

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Fish, Wildlife & Water Resources to which was referred
3 House Bill No. 552 entitled “An act relating to threatened and endangered
4 species” respectfully reports that it has considered the same and recommends
5 that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 Sec. 1. 10 V.S.A. § 5401 is amended to read:

8 § 5401. DEFINITIONS

9 As used in this chapter:

10 (1) “Agency” means the Agency of Natural Resources.

11 (2) “Secretary” means the Secretary of Natural Resources.

12 (3) “Species” ~~includes all subspecies of~~ means wildlife or wild plants
13 and any subspecies or other group of wildlife or wild plants of the same
14 species, the members of which may interbreed when mature.

15 (4) “Wildlife” means any member of a nondomesticated species of the
16 animal kingdom, whether reared in captivity or not, including, without
17 limitation, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean,
18 arthropod or other invertebrate, and also including any part, product, egg,
19 offspring, dead body, or part of the dead body of any such wildlife.

1 (5) “Plant” means any member of the plant kingdom, including seeds,
2 roots, and other parts thereof. As used in this chapter, plants shall include
3 fungi.

4 (6) “Endangered species” means a species listed ~~on the state endangered~~
5 ~~species list~~ as endangered under this chapter or ~~determined to be an~~
6 ~~“endangered species”~~ under the federal Endangered Species Act. The term
7 generally refers to species whose continued existence as a viable component of
8 the State’s wild fauna or flora is in jeopardy.

9 (7) “Threatened species” means a species listed ~~on the State~~ as a
10 ~~threatened species list~~ under this chapter or determined to be a “threatened
11 species” under the federal Endangered Species Act. The term generally refers
12 to species whose continued existence as a sustainable component of the State’s
13 wild fauna or flora is in jeopardy.

14 (8) “Endangered Species Act” and “federal Endangered Species Act”
15 means the Endangered Species Act of 1973, Public Law 93-205, as amended.

16 (9) “Habitat” means the physical and biological environment in which a
17 particular species of plant or animal lives.

18 (10) “Conserve,” “conserving,” and “conservation” mean to use and the
19 use of all methods and procedures ~~both~~ for increasing or maintaining:

20 (A) the number of individuals within a population of a species;

21 (B) the number of populations of a species; and

1 (C) populations of wildlife or wild plants to the optimum carrying
2 capacity of the habitat, ~~and for maintaining those numbers.~~

3 (11) “Optimum carrying capacity” for a species means a population
4 level of that species which, in that habitat, can ~~indefinitely~~ sustainably coexist
5 with healthy populations of all wildlife and wild plant species normally
6 present.

7 (12) “Methods” and “procedures” means all activities associated with
8 ~~scientific~~ natural resources management, including, without limitation,
9 scientific research, census, law enforcement, habitat acquisition and
10 maintenance, propagation, live trapping, and transplanting. The terms also
11 include the periodic or continuous protection of species or populations, where
12 appropriate, and the regulated taking of individuals of the species or population
13 in extraordinary cases where population pressures within a habitat cannot be
14 otherwise relieved.

15 (13) “Possession” ~~of a member of a species~~ means ~~the state of~~
16 possessing, exporting, importing, processing, selling, offering to sell,
17 delivering, carrying, transporting, or shipping by any means a member of ~~that a~~
18 species.

19 (14) ~~“Taking,”~~ “Take” or “taking”:

1 (A) ~~with~~ With respect to wildlife means “taking” as defined in
2 section 4001 of this title, and designated a threatened or endangered species,
3 means:

4 (i) pursuing, shooting, hunting, killing, capturing, trapping,
5 harming, snaring, and netting wildlife;

6 (ii) an act that creates a risk of injury to wildlife, whether or not
7 the injury occurs, including disturbing, harassing, wounding, or placing,
8 setting, drawing, or using any net or other device commonly used to take
9 animals; or

10 (iii) attempting to engage in or assisting another to engage in an
11 act set forth under subdivision (A)(i) or (ii) of this subdivision (14).

12 (B) ~~with~~ With respect to wild plants designated a threatened or
13 endangered species, means uprooting, transplanting, gathering seeds or fruit,
14 cutting, injuring, or killing or any attempt to do the same or assisting another
15 who is doing or is attempting to do the same.

16 (15) “Critical habitat” for a threatened species or endangered species
17 means:

18 (A) a delineated location within the geographical area occupied by
19 the species that:

20 (i) has the physical or biological features that are identifiable,
21 concentrated, and decisive to the survival of a population of the species;

1 (ii) is necessary for the conservation or recovery of the
2 species; and

3 (iii) may require special management considerations or
4 protection; or

5 (B) a delineated location outside the geographical area occupied by a
6 species at the time it is listed under section 5402 of this title that:

7 (i)(I) was historically occupied by a species; or

8 (II) contains habitat that is hydrologically connected or directly
9 adjacent to occupied habitat;

10 (ii) contains habitat that is identifiable, concentrated, and decisive
11 to the continued survival of a population of the species; and

12 (iii) is necessary for the conservation or recovery of the species.

13 (16) “Destroy or adversely impact” means, with respect to critical
14 habitat, a direct or indirect activity that negatively affects the value of critical
15 habitat for the survival, conservation, or recovery of a listed species.

16 (17) “Harming,” as used in the definition of “take” or “taking” under
17 subdivision (14) of this subsection, means:

18 (A) an act that kills or injures wildlife or wild plants; or

19 (B) the destruction or imperilment of habitat that kills or injures a
20 threatened or endangered species by significantly impairing continued survival

1 or essential behavioral patterns, including reproduction, feeding, and
2 sheltering.

3 Sec. 2. 10 V.S.A. § 5402 is amended to read:

4 § 5402. ENDANGERED AND THREATENED SPECIES LISTS

5 (a) The Secretary shall adopt by rule a State-endangered species list and a
6 State-threatened species list. The listing for any species may apply to the
7 whole State or to any part of the State and shall identify the species by its most
8 recently accepted genus and species names and, if available, the common
9 name.

10 (b) The Secretary shall determine a species to be endangered if it normally
11 occurs in the State and its continued existence as ~~wildlife or a wild plant in the~~
12 ~~State~~ a sustainable component of the State's wild fauna or flora is in jeopardy.

13 (c) The Secretary shall determine a species to be threatened if:

14 (1) it is a sustainable component of the State's wild fauna or flora;

15 (2) it is reasonable to conclude based on available information that its
16 numbers are significantly declining because of loss of habitat or human
17 disturbance; and

18 (3) unless protected, it will become an endangered species.

19 (d) In determining whether a species is endangered or threatened, the
20 Secretary shall consider:

- 1 (1) the present or threatened destruction, degradation, fragmentation,
2 modification, or curtailment of the range or habitat of the species;
- 3 (2) taking or over-utilization of the species for commercial, sporting,
4 scientific, educational, or other purposes;
- 5 (3) disease or predation affecting the species;
- 6 (4) the adequacy of existing regulation;
- 7 (5) actions relating to the species carried out or about to be carried out
8 by any governmental agency or any other person who may affect the
9 species; ~~and~~
- 10 (6) climate change;
- 11 (7) competition with other species, including non-native invasive
12 species;
- 13 (8) the decline in the population;
- 14 (9) cumulative impacts; and
- 15 (10) other natural or ~~man-made~~ human-made factors affecting the
16 continued existence of the species.
- 17 (e) In determining whether a species is endangered or threatened or
18 whether to delist a species, the Secretary shall:
- 19 (1) use the best scientific, commercial, and other data available;
- 20 (2) notify and consult with interested officials in Canada, interested state
21 ~~or~~ State and federal agencies, other states having a common interest in the

1 species, affected landowners, and any interested persons at least 30 days prior
2 to commencement of rulemaking; and

3 (3) notify the ~~governor~~ appropriate state officials and agencies of any
4 state contiguous to Vermont in which the species affected is known to occur.

5 Sec. 3. 10 V.S.A. § 5402a is added to read:

6 § 5402a. CRITICAL HABITAT; LISTING

7 (a) The Secretary may adopt by rule a critical habitat designation list for
8 threatened or endangered species. Critical habitat may be designated in any
9 part of the State. The Secretary shall not be required to designate critical
10 habitat for every State-listed threatened or endangered species. When the
11 Secretary designates critical habitat, the Secretary shall identify the species for
12 which the designation is made, including its most recently accepted genus and
13 species names, and, if available, its common name.

14 (b) The Secretary shall designate only critical habitat that meets the
15 definition of “critical habitat” under this chapter. In determining whether and
16 where to designate critical habitat, the Secretary shall consider the following:

17 (1) the current or historic use of the habitat by a listed State-endangered
18 or -threatened species;

19 (2) the extent to which the habitat is decisive to the survival and
20 recovery of a listed State-endangered or -threatened species, at any stage of its
21 life cycle;

- 1 (3) the space necessary for individual and population growth of the
- 2 species;
- 3 (4) food, water, air, light, minerals, or other nutritional or physiological
- 4 requirements of the listed species;
- 5 (5) cover or shelter for the listed species;
- 6 (6) sites for breeding, reproduction, rearing of offspring, germination, or
- 7 seed dispersal; migration corridors; and overwintering;
- 8 (7) the present or threatened destruction, degradation, fragmentation,
- 9 modification, or curtailment of the range or habitat of the listed species;
- 10 (8) the adequacy of existing regulation;
- 11 (9) actions relating to the species carried out or about to be carried out
- 12 by any governmental agency or any other person who may affect the species;
- 13 (10) cumulative impacts; and
- 14 (11) natural or human-made factors affecting the continued existence of
- 15 the listed species.

16 (c) In determining whether to designate critical habitat for a State-listed
17 threatened or endangered species, the Secretary shall:

- 18 (1) use the best scientific, commercial, and other data available;
- 19 (2) notify and consult with interested officials in Canada, interested
- 20 State and federal agencies, other states having a common interest in the

1 species, affected landowners, and any interested persons at least 30 days prior
2 to commencement of rulemaking; and

3 (3) notify the appropriate state officials and agencies of any state
4 contiguous to Vermont in which the species affected is known to occur.

5 Sec. 4. 10 V.S.A. § 5403 is amended to read:

6 § 5403. PROTECTION OF ENDANGERED AND THREATENED SPECIES

7 (a) Except as authorized under this chapter, a person shall not:

8 (1) take, possess, or transport wildlife or plants that are members of an
9 endangered or threatened species; or

10 (2) **destroy or adversely impact critical habitat.**

11 (b) Any person who takes a threatened or endangered species shall report
12 the taking to the Secretary.

13 (c) The Secretary may, with advice of the Endangered Species Committee,
14 adopt rules for the protection ~~and~~ conservation, or recovery of endangered and
15 threatened species.

16 ~~(e)~~(d) The Secretary may bring a ~~civil~~ environmental enforcement action
17 against any person who violates subsection (a) or (b) of this section or rules
18 adopted under this chapter in accordance with chapters 201 and 211 of this
19 title.

20 ~~(d)~~(e) Instead of bringing a ~~civil~~ environmental enforcement action for a
21 violation of this chapter or rules adopted under this chapter, the Secretary may

1 refer violations of this chapter to the Commissioner of Fish and Wildlife for
2 criminal enforcement.

3 ~~(e)~~(f) A In a criminal enforcement action, a person who knowingly violates
4 a requirement of this chapter or a rule of the Secretary adopted under
5 subsection ~~(b)~~(c) of this section related to taking, possessing, transporting,
6 buying, or selling a threatened or endangered species shall be fined ~~not more~~
7 ~~than \$500.00~~ in accordance with section 4518 of this title, and the person shall
8 pay restitution under section 4514 of this title.

9 ~~(f)~~(g) Any person who violates subsection (a) or (b) of this section by
10 knowingly injuring a member of a threatened or endangered species or
11 knowingly destroying or adversely impacting critical habitat and who is
12 subject to criminal prosecution may be required by the court to pay
13 restitution for:

14 (1) actual costs and related expenses incurred in treating and caring for
15 the injured plant or animal to the person incurring these expenses, including
16 the costs of veterinarian services and Agency of Natural Resources staff
17 time; or

18 (2) reasonable mitigation and restoration costs such as: species
19 restoration plans; habitat protection; and enhancement, transplanting,
20 cultivation, and propagation ~~for plants.~~

1 Sec. 5. 10 V.S.A. § 5404 is amended to read:

2 § 5404. ENDANGERED SPECIES COMMITTEE

3 (a) A ~~Committee~~ committee on endangered species is created to be known
4 as the “Endangered Species Committee,” and shall consist of nine members,
5 including the Secretary of Agriculture, Food and Markets, the Commissioner
6 of Fish and Wildlife, the Commissioner of Forests, Parks and Recreation, and
7 six members appointed by the Governor from the public at large. Of the six
8 public members, two shall be actively engaged in agricultural or silvicultural
9 activities, two shall be knowledgeable concerning flora, and two shall be
10 knowledgeable concerning fauna. Members appointed by the Governor shall
11 be entitled to reimbursement for expenses incurred in the attendance of
12 meetings, as approved by the Chair. The Chair of the Committee shall be
13 elected from among and by the members each year. Members who are not
14 employees of the State shall serve terms of three years, except that the
15 Governor may make appointments for a lesser term in order to prevent more
16 than two terms from expiring in any year.

17 (b) The Endangered Species Committee shall advise the Secretary on all
18 matters relating to endangered and threatened species, including whether to
19 alter the lists of endangered and threatened species ~~and~~, how to protect those
20 species, and whether and where to designate critical habitat.

1 (c) The Agency of Natural Resources shall provide the Endangered Species
2 Committee with necessary staff services.

3 Sec. 6. 10 V.S.A. § 5405 is amended to read:

4 § 5405. CONSERVATION PROGRAMS

5 The Secretary, with the advice of the Endangered Species Committee, may
6 establish conservation programs and establish recovery plans for the
7 conservation or recovery of threatened or endangered species of wildlife or
8 plants or for the conservation or recovery of critical habitat. The programs
9 may include the purchase of land or aquatic habitat and the formation of
10 contracts for the purpose of management of wildlife or wild plant refuge areas
11 or for other purposes.

12 Sec. 7. 10 V.S.A. § 5406 is amended to read:

13 § 5406. COOPERATION BY OTHER AGENCIES

14 All agencies of this State shall review programs administered by them
15 which may relate to this chapter and shall, in consultation with the Secretary,
16 utilize their authorities only in a manner which does not jeopardize the
17 threatened or endangered species, critical habitat, or the outcomes of
18 conservation or recovery programs established by this chapter or by the
19 Secretary under ~~its~~ his or her authority.

1 Sec. 8. 10 V.S.A. § 5407 is amended to read:

2 § 5407. ~~ENFORCEMENT~~ AUTHORITY TO SEIZE THREATENED OR
3 ENDANGERED SPECIES

4 In addition to other methods of enforcement authorized by law, the
5 Secretary may direct under this section that wildlife or ~~wild~~ plants ~~which~~ that
6 were seized because of violation of this chapter be rehabilitated, released,
7 replanted, or transferred to a zoological, botanical, educational or scientific
8 institution, and that the costs of the transfer and staff time related to a violation
9 may be charged to the violator. The Secretary, with the advice of the
10 Endangered Species Committee, may adopt rules for the implementation of
11 this section.

12 Sec. 9. 10 V.S.A. § 5408 is amended to read:

13 § 5408. ~~LIMITATIONS~~ AUTHORIZED TAKINGS; INCIDENTAL
14 TAKINGS; DESTRUCTION OF CRITICAL HABITAT

15 (a) Authorized taking. Notwithstanding any provision of this chapter, after
16 obtaining the advice of the Endangered Species Committee, the Secretary may
17 permit, under such terms and conditions as the Secretary may prescribe by
18 rule, the taking of a threatened or endangered species, the destruction or
19 adverse impact of critical habitat, or any act otherwise prohibited by this
20 chapter if done for any of the following purposes:

21 (1) scientific purposes;

1 (2) to enhance the propagation or survival of a threatened or endangered
2 species; ~~economic hardship~~;

3 (3) zoological exhibition;

4 (4) educational purposes;

5 (5) noncommercial cultural or ceremonial purposes; or

6 (6) special purposes consistent with the purposes of the federal
7 Endangered Species Act.

8 (b) Incidental taking. The Secretary may permit, under such terms and
9 conditions as the Secretary may prescribe by rule, the incidental taking of a
10 threatened or endangered species or the destruction or adverse impact of
11 critical habitat if:

12 (1) the taking is necessary to conduct an otherwise lawful activity;

13 (2) the taking is attendant or secondary to, and not the purposes of, the
14 lawful activity;

15 (3) the impact of the permitted incidental take is minimized; and

16 (4) the incidental taking will not impair the **conservation or** recovery of
17 any endangered species or threatened species.

18 (c) Transport through State. Nothing in this chapter shall prevent a person
19 who holds a proper permit from the federal government or any other state from
20 transporting a member of an endangered or threatened species from a point
21 outside this State ~~to another point within or without this~~ through the State.

1 ~~(e)~~(d) Possession. Nothing in this chapter shall prevent a person from
2 possessing in this State wildlife or wild plants which are not determined to be
3 “endangered” or “threatened” under the federal Endangered Species Act where
4 the possessor is able to produce substantial evidence that the wildlife or wild
5 plant was first taken or obtained in a place without violating the law of that
6 place, provided that an importation permit may be required under section 4714
7 of this title or the rules of the Department.

8 ~~(d)~~(e) Interference with agricultural or silvicultural practices. No rule
9 adopted under this chapter shall cause undue interference with normal
10 agricultural or silvicultural practices. This section shall not be construed to
11 exempt any person from the provisions of the federal Endangered Species Act.
12 The Secretary shall not adopt rules that restrain agricultural activities without
13 first consulting with the Secretary of Agriculture, Food and Markets. The
14 Secretary shall not adopt rules that restrain silvicultural activities without first
15 consulting with the Commissioner of Forests, Parks and Recreation.

16 (f) Consistency with State law. Nothing in this chapter shall be interpreted
17 to limit or amend the definitions and applications of necessary habitat in
18 chapter 151 of this title or in 30 V.S.A. chapter 5.

19 ~~(e)~~(g) Effect on federal law. Nothing in this section permits a person to
20 violate any provision of federal law concerning federally protected threatened
21 or endangered species.

1 (h) Permit application. An applicant for a permit under this section shall
2 submit an application to the Secretary that includes the following information:

3 (1) a description of the activities that could lead to a taking of a listed
4 endangered or threatened species or the destruction or adverse impact of
5 critical habitat;

6 (2) the steps that the applicant has or will take to avoid, minimize, and
7 mitigate the impact to the relevant endangered or threatened species or critical
8 habitat;

9 (3) a plan for ensuring that funding is available to conduct any required
10 monitoring and mitigation, if applicable;

11 (4) a summary of the alternative actions to the taking or destruction of
12 critical habitat that the applicant considered and the reasons that these
13 alternatives were not selected, if applicable;

14 (5) the name or names and obligations and responsibilities of the person
15 or persons that will be involved in the proposed taking or destruction of critical
16 habitat; and

17 (6) any additional information that the Secretary may require.

18 ~~(i)~~ Permit fees.

19 (1) Fees to be charged to a person applying to take a threatened or
20 endangered species or destroy or adversely impact critical habitat under this
21 section shall be:

1 (A) ~~To~~ to take for scientific purposes, to enhance the propagation or
2 survival of the species, noncommercial cultural or ceremonial purposes, or for
3 educational purposes or special purposes consistent with the federal
4 Endangered Species Act, \$50.00;

5 (B) ~~To~~ to take for a zoological or botanical exhibition ~~or to lessen an~~
6 ~~economic hardship~~, \$250.00 for each listed animal or plant taken up to a
7 maximum of \$25,000.00 ~~or, if the Secretary determines that it is in the best~~
8 ~~interest of the species, the parties may agree to mitigation in lieu of a monetary~~
9 ~~fee;~~ and

10 (C) for an incidental taking, \$250.00 for each listed animal or plant
11 taken up to a maximum of \$25,000.00.

12 (2) The Secretary may require the implementation of reasonable
13 mitigation strategies, and may collect reasonable mitigation funds, in lieu of or
14 in addition to the permit fees, in order to mitigate the impacts of a taking, the
15 adverse impact on habitat, or destruction of habitat.

16 (3) Fees ~~or~~ and mitigation payments collected under this subsection and
17 interest on fees and mitigation payments shall be deposited in the Threatened
18 and Endangered Species Fund ~~within the Fish and Wildlife Fund, which Fund~~
19 ~~is hereby created~~ and shall be used solely for expenditures of the Department
20 of Fish and Wildlife related to threatened and endangered species.

21 Expenditures may be made for monitoring, restoration, conservation, recovery,

1 and the acquisition of property interests and other purposes consistent with this
2 chapter. Where practical, the fees collected for takings shall be devoted to the
3 conservation or recovery of the taken species or its habitat. Interest accrued on
4 the Fund shall be credited to the Fund.

5 ~~(g)~~(j) Permit term. A permit issued under this section shall be valid for the
6 period of time specified in the permit, not to exceed five years. A permit
7 issued under this section may be renewed upon application to the Secretary.

8 (k) Public notice. The Secretary shall establish rules for public notice of
9 draft permit decisions based on incidental take and for initial and amended
10 general permits. The rules shall provide for public notice, no fewer than
11 30 days of public comment, and the opportunity to request a public
12 informational hearing. The rules shall also provide for posting permit
13 applications, permit decisions, and the initial or amended general permits on a
14 publicly accessible website, as well as for allowing persons to request
15 notification of permit decisions. The rules may set application requirements
16 for general permits that deviate from subsection (g) of this section and
17 establish best management practices for different types of general permits.

18 (l) General permits. The Secretary may issue general permits for activities
19 that will not affect the continued survival or recovery of a species. A general
20 permit issued under this chapter shall contain those terms and conditions
21 necessary to ensure compliance with the provisions of this statute. These terms

1 and conditions may include the implementation of best management practices
2 and the adoption of specific mitigation measures and required surveying,
3 monitoring, and reporting. In determining whether an activity warrants a
4 general permit, the Secretary shall consider only those cases where:

5 (1) an imminent risk to human health and safety exists;

6 (2) a proposed action enhances the overall long-term survival of the
7 species; or

8 (3) best management practices or guidelines, or both, have been
9 developed and applied to minimize take to the greatest extent possible.

10 Sec. 10. 10 V.S.A. § 5410 is amended to read:

11 § 5410. LOCATION CONFIDENTIAL

12 ~~All~~ Except for critical habitat designated under section 5411 of this title, all
13 information regarding the location of threatened or endangered species sites
14 shall be kept confidential in perpetuity except that the Secretary shall disclose
15 this information to the owner of land upon which the species has been located,
16 or to a potential buyer who has a bona fide contract to buy the land and applies
17 to the Secretary for disclosure of threatened or endangered species information,
18 and to qualified individuals or organizations, public agencies and nonprofit
19 organizations for scientific research or for preservation and planning purposes
20 when the Secretary determines that the preservation of the species is not
21 further endangered by the disclosure.

1 Sec. 11. EFFECTIVE DATE

2 This act shall take effect on July 1, 2016.

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10 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE