

1 H.210

2 Introduced by Representative Krebs of South Hero

3 Referred to Committee on

4 Date:

5 Subject: Fish and wildlife; endangered and threatened species; incidental take

6 Statement of purpose of bill as introduced: This bill proposes to establish a

7 process under which the Commissioner of Fish and Wildlife may issue a

8 permit for the incidental taking of a threatened or endangered species.

9 An act relating to requiring a permit for the incidental taking of an  
10 endangered or threatened species

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 10 V.S.A. § 5408 is amended to read:

13 § 5408. ~~LIMITATIONS~~ INCIDENTAL TAKE PERMIT

14 ~~(a) Notwithstanding any provision of this chapter, after obtaining the~~  
15 ~~advice of the endangered species committee, the secretary may permit, under~~  
16 ~~such terms and conditions as the secretary may prescribe by rule, any act~~  
17 ~~otherwise prohibited by this chapter if done for any of the following purposes:~~  
18 ~~scientific purposes; to enhance the propagation or survival of a species;~~  
19 ~~economic hardship; zoological exhibition; educational purposes; or special~~  
20 ~~purposes consistent with the purposes of the federal Endangered Species Act.~~

1           ~~(b) Nothing in this chapter shall prevent a person who holds a proper~~  
2 ~~permit from the federal government or any other state from transporting a~~  
3 ~~member of an endangered or threatened species from a point outside this state~~  
4 ~~to another point within or without this state.~~

5           ~~(c) Nothing in this chapter shall prevent a person from possessing in this~~  
6 ~~state wildlife or wild plants which are not determined to be “endangered” or~~  
7 ~~“threatened” under the federal Endangered Species Act where the possessor is~~  
8 ~~able to produce substantial evidence that the wildlife or wild plant was first~~  
9 ~~taken or obtained in a place without violating the law of that place.~~

10           ~~(d) No rule adopted under this chapter shall cause undue interference with~~  
11 ~~normal agricultural or silvicultural practices. This section shall not be~~  
12 ~~construed to exempt any person from the provisions of the federal Endangered~~  
13 ~~Species Act.~~

14           ~~(e) Nothing in this section permits a person to violate any provision of~~  
15 ~~federal law concerning federally protected endangered species.~~

16           ~~(f)(1) Fees to be charged to a person applying to take a threatened or~~  
17 ~~endangered species under this section shall be:~~

18                   ~~(A) To take for scientific purposes, to enhance the propagation or~~  
19 ~~survival of the species, or for educational purposes or special purposes~~  
20 ~~consistent with the federal Endangered Species Act, \$50.00.~~

1           ~~(B) To take for a zoological or botanical exhibition or to lessen an~~  
2 ~~economic hardship, \$250.00 for each listed animal or plant taken up to a~~  
3 ~~maximum of \$25,000.00 or, if the secretary determines that it is in the best~~  
4 ~~interest of the species, the parties may agree to mitigation in lieu of a monetary~~  
5 ~~fee.~~

6           (a) The Commissioner may issue a permit to take an endangered or  
7 threatened species the taking of which is otherwise prohibited by section 5403  
8 of this title for one of the following purposes:

9           (1) scientific purposes;

10           (2) to enhance the propagation or survival of a species;

11           (3) when the taking is necessary to conduct an otherwise lawful activity;

12 and the taking is incidental to, and not the purpose of, the lawful activity.

13           (b) An applicant for an incidental take permit under subdivision (a)(3) of  
14 this section shall submit to the Commissioner a proposed conservation plan.

15 The proposed conservation plan shall include the following:

16           (1) a description of the impact that will likely occur as a result of the  
17 taking of a listed endangered or threatened species;

18           (2) the steps that the applicant will take to minimize and mitigate the  
19 impact to the relevant endangered or threatened species;

20           (3) a summary of the funding available to the applicant to implement the  
21 steps identified under subdivision (2) of this subsection;

1           (4) a summary of the alternative actions to the taking that the applicant  
2           considered and the reasons that these alternatives will not be implemented;

3           (5) the name or names and obligations and responsibilities of the  
4           persons that will be involved in the proposed incidental taking; and

5           (6) any additional information or conditions that the commissioner may  
6           require to be necessary or appropriate.

7           (c) Upon receipt of an application for an incidental take permit under  
8           subdivision (a)(3) of this section and the accompanying conservation plan, the  
9           Commissioner shall provide public notice of the application. The  
10           Commissioner shall adopt a procedure for receipt of public comment on the  
11           proposed taking.

12           (d) After receipt and consideration of the public comment received on the  
13           proposed incidental taking under subdivision (a)(3) of this section, the  
14           Commissioner shall issue the permit if the Commissioner determines, based on  
15           the permit application and the conservation plan, that the proposed taking will  
16           meet all of the following requirements:

17           (1) The proposed taking will not be the purpose of, but will be only  
18           incidental to, the carrying out of a lawful activity.

19           (2) The applicant will, to the maximum extent practicable, minimize and  
20           mitigate the impact caused by the taking.

1           (3) The applicant will ensure that adequate funding for the conservation  
2 plan will be provided.

3           (4) The taking will not appreciably reduce the likelihood of the survival  
4 or recovery of the endangered or threatened species in the State, the whole  
5 plant-animal community of which the species is a part, or the habitat that is  
6 critical to the species' existence.

7           (5) The applicant has or will satisfy any requirement of the  
8 Commissioner under subdivision (b)(5) of this section.

9           (e) The Commissioner may require additional permit terms or conditions  
10 necessary to ensure that the requirements of subdivisions (d)(1)–(5) of this  
11 section will be satisfied. Terms or conditions under this subsection may  
12 include reporting and monitoring requirements.

13           (f) The Commissioner may, at any time, revoke, modify, or suspend a  
14 permit issued under this section upon finding that the permit holder violated  
15 the terms and conditions of the permit.

16           (g) An incidental take permit under this section is not required if a person  
17 has been issued a federal permit under 16 U.S.C. § 1539.

18           (h) An applicant for an incidental take permit under this section may satisfy  
19 the mitigation requirements of subdivision (d)(2) of this section by payment of  
20 a mitigation payment to the Threatened and Endangered Species Fund under  
21 subsection (j) of this section. A mitigation payment provided by an applicant

1 shall be used to fund habitat management or the protection of land or other  
2 appropriate mitigation for the species subject to the incidental take permit. The  
3 amount of the mitigation payment shall be determined based on a formula  
4 established by the Commissioner by rule that considers the impact on the  
5 affected species, the number of individual animals or plants of the affected  
6 species that may be taken, and the impact on the habitat of the affected species.

7 (i) The application fee for a permit under this section shall be \$150.00.

8 ~~(2)(j)~~ Fees or mitigation payments collected under this ~~subsection~~  
9 ~~section~~ shall be deposited in the ~~threatened and endangered species~~ Threatened  
10 and Endangered Species Fund within the ~~fish and wildlife fund~~ Fish and  
11 Wildlife Fund, which ~~fund~~ Fund is hereby created. Expenditures may be made  
12 for monitoring, restoration, conservation, and the acquisition of property  
13 interests and other purposes consistent with this chapter. Where practical, the  
14 fees collected for takings shall be devoted to the conservation of the taken  
15 species or its habitat. Interest accrued on the ~~fund~~ Fund shall be credited to the  
16 ~~fund~~ Fund.

17 Sec. 2. EFFECTIVE DATE

18 This act shall take effect on July 1, 2013.