

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals #17

January 31, 2020

S. 6933

By: Senator Martinez

A. 8963

By: M. of A. Englebright

Senate Committee: Rules

Assembly Committee: Environmental Conservation

Effective Date: Immediately

AN ACT to amend the environmental conservation law, in relation to the required criteria to be designated as a vulnerable species; and to amend a chapter of the laws of 2019, amending the environmental conservation law relating to designating certain species as vulnerable species and prohibiting the sale of articles made from such vulnerable species, in relation to the effectiveness thereof.

LAW & SECTION REFERRED TO: Environmental Conservation Law, Section 11-0535-b, subdivision 1, as added by chapter 651 of the laws of 2019.

THE COMMITTEE ON ANIMALS AND THE LAW SUPPORTS THIS LEGISLATION

This bill is an amendment to Chapter 651 of the Laws of 2019, which added new Section 11-0535-b to the Environmental Conservation Law, setting forth criteria that are to be used by the Department of Environmental Conservation in determining that a species is vulnerable to extinction and designating it a “vulnerable species,” and prohibiting the sale of articles made from such vulnerable species.

Extinction risks are fluid and species dependent; there is no “one size fits all” when it comes to determining whether a species is vulnerable to extinction within a specific timeframe. This bill reinforces the Legislature's intent in enacting ECL 11-0535-b to protect species vulnerable to extinction. By providing more discretion to the Department of Conservation to identify species as vulnerable, this bill removes the potentially unintended consequence that some vulnerable species at significant risk might be overlooked, or action taken by the department too late into the species final decline.

Under the law enacted last year, the specific factors used to evaluate whether a species should be classified as vulnerable are exceptionally complex and require a degree of statistical analysis and assessment that may not be readily available for some species. An example is subdivision 1(a)(i), requiring that a species population has reduced by “...thirty percent or more over the last ten

years or three generations, whichever is longer." Additionally, some of the evaluation terms provided for estimating or projecting population size in subdivision (1)(a)(i), such as "*inferred*" or "*suspected*" are vague. Subdivision 1(a)(ii) relating to a species' geographic range, is also difficult to assess for some species, as is the population estimation requirement in subsection 1(a)(iii), "*...there are less than ten thousand mature individuals and the risk of extinction of the species within one hundred years is more than ten percent.*" While subdivision 1(a)(iv) includes a catch-all provision allowing a species to be determined to be "vulnerable" if there are "*other factors that may cause the species to go extinct if they are not identified and reversed,*" a concern is that the technical determinations that must be made under most of the criteria for assessing the "vulnerable" state of a species may limit the evaluation of less specific, but equally important considerations.

For example, there is grave concern over the survival of many species of animals in Australia as a result of the recent catastrophic wildfires in that country. The residual damage and threats to those species' survival, in conjunction with the loss of many already endangered species in the fires, will not be known for many years. Action to protect those species should be taken immediately. Without eliminating the potential market in New York for some of these unprotected species, the danger of overly restrictive evaluation criteria for vulnerable species will allow their extinction to become more likely.

S.6933 / A.8963 removes ambiguities and restrictive criteria for determining that a species is "vulnerable" that may be difficult for the Department of Environmental Conservation to ascertain, especially within a timeframe necessary to avoid further population decline, while still providing the department constructive guidance. Under the bill, the guideline established is clear but flexible, allowing the department discretion to designate a vulnerable species under two broad provisions, (1) that the species has "*...an observed, estimated or projected population decline that if unreversed, will likely result in the species becoming endangered or threatened within the foreseeable future;* or (2) any "*other factors that may cause the species to go extinct if they are not identified and reversed.*"

The Committee on Animals and the Law applauded the enactment of ECL Section 11-0535-b in 2019 as a significant step towards averting the catastrophic reality that some species will perish unless overt actions are taken. By designating certain species as "vulnerable" to extinction and prohibiting the sale within New York State of articles made from the species, New York established itself as a potential role model for other states. We commend the sponsors' continued commitment, as demonstrated by this bill, to ensure that vulnerable species otherwise without protections under federal or state law are recognized and protected in New York.

For all the reasons cited herein, the NYSBA's Committee on Animals and the Law **SUPPORTS** the passage and enactment of this legislation.