

CONCERNS AND SOLUTIONS

SUMMARY

The Wildlife Trafficking Prevention Act as currently written causes multiple problems both for enforcement and those expected to comply. If the WTPA is not reasonably defined and enforced, it will dramatically, unjustly and adversely affect the businesses and lives of many Oregonians.

House Bill 2576 effectively addresses the most egregious of these concerns.

The Problems

WTPA is Vague

Though purported to be modeled after Washington State's Initiative 1401, there are substantial differences that leave undefined areas for both enforcement and the public.

Washington State's 1401 is tied to specific and definable species, Oregon's law is not. Washington's 1401 listed the same *common* names of threatened or endangered organisms, but it then goes on to scientifically identify the species within that list by tying the group to the internationally recognized IUCN Red List with specific threat level parameters. Any species in the broader list that falls within the top five of seven threat levels is covered in the Washington State law, in perpetuity. This ensures that species within the listed families that may become threatened in the future are automatically covered by State law even if not specifically enumerated. **However, by omitting the IUCN designations, Oregon's law lumps at least EIGHT HUNDRED species of common fish in with truly threatened and endangered species.**

There are serious unintended consequences for using colloquial rather than scientific names for banned species :

1. **What constitutes a shark? "Shark" is a colloquial term that is shared by not only oceanic predators, but several species of small freshwater aquarium fish as well.** Are these also now forbidden to be sold in Oregon? Additionally, some oceanic species that are "shark-like" such as wobbegongs do not bear the common name of shark. Are they supposed to be included in the

new prohibitions?

2. **Similarly, what is a ray?** Is “ray” meant to include related organisms like skates, sawfish, devil fish or batoids? If so, they are not enumerated in the law , and some of them are endangered. The lack of any scientific or Latin nomenclature in this bill creates serious problems with both compliance and enforcement.
3. By grouping over 800 common fish species with truly threatened or endangered animals, Oregon is actually creating an unprecedented extreme in conservation law that, far from supporting international and federal regulations as the bill purported, so far supersedes them as to render them *less* effective. **If Oregon law considers the trade in common, non-threatened fish species on par with ivory, rhino horns, or even shark finning, the seriousness of real trafficking in endangered species is not enhanced but diluted and diminished.**

Both CITES and the IUCN Red List affirm that vast majority of shark and ray species are common, unthreatened and not endangered

The most scientifically informed international body on the threats to worldwide taxa for the past 50 years is the International Union for the Conservation of Nature (IUCN). The Convention on the International Trade of Endangered Species (CITES), grew out of the IUCN in 1963 to become the political and law enforcement arm in worldwide wildlife trade. The USA was one of the original signatories to this multilateral treaty in 1973 and has been joined by 182 other nations. All UN nations are signatories. The IUCN recognizes 25 endangered and 48 vulnerable species of shark out of 440 total species. **Making a wholesale ban on 365 common species (or species of "least concern" on the IUCN Red List) Oregon law.** Similarly, the IUCN lists 41 species of rays as endangered and 68 as vulnerable **leaving 451 common species as banned in Oregon**, as they are in no other municipality. **CITES lists 15 species of shark as protected and 2 species of ray.**

HB 2576 rectifies this problem by scientifically and specifically identifying the species affected by the WTPA. This is accomplished by linking to appendices I and II in the Convention on the International Trade of Endangered Species (CITES) on lines 29-31 of the bill.

WTPA is Confusing and Contradictory

In addition, the WTPA is self-contradictory and confusing as currently written. In the law, **all** species of shark or ray, whether common or endangered, are expressly forbidden to be sold or purchased in Oregon with few exceptions. One exception is : When the activity is expressly authorized by federal law.

Common, unprotected species of shark and ray or their parts are routinely imported legally for food, aquaria, handicraft and other industries and cleared through Federal US Fish and Wildlife officers when accompanied by proper permits and licenses. **Therefore, legal importation and clearing through US Fish and Wildlife should reasonably constitute "expressly authorized by federal law" as stated in section 2(B).** However, **WTPA which was purported to be a support and emphasis of federal conservation law,** intimates that it will supercede and nullify federal law by making such legally imported, unprotected specimens illegal for sale within the State.

In addition, "trafficking" is a legal term meaning "to deal or trade in something illegal". The **Federal US Fish and Wildlife definition** of Trafficking as it applies to Wildlife is:

"The poaching or other taking of *protected or managed* species and the *illegal* trade in wildlife and their related parts and products." Source: <https://www.fws.gov/international/wildlife-trafficking/>
It is contradictory to include legally imported, unprotected species of sharks and rays in the interpretation and enforcement of a law that expressly purports to address wildlife trafficking.

Since trafficking deals only with illegal trade of protected or managed species, then one cannot "traffick" in common, unprotected species that are legally imported. By superseding federal and international law, Oregon is creating a class of criminality that does not exist anywhere else in the world of which we are aware. No other state or country that we can find has declared a wholesale ban on the trade of an entire Superorder of fish, much less two of them.

The provision in 2(f) of WTPA is also vague and concerning. This allows the commission to adopt rules banning any additional species if enforcement personnel are not able to distinguish between the newly protected species (or parts thereof) and those species not enumerated in the law. As no funding or training for enforcement personnel has been provided with WTPA, will the Fish and Wildlife commission be forced to ban additional species to make identification possible for non-trained law enforcement? If so, which and how will the public be made aware of such changes?

Solutions

Two Simple solutions will clarify and make reasonable the implementation of this new law.

1. **As written in HB 2576, the WTPA should tie affected species to CITES Appendix I and II or alternatively to the IUCN Red List.**

This will serve the purpose of ensuring that the WTPA does in fact what the law's very title claims to do, prevents the trafficking of *illicit* (and protected) organisms by relying on established and scientifically based federal and international conservation designations rather than an unclear and arbitrary list of common names. **CITES has been the worldwide governing body for the identification and enforcement of wildlife conservation since 1973.** 182 nations, including all UN countries are signatories. The USA was one of the founding members.

Alternatively the IUCN Red List could be used to determine which species are covered as in Washington State. In perpetuity, species designated as **“Vulnerable”, “Endangered”, “Critically Endangered” or “Extinct in the Wild “** on the IUCN Red List would be covered by the law. Common species of **“Least Concern” or “Near Threatened”** would not, though they would remain subject to US Fish and Wildlife regulation.

2. **As should be interpreted in section 2(B), specimens that are legally imported through US Fish and Wildlife should remain unaffected by this Oregon law.**

Legal importations have already been subjected to and cleared by Federal Wildlife officers and are held to the highest standards of international conservation law. This should be sufficient to render trade in such specimens activity (that) is expressly authorized by federal law. However, these species, having been legally imported and unaffected by the new law should also be sellable as exempted specimens.

Personal Impact and Biography: Christopher Marley, Artist

My company, **Pheromone**, employs 14 Oregonians with well-paying jobs as well as 10 Malaysians who support our Oregon-based studio. **Our greatest work is in reclaiming animal specimens that die in captivity in the US and around the world and would otherwise be discarded. We take these organisms and preserve them, creating artwork that is renowned around the world.**

We work with the most prestigious names in retail throughout the US, Europe and Asia as well as some of the world's most renowned museums. Two books on my work have received distinguished awards - my first, *Pheromone* making the Times (UK) Best Books of the Year list while my most recent book *Biophilia* was a NY Times bestseller - nearly unheard of for a \$50 art book.

Perhaps more importantly, much of my work and photographs of my pieces have literally become the face of conservation in many sectors.

Images of my preserved organism compositions have been licensed by *World Wildlife Fund*, featured in the *Kyoto Journal*, *Scientific American*, *Audubon*, *National Geographic Explorer*, and have graced the cover of *Science News* as well as dozens of other periodicals. *Biophilia* was praised by *The Smithsonian*, the *NY Times*, *Slate*, *Wired* and a host of other reviewers both environmentally concerned and otherwise. An image of one of my works will be the next cover of *Philosophical Transactions* - the oldest scientific journal in the world.

With specific regards to sharks and rays, I work with aquariums and importers to acquire and preserve fish that die of natural causes in captivity and would otherwise be discarded. I have also visited licensed fish markets in foreign countries and buy specimens that I feel are too beautiful to simply be served on a plate, to be preserved for generations. These are not rare species, simply unfamiliar in our culture, but to me have greater aesthetic than culinary value. **The investments we have made and continue to make in the legal acquisition of every specimen we work with is not insubstantial.** In shipping a crate of fresh seafood from Borneo overnight and spending over one year in preserving the specimens to create a single piece of art, we are breaking new ground in both art and biology that is at worst cost neutral to wild populations of common fish species. **Making our work suddenly illegal in a poorly worded bill purported to reinforce international wildlife laws is not only unjust but borders on arbitrary and capricious.** The WTPA needs to be clarified and enforced in a manner that is true to the intent of the measure as it was titled and advertised to the Oregon voters who passed it.



Reclaimed Reef Sharks | 48x96