a short sighted bill which is a gift to those who would make a quick buck off destroying them.

**Maralyn Doyle
68 Sutton Road
Newbury, NH 03255**

Griffin Roberge

From: Lindsay Gabrielson <lindsaygabrielson@gmail.com>
Sent: Tuesday, February 09, 2021 6:32 AM
To: Griffin Roberge
Subject: Oppose SB 129

Dear Committeeman,

Please know I oppose this bill as it will weaken RSA 212-A – NH's Endangered Species Conservation Act. Please protect our wildlife. Thank you for your consideration of this matter.

Warm Regards,
Lindsay Gabrielson
Nashua, NH

Griffin Roberge

From: Margaret daiss hurley <mdaishhurley@gmail.com>
Sent: Tuesday, February 09, 2021 7:20 AM
To: Griffin Roberge
Subject: PLEASE OPPOSE SB 129

Please OPPOSE Senate Bill 129 because of the harm it would allow to threatened & endangered species.

Respectfully,

Margareet Hurley

Griffin Roberge

From: Caroline Bogart <caroline@bogartcomputing.com>
Sent: Tuesday, February 09, 2021 11:23 AM
To: Griffin Roberge
Subject: Fwd: Energy and Natural Resources Committee: Oppose SB129

Hello, my name is Caroline Bogart, I live in Litchfield. I am concerned about SB129. This bill guts wildlife protections. It provides for behavior that is illegal under existing statutes. Either we have an Endangered Species Conservation Act, or we don't, watering it down with other bills is sneaky and underhanded. Compensatory Mitigation means developers get to pay to ruin wildlife habitats. Just once I'd like to see people stand up to corruption that protects animals with one hand and then murders them with the other.

I oppose SB129.
Thank you,
Caroline Bogart

Griffin Roberge

From: Rick Van de Poll <rickvdp@gmail.com>
Sent: Tuesday, February 09, 2021 12:40 PM
To: Kevin Avard; Bob Giuda; James Gray; Rebecca Perkins Kwoka; David Watters; Griffin Roberge
Subject: SB 129
Attachments: EMC ltr to Senate ENR re SB 129 Feb 2021.doc

Please see the attached, thank you.

Sent from Mail for Windows 10

February 9, 2021

TO: Senate Committee on Energy & Nature Resources

FROM: Rick Van de Poll, Ph.D., Principal
Ecosystem Management Consultants

RE: SB 129

Dear Senate Committee Members;

The following are my comments relative to today's hearing on Senate Bill 129 regarding the minimization of environmental impacts on threatened and endangered species. I would like to conditionally support this bill but have some concerns that can perhaps be best addressed through one or more amendments. These concerns are as follows:


- 1) **The term "significantly" should be struck since it cannot be defined** – RSA 212-A clearly spells out the value that the state places on protecting threatened and endangered species, which like all other species of wildlife, are in the "Public Trust." The law also states under 212-A:3 that these species "should be afforded such protection as is necessary to maintain and enhance their numbers." Any qualifier on the term "jeopardize the continued existence of" must be addressed either in rule or by the professional staff of Fish & Game, not in law. The use of such a term will only invite more lawsuits that try to define it as a whole.
- 2) **The requirement that Fish & Game review all AoT permits makes sense for the reasons stated in the hearing, that is, very little is actually known by DES or Fish & Game about threatened and endangered species** – as a wildlife biologist who has recorded hundreds of 'Element Occurrence Records' for NH Natural Heritage and NH Fish & Game, I can summarily state that our database knowledge of occurrences is very limited. I can also state that this does not need to slow the process down. A person well trained in wildlife biology can make a rapid assessment and submit a report in a fraction of the time it takes to prepare other elements of an AoT permit. If a secondary review is required, then this cost should be borne by the applicant, since it is the applicant that is causing the harm and needs to demonstrate that harm is being adequately avoided.
- 3) **Fish & Game should be compensated for their review time** – this was something I proposed during the SB 48 Commission to Study the Efficiency and Effectiveness of the Fish & Game Department yet was summarily dismissed. At present we have a \$25 review fee that goes to NH Natural Heritage for any DES permit, why not another \$25 or \$50 to Fish & Game? This would help offset the 'rate determining step' of project

reviews by helping fund an FTE reviewer. Such a fee would be a fraction of the cost of a normal AoT permit and help get the review time back down to the 50 day target.

- 4) **An in-lieu fee program needs to be authorized but spelled out in rule** – rule-making may take a while, yet it will allow for the proper types of input regarding how to define “unavoidable” or “impacts.” The inclusion of habitats is good and necessary since this would obviate the need to demonstrate that a species is present, which would further delay a project. Action could therefore be taken on impacts to habitat and calculating what kind of an offset this deserves. I would also suggest that the standard cost-per-acre calculator the Aquatic Resources Mitigation (ARM) Fund uses will not easily apply here.
- 5) **Any monies derived from such mitigation fees should be placed in a dedicated mitigation fund at NH Fish & Game** – not unlike the ARM Fund, this type of dedicated account could then be used to permanently protect habitat for rare and endangered species. It should not go into the Non-Game Species Account or the Fish & Game Fund as these are not set up to dispense monies that are specific to threatened and endangered species or critical habitat.
- 6) **Critical habitat needs to be defined** – this language is used in the law in several places, yet it has never been defined or identified by the Executive Director as stated in the law. This is a fundamental requirement for beginning the rule-making process that will establish a mitigation offset for destruction of habitat that is known to support a threatened or endangered species.

I thank you for your consideration of these comments.

Sincerely;



Rick Van de Poll
Ecosystem Management Consultants

Griffin Roberge

From: James Glover <glover31188@yahoo.com>
Sent: Tuesday, February 09, 2021 7:45 PM
To: Griffin Roberge
Subject: Oppose SB 129

I am writing to oppose SB 129.

This bill makes a mockery of NH's Endangered Species Conservation Act, whose purpose is to maintain and enhance the populations of threatened & endangered (T&E) species. This bill would allow developers to pay penalties (called "compensatory mitigation") when they harm endangered wildlife or their habitat. The harm would be called "minimum" but that does not make it less harmful to T&E animals.

Thank you
James Glover
Raymond, NH

Griffin Roberge

From: Suzanne Fournier <animalfriendlyolutions@comcast.net>
Sent: Friday, February 12, 2021 10:28 AM
To: Griffin Roberge
Subject: Opposition to SB 129 – do not allow the weakening of our Endangered Wildlife Species law (with attached Ch. 4 WAP)
Attachments: Wildlife Action Plan chapter4-development.pdf; SB 129 - oppose - written comments by Fournier.pdf; SB 129 - oppose - 2-9-21 testimony.pdf

Note: Attached is Wildlife Action Plan -- Chapter on Development

Note: This e-letter is also attached as a PDF in proper format

Sent c/o Griffin Roberge, Committee Aide

Friday, February 12, 2021

TO: NH Senate Energy & Natural Resources Committee, Chairman Avard, Vice-Chair Giuda, Members Gray, Watters, and Kwoka

FROM: Suzanne Founier, Coordinator of Animal Friendly Damage Control Solutions

RE: Opposition to SB 129 – do not allow the weakening of our Endangered Species law

Dear Chairman Avard & Honorable Members of the Committee:

I'm appreciative of the opportunity I had at the February 9 hearing when I provided brief testimony (enclosed). I'm pleased to provide additional comments for your consideration.

A. At the hearing much was made about the hurry to make changes to RSA 212-A in contrast to the slow process of rulemaking. But you heard from testifiers that even if the bill were to pass, the word "significantly" would need to go to rulemaking, as would the creation of the mitigation program for threatened & endangered species (T&E) that is not as simple as conserving a block of land.

You heard Dr. Van de Poll say that the mitigation program would have to be developed in rulemaking. You heard from DES' Mr. Pelletier that even if the bill is passed, the issues would still need to go through the lengthy process of rulemaking. When it comes to T&E species, there are complexities that will take a lot of time; there are no shortcuts.

B. Sen. Kwoka had asked about habitat-layer maps for New Hampshire. Yes NH has them as a result of the great achievement led by the NH Fish & Game Department to write the 2005 Wildlife Action Plan (WAP) and its 10-year update in 2015. The wildlife habitat maps were updated in 2020 and are available at this link: [WAP Town Maps | Wildlife | New Hampshire Fish and Game Department \(state.nh.us\)](https://www.state.nh.us/wildlife/wap-town-maps)

Additionally, the UNH-Cooperative Extension has a program based on the WAP called Taking Action for Wildlife [Take Action | Taking Action for Wildlife](#).

All of these resources – the WAP, the habitat maps, and the Taking Action for Wildlife Program – help to guide activities towards protecting wildlife, especially those that are rare, threatened or endangered. However, the guidance works only if the recipient heeds the advice.

The Highest Ranked Wildlife Habitat by Ecological Condition Map at the town level, for example, clearly shows whether a proposed project is situated within rich wildlife habitat. The richest habitat is color-coded as the Highest Ranked Habitat in all of NH. This information itself should be enough for a developer to realize that a project planned within the Highest Ranked Habitat will very likely conflict with endangered wildlife.

Projects should and can be designed to avoid negative impacts to T&E. A project's location, purpose, orientation, size, duration and timing are among the variables that can be adjusted. It's important that projects be adjusted, including a change in location, to avoid harming T&E.

C. The NH Endangered Species Conservation Act predates the Wildlife Action Plan (WAP) and therefore does not yet name it. It is due time for the WAP to be added to RSA 212-A as the go-to guidebook on how to avoid harming T&E wildlife. The WAP details specific threats to avoid and is therefore a valuable source of information to state agencies.

RSA 212-A:9,I refers to programs like the WAP, as follows:

"The executive director [of F&G] shall establish *such programs* . . . as are deemed necessary for the conservation of endangered or threatened species." [emphasis added]

Indeed the WAP has been established as the blueprint for conserving NH's and the Nation's fish and wildlife, according to the Association of Fish & Wildlife Agencies.

I'm enclosing the WAP chapter on development [pages 4-37 to 4-43] that cautions us in NH that, at the rate of slow protection and fast development that's been occurring, "many more species will become rare, and several rare species are likely to be extirpated from the state." [p.4-38] Therefore, strengthening of RSA 212-A is called for, not weakening, if NH is to successfully hold onto its endangered species.

D. SB 129 would change Section 9 of RSA 212-A to allow minimum harm, but overlooks Section 7 that prohibits harm in the form of "take" of endangered wildlife by anyone, which would include permittees.

I. With respect to any endangered or threatened species, it is unlawful, except as provided in RSA 212-A:7, II for any person to:

...

(b) Take any such species within this state;

In its order in Case No. 2018-0617, Appeal of Suzanne Fournier & a., November 14, 2019, the NH Supreme Court referred to the definition as follows [order p.4]:

"Take," as defined by RSA chapter 207, General Provisions as to Fish and Game, includes pursuing, hunting, and trapping wildlife, as well as "lesser acts," such as disturbing and worrying wildlife. RSA 207:1, XXVII (2019). It also includes "every attempt to take and every act of assistance to every other person in taking or attempting to take wildlife."

It makes sense that “take” in all of its forms is prohibited, because to allow “take” in any form would certainly not help the endangered species to maintain and enhance their population sizes, which is the purpose of RSA 212-A found in Section 3,I –

Species of wildlife normally occurring within this state which may be found to be in jeopardy should be accorded such protection as is necessary to maintain and enhance their numbers.

E. Mitigation of Harm

The idea of mitigation, including monetary mitigation, makes sense to many people in the conservation movement, because there has already been much habitat loss *without* any mitigation efforts to help ameliorate the impacts on wildlife.

However, the practice of mitigation is best applied to situations where it is the habitat of the more common species that is being destroyed, built upon, and fragmented. As pointed out in the WAP in the attached development chapter on page 4-38, common species will become rare at the rate of development NH is seeing. That means that NH will increase the number of species that are imperiled.

Therefore, mitigation may be able to help prevent the common species like White-tailed Deer and Foxes from eventually being listed as threatened. There was testimony about keeping common species common, an important goal of F&G. Mitigation would help common species.

Mitigation, however, is not appropriate for endangered species. To first allow harm to endangered species (however “minimum”) followed by mitigation, it is too little, too late. The harm would already be done. Their existence at the site’s location would be jeopardized.

During the 2020 rulemaking the DES attorney had testified before JLCAR (Joint Legislative Committee on Administrative Rules) that the “no jeopardize” language applied to the specific project’s location. Therefore, to jeopardize them at the location but with an attempt to mitigate the harm somewhere else and somehow, is incongruent with what was presented to JLCAR. As one testifier at the SB 129 hearing said, there’s no such thing as “insignificant” jeopardy, like other things in life, you’re either pregnant or not, you’re either dead or alive, and T&E species’ existence is either jeopardized or not.

SB 129 asks you to jeopardize the continued existence of T&E wildlife species, when what they need to recover to healthy populations is a whole lot of help. Projects need to be designed to cause no harm or else not go forward.

Our laws ought to be encouraging landowners to put their highest ranked wildlife land into conservation and NH should provide incentives to do that. Our laws ought to be discouraging development of highest ranked land. Keeping a strong RSA 212-A is helpful in that regard.

F. Lastly, I wonder -- where is the Fish & Game Department on this endangered species bill? Has the agency been silenced to give DES license to weaken RSA 212-A? What’s going on in NH government?

I ask that you recognize SB 129 as the damaging bill that it is and vote against it.

Thank you for your consideration.

Respectfully yours,

Suzanne Fournier, Coordinator

Animal Friendly Damage Control Solutions

9 Woodward Dr.

Milford, NH 03055-3122

=====**Below is my prepared testimony presented orally on Feb. 9, 2021**=====

Prepared Testimony – SB 129 Hearing on 2/9/21

By Suzanne Fournier of Milford, NH

I am Suzanne Fournier from Milford, an environmental and wildlife protection activist.

This bill was hastily done and not well vetted with the wildlife protection community. It does not deserve your support.

It is a pro-development bill that would cause serious harm to some of the most desperate wildlife species in NH by weakening the law that's intended to protect them.

Some background on this issue: In late 2019 the NH Supreme Court admonished both the Dept of Env. Services (DES) and Fish & Game (F&G) for approving projects that cause harm to threatened & endangered wildlife. These agencies were allowing harm to occur that had been minimized but not eliminated. However, they were supposed to be avoiding adverse impacts altogether.

The Supreme Court was not against development. The justices recognized that projects could be designed for no adverse impact to endangered species and suggested that suitable studies of how the rare animals are using the property is very important to be able to design projects to avoid negative impacts.

What the Supreme Court said didn't sit well with DES. So for more than a year now, DES has been trying very hard to hold onto the status quo to continue to allow impacts.

Now they want your help to weaken the underlying statute to legalize harming species.

The real danger in this bill is that these already-imperiled species will be minimized out of existence, one site at a time, and that is the opposite of what our NH Endangered Species Conservation Act is about, which is helping the species maintain and enhance their population sizes.

The bill would actually allow developers to jeopardize the continued existence of the species, if the jeopardy can somehow be labeled as “insignificant.” It wouldn’t be insignificant to the rare wildlife, would it?

I want to turn to the finances of the bill.

The proposed monetary mitigation program would allow rich developers to pay for the harm they would do to the endangered species. They would pay into a fund instead of being required to design their projects to do no harm to the species.

The money wouldn’t even go to the endangered wildlife under RSA 212-A, but instead into RSA 212-B – the Nongame Species Management Act – and could only be used for the nongame species management program, not directly for endangered species mitigation.

The bill says that some of the money could even go to Chapter 206 that established the F&G Fund and concerns game species, nothing to do with endangered species at all.

As I said, hastily done. For all of these reasons and many more with no time to discuss, I hope you will oppose this poorly-thought-out and dangerous bill that would weaken our precious endangered species law.

Thank you.

Respectfully submitted,

Suzanne Fournier, Coordinator

Animal Friendly Damage Control Solutions

9 Woodward Dr.

Milford, NH 03055-3122

(603) 673-7389

Prepared Testimony – SB 129 Hearing on 2/9/21

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The money wouldn’t even go to the endangered wildlife under RSA 212-A, but instead into RSA 212-B – the Nongame Species Management Act – and could only be used for the nongame species management program, not directly for endangered species mitigation.

The bill says that some of the money could even go to Chapter 206 that established the F&G Fund and concerns game species, nothing to do with endangered species at all.

As I said, hastily done. For all of these reasons and many more with no time to discuss, I hope you will oppose this poorly-thought-out and dangerous bill that would weaken our precious endangered species law.

Thank you.

Respectfully submitted,

Suzanne Fournier, Coordinator

Animal Friendly Damage Control Solutions

9 Woodward Dr.

Milford, NH 03055-3122

(603) 673-7389

Friday, February 12, 2021

TO: NH Senate Energy & Natural Resources Committee, Chairman Avard, Vice-Chair Giuda, Members Gray, Watters, and Kwoka

FROM: Suzanne Founier, Coordinator of Animal Friendly Damage Control Solutions

RE: Opposition to SB 129 – do not allow the weakening of our Endangered Species law

Dear Chairman Avard & Honorable Members of the Committee:

I'm appreciative of the opportunity I had at the February 9 hearing when I provided brief testimony (enclosed). I'm pleased to provide additional comments for your consideration.

A. At the hearing much was made about the hurry to make changes to RSA 212-A in contrast to the slow process of rulemaking. But you heard from testifiers that even if the bill were to pass, the word "significantly" would need to go to rulemaking, as would the creation of the mitigation program for threatened & endangered species (T&E) that is not as simple as conserving a block of land.

You heard Dr. Van de Poll say that the mitigation program would have to be developed in rulemaking. You heard from DES' Mr. Pelletier that even if the bill is passed, the issues would still need to go through the lengthy process of rulemaking. When it comes to T&E species, there are complexities that will take a lot of time; there are no shortcuts.

B. Sen. Kwoka had asked about habitat-layer maps for New Hampshire. Yes NH has them as a result of the great achievement led by the NH Fish & Game Department to write the 2005 Wildlife Action Plan (WAP) and its 10-year update in 2015. The wildlife habitat maps were updated in 2020 and are available at this link: [WAP Town Maps | Wildlife | New Hampshire Fish and Game Department \(state.nh.us\)](#)

Additionally, the UNH-Cooperative Extension has a program based on the WAP called Taking Action for Wildlife [Take Action | Taking Action for Wildlife](#).

All of these resources – the WAP, the habitat maps, and the Taking Action for Wildlife Program – help to guide activities towards protecting wildlife, especially those that are rare, threatened or endangered. However, the guidance works only if the recipient heeds the advice.

The [Highest Ranked Wildlife Habitat by Ecological Condition Map](#) at the town level, for example, clearly shows whether a proposed project is situated within rich wildlife habitat. The richest habitat is color-coded as the Highest Ranked Habitat in all of NH. This information itself should be enough for a developer to realize that a project planned within the Highest Ranked Habitat will very likely conflict with endangered wildlife.

Projects should and can be designed to avoid negative impacts to T&E. A project's location, purpose, orientation, size, duration and timing are among the variables that can be adjusted. It's important that projects be adjusted, including a change in location, to avoid harming T&E.

C. The NH Endangered Species Conservation Act predates the Wildlife Action Plan (WAP) and therefore does not yet name it. It is due time for the WAP to be added to RSA 212-A as the go-to guidebook on how to avoid harming T&E wildlife. The WAP details specific threats to avoid and is therefore a valuable source of information to state agencies.

RSA 212-A:9,I refers to programs like the WAP, as follows:

"The executive director [of F&G] shall establish *such programs* . . . as are deemed necessary for the conservation of endangered or threatened species."
[emphasis added]

Indeed the WAP has been established as the blueprint for conserving NH's and the Nation's fish and wildlife, according to the Association of Fish & Wildlife Agencies.

I'm enclosing the WAP chapter on development [pages 4-37 to 4-43] that cautions us in NH that, at the rate of slow protection and fast development that's been occurring, "many more species will become rare, and several rare species are likely to be extirpated from the state." [p.4-38] Therefore, strengthening of RSA 212-A is called for, not weakening, if NH is to successfully hold onto its endangered species.

D. SB 129 would change Section 9 of RSA 212-A to allow minimum harm, but overlooks Section 7 that prohibits harm in the form of "take" of endangered wildlife by anyone, which would include permittees.

I. With respect to any endangered or threatened species, it is unlawful, except as provided in RSA 212-A:7, II for any person to:

...

(b) Take any such species within this state;

In its order in Case No. 2018-0617, Appeal of Suzanne Fournier & a., November 14, 2019, the NH Supreme Court referred to the definition as follows [order p.4]:

"Take," as defined by RSA chapter 207, General Provisions as to Fish and Game, includes pursuing, hunting, and trapping wildlife, as well as "lesser acts," such as disturbing and worrying wildlife. RSA 207:1, XXVII (2019). It also includes "every attempt to take and every act of assistance to every other person in taking or attempting to take wildlife."

It makes sense that "take" in all of its forms is prohibited, because to allow "take" in any form would certainly not help the endangered species to maintain and enhance their population sizes, which is the purpose of RSA 212-A found in Section 3,I –

Species of wildlife normally occurring within this state which may be found to be in jeopardy should be accorded such protection as is necessary to maintain and enhance their numbers.

E. Mitigation of Harm

The idea of mitigation, including monetary mitigation, makes sense to many people in the conservation movement, because there has already been much habitat loss *without* any mitigation efforts to help ameliorate the impacts on wildlife.

However, the practice of mitigation is best applied to situations where it is the habitat of the more common species that is being destroyed, built upon, and fragmented. As pointed out in the WAP in the attached development chapter on page 4-38, common species will become rare at the rate of development NH is seeing. That means that NH will increase the number of species that are imperiled.

Therefore, mitigation may be able to help prevent the common species like White-tailed Deer and Foxes from eventually being listed as threatened. There was testimony about keeping common species common, an important goal of F&G. Mitigation would help common species.

Mitigation, however, is not appropriate for endangered species. To first allow harm to endangered species (however "minimum") followed by mitigation, it is too little, too late. The harm would already be done. Their existence at the site's location would be jeopardized.

During the 2020 rulemaking the DES attorney had testified before JLCAR (Joint Legislative Committee on Administrative Rules) that the "no jeopardize" language applied to the specific project's location. Therefore, to jeopardize them at the location but with an attempt to mitigate the harm somewhere else and somehow, is incongruent with what was presented to JLCAR. As one testifier at the SB 129 hearing said, there's no such thing as "insignificant" jeopardy, like other things in life, you're either pregnant or not, you're either dead or alive, and T&E species' existence is either jeopardized or not.

SB 129 asks you to jeopardize the continued existence of T&E wildlife species, when what they need to recover to healthy populations is a whole lot of help. Projects need to be designed to cause no harm or else not go forward.

Our laws ought to be encouraging landowners to put their highest ranked wildlife land into conservation and NH should provide incentives to do that. Our laws ought to be discouraging development of highest ranked land. Keeping a strong RSA 212-A is helpful in that regard.

F. Lastly, I wonder -- where is the Fish & Game Department on this endangered species bill? Has the agency been silenced to give DES license to weaken RSA 212-A? What's going on in NH government?

I ask that you recognize SB 129 as the damaging bill that it is and vote against it.

Thank you for your consideration.

Respectfully yours,

**Suzanne Fournier, Coordinator
Animal Friendly Damage Control Solutions
9 Woodward Dr.
Milford, NH 03055-3122**

Residential and Commercial Development

The International Union for the Conservation of Nature broadly defines the ‘residential and commercial development’ threat (IUCN 1) as wildlife impacts from human settlements or other non-agricultural land uses with a substantial footprint. This threat is further assigned to the following categories:

- Housing & urban areas such as cities, towns, and settlements including non-housing development typically integrated with housing.
- Commercial & industrial areas such as factories and other commercial centers. Commercial centers are typically selling a product or service, while industrial areas focus on manufacturing a product. Threats from these activities, such as level of pollution, vary by location and practice.
- Tourism & recreation areas with a substantial footprint.

Risk Assessment Summary

Residential and commercial development affects 115 SGCN species and 22 habitats. Among the 200 threats identified within this category, 28 were ranked as high, 92 as medium, and 80 as low (See Table 4-14). In the 2005 Wildlife Action Plan, development was the highest ranking threat to species and habitats. This threat was downgraded in the 2015 ranking, which was likely the result of a modification of the threat ranking methodology, and/or the economic downturn known as the Great Recession.

During the 2015 ranking process, expert reviewers were instructed to limit the assessment of risk to a 10 year time horizon and consider the risk from future development only (see Appendix E), whereas in 2005 impacts from past development and an unlimited time horizon were used to evaluate this threat, which likely resulted in development being the highest rank threat. Changes in 2015 methodology were made to adhere to a more uniform approach that was adopted by the Northeast states.

In addition to the change in methodology leading to a reduction in the development threat, New Hampshire, the region and the nation experienced an economic crisis that resulted in a collapse in the housing market. Norton et al. (2014) reported that during “the decade between 2000 and 2010, New Hampshire’s growth rate fell to 6.5 percent, still the highest rate in the Northeast, but the state’s slowest decade of growth since before World War II...For the forecast years beyond 2010, New Hampshire population growth rates are expected to continue to decline – with 3.3 percent growth from 2010 to 2020 and a modest 3.8 percent growth from 2020 to 2030 according to the New Hampshire Office of Energy and Planning’s 2012 population projections.”

The reduction in development was reflected in the number of standard wetland dredge and fill permits, which after reaching a high of 939 in 2006 dropped to a low of 485 in 2011. Subsequently, they rebounded to 581 applications in 2014. A similar trend occurred in the number of projects that NHFG reviewed for their potential to impact threatened and endangered wildlife; however, a sharp increase to pre-recession levels was recorded for 2014. Although improvements in the economy are leading to increases in residential and commercial development, NH housing markets are not predicted to return to levels experienced in the last two decades of the 20th century due to an aging population and loss of young workers (Norton et al 2014).

Despite the reduction in housing and commercial growth, many species of wildlife and habitats will continue to be threatened by development, especially in southern counties where rapid growth is expected to continue. Economic development programs aimed at attracting tourists, such as ATV trail development and ski area expansion, will continue to expand the footprint of development in the northern counties.

Known Wildlife Exposure Pathways

Housing and urban areas, and commercial and industrial development

Wildlife and habitat impacts associated with housing and urban areas, and commercial and industrial development, are similar enough to treat as a single category. Development is a widespread threat for habitats and species, both wetland and terrestrial. Species or habitats with a limited distribution, complex habitat requirements, and/or low population sizes often are at greatest risk. Impacts can be very extensive and serious or catastrophic for some species (i.e., timber rattlesnake, New England cottontail, Karner blue butterfly, Blanding's and spotted turtles, and salt marsh birds), in the short-term or immediately. Development of uplands surrounding salt marshes, freshwater marshes, and shrub wetlands is likely to be extensive, serious to catastrophic, and occur in the short-term. Impacts are generally somewhat or well-documented.

Development results in the loss of habitat required by native wildlife and the fragmentation of remaining blocks of habitat. Organisms may be killed during or after construction. All habitats and species are impacted by development but to varying degrees. Large forest blocks are being subdivided and remaining patches are becoming highly fragmented, especially in southern New Hampshire. As a result, area-sensitive species will decline and local populations will become more vulnerable to local extirpations. Early successional shrublands in southern New Hampshire are ephemeral by nature but are rapidly being developed and fragmented, leaving the New England cottontail at serious risk.

Thirty-two percent of New Hampshire's land area is protected, which is a 4% increase from the 28% reported in the 2005 Wildlife Action Plan (TNC and SPNHF 2014). Nevertheless, the largest land protection gains were in Northern counties (e.g. Androscoggin headwaters) and percentages of land protected in Southern counties and within certain habitats such as Appalachian-oak-pine and floodplains remain low. As an example, approximately 6% of the state is identified as 100-year floodplain, yet only 21% of floodplain is currently protected or in public ownership (TNC and SPNHF 2014). Species also remain vulnerable, with nearly two-thirds of documented rare plant and animal occurrences in the Granite State on unprotected land (TNC and SPNHF 2014).

At the current rate of protection and development, many more species will become rare, and several rare species are likely to be extirpated from the state. Loss and fragmentation of habitats resulting from development are not restricted to a particular habitat or species; however, some are at greater risk due to limited distribution, low population densities (e.g., Karner blue butterfly, timber rattlesnake), life history characteristics (e.g., low reproductive rates, late age of maturity, large home ranges), ease of development (e.g., pitch-pine barrens), or the intersection of development pressure and the distribution of the habitat type in New Hampshire. Filling of freshwater or estuarine wetlands can have immediate severe impacts on local flora and fauna. The NHDES reports a cumulative 1,600 acres of wetlands lost in association with permitted projects from 1997-2012 (NHDES 2013). Currently, freshwater wetlands (see Marsh & Shrub wetlands and Peatlands profiles), salt marshes, rivers, and streams are regulated by NHDES (RSA 482-A and Wetlands Bureau Administrative Rules). Vernal pools, although regulated by RSA 482-A, are vulnerable to filling due to small size and ephemeral hydroperiods. The greatest threat

wildlife requires a relatively undeveloped upland buffer to allow for nesting, foraging, breeding, and hibernation, and/or to reduce disturbance. NHDES does not require development setbacks from wetlands, unless designated as a 'prime wetland' by the town. The Comprehensive Shoreland Protection Act (RSA 483-B) regulates tree cutting and development of major rivers and large surface bodies (> 10 ac); however, most of the smaller perennial tributaries receive no upland protection. Town zoning and wetland regulations vary considerably throughout the state.

Development of terrestrial habitats is largely unregulated in New Hampshire. Site-specific permits are required by the NHDES for impacts exceeding 100,000 sq. ft. As part of the 2005 Wildlife Action Plan implementation, wildlife and rare natural community impacts are being included in the review process for alteration of terrain permits.

Tourism & recreation areas

Two major initiatives are underway to boost the North Country economy through recreation. One is Ride the Wilds and the second is a major expansion proposed for the Balsams Ski Area and Resort in Dixville. Ride the Wilds is an initiative to attract ATV riders to Coos County for which the state developed a system of motorized vehicle trails in Jericho Mountain State Park. In addition, 10 towns have opened their roads to ATV use to provide a 1,000 mile network of riding opportunities. As riding pressure increases and new trails are developed, wildlife will experience direct mortality from vehicles and disturbance from noise. Trail development and use will also provide expansion opportunities for invasive species.

Plans are also underway for a major expansion of the Balsams ski area. High elevation spruce- fir forest and associated species such American marten, Bicknell's thrush and three-toed woodpecker will likely be impacted by new and expanded ski trails.

Research Needs

- Determine minimum patch sizes and levels of connectivity required for supporting self-sustaining populations of threatened and endangered wildlife.
- Evaluate new development patterns that emerge with changing human demographics.
- Evaluate ATV impacts to wildlife to develop best management practices.
- Identify habitat types with low levels of existing protection and high levels of development pressure as targets for conservation efforts.

Table 4-14. Habitats and species at highest risk from the effects of commercial and residential development (threats ranked as *Low* not included here). IUCN Level 2 provided if evaluated to that level (if not evaluated to level 2, text reads *not specified*). Some habitats and species were evaluated for multiple specific threats separately and therefore listed multiple times below. See Appendix E for additional information on specific threats and ranking

Habitat	IUCN Level 2	Overall Threat Score
Appalachian Oak Pine Forest	Not Specified	H
Coastal Islands	Not Specified	M
Coldwater rivers and streams	Not Specified	M
Dunes	Housing & urban areas	M
Floodplain Forests	Not Specified	H
Grasslands	Commercial & industrial areas	M
Grasslands	Not Specified	M
Hemlock-Hardwood-Pine Forest	Not Specified	M
High Elevation Spruce-Fir Forest	Not Specified	M
Large warmwater rivers	Not Specified	M
Marsh and Shrub Wetlands	Not Specified	M
Northern Hardwood-Conifer Forest	Not Specified	M
Peatlands	Not Specified	M
Pine Barrens	Not Specified	M
Salt Marsh	Not Specified	H
Shrublands	Not Specified	H
Talus Slopes, Rocky Ridges	Not Specified	M
Temperate Swamp	Not Specified	M
Vernal Pools	Not Specified	H
Warmwater lakes and ponds	Not Specified	M
Warmwater rivers and streams	Not Specified	M
Common Name	IUCN Level 2	Overall Threat Score
American Bumble Bee	Not Specified	M
American Marten	Not Specified	M
American Woodcock	Not Specified	M
Bald Eagle	Not Specified	M
Banded Sunfish	Not Specified	M

Bay-breasted Warbler	Not Specified	M
Bicknell's Thrush	Not Specified	M
Black-billed Cuckoo	Not Specified	H
Blanding's Turtle	Not Specified	H
Blue-winged Warbler	Not Specified	H
Bobolink	Commercial & industrial areas	M
Bobolink	Not Specified	M
Box Turtle	Not Specified	M
Bridle Shiner	Not Specified	H
Brook Floater	Not Specified	M
Brown Thrasher	Not Specified	H
Canada Warbler	Not Specified	M
Cape May Warbler	Not Specified	M
Cerulean Warbler	Not Specified	M
Common Nighthawk	Not Specified	H
Common Tern	Not Specified	M
Coppery Emerald	Not Specified	M
Dwarf Wedgemussel	Not Specified	M
Eastern Meadowlark	Commercial & industrial areas	M
Eastern Meadowlark	Not Specified	M
Eastern Pearlshell	Not Specified	M
Eastern Pondmussel	Not Specified	M
Eastern Towhee	Not Specified	H
Eastern Whip-poor-Will	Not Specified	M
Field Sparrow	Not Specified	H
Fowlers Toad	Not Specified	M
Frosted Elfin	Not Specified	H
Golden-winged Warbler	Not Specified	H
Grasshopper Sparrow	Commercial & industrial areas	H
Grasshopper Sparrow	Not Specified	M
Hessel's Hairstreak	Not Specified	M
Hognose Snake	Not Specified	H
Horned Lark	Commercial & industrial areas	H
Jefferson/Blue-Spotted Salamander Complex	Not Specified	M
Karner Blue Butterfly	Not Specified	H
Kennedy's Emerald	Not Specified	M

Least Terns	Not Specified	M
Lynx	Not Specified	H
Lyre-tipped Spreadwing	Not Specified	M
Marbled Salamander	Not Specified	H
Margined Tiger Beetle	Not Specified	M
Monarch	Not Specified	M
Moose	Not Specified	M
New England Cottontail	Not Specified	H
Northern black racer	Housing & urban areas	M
Northern black racer	Not Specified	H
Northern Goshawk	Not Specified	M
Northern Harrier	Not Specified	M
Northern Leopard Frog	Not Specified	M
Ocellated Emerald	Not Specified	M
Olive-sided Flycatcher	Not Specified	M
Pine Barrens Bluet	Not Specified	M
Pine Barrens Lepidoptera	Not Specified	M
Piping Plover	Not Specified	M
Prairie Warbler	Not Specified	H
Purple Finch	Not Specified	M
Rainbow Smelt (diadromous)	Not Specified	M
Ringed Boghaunter	Not Specified	M
Roseate Tern	Not Specified	M
Ruffed Grouse	Not Specified	M
Rusty Blackbird	Not Specified	H
Rusty-patched Bumble Bee	Not Specified	M
Scarlet Tanager	Not Specified	M
Sleepy duskywing	Not Specified	M
Spotted Turtle	Not Specified	H
Swamp Darter	Not Specified	M
Three-toed Woodpecker	Not Specified	M
Three-toed Woodpecker	Tourism and recreation areas	M
Timber Rattlesnake	Not Specified	H
Veery	Not Specified	M
Vesper Sparrow	Commercial & industrial areas	M
Vesper Sparrow	Not Specified	M

Wood Thrush	Not Specified	M
Wood Turtle	Not Specified	H
Yellow Bumble Bee	Not Specified	M
Yellowbanded Bumble Bee	Not Specified	M

Literature Cited

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- Norton, S., D. Barrick, D. Delay, and K. Decker. 2014. What is New Hampshire? An overview of issues shaping the Granite State's Future. NH Center for Public Policy Studies. Available at http://www.nhpolicy.org/UploadedFiles/Reports/WINH14_for_publication.pdf.
- The Nature Conservancy (TNC) and the Society for the Protection of New Hampshire Forests (SPNHF). 2014. Land Conservation in New Hampshire: A Snapshot of Progress and Opportunities. Prepared by The NH Chapter of The Nature Conservancy and the Society of the Protection of NH Forests.

Griffin Roberge

From: Helen Tam-Semmens <htamsemmens@gmail.com>
Sent: Friday, February 12, 2021 2:44 PM
To: Griffin Roberge
Subject: Strongly oppose SB 129

As a member of my town's Conservation Commission for years, I strongly oppose SB 129 which waters down NH's Endangered Species Conservation Act significantly.

At this time that we are already seeing negative and costly effects of climate change in our town (toxic blue green algae in our lakes, hemlock trees dying, etc), we need to further STRENGTHEN our ecosystems by tightening Endangered Species Act, not the other way around.

For every endangered species saved, countless other species are also saved and habits remain untouched or restored, hence providing resilience to our ecosystem to weather the devastating impact of climate change. This is well-documented.

No amount of money or fines can counter the effects of species extinction, habitat loss, and the ecological avalanche of disaster that could follow. Being an engineer, I fully understand the mechanism of systems collapse. The system would degrade gradually, then all of a sudden - collapse. Our ecosystem is degrading at an alarming rate. We also noticed less insects, birds and small mammals in our area, which correlates with NH Fish and Game data. The ecological collapse could be imminent, or years and decades away. What scientists know for sure is that it will happen if we don't stop what we are doing, and start repairing - now!

This is a defining moment in our human kind. Please be on the right side of history, rather than have our children and children's children curse us for what we have done to the planet they have to rely to survive.

I am far from fear-mongering, unfortunately. The data is clear. If you have any questions, please feel free to email me.

Best regards,
Helen Tam-Semmens
Stoddard, NH

Griffin Roberge

From: Voices of Wildlife NH <voicesofwildlifeinnh@gmail.com>
Sent: Friday, February 12, 2021 7:26 PM
To: Kevin Avard; Bob Giuda; James Gray; Rebecca Perkins Kwoka; David Watters; Griffin Roberge
Subject: SB 129
Attachments: S129 comment.docx

Dear Honorable Committee Members,

I was preparing to send my organization's comment about our opposition to SB 129 when I learned that you had already Exec'ed the bill and voted it OTL. It appears the bill was rushed before you gave us all time to comment. That was very disappointing to many of the people of NH who care about wildlife.

My comment is attached even so with hopes you will take it into consideration. I request that the bill at the very least be removed from the consent calendar so the people of NH can have some say in this matter.

Thanks for your time and consideration.

Linda Dionne

--

Voices of Wildlife in NH (VOW)
PO Box 5802
Manchester, NH 03108

www.voicesofwildlifeinnh.org
www.facebook.com/VOWNH

VOW, a registered NH non-profit 501(c)(4), works to protect NH's wildlife by advocating for legislation and regulations and conducts research into elected official's positions and voting records regarding these issues and to publicize those results.



NH State Senate Energy and Natural Resources Committee

RE: Opposition to SB129

Dear Honorable Committee Members,

I listened to the hearing for SB129 – a bill to change the NH Endangered Species Conservation Act – on Tuesday, February 9. I am opposed to this legislation for the overall reason that it weakens the protections for threatened & endangered wildlife species and the following specific reasons:

#1 The financial incentive in this bill is backward. It would give NH Fish and Game money for not protecting threatened and endangered species as much as they could and should.

#2 I heard a lot of long-drawn-out "survivor bias" testimony about how everything worked simply fine *for them* -- the developers – before the court case.

That bias should make us question what they are saying. What the NH Department of Environmental Services (DES) was doing before the court case was working well for the developers they said. But what about the invisible threatened and endangered wildlife species, the non-survivors. It was not working for them. The list of species in trouble has been growing since the first publication of the NH Wildlife Action Plan in 2005. State Wildlife Action Plans serve as the blueprints for conserving our nation's fish and wildlife and preventing endangered species. In 2005, each state, territory, and the District Columbia submitted their plan for approval to the US Fish and Wildlife Service as a condition for receiving funding through the State and Tribal Wildlife Grants program.

What is the primary reason that causes animal species to become threatened and endangered in the first place? It is the loss of habitat. So, I agree with the developers that the system was working well *for them*. But it was not working for the many animal species that had been unseen and poorly represented.

However, and thankfully someone did see them and brought a successful court case forward.

At that moment in 2019, the endangered wildlife won. But sometimes victories do not last for long, especially when the powerful will not accept a loss. Instead of taking this loss, DES and others now want to change the law and the rules. They are trying to win for the developers at any cost, even if it leads to the eventual loss of endangered species.

Now is not the time to make these animals invisible again. With climate change causing droughts and disease, now, more than ever, we need to protect our wildlife.

Do not pass this legislation, SB129, that will weaken NH's Endangered Conservation Species Act. Thank you for your time and consideration and for your service to NH.

Sincerely,

Linda Dionne

Board Member

voicesofwildlifeinnh@gmail.com

Voting Sheets

Senate Energy & Natural Resources Committee

EXECUTIVE SESSION RECORD

2021-2022 Session

Bill # SB 129

Hearing Date: 02/09/2021

Executive Session Date: 02/09/2021

Motion of: Amendment 0260s w/ changes Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins Kwoka	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: OTPA Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda, Vice Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins Kwoka	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins Kwoka	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins Kwoka	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Giuda

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Tuesday, February 9, 2021

THE COMMITTEE ON Energy and Natural Resources

to which was referred **SB 129**

AN ACT

relative to minimizing environmental impacts on
the habitats of endangered or threatened species.

Having considered the same, the committee recommends that the Bill

ought to pass with amendment

by a vote of: 5-0

Amendment # 0315s

Senator Bob Giuda
For the Committee

Griffin Roberge 271-3042

ENERGY AND NATURAL RESOURCES

SB 129, relative to minimizing environmental impacts on the habitats of endangered or threatened species.

Ought to Pass with Amendment, Vote 5-0.

Senator Bob Giuda for the committee.

Docket of SB129

Bill Title: relative to minimizing environmental impacts on the habitats of endangered or threatened species.

Official Docket of SB129.:

Date	Body	Description
2/3/2021	S	Introduced 01/06/2021 and Referred to Energy and Natural Resources; SJ 3
2/4/2021	S	Remote Hearing: 02/09/2021, 09:00 am; Links to join the hearing can be found in the Senate Calendar; SC 10
2/11/2021	S	Committee Report: Ought to Pass with Amendment #2021-0315s , 02/18/2021; SC 11
2/18/2021	S	Committee Amendment #2021-0315s , RC 1Y-23N, AF; 02/18/2021; SJ 5
2/18/2021	S	Sen. Bradley Moved Reconsideration on Committee Amendment 2021-0315, RC 24Y-0N, MA; 02/18/2021; SJ 5
2/18/2021	S	Committee Amendment #2021-0315s , RC 0Y-24N, AF; 02/18/2021; SJ 5
2/18/2021	S	Sen. Bradley Floor Amendment #2021-0416s , RC 21Y-3N, AA; 02/18/2021; SJ 5
2/18/2021	S	Ought to Pass with Amendment 2021-0416s, RC 21Y-3N, MA; OT3rdg; 02/18/2021; SJ 5
3/10/2021	H	Introduced (in recess of) 02/25/2021 and referred to Fish and Game and Marine Resources HJ 4 P. 48
4/28/2021	H	Public Hearing: 04/28/2021 09:00 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/97783276704 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
5/11/2021	H	Majority Committee Report: Ought to Pass (Vote 10-8; RC) HC 26 P. 23
5/11/2021	H	Minority Committee Report: Inexpedient to Legislate
6/3/2021	H	Ought to Pass: MA DV 190-181 06/03/2021 HJ 8 P. 153
7/12/2021	H	Enrolled Bill Amendment #2021-2051e: AA VV (In recess of) 06/24/2021
7/13/2021	S	Enrolled Bill Amendment #2021-2051e Adopted, VV, (In recess of 06/24/2021); SJ 20
7/23/2021	H	Enrolled (in recess of) 06/24/2021
7/21/2021	S	Enrolled Adopted, VV, (In recess 06/24/2021); SJ 20
8/16/2021	S	Signed by the Governor on 08/10/2021; Chapter 0203; Effective 10/09/2021

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB 129

Senate Committee: ENR

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: (Legislative Aides)

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

N/A Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: (Legislative Aides)

All amendments considered in committee (including those not adopted):

- amendment # 02606 _____ - amendment # _____

- amendment # 03155 _____ - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: (Clerk's Office)

All floor amendments considered by the body during session (only if they are offered to the senate):

- amendment # 04165 _____ - amendment # _____

_____ - amendment # _____ _____ - amendment # _____

Post Floor Action: (if applicable) (Clerk's Office)

_____ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

Enrolled Bill Amendment(s) 20515

_____ Governor's Veto Message

All available versions of the bill: (Clerk's Office)

_____ as amended by the senate _____ as amended by the house

_____ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Committee Aide

Date

Senate Clerk's Office _____

June 29, 2021
2021-2051-EBA
11/10

Enrolled Bill Amendment to SB 129

The Committee on Enrolled Bills to which was referred SB 129

AN ACT relative to minimizing environmental impacts on the habitats of endangered or threatened species.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to SB 129

This enrolled bill amendment makes a grammatical correction.

Enrolled Bill Amendment to SB 129

Amend RSA 212-A:16 as inserted by section 3 of the bill by replacing line 16 with the following:

summarizing all deposits and expenditures from the fund. The report shall include, but not be limited