

H.570

An act relating to hunting, fishing, and trapping

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

Sec. 1. 10 V.S.A. § 4083 is amended to read:

§ 4083. FISH

Any regulation or amendment thereto adopted pursuant to this subchapter ~~which~~ that relates to fish may apply to all or any portion of the State and may ~~do~~ address any or all of the following as to any species or varieties of fish:

- (1) ~~Establish~~ establish, extend, shorten, or abolish open seasons, and closed seasons;
- (2) ~~Establish~~ establish, change, or abolish daily limits, season limits, possession limits, and size limits;
- (3) ~~Establish~~ establish and change territorial limits for the pursuit, taking, or killing of any species or varieties, and close or open lakes, streams, or parts thereof;
- (4) ~~Prescribe~~ prescribe the manner and the means of pursuing, taking, or killing any species or variety, including the prescribing of type or kinds of bait, lures, tackle, equipment, traps, or any other means or devices for taking such fish;
- (5) ~~Prescribe~~ prescribe such rules relating to transportation and exportation of fish as may be necessary for the enforcement of this part;

(6) establish rules regarding the purchase and sale of fish caught in Vermont, including: prohibiting the sale of specified fish; seasons; limits; reporting requirements; and the manner and means of pursuing or taking fish, in accordance with the requirements of part 4 of this title.

Sec. 2. 10 V.S.A. § 4611 is amended to read:

§ 4611. ~~SALE OF SALMON, TROUT, AND BLACK BASS FISH~~

(a) A person shall not buy or sell a salmon, trout, lake trout, walleye, northern pike, muskellunge, ~~or~~ black bass, or any other fish specified by rule by the Board taken in this State, or imported from another state or country where sale of such fish is prohibited, except such fish reared in licensed propagation farms within the State.

(b) A person shall not buy or sell fish caught in Vermont without a permit issued by the Commissioner, as required under the rules of the Board and the requirements of part 4 of this title. A propagation farm with a valid permit issued under 10 App. V.S.A. § 117 shall not be required to obtain a permit under this section.

Sec. 3. 10 V.S.A. § 4605 is amended to read:

§ 4605. PLACING FISH IN WATERS; FISH IMPORTATION PERMITS

(a) A person shall not introduce or attempt to introduce:

~~(1) pickerel or northern pike into any waters; or~~

~~(2)~~ any fish, ~~except trout or salmon~~, into any waters except private ponds lacking access to other waters of the State without a permit issued by the Commissioner under this section or rules adopted by the Commissioner under subsection (c) of this section.

(b) A person shall not bring into the State for the purpose of planting or introducing, or to plant or introduce, into any of the inland or outlying waters of the State any live fish or the live spawn thereof, unless, upon application in writing therefor, the person obtains from the Commissioner a permit so to do. ~~The permit may include conditions which the Commissioner finds necessary to guard the health of Vermont's fish population.~~

(c) The Commissioner may, by rule,:

(1) Require a permit to introduce or attempt to introduce specific fish species into a specific water of the State based on management purposes.

(2) Prohibit the introduction or attempt at introduction of fish to specific waters of the State based on management purposes, ecosystem considerations, or the health and safety of Vermont's fish population.

(3) adopt Adopt a list of fish which, if introduced into Vermont waters, have the potential to cause harm to the fish population of the State. A person shall not possess or bring into the State any fish on the list unless the person has received a permit issued pursuant to this subsection. The Commissioner may issue a permit allowing importation and possession of a fish on the list,

provided the fish is to be kept in a controlled situation and used for a public purpose such as research or education. ~~A permit issued under this subsection shall include conditions that ensure the health and safety of Vermont's fish population.~~

(d) Applicants shall pay a permit fee of \$50.00. The Commissioner or duly authorized agents, shall make such investigation and inspection of the fish as they may deem necessary and then the importation permit may be granted pursuant to regulations which the Board shall prescribe. The Commissioner may waive the permit fee required under this subsection for organizations cooperating or partnering with the Department. The Commissioner or duly authorized agents shall make a determination on the permit within 10 days of receiving the application. The Department may dispose of unlawfully imported fish as it may judge best, and the State may collect damages from the violator of this subsection for all expenses incurred.

(e) Nothing in this section shall prohibit the Board, the Commissioner, or their duly authorized agents from bringing into the State for the purpose of planting, introducing, or stocking, or from planting, introducing, or stocking any fish in the State.

(f) In any permit issued under this section, the Commissioner may include conditions that ensure the health and safety of Vermont's fish population.

Sec. 4. 10 V.S.A. § 4501 is amended to read:

§ 4501. AIDING IN VIOLATIONS; SHARING IN PROCEEDS

A person who drives, transports, scouts, counsels, or otherwise aids another person in a violation of a provision of this part, or who knowingly possesses, consumes, or otherwise shares in the proceeds of such a violation by receiving or possessing fish or wild animals, or any parts thereof, shall be punished as a principal.

Sec. 5. 10 V.S.A. § 4502 is amended to read:

§ 4502. UNIFORM POINT SYSTEM; REVOCATION OF LICENSE

* * *

(b) A person violating provisions of this part shall receive points for convictions in accordance with the following schedule (all sections are in this title of the Vermont Statutes Annotated):

(1) ~~Five~~ Except for biological collection violations determined to be nonpoint violations under the rules of the Board, five points shall be assessed for any violation of statutes or rules adopted under this part except those listed in subdivisions (2) and (3) of this subsection.

(2) Ten points shall be assessed for:

(Y) Appendix § 2; Appendix § 33, section 14.3. Reporting of ~~deer,~~
~~bear~~ big game

* * *

(GG) Appendix § 44. Trapping, except for violations of Appendix § 44, sections 4.3, 4.4, 4.6, 4.9, 4.10, 4.11, 4.12, 4.14(c), and 4.14(e)

(HH) § 4827. A Taking black bear doing damage

* * *

(NN) § 4826. Taking deer doing damage

(OO) § 22a. Taking turkey doing damage

(PP) § 35. Taking moose doing damage

(QQ) Appendix § 22, section 6.7; Appendix § 33, section 13.1(g); Appendix § 37, section 7.7. Possession or transport of a cocked crossbow in or on a motor vehicle, motorboat, airplane, snowmobile, or other motor-propelled vehicle

(RR) Appendix § 7, section 6.3(b). Hunting bear with any dog not listed on the permit

(SS) Appendix § 37, section 9.0. Feeding deer.

(3) Twenty points shall be assessed for:

* * *

(O) Appendix § 7, sections 4.2, 5.1, 5.2, 5.3, 6.1, 6.2, 6.3(d), 6.3(e), 6.4, 6.5(c), 6.5(d), 7.1, and 7.2. Bear, unauthorized taking ~~with aid of dogs~~

(P) Appendix § 22. Turkey season, excluding: requirements for youth turkey hunting season; section 6.2, size of shot used or possessed; and section 6.7, transport of cocked crossbow

* * *

(U) Appendix § 37, excluding ~~violations of annual deer limits;~~
requirements for youth deer hunting weekend, ~~and;~~ limitations on feeding of
deer; section 7.7, transport of cocked crossbow; and section 11.0, ban of urine
and other natural lures

(V) § 4454. Interstate Wildlife Violator Compact.

(W) § 4711. Crossbow hunting

(X) Appendix § 4. Hunting with a crossbow without a permit
or license

(Y) Appendix § 20. Aerial hunting

(Z) Appendix § 44, section 4.6. Use of tooth jawed traps

(AA) Appendix § 44, section 4.11. Taking furbearers with poison

(BB) Appendix § 44, section 4.12. Taking furbearers from a den.

* * *

(e) ~~The Commissioner shall revoke a hunting license issued under this part~~
~~when the holder thereof~~ When a person holding a license issued under this part
has been convicted of a violation of 13 V.S.A. § 1023(a)(2) or has been
convicted of manslaughter by the careless and negligent use of firearms, the
Commissioner shall revoke the person's hunting license, 20 points shall
accumulate on the person's license, and another license shall not be issued to
~~such~~ the person within five years from the date of ~~such~~ the revocation or within

five years from the date of ~~such~~ the conviction if ~~such~~ the person had no license. The court before which such person is convicted shall certify ~~such~~ the conviction to the Commissioner. A revocation shall be deemed effective when notice is given, when made in person, or three days after the deposit of ~~such~~ the notice in the U.S. mail, if made in writing.

* * *

Sec. 6. 10 V.S.A. § 4503 is amended to read:

§ 4503. UNLAWFUL EQUIPMENT, VEHICLE, FORFEITURE

A person convicted of violating the provisions of section 4745, 4781, 4783, 4784, 4705(a), 4280, 4747, or 4606 of this title relating to taking big game ~~by illegal means,~~ shall forfeit to the State Department of Fish and Wildlife the firearms, jacks, artificial lights, motor vehicle, or any other device used in ~~the taking or transporting of big game~~ committing the violation. Forfeiture of a motor vehicle shall not apply to the illegal taking, possessing, or transporting of wild turkey, ~~or~~ anadromous Atlantic salmon, section 4606, or to the person's first conviction of the provisions of section 4745, 4781, 4783, or 4784 under this section. Proceeds from the sale of items or equipment forfeited under this section shall be deposited in the Fish and Wildlife Fund.

Sec. 7. 10 V.S.A. § 4514 is amended to read:

§ 4514. POSSESSION OF FLESH OF GAME; RESTITUTION

(a) When legally taken, the flesh of a fish or wild animal may be possessed for food for a reasonable time thereafter and such flesh may be transported and stored in a public cold storage plant. Nothing in this section shall authorize the possession of game birds or carcasses or parts thereof contrary to regulations made pursuant to the Migratory Bird Treaty Act.

(b) Any person convicted of illegally taking, destroying, or possessing wild animals or threatened or endangered species shall, in addition to other penalties provided under this chapter, pay restitution in the following amounts into the Fish and Wildlife Fund for each animal taken, destroyed, or possessed, ~~no more than the following amounts:~~

- | | |
|---|--|
| (1) Big game | <u>no more than \$2,000.00</u>
<u>and no less than \$200.00</u>
<u>for the first offense and no</u>
<u>less than \$500.00</u>
<u>each for a second or</u>
<u>subsequent offense</u> |
| (2) Endangered or threatened species
as defined in section 5401 of this
title | \$2,000 <u>no more than</u>
<u>\$2,000.00 and no less than</u>
<u>\$500.00 each</u> |

- (3) Small game no more than \$500.00 and
no less than \$50.00 each
- (4) Fish no more than \$50.00
and no less than \$25.00
each

(c) A person who damages or destroys a wildlife facsimile owned by the Department of Fish and Wildlife in violation of the requirements of part 4 of this title shall pay restitution for the replacement or repair of the decoy into the Fish and Wildlife Fund.

Sec. 8. 10 V.S.A. § 4517 is amended to read:

§ 4517. DESTRUCTION OF STATE PROPERTY

(a) Whoever ~~wilfully or carelessly~~ intentionally or recklessly damages, injures, interferes with, or destroys any property, real or personal, belonging to or controlled by the State for fish, game, or wildlife purposes shall be fined not more than \$2,500.00.

(b) A person convicted of intentionally or recklessly damaging, injuring, interfering with, or destroying property belonging to or controlled by the State for fish, game, or wildlife purposes shall, in addition to other penalties provided under this chapter, pay restitution into the Fish and Wildlife Fund to repair or replace the damaged property.

Sec. 9. 10 V.S.A. § 4518 is amended to read:

§ 4518. BIG GAME VIOLATIONS; THREATENED AND ENDANGERED
SPECIES; SUSPENSION; VIOLATIONS

Whoever violates a provision of this part or orders or rules of the Board relating to taking, possessing, transporting, buying, or selling of big game or relating to threatened or endangered species shall be fined not more than \$1,000.00 nor less than \$400.00 or imprisoned for not more than 60 days, or both. Upon a second and all subsequent convictions or any conviction while under license suspension related to the requirements of part 4 of this title, the violator shall be fined not more than ~~\$2,000.00~~ \$4,000.00 nor less than ~~\$1,000.00~~ \$2,000.00 or imprisoned for not more than 60 days, or both.

Sec. 10. 10 V.S.A. § 4572 is amended to read:

§ 4572. DEFINITIONS

(a) As used in this subchapter, a minor fish and wildlife violation means:

(1) a violation of 10 V.S.A. § 4145 (violation of access and landing area rules);

(2) a violation of 10 V.S.A. § 4251 (taking wild animals and fish without a license);

(3) a violation of 10 V.S.A. § 4266 (failure to carry a license on person or failure to exhibit license);

(4) a violation of 10 V.S.A. § 4267 (false statements in license application; altering license; transferring license to another person; using another person's license; or guiding an unlicensed person);

(5) a violation of 10 V.S.A. § 4713 (tree or ground stands or blinds); or

(6) ~~a violation of 10 V.S.A. § 4616 (use of external felt-soled boots or external felt-soled waders)~~ [Repealed.]

(7) a violation of a biological collection rule adopted by the Board under part 4 of this title.

(b) "Bureau" means the Judicial Bureau as created in 4 V.S.A. § 1102.

Sec. 11. 10 V.S.A. § 4616 is amended to read:

§ 4616. ~~FELT-SOLED BOOTS AND WADERS; USE PROHIBITED~~

~~It is unlawful to use external felt-soled boots or external felt-soled waders in the waters of Vermont, except that a state or federal employee or emergency personnel, including fire, law enforcement, and EMT personnel, may use external felt-soled boots or external felt-soled waders in the discharge of official duties. [Repealed.]~~

Sec. 12. 10 V.S.A. § 4708 is amended to read:

§ 4708. INTERFERENCE WITH HUNTING, FISHING, OR TRAPPING

(a) A person shall not intentionally interfere with the lawful taking of fish or wild animals by ~~another nor intentionally harass, drive, or disturb fish or any wild animal for the purpose of disrupting the lawful taking of the same.~~

~~Nothing in this subsection shall be construed to prohibit any incidental interference arising from lawful activity by land users including farmers and recreationists.~~

~~(b) A person shall not take, injure, destroy, or wilfully interfere with:~~

~~(1) a trap, when lawfully set for the purpose of taking wild animals; or~~

~~(2) wilfully interfere with a person in the act of trapping animals;~~

(1) tampering with traps, nets, bait, firearms, or any other thing used for hunting, trapping, or fishing;

(2) placing himself or herself in a position, for the purpose of interfering, that hinders or prevents hunting, trapping, or fishing; or

(3) engaging in an activity, for the purpose of interfering, that drives, harasses, disturbs, or is likely to disturb wildlife or fish.

(b) Nothing in this subsection shall be construed to prohibit an incidental interference arising from lawful activity by landowners or users of land, including farmers and recreationists.

Sec. 13. 10 V.S.A. § 4745 is amended to read:

§ 4745. TAKING ~~DEER~~ BIG GAME OUT OF SEASON PROHIBITED;

TIME

A person shall not take ~~a wild deer except specified wild deer~~ big game except during the seasons provided by law under part 4 of this title or the rules of the Board, and then only between one-half hour before sunrise and one-half

hour after sunset. However, this section shall not be construed to prohibit the taking of ~~deer~~big game under section 4826 or 4827 of this title and provisions in the rules of the Board relating to wildlife doing damage.

Sec. 14. 10 V.S.A. § 4781 is amended to read:

§ 4781. BIG GAME; POSSESSION

A person shall not possess big game ~~except during the open season and for a reasonable time thereafter unless otherwise provided, and then only such as can be legally taken. A person shall not possess big game taken by any illegal devices, nor any big game taken in closed season~~ taken by unlawful means or methods or taken in a closed season in violation of any provision of part 4 of this title or rules of the Board. Unless otherwise prohibited, a person may possess lawfully taken game during the open season and for a reasonable time thereafter.

Sec. 15. 10 V.S.A. § 4784 is amended to read:

§ 4784. TRANSPORTATION OF BIG GAME

A person shall not transport big game ~~taken by any illegal devices, or taken in closed season. A person shall not transport a wild deer with antlers less than three inches in length except deer taken under the provisions of this title~~ by unlawful means or methods or taken in a closed season in violation of any provision of part 4 of this title or rules of the Board.

Sec. 16. 10 V.S.A. § 5201 is amended to read:

§ 5201. NOTICES; POSTING

(a)(1) An owner, or a person having the exclusive right to take ~~fish or wild animals~~ game upon land or the waters thereon, who desires to protect his or her land or ~~waters~~ private pond or propagation farm over which he or she has exclusive control, may maintain notices stating that:

(A) the shooting, trapping, or taking of game or wild animals is prohibited or is by permission only;

(B) fishing or the taking of fish is prohibited or is by permission only;

(C) fishing, hunting, trapping, ~~and~~ or taking of ~~wild animals and fish~~ are game is prohibited or ~~are~~ is by permission only.

(2) "Permission only signs" authorized under this section shall contain the owner's name and a method by which to contact the property owner or a person authorized to provide permission to hunt, fish, or trap on the property.

(b) Notices prohibiting the taking of ~~wild animals~~ game shall be erected upon or near the boundaries of lands to be affected with notices at each corner and not over 400 feet apart along the boundaries thereof. ~~Notices prohibiting the taking of fish shall show the date that the waters were last stocked and shall be maintained upon or near the shores of the waters not over 400 feet apart.~~ Legible signs must be maintained at all times and shall be dated each year.

These signs shall be of a standard size and design as the Commissioner shall specify.

(c) The owner or person posting the lands shall record this posting annually in the town clerk's office of the town in which the land is located. The recording form shall be furnished by the Commissioner and shall be filled out in triplicate, one copy to be retained by the town clerk, one copy to the Commissioner, and one copy to be retained by the person having the right to post the lands. The forms shall contain the information as to the approximate number of acres posted, location in town, date of posting, and signature of person so posting the lands. The town clerk shall file the record and it shall be open to public inspection. The town clerk shall retain a fee of \$5.00 for this recording.

(d) Land posted as provided in subsection (b) of this section shall be enclosed land for the purposes herein.

Sec. 17. 10 V.S.A. § 5202 is amended to read:

§ 5202. PRIVATE PRESERVES PONDS, STOCKING, ~~AFFIDAVIT~~

~~(a) To post a stream as a private preserve under section 5201 of this title, a person annually shall:~~

~~(1) Stock the waters of each half mile of stream with at least 1,000 fry, 600 advanced fry, 300 fingerlings, or 150 fish, each not less than six inches in length.~~

~~(2) File with the Commissioner and the town clerk of the town in which the waters lie, immediately after stocking the waters, a sworn affidavit declaring that the provisions of this section have been complied with. The affidavit shall identify the number and kind of fish placed in the waters, the date they were purchased, and the person from whom they were purchased.~~

~~(b) When land or waters are stocked by the State with fish, wild animals, or game, with the knowledge and consent of the owner, the owner may not prohibit the taking of fish, wild animals, or game under section 5201 of this title. However, the The Commissioner may, at his or her discretion, stock a private fishing preserve which pond that allows some charitable or nonprofit organizations to use the area at no charge. In that case, the owner may prohibit the taking of fish or game by the general public under section 5201 of this title.~~

Sec. 18. REPEAL

2015 Acts and Resolves No. 61, Sec. 18 (repeal of authorized use of gun suppressors at sport shooting ranges) is repealed.

Sec. 19. 10 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this chapter:

- (1) “Agency” means the Agency of Natural Resources.
- (2) “Secretary” means the Secretary of Natural Resources.

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

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

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

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

(7) “Threatened species” means a species listed ~~on the State as a~~ threatened species ~~list~~ under this chapter or determined to be a “threatened species” under the federal Endangered Species Act.

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

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

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

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

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

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

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

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

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

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

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

(i) pursuing, shooting, hunting, killing, capturing, trapping, harming, snaring, or netting wildlife;

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

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

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

(15) “Accepted silvicultural practices” means the accepted silvicultural practices defined by the Commissioner of Forests, Parks and Recreation,

including the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont adopted by the Commissioner of Forests, Parks and Recreation.

(16) "Critical habitat" for a threatened species or endangered species

means:

(A) a delineated location within the geographical area occupied by

the species that:

(i) has the physical or biological features that are identifiable,

concentrated, and decisive to the survival of a population of the species; and

(ii) is necessary for the conservation or recovery of the

species; and

(iii) may require special management considerations or

protection; or

(B) a delineated location outside the geographical area occupied by a

species at the time it is listed under section 5402 of this title that:

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

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

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

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

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

(18) “Farming” shall have the same meaning as used in subdivision 6001(22) of this title.

(19) “Forestry operations” means activities related to the management of forests, including a timber harvest; pruning; planting; reforestation; pest, disease, and invasive species control; wildlife habitat management; and fertilization. “Forestry operations” include the primary processing of forest products of commercial value on a parcel where the timber harvest occurs.

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

(A) an act that kills or injures a threatened or endangered species; or

(B) the destruction or imperilment of habitat that kills or injures a threatened or endangered species by significantly impairing continued survival or essential behavioral patterns, including reproduction, feeding, or sheltering.

Sec. 20. 10 V.S.A. § 5402 is amended to read:

§ 5402. ENDANGERED AND THREATENED SPECIES LISTS

(a) The Secretary shall adopt by rule a ~~State-endangered~~ State endangered species list and a ~~State-threatened~~ State threatened species list. The listing for

any species may apply to the whole State or to any part of the State and shall identify the species by its most recently accepted genus and species names and, if available, the common name.

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

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

(1) it is a sustainable component of the State's wildlife or wild plants;

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

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

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

(1) the present or threatened destruction, degradation, fragmentation, modification, or curtailment of the range or habitat of the species;

(2) any killing, harming, or over-utilization of the species for commercial, sporting, scientific, educational, or other purposes;

(3) disease or predation affecting the species;

(4) the adequacy of existing regulation;

(5) actions relating to the species carried out or about to be carried out by any governmental agency or any other person who may affect the species; ~~and~~

(6) competition with other species, including nonnative invasive species;

(7) the decline in the population;

(8) cumulative impacts; and

(9) other natural or ~~man-made~~ human-made factors affecting the continued existence of the species.

(e) In determining whether a species is ~~endangered or threatened or~~ endangered or whether to delist a species, the Secretary shall:

(1) use the best scientific, commercial, and other data available;

(2) at least 30 days prior to commencement of rulemaking, notify and consult with ~~interested state or~~ appropriate officials in Canada, appropriate State and federal agencies, other states having a common interest in the species, affected landowners, and any interested persons; and

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

Sec. 21. 10 V.S.A. § 5402a is added to read:

§ 5402a. CRITICAL HABITAT; LISTING

(a) Except as provided for under subsection (f) of this section, the Secretary may, after the consultation required under subsection 5408(e) of this section, adopt or amend by rule a critical habitat designation list for threatened or endangered species. Critical habitat may be designated in any part of the State. The Secretary shall not be required to designate critical habitat for every State-listed threatened or endangered species. When the Secretary designates critical habitat, the Secretary shall identify the species for which the designation is made, including its most recently accepted genus and species names, and, if available, its common name.

(b) The Secretary shall designate only critical habitat that meets the definition of “critical habitat” under this chapter. In determining whether and where to designate critical habitat for a State-listed threatened or endangered species, the Secretary shall, after consultation with and consideration of recommendations of the Secretary of Agriculture, Food and Markets, the Secretary of Transportation, the Secretary of Commerce and Community Development, and the Commissioner of Forests, Parks and Recreation, consider the following:

(1) the current or historic use of the habitat by the listed species;

(2) the extent to which the habitat is decisive to the survival and recovery of the listed species at any stage of its life cycle;

(3) the space necessary for individual and population growth of the listed species;

(4) food, water, air, light, minerals, or other nutritional or physiological requirements of the listed species;

(5) cover or shelter for the listed species;

(6) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; migration corridors; and overwintering;

(7) the present or threatened destruction, degradation, fragmentation, modification, or curtailment of the range or habitat of the listed species;

(8) the adequacy of existing regulation;

(9) actions relating to the listed species carried out or about to be carried out by any governmental agency or any other person that may affect the listed species;

(10) cumulative impacts; and

(11) natural or human-made factors affecting the continued existence of the listed species.

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

(1) use the best scientific, commercial, and other data available;

(2) notify and consult with appropriate officials in Canada, appropriate State and federal agencies, other states having a common interest in the species, affected landowners, any municipality where the proposed designation is located, and any interested persons at least 60 days prior to commencement of rulemaking;

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

(4) if a critical habitat designation is proposed in a growth center, new town center, or neighborhood development area designated under 24 V.S.A. chapter 76A, notify the Secretary of Commerce and Community Development and any municipality in which the designation is proposed.

(d) Prior to initiating rulemaking under this section to designate critical habitat, the Secretary shall notify the owner of record of any land on which critical habitat is proposed for designation. The Secretary shall make all reasonable efforts to work cooperatively with affected landowners.

(e) Where appropriate, the Secretary shall include well-established mitigation practices and best management practices in the critical habitat designation rule.

(f) The Secretary shall not designate critical habitat in a designated downtown or village center, designated under 24 V.S.A. chapter 76A.

Sec. 22. 10 V.S.A. § 5403 is amended to read:

§ 5403. PROTECTION OF ENDANGERED AND THREATENED SPECIES

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

(1) take, possess, or transport wildlife or wild plants that are members of ~~an endangered or a~~ threatened or endangered species; or

(2) destroy or adversely impact critical habitat.

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

(c) The Secretary may, with advice of the Endangered Species Committee and after the consultation required under subsection 5408(e) of this section, adopt rules for the protection ~~and~~ conservation, or recovery of endangered and threatened species. The rules may establish application requirements for an individual permit or general permits issued under this section, including requirements that differ from the requirements of subsection 5408(h) of this title.

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

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

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

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

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

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

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

Sec. 23. 10 V.S.A. § 5404 is amended to read:

§ 5404. ENDANGERED SPECIES COMMITTEE

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

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

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

Sec. 24. 10 V.S.A. § 5405 is amended to read:

§ 5405. CONSERVATION PROGRAMS

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

Sec. 25. 10 V.S.A. § 5406 is amended to read:

§ 5406. COOPERATION BY OTHER AGENCIES

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

Sec. 26. 10 V.S.A. § 5407 is amended to read:

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

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

Sec. 27. 10 V.S.A. § 5408 is amended to read:

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

(a) Authorized taking. Notwithstanding any provision of this chapter, after obtaining the advice of the Endangered Species Committee, the Secretary may permit, under such terms and conditions as the Secretary may, ~~prescribe by rule,~~ require as necessary to carry out the purposes of this chapter the taking of a threatened or endangered species, the destruction of or adverse impact on critical habitat, or any act otherwise prohibited by this chapter if done for any of the following purposes:

- (1) scientific purposes;
- (2) to enhance the propagation or survival of a threatened or endangered species; ~~economic hardship~~;
- (3) zoological exhibition;
- (4) educational purposes;
- (5) noncommercial cultural or ceremonial purposes; or
- (6) special purposes consistent with the purposes of the federal Endangered Species Act.

(b) Incidental taking. After obtaining the advice of the Endangered Species Committee, the Secretary may permit, under such terms and conditions as necessary to carry out the purposes of this chapter, the incidental taking of a threatened or endangered species or the destruction of or adverse impact on critical habitat if:

- (1) the taking is necessary to conduct an otherwise lawful activity;
- (2) the taking is attendant or secondary to, and not the purpose of, the lawful activity;
- (3) the impact of the permitted incidental take is minimized; and
- (4) the incidental taking will not impair the conservation or recovery of any endangered species or threatened species.

(c) Transport through State. Nothing in this chapter shall prevent a person who holds a proper permit from the federal government or any other state from

transporting a member of ~~an endangered or a threatened~~ or endangered species from a point outside this State ~~to another point within or without this~~ through the State.

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

~~(d)~~(e) Interference with agricultural or silvicultural practices. No rule adopted under this chapter shall cause undue interference with ~~normal agricultural or~~ farming, forestry operations, or accepted silvicultural practices. This section shall not be construed to exempt any person from the provisions of the ~~federal Endangered Species Act~~ requirements of this chapter. The Secretary shall not adopt rules that affect farming, forestry operations, or accepted silvicultural practices without first consulting the Secretary of Agriculture, Food and Markets and the Commissioner of Forests, Parks and Recreation.

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

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

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

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

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

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

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

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

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

~~(f)~~(i) Permit fees.

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

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

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

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

(2) The Secretary may require the implementation of mitigation strategies and may collect mitigation funds, in addition to the permit fees, in

order to mitigate the impacts of a taking or the destruction of or adverse impact on critical habitat. Mitigation may include:

(A) a requirement to rectify the taking or adverse impact or to reduce the adverse impact over time;

(B) a requirement to manage or restore land within the area of the proposed activity or in an area outside the proposed area as habitat for the threatened or endangered species; or

(C) compensation, including payment into the Threatened and Endangered Species Fund for the uses of that Fund, provided that any payment is commensurate with the taking or adverse impact proposed.

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

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

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

(k) Public notice. Prior to issuing a permit for an incidental taking and prior to the initial issuance or amendment of a general permit under this section, the Secretary shall provide for: public notice of no fewer than 30 days; opportunity for written comment; and opportunity to request a public informational hearing. The Secretary shall post permit applications, permit decisions, and the initial or amended general permits on the website of the Agency of Natural Resources. The Secretary also shall provide notice to interested persons who request notice of permit applications, permit decisions, and proposed general permits or proposed amendments to general permits.

(l) General permits.

(1) The Secretary may issue general permits for activities that will not affect the continued survival or recovery of a threatened or endangered species.

(2) A general permit issued under this chapter shall contain those terms and conditions necessary to ensure compliance with the provisions of this statute.

(3) These terms and conditions may include the implementation of best management practices and the adoption of specific mitigation measures and required surveying, monitoring, and reporting.

(4) The Secretary may issue a general permit to take a threatened or endangered species or destroy or adversely impact critical habitat only if an activity or class of activities satisfies one or more of the following criteria:

(A) the taking of a threatened or endangered species or the destruction of or adverse impact on critical habitat is necessary to address an imminent risk to human health;

(B) a proposed taking of a threatened or endangered species or the destruction of or adverse impact on critical habitat would enhance the overall long-term survival of the species; or

(C) the Secretary has approved best management practices that are designed, when applied, to minimize to the greatest extent possible the taking of a threatened or endangered species or the destruction of or adverse impact on critical habitat.

(5) On or before September 1, 2017, the Secretary shall issue a general permit for vegetation management and operational and maintenance activities conducted by a utility. The general permit shall have a five-year term. A one-time application for coverage by a utility shall be made for activities authorized by the general permit, and coverage under the general permit shall be for the term of the general permit. Until the general permit has been issued, no critical habitat designation for wild plants shall be made in a utility right-of-way. As used in this subdivision (5), "utility" means an electric

company, telecommunication company, pipeline operator, or railroad company.

(6) Prior to issuing an initial or amended general permit under this subsection, the Secretary shall:

(A) post a draft of the general permit on the Agency website;

(B) provide public notice of at least 30 days; and

(C) provide for written comments or a public hearing, or both.

(7) For applications for coverage under the terms of an issued general permit, the applicant shall provide notice on a form provided by the Secretary. The Secretary shall post notice of the application on the Agency website and shall provide an opportunity for written comment, regarding whether the application complies with the terms and conditions of the general permit, for ten days following receipt of the application.

(8) The Secretary may require any applicant for coverage under a general permit to submit additional information that the Secretary considers necessary and may refuse to approve coverage under the terms of a general permit until the information is furnished and evaluated.

(9) The Secretary may require any applicant for coverage under a general permit to seek an individual permit under this section if the applicant does not qualify for coverage.

(10) The Secretary may require a person operating under a general permit issued under this section to obtain an individual permit under this section if the person proposes to destroy or adversely impact critical habitat that was designated under section 5402a of this title after issuance of the general permit, unless existing best management practices approved under the general permit adequately protect the critical habitat or have been amended to do so prior to the critical habitat designation pursuant to section 5402a of this title.

Sec. 28. 10 V.S.A. § 5410 is amended to read:

§ 5410. LOCATION CONFIDENTIAL

(a) ~~All information~~ The Secretary shall not disclose information regarding the specific location of threatened or endangered species sites ~~shall be kept confidential in perpetuity~~ except that the Secretary shall disclose this information ~~to~~ regarding the location of the threatened or endangered species to:

(1) the owner of land upon which the species ~~has been~~ is located, ~~or to;~~

(2) a potential buyer of land upon which the species is located who has a bona fide contract to buy the land and applies to the Secretary for disclosure of threatened or endangered species information, ~~and to; or~~

(3) qualified individuals or organizations, public agencies and nonprofit organizations for scientific research or for preservation and planning purposes

when the Secretary determines that the preservation of the species is not further endangered by the disclosure.

(b) When the Secretary issues a permit under this chapter to take a threatened or endangered species or destroy or adversely impact critical habitat and when the Secretary designates critical habitat by rule under section 5402a of this title, the Secretary shall disclose only the municipality and general location where the threatened or endangered species or designated critical habitat is located. When the Secretary designates critical habitat under section 5402a of this title, the Secretary shall notify the municipality in which the critical habitat is located and shall disclose the general location of the designated critical habitat.

Sec. 29. STATUTORY REVISION

The Office of Legislative Council, in its statutory revision capacity, is directed to renumber the subdivisions of 10 V.S.A. § 5401 in numerical and alphabetical order and to correct any cross-references in statute to 10 V.S.A. § 5401 to reflect the renumbered subdivisions.

Sec. 30. FEE RECOMMENDATION; PERMIT TO DESTROY OR

ADVERSELY IMPACT CRITICAL HABITAT

The consolidated Executive Branch fee report and request to be submitted on or before the third Tuesday of January 2018 pursuant to 32 V.S.A. § 605 shall include a recommendation from the Agency of Natural Resources of a fee

for a permit under 10 V.S.A. § 5408 to destroy or adversely impact critical habitat of a State-listed threatened or endangered species. The recommendation shall include whether the owner of property where critical habitat is designated under 10 V.S.A. § 5402a should be required to pay a fee for a permit to destroy or adversely impact critical habitat on his or her property.

Sec. 31. 10 V.S.A. § 6081 is amended to read:

§ 6081. PERMITS REQUIRED; EXEMPTIONS

(a) No person shall sell or offer for sale any interest in any subdivision located in this State, or commence construction on a subdivision or development, or commence development without a permit. This section shall not prohibit the sale, mortgage, or transfer of all, or an undivided interest in all, of a subdivision unless the sale, mortgage, or transfer is accomplished to circumvent the purposes of this chapter.

* * *

(w)(1) A permit or permit amendment shall not be required for a change to a sport shooting range, as defined in section 5227 of this title, if a jurisdictional opinion issued under subsection 6007(c) of this title determines that each of the following applies:

(A) The range was in operation before January 1, 2006 and has been operating since that date.

(B) The range has a lead management plan approved by the Department of Environmental Conservation under chapters 47 and 159 of this title that requires implementation of best management practices to mitigate environmental impacts to soil and water.

(C) The change is for the purpose of one or more of the following:

(i) To improve the safety of range employees, users of the range, or the public.

(ii) To abate noise from activities at the range. A qualified noise abatement professional may certify that a change in a sport shooting range is for this purpose and this certification shall be conclusive evidence that a purpose of the change is to abate noise from activities at the range.

(iii) To remediate, mitigate, or reduce impacts to air or water quality from the range or the deposit or disposal of waste generated by the range or its use.

(2) Obtaining a certification described in subdivision (1)(B)(ii) of this subsection shall be at the option of the range's owner.

Sec. 32. EFFECTIVE DATES

This act shall take effect on July 1, 2016, except that Secs. 1 (regulation of fish), 2 (commercial sale of fish), and 3 (importation and stocking of fish) shall take effect on January 1, 2017.