

**Vermont  
Endangered Species  
Committee**

**Operations Guidelines**

**Adopted by the Endangered Species Committee  
January 20, 2022**

## **I. BACKGROUND**

Vermont's Protection of Endangered Species Law was enacted in 1972, updated in 1981 (10 V.S.A. Chapter 123 §§ 5401-5410), and was updated again in 2016. The statute requires the Secretary of the Vermont Agency of Natural Resources (Secretary) to adopt by rule a list of threatened and endangered (T&E) species of wild plants and animals that naturally occur in Vermont. The 2016 version allows for the additional protection of the critical habitat of threatened and endangered species through rulemaking (10 V.S.A. Chapter 123 §§ 5402a). The population status of these species, and their habitat if so designated, is determined to merit protection and their taking is prohibited without a permit from the Secretary.

The legislation establishes an Endangered Species Committee (ESC) to advise the Secretary on all matters related to endangered species including the listing, permitting of taking of T&E species, and the promulgation of rules relating to their protection and conservation. The ESC works closely with the Vermont Fish and Wildlife Department (FWD) and assists in the administration and implementation of programs for the protection, conservation and restoration of species listed, delisted or otherwise afforded consideration by the Protection of Endangered Species Law. Effective coordination and communication between the Secretary, FWD and the ESC is the cornerstone of successful endangered species conservation and recovery.

This document offers organizational, procedural, and administrative guidance for the ESC.

## **II. ORGANIZATION, COMPOSITION, AND MEETINGS**

### **A. Endangered Species Committee (ESC)**

The ESC is comprised of nine members appointed by the Governor for three year terms (or until a replacement is appointed). By statute, these members include the Secretary of the Agency of Agriculture, the Commissioner of the FWD, the Commissioner of the Department of Forests, Parks and Recreation (DFPR), and six members from the public at large, two of whom shall be actively engaged in agricultural activities, two of whom shall be knowledgeable concerning flora, and two of whom shall be knowledgeable concerning fauna. The Secretary of the Agency of Agriculture, the Commissioner of the FWD, and the Commissioner of the DFPR may appoint staff members as their designees.

Scientific Advisory Groups (SAGs), consisting of technical experts in specific taxonomic groups of plants and animals, may be created as necessary to assist the ESC.

### **B. Meetings of the ESC**

The ESC may elect a Chair and Vice-Chair annually, during the first regularly scheduled meeting of the calendar year (Annual meeting). The ESC usually meets three times a year but may meet more frequently as necessary, at the request of the Chair or the Secretary for the purpose of listing a new species, the review of a permit for the taking of a threatened or endangered species, or similar purposes.

ANR staff designated by the Secretary may provide administrative support to the ESC and may take minutes. ANR staff may distribute the minutes of meetings to members of the ESC, the Secretary, the Species Advisory Group (SAG) chairs, and others who have requested copies. The minutes shall include motions and voting results, as well as minority opinions.

### **C. Vermont Open Meeting Law**

The time and place of an ESC meeting time and the agenda must be posted on the FWD website at least 48 hours in advance of the meeting but ideally at least a week before the meeting.

The Secretary of Administration must be notified of the meeting a week prior to the meeting. An opportunity for public comment must be offered during the meeting. Meeting minutes must be posted on the FWD website within 5 days of the meeting. Minutes must cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Additionally, minutes must include the following minimal information at a minimum: all members of the ESC present; all other active participants in the meeting; all motions, proposals, and resolutions made, offered, and considered, and what disposition is made of same; and; the results of any votes, with a record of the individual vote of each member if a roll call is taken.

One or more of the members of the ESC may attend a meeting by electronic or other means without being physically present at a designated meeting location. In this case, any vote of the ESC that is not unanimous shall be taken by roll call. Each member who attends a meeting without being physically present at a designated meeting location shall identify themselves when the meeting is convened and be able to hear the conduct of the meeting and be heard throughout the meeting.

### **D. Standing Subcommittees**

The ESC may establish Standing Subcommittees to facilitate the performance of its advisory role. Standing Subcommittees may include: (1) Listing; (2) Permitting; and (3) Conservation and Education. Each subcommittee may consist of members as determined by the ESC. For example, subcommittees may include members of the ESC, ANR staff and members of the public. The Conservation and Education Subcommittee may include additional FWD or DFPR outreach staff.

The ESC appoints subcommittee members for two year terms renewable at the Annual Meeting. Each subcommittee may elect a chair from its membership. The standing subcommittees may respond to requests from the ESC Chair and make recommendations to the ESC Chair for final recommendation to the Secretary. The subcommittees may request guidance and information from the SAGs as described below. The standing subcommittees may meet whenever necessary. Recommendations to the ESC Chair may either be in writing, including supporting documentation and significant minority opinions, if any, or conveyed orally during an ESC meeting. All recommendations from the subcommittees may be presented to the ESC Chair by the requested due date, or within 30 days of assignment if no due date is requested.

*Listing Process Subcommittee:* This Subcommittee makes recommendations to the ESC on matters concerning the listing of threatened or endangered species. The Subcommittee may determine prior to the presentation of a species to the ESC for listing, or changes in listing, whether or not all criteria have been met or addressed, and that documentation appears adequate and clearly presented.

*Permits Subcommittee:* This Subcommittee makes recommendations to the ESC on matters concerning Endangered Species Permits for takings. This includes review of permit applications for takings of endangered species, amendments to applications, periodic reports by permit holders, alleged violations of permits, and enforcement. The Subcommittee may recommend to approve, approve with conditions, or deny permit applications.

*Conservation and Education Subcommittee:* This Subcommittee makes recommendations to the ESC regarding conservation and education initiatives related to endangered species management, protection and recovery in the state of Vermont. It also oversees the selection of candidates for the Sally Laughlin Award for the Conservation of Endangered and Threatened Species, and makes recommendations to the ESC.

## **E. Scientific Advisory Groups (SAGs)**

SAGs, representing various taxonomic divisions of plants and animals, may be created as necessary to assist the ESC. SAGs consist of persons with a high level of knowledge and/or expertise about the respective plants or animals and may include FWD staff biologists. SAG members are appointed by the ESC or the appropriate SAG Chair for two year terms, renewable each year at the ESC Annual Meeting. At any ESC meeting, the ESC may nominate and appoint a SAG member by a simple majority vote. A SAG member may be removed from the list by vote of the ESC upon request or for lack of participation or contribution. The SAGs elect their own officers annually, usually at the first meeting of the year. ANR staff may serve as SAG officers if elected and vote on any issues where votes are taken and a conflict of interest does not exist.

SAGs provide technical, biological (zoological and botanical) assistance to the ESC including recommending changes to the Threatened and Endangered species list, proposing or reviewing proposed critical habitat designations, assessing permit applications regarding takings, reviewing recovery and post-delisting management plans, and reviewing and suggesting conservation and education initiatives and research priorities. Recommendations to the ESC are made in writing to the Chair, providing best available scientific information, with supporting documentation and significant minority opinions, if any.

SAG members shall reveal any potential conflict of interest prior to discussions and recommendations and recuse themselves from any votes taken if they have conflicts with their conditions of employment, affiliations, and/or other conflicts of interest. (e.g., a SAG member working for a college or university would recuse themselves from voting on a permit application submitted by that institution).

## **III. PROCESS MANAGEMENT**

### **A. Coordination and Communication between the Secretary and the ESC**

*Information Requests from the Secretary to the ESC:* When the Secretary requires ESC advice, designated ANR staff may forward the relevant information concerning the matter for review to the ESC. If the ESC determines that additional information is necessary, the ESC may request that information from the designated ANR staff.

*Recommendations to the Secretary from the ESC:* The ESC may advise the Secretary on all matters relating to T&E species. Recommendations may be in writing via email and may be specific, provide a rationale, include relevant documentation, and contain sufficient information for the Secretary to act upon the recommendations.

## **B. Listing and Delisting Processes**

The ESC shall make recommendations to the Secretary regarding whether a species should be listed as endangered or threatened and may recommend, as necessary and appropriate, changes in the listing (including delisting) of species already subject to the protection of the Vermont Protection of Endangered Species Law. The steps of the listing and delisting process are:

- a) A recommendation for listing or for critical habitat designation may be referred to the ESC by the appropriate SAG or brought directly to the ESC from another source. If brought directly to the ESC it may be referred to the appropriate SAG for review.
- b) Information on the species is provided in a **Species Documentation Form**. Information on critical habitat is provided in a **Critical Habitat Designation Form**. Information is assembled from available sources, including unpublished reports, scientific publications, museums, herbaria, field data, VFWD reports and data, and other credible sources. If there are inadequate data, additional field work or other information may be requested by the ESC from university, agency or independent experts.
- c) The recommendation for species listing includes the application of species status criteria guidelines to determine what status, if any, should apply to the species being considered. This status is recorded on a **Species Status Form** along with the qualifying criteria.
- d) The recommendation for species listing includes a written summary of the requested status and the reasons why the species qualifies for listing, a change in listing, or delisting. This summary is recorded on a **Proposal for Listing** form.
- e) The ESC chair forwards the information to the Listing Subcommittee for review and recommendation.
- f) The Listing Subcommittee reviews the submitted materials to ensure conformance with the criteria guidelines, reviews the documentation to ensure it is complete and suitable for review by the ESC and the Secretary, and highlights for the ESC any specific issues that in their view, merit special consideration.
- g) The ESC reviews the proposed status of the species or of critical habitat, deliberates any pertinent issues, and votes on a recommendation to forward to the Secretary.

- h) The ESC Chair forwards to the Secretary a letter of recommendation, a **Summary (Motion to List)**, a **Status Review Form**, and a **Species Documentation Form**. For critical habitat, the ESC Chair forwards to the Secretary a letter of recommendation, a **Summary (Motion to List)**, and a **Critical Habitat Designation Form**.
- i) The Secretary considers the recommendations of the ESC and acts on the recommendation (e.g., asks for more information, concurs, rejects) within a three month period. Upon taking action, written notice is sent to the ESC and FWD containing notice of the decision and its justification, and the Department will initiate rule-making in conformance with the Administrative Procedures Act.

### **C. Endangered and Threatened Species Taking Permit Process**

The Secretary is authorized by statute to allow for the taking of an endangered species or its designated critical habitat for any of the following purposes: scientific purposes; to enhance the propagation or survival of a species; economic hardship; zoological exhibition; educational purposes; or special purposes consistent with the purposes of the federal Endangered Species Act. Permitting is administered by the FWD. Prior to issuing a permit, other than a routine, research or educational permit, the Secretary obtains the advice of the ESC. The ESC participates in the permitting process according to the following steps:

- a) **Routine Permit Applications** (e.g., display of mounted specimen or renewal of weed harvesting permit) and **Research or Educational Permit Applications**
  - i. These applications are handled as an administrative task by the Department and are not considered by the ESC.
  - ii. Annually a summary of permits approved without ESC involvement is prepared by the FWD and presented to the ESC. Upon the ESC's review some of the applications may be treated in one of the following categories in future instances.
- b) **All Other Takings Permit Applications**
  - i. The petitioner submits a completed written application for a permit to the Secretary, specifying the purpose(s) of the permit, as listed in 10 V.S.A. § 5408(a). The application shall include all information deemed necessary to properly evaluate the application, including a description of the possible impacts due to the proposed action, and plan for conservation or mitigation.
  - ii. When deemed complete, as determined by FWD staff, the written application is provided to the ESC Chair for distribution to members of the ESC and appropriate SAG members. At that time, the Secretary's designee may establish deadlines for the timely review and advice by the ESC.
  - iii. Hearing: The Secretary may conduct a public hearing in order to properly evaluate the application. Such hearings may be held within 60 days of the receipt of an administratively complete application. An ESC member may attend the hearing and draft comments and recommendations regarding the issuance of a permit. ANR staff

with expertise in either plants or animals, as appropriate; a hearing officer, and legal counsel may also attend the hearing and assist the ESC in drafting comments if requested. The ESC member and the ANR member assigned to the hearing may work together to draft comments to be sent to the ESC Chair to distribute to all ESC members for review, comment, and vote by a specified date in order to adhere to the timeframe above. Members not responding shall be considered to have abstained.

- iv. Where a petition has been denied and no public hearing has yet been held, the petitioner may request a hearing in writing. The Secretary may conduct a hearing within 30 days of receipt of the request (or within a timeframe to which the petitioner agrees).
- v. The ESC and/or the Secretary, and assigned staff, may at any time during the application process communicate with the petitioner, or meet informally to clarify issues or request additional information.

The Secretary may require, as part of an issued permit, conditions for the protection and conservation of endangered species or for critical habitat, per 10 V.S.A. Section 5403, 10 V.S.A. Section 5408.

c) **Recommendations and Advisements**

- i. Following a vote by ESC members, the ESC Chair, or a member designated by the Chair, may provide a written response to the Secretary. The statement may include comments, recommendations, or questions. The Chair or designated ESC member also may be asked by the Secretary to meet with the applicant and/or ANR staff to assist in working out the details of permit conditions.
- ii. The Secretary makes a determination regarding the permit application. The Secretary may consult with the Chair or designated ESC member prior to making the determination.

d) **Applications from State Agencies and Departments**

- i. In the special case where the permit applicant is the FWD; the DFPR; the Agency of Natural Resources; or the Agency of Agriculture, employees of the applicant shall identify the potential conflict prior to discussion of the permit and recuse themselves from any votes taken on that permit. Where additional technical expertise is needed, a request may be made to the Secretary, the Commissioner of the FWD, or other sources of expertise.

e) **Monitoring Permit Stipulations**

- i. Monitoring of the conditions of approved permits is performed by ANR staff and/or contractors hired by the Applicant.
- ii. Annually, a report of monitoring results is compiled by FWD and submitted to the ESC.

#### **IV. ADMINISTRATIVE PROCEDURES AND ASSISTANCE**

The Secretary may appoint one ANR staff member to be the ESC liaison and one staff member to provide administrative support. The administrative assistant may secure space for ESC meetings, ensure the meetings are properly warned, and distribute ESC meeting minutes to members and interested parties. The liaison may serve as ESC meeting recorder and assist with communication between the Secretary and the ESC. SAG and Subcommittee chairs may request assistance with copying documents (i.e., handouts) prior to ESC meetings. Requests for assistance may be submitted to the administrative assistant at least 48 hours in advance of the ESC meeting.

The Secretary of ANR may provide legal advice to the ESC as necessary and appropriate through the FWD General Counsel.

ESC members and SAG Chairs may secure reimbursement for mileage and per diem expenses by completing a state expense form and submitting the form to the ESC liaison. As approved by the Secretary, compensation for mileage may be given to SAG chairs for attendance at meetings and hearings as requested by the chair of the ESC.

#### **Version History**

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