

§ 5401. Definitions

As used in this chapter:

(1) "Agency" means the ~~agency of natural resources~~ Agency of Natural Resources.

(2) "Secretary" means the Secretary ~~secretary~~ of the Agency of Natural Resources, unless otherwise specified ~~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~~ plants or animals that are capable of interbreeding and producing fertile offspring. For the purposes of this chapter species may include or be intraspecific taxa (e.g., subspecies, varieties).

(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. For the purposes of this Chapter, plants shall include fungi.

(6) "Endangered species" means a species listed on the state endangered species list 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 threatened species list under this chapter or determined to be a "threatened species" under the federal Endangered Species Act. The Secretary may list a federally threatened species as an endangered species if warranted in accordance with § 5402 (b) of this Chapter.

(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 increasing the number of individuals within species and 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 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, exporting, importing, processing, selling, offering to sell, delivering, carrying, transporting, or shipping by any means a member of ~~that~~ a species.

(14) "Take or taking," with respect to wildlife means: pursuing, shooting, hunting, killing, capturing, trapping, harming, snaring and netting animals and all other acts, such as disturbing, harassing, rying or worrying or wounding or placing, setting, drawing or using any net or other device commonly used to take animals, whether they result in the taking or not; and shall include every attempt to take and every act of assistance to every other person in taking or attempting to take animals, provided that when taking is allowed by law, reference is had to taking by lawful means and in lawful manner. "taking" as defined in section 4001 of this title, and

(15) "Take or taking," with respect to wild plants means uprooting, transplanting, taking seeds or fruit, cutting, injuring or killing or any attempt to do the same or assisting another who is doing or is attempting to do the same.

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

(i) the site specific areas within the geographical area occupied by the species, listed in accordance with the provisions of section 5402 of this chapter, on which are found those physical or biological features decisive to the survival of the species, necessary for the conservation of the species and which may require special management considerations or protection; or

(ii) the site specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 5402 of this chapter, upon a determination by the Secretary that such areas are necessary for the continued survival, conservation and recovery of the species.

(17) "Destroy or significantly imperil~~adversely impact~~" with respect to critical habitat means a direct or indirect alteration that ~~adversely eliminates or significantly imperils impacts~~ the value of critical habitat for either the survival or recovery of a listed species. Such alterations include, but are not limited to, ~~adversely modifying an undue adverse modification~~ any of those physical or biological features that ~~are were the basis for determining the habitat to be critical~~ decisive to the survival of the species, as well as ~~adversely impacting an undue adverse impact on~~ the use of the habitat by the species.

(18) "Harm" in definition of "take" means an act which actually kills or injures wildlife or wild plants. Such act may include the destruction or imperilment of habitat which kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, sheltering and in the case of plants, continued survival.

§ 5402. Critical Habitat, and Endangered and ~~threatened species lists~~Threatened Species Lists

(a) The ~~secretary~~Secretary shall adopt by rule a state-endangered species list, ~~and a state-threatened species list, and may adopt by rule a critical habitat designation list.~~ The Secretary shall not be required to designate critical habitat for every state listed threatened or endangered species. 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. Except as necessary as determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(b) The ~~secretary~~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 is in jeopardy.

(c) The ~~secretary~~Secretary shall determine a species to be threatened if it is reasonable to conclude based on available information that its numbers are either so low or are significantly declining, because of loss of habitat or human disturbance and unless protected the species will become an endangered species.

(d) In determining whether a species is endangered or threatened, the ~~secretary~~Secretary shall consider one or more of the following:

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

(2) taking 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) climate change;

~~(7) competition with other species, including non-native invasive species;~~

~~(8) the decline in the population; and~~

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

(e) In determining whether and where to designate critical habitat for a state endangered or threatened species, the Secretary shall consider physical and biological features that are necessary to the conservation of the given species and; special management considerations and strategies for the protection and restoration of the species; including but not limited to the following:

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

(2) the extent to which the habitat is necessary to the survival and restoration of a listed state-endangered or threatened species, at any stage of its life cycle;

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

(4) food, water, air, light, minerals, or other nutritional or physiological requirements;

(5) cover or shelter;

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

(7) the habitat(s) that meet the physical and biological requirements of the species or are representative of the historic geographical and ecological location of a species;

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

(9) the adequacy of existing regulation;

(10) 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

(11) ~~climate change and other~~ natural or man-made factors affecting the continued existence of the species.

(f) In determining whether a species is endangered or threatened, whether to designate critical habitat for a state listed threatened and endangered species, and whether to delist a species or habitat, the ~~secretary~~ Secretary shall:

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

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

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

§ 5403. Protection of endangered and threatened species

(a) Except as authorized ~~under~~ in accordance with this chapter a person shall not,

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

(2) destroy or adversely alter or adversely impact the significantly imperil critical habitat, or its use or accessibility by an endangered or threatened species.

(b) ~~The secretary~~Secretary may, with advice of the ~~endangered species committee~~Endangered Species Committee, adopt rules for the protection and conservation of endangered and threatened species.

(c) The Secretary may bring a civil enforcement action against anyA person who violates subsection (a) of this section or any rules adopted under this chapter, with regard to an endangered species, in accordance with Chapters 201 and 211. Instead of bringing a civil enforcement action, the Secretary may refer violations of this chapter to the Commissioner of the Fish and Wildlife Department for criminal enforcement. shall be fined not more than \$1,000.00 on the first offense. For a subsequent conviction the person shall be fined not less than \$500.00 nor more than \$1,000.00.

(d) ~~A person who violates subsection (a) of this section with regard to a threatened species shall be fined not more than \$500.00 on the first offense. For a subsequent conviction the person shall be fined not less than \$250.00 nor more than \$500.00.~~who violates a rule of the secretary adopted under subsection (b) of this section shall be fined not more than \$500.00. (f) 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 modifying critical habitat; and is subject to criminal prosecution, may be required by the court to pay restitution for:

(1) ~~of no more than \$500.00~~actual veterinarian-costs and related expenses incurred in treating and caring for the injured plant ~~bird~~-or animal to the person incurring these expenses, including veterinarian and staff time, or

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

§ 5404. ~~Endangered species committee~~Species Committee

(a) A committee on endangered species is created to be known as the "~~endangered species committee~~Endangered Species Committee," and shall consist of nine members, including the ~~secretary~~Secretary of agriculture, food and marketsAgriculture, Food and Markets, the Commissioner of Fish and Wildlife, the Commissioner of Forests Parks and Recreation~~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 silvacultural 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 chairman. The chairman of the committee shall be elected from among and by the members each year. Members 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~~Endangered Species Committee shall advise the ~~secretary~~Secretary of the Agency 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~~Agency shall provide the ~~endangered species committee~~Endangered Species Committee with necessary staff services.

§ 5405. Conservation programs

The ~~secretary~~Secretary, with the advice of the ~~endangered species committee~~Endangered Species Committee, may establish conservation programs and establish recovery plans for the conservation of threatened or endangered species of wildlife or plants, and critical habitat. The Fish and Wildlife Department also has authority to establish conservation and recovery programs for listed species. The programs may include the purchase of land or aquatic habitat and the formation of contracts for the purpose of management of wildlife or plant refuge areas or for other purposes.

§ 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~~Secretary, utilize their authorities only in a manner which does not jeopardize the listed species or the outcomes of conservation programs established by this chapter or by the ~~secretary~~Secretary under ~~its~~his or her authority.

§ 5407. Enforcement Authority to Seize Threatened and Endangered Species

In addition to other methods of enforcement authorized by law, the ~~secretary~~Secretary may direct under this section that wildlife or plants which 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 the violation may be charged to the violator. The ~~secretary~~Secretary, with the advice of the ~~endangered species committee~~Endangered Species Committee, may adopt rules for the implementation of this section. (Added 1981, No. 188 (Adj. Sess.), § 2.)

§ 5408. Limitations

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

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

(c) 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.

(d) No rule adopted under this chapter shall cause undue interference with normal agricultural or silvicultural practices. This section shall not be construed to exempt any person from the provisions of the federal Endangered Species Act. The ~~secretary~~Secretary shall not adopt rules that restrain agricultural activities without the consent of the ~~secretary~~Secretary of Agriculture, Food and Markets and shall not adopt rules that restrain silvicultural activities without the consent of the Commissioner of Forests, Parks and Recreation

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

(f) An applicant for a permit under this section shall submit an application to the Secretary which includes the following information:

- (1) a description of the activities that could lead to a taking of a listed endangered or threatened species;
- (2) the steps that the applicant will take to avoid, minimize and mitigate the impact to the relevant endangered or threatened species;
- (3) a plan for ensuring that funding is available to conduct any required monitoring and accomplish the steps in subsection (2);
- (4) a summary of the alternative actions to the taking that the applicant considered and the reasons that these alternatives were not selected;
- (5) the name or names and obligations and responsibilities of the persons that will be involved in the proposed incidental taking; and
- (6) any additional information or conditions that the Secretary may require to be necessary or appropriate.

(g) Application and Mitigation Fees

(1) Fees to be charged to a person applying to take a threatened or endangered species or, to destroy or significantly imperil~~adversely alter or adversely impact~~ critical habitat, under this section shall be:

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

(B) To take for a zoological or botanical exhibition or to lessen an economic hardship, \$250.00 for each listed animal or 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 funds in lieu of a monetary fee.~~

(C) The administrative permit fee to destroy or adversely impact critical habitat is \$250.00. Additional mitigation fees or mitigation strategies may be imposed by the Secretary to mitigate the loss of critical habitat. The Secretary shall promulgate rules to determine fair and reasonable

mitigation fees based on impact. The mitigation fees may be based on the fair market value of habitat replacement.

(D) If the Secretary determines that it is in the best interest of the species, the Secretary may require the implementation of reasonable mitigation strategies, and may collect reasonable mitigation funds, in lieu of or in addition to the permit fees, in order to mitigate the impacts of a taking.

(2) Fees ~~or~~ and mitigation payments collected under this subsection shall be deposited in the ~~€~~Threatened and Endangered Species Fund within the Fish and Wildlife Fund, which Fund is hereby created. Expenditures may be made for monitoring, restoration, conservation, 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 of the taken species or its habitat. Interest accrued on the Fund shall be credited to the Fund.

(h) 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.

(i) The Secretary shall establish rules for public notice of draft permit decisions based on economic hardship and, for initial and amended general permits. The rules shall provide for no less than thirty days of public notice and the opportunity to request a public informational hearing. The rules shall also provide for posting permit applications, permit decisions, and the initial or amended general permits on a publically accessible website, as well as for allowing persons to request notification of permit decisions.

(j) The Secretary may issue general permits for activities which will not affect the continued survival or recovery of a species or destroy critical habitat. A general permit issued under this chapter shall contain those terms and conditions necessary to ensure compliance with the provisions of this statute. These terms and conditions may include best management practices and mitigation measures.

§ 5410. Location confidential

All information regarding the location of threatened and endangered species sites shall be kept confidential in perpetuity except that the ~~secretary~~Secretary shall disclose this information to the owner of land upon which the species has been located, or to a potential buyer who has a bona fide contract to buy the land and applies to the ~~secretary~~Secretary for disclosure of threatened and endangered species information, and to qualified individuals or organizations, public agencies and nonprofit organizations for scientific research or for preservation and planning purposes when the ~~secretary~~Secretary determines that the preservation of the species is not further endangered by the disclosure.