

H.552- Definitions	Fed Endangered Species 16 U.S.C.A. § 1532- Definitions
<p>(10) “Conserve,” “conserving,” and “conservation” mean to use and the use of all methods and procedures for increasing or maintaining:</p> <p>(A) the number of individuals within a population of a species;</p> <p>(B) the number of populations of a species;</p> <p>and</p> <p>(C) populations of wildlife or wild plants to the optimum carrying capacity of the habitat.</p>	<p>“Conserve” (3) The terms “conserve”, “conserving”, and “conservation” mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.</p>
<p>(7) “Threatened species” means a species listed as a threatened species under this chapter or determined to be a “threatened species” under the federal Endangered Species Act. The term generally refers to species whose continued existence as a sustainable component of the State’s wild fauna or flora is in jeopardy.</p>	<p>“Threatened Species” (20) The term “threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.</p>
<p>(6) “Endangered species” means a species listed as endangered under this chapter or 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.</p>	<p>“Endangered Species” (6) The term “endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this chapter would present an overwhelming and overriding risk to man.</p>
<p>(15) “Critical habitat” for a threatened species or endangered species means:</p> <p>(A) a delineated location within the geographical area occupied by the species that:</p> <p>(i) has the physical or biological features that are identifiable, concentrated, and decisive to the survival of a population of the species;</p> <p>(ii) is necessary for the conservation or recovery of the species; and</p>	<p>“Critical Habitat” (5)(A)(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 1533 of this title, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area</p>

<p>(iii) may require special management considerations or protection; or</p> <p>(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:</p> <p>(i)(I) was historically occupied by a species; or</p> <p>(II) contains habitat that is hydrologically connected or directly adjacent to occupied habitat;</p> <p>(ii) contains habitat that is identifiable, concentrated, and decisive to the continued survival of a population of the species; and</p> <p>(iii) is necessary for the conservation or recovery of the species.</p>	<p>occupied by the species at the time it is listed in accordance with the provisions of section 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species.</p> <p>(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.</p> <p>(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.</p>
<p>(14) “Take” or “taking”:</p> <p>(A) With respect to wildlife designated a threatened or endangered species, means:</p> <p>(i) pursuing, shooting, hunting, killing, capturing, trapping, harming, snaring, and netting wildlife;</p> <p>(ii) an act that creates a risk of injury to wildlife, whether or not the injury occurs, including disturbing, harassing, wounding, or placing, setting, drawing, or using any net or other device commonly used to take animals; or</p> <p>(iii) attempting to engage in or assisting another to engage in an act set forth under subdivision (A)(i) or (ii) of this subdivision (14).</p> <p>(B) With respect to wild plants designated a threatened or endangered species, means uprooting, transplanting, gathering 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.</p> <p>(17) “Harming,” as used in the definition of “take” or “taking” under subdivision (14) of this subsection, means:</p> <p>(A) an act that kills or injures wildlife or wild plants; or</p> <p>(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, and sheltering.</p>	<p>“Take” (19) The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.</p> <p>“Harm” in the definition of “take” in the Act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. 50 C.F.R. § 17.3</p>

(16) “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 species.	There is no definition of the term “destroy or adversely impact” with respect to critical habitat in the text of the ESA. However, § 1538 (2) provides examples of damaging activity in general.	
	16 U.S.C.A. § 1538 (2) Prohibited Acts Unlawful to: (B) remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law.	
(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.	“Fish or Wildlife” (8) The term “fish or wildlife” means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.	
(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.	“Plant” (14) The term “plant” means any member of the plant kingdom, including seeds, roots and other parts thereof.	

Listing Endangered Species	<p>§ 5402. Endangered and Threatened Species Lists</p> <p>(a) The Secretary shall adopt by rule a State-endangered species list and a 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</p>	<p>16 U.S.C.A. § 1533(c) Lists</p> <p>(1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species</p>
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	<p>genus and species names and, if available, the common name.</p>	<p>contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range.</p>
<p>List Criteria</p>	<p>5402(b) The Secretary shall determine a species to be endangered if it normally occurs in the State and its continued existence as a sustainable component of the State’s wild fauna or flora is in jeopardy.</p> <p>(c) The Secretary shall determine a species to be threatened if:</p> <p>(1) it is a sustainable component of the State’s wild fauna or flora;</p> <p>(2) it is reasonable to conclude based on available information that its numbers are declining and;</p> <p>(3) unless protected, it will become endangered.</p> <p>(d) In determining whether a species is endangered or threatened, the Secretary shall consider:</p> <p>(1) the present or threatened destruction, degradation, fragmentation, modification, or curtailment of the range or habitat of the species;</p> <p>(2) taking or over-utilization of the species for commercial, sporting, scientific, educational, or other purposes;</p> <p>(3) disease or predation affecting the species;</p> <p>(4) the adequacy of existing regulation;</p> <p>(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</p> <p>(6) climate change;</p> <p>(7) competition with other species, including non-native invasive species;</p> <p>(8) the decline in the population;</p> <p>(9) cumulative impacts; and</p> <p>(10) other natural or human-made factors affecting the continued existence of the species.</p>	<p>16 U.S.C.A § 1533 (a) Generally</p> <p>(1) The Secretary shall by regulation promulgated in accordance with subsection (b) of this section determine whether any species is an endangered species or a threatened species because of any of the following factors:</p> <p>(A) the present or threatened destruction, modification, or curtailment of its habitat or range;</p> <p>(B) overutilization for commercial, recreational, scientific, or educational purposes;</p> <p>(C) disease or predation;</p> <p>(D) the inadequacy of existing regulatory mechanisms; or</p> <p>(E) other natural or manmade factors affecting its continued existence.</p>

Critical Habitat Listing	<p>§5402(a) (a) The Secretary may, consistent with section 5408(e) of this chapter, adopt 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.</p>	<p>50 C.F.R§ 17.94 Critical habitats.(b)(1) For the critical habitat designations published and effective after May 31, 2012, the map provided by the Secretary of the Interior, as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a critical habitat. Each critical habitat area will be shown on a map with more-detailed information discussed in the preamble of the rulemaking documents published in the Federal Register and made available from the lead field office of the Service responsible for such designation. Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the critical habitat is located. General descriptions of the location and boundaries of each area may be provided to clarify or refine what is included within the boundaries depicted on the map, or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area.</p>
Reporting the taking of an endangered species	<p>§ 5403 (b) Any person who takes a threatened or endangered species shall report the taking to the Secretary.</p>	<p>N/A. No mandatory reporting requirement in the ESA</p>
Endangered Species Committee	<p>§5404(a) A 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</p>	<p>16 U.S.C.A § 1536 (e)(1) ESTABLISHMENT OF COMMITTEE.— There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the “Committee”). (2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or</p>

	<p>members, two shall be actively engaged in agricultural or silvicultural or forestry 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.</p> <p>(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.</p> <p>(c) The Agency of Natural Resources shall provide the Endangered Species Committee with necessary staff services. Sec. 6.</p>	<p>not to grant an exemption from the requirements of subsection (a)(2) of this section for the action set forth in such application. (3) The Committee shall be composed of seven members as follows:</p> <p>(A) The Secretary of Agriculture. (B) The Secretary of the Army. (C) The Chairman of the Council of Economic Advisors. (D) The Administrator of the Environmental Protection Agency. (E) The Secretary of the Interior. (F) The Administrator of the National Oceanic and Atmospheric Administration. (G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.</p>
<p>Incidental Taking</p>	<p>§ 5408 AUTHORIZED TAKINGS; INCIDENTAL TAKINGS; DESTRUCTION OF CRITICAL HABITAT</p> <p>(b) Incidental taking. The Secretary may permit, under such terms and conditions as the Secretary may prescribe by rules that are consistent with paragraph (e) of this section, the incidental taking of a threatened or endangered species or the destruction or adverse impact of critical habitat if:</p> <p>(1) the taking is necessary to conduct an otherwise lawful activity;</p> <p>(2) the taking is attendant or secondary to, and not the purposes of, the lawful activity;</p>	<p>16 U.S.C.A. § 1536 (4) If after consultation under subsection (a)(2) of this section, the Secretary concludes that--</p> <p>(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection;</p> <p>(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection; and</p> <p>(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 1371(a)(5) of this title;</p> <p>the Secretary shall provide the Federal agency and the applicant concerned, if any, with a</p>

	<p>(3) the impact of the permitted incidental take is minimized; and</p> <p>(4) the incidental taking will not impair the conservation or recovery of any endangered species or threatened species.</p> <p>(No provision for authorized incidental taking because of an economic hardship as seen in the ESA)</p>	<p>written statement that--</p> <p>(i) specifies the impact of such incidental taking on the species,</p> <p>(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,</p> <p>(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 1371(a)(5) of this title with regard to such taking, and</p> <p>(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).</p>
<p>Undue interference with Agriculture or silviculture</p>	<p>§ 5408 (e) Interference with agricultural or silvicultural practices. No rule adopted under this chapter shall cause undue interference with farming, agricultural or silvicultural practices, or forestry operations. The Secretary shall not adopt rules that affect farming or agricultural practices as defined by the Required Agricultural Practices Regulations and any subsequent regulations of the Secretary of the Agency of Agriculture, Food and Markets; without first consulting with the Secretary of Agriculture, Food and Markets. The Secretary shall not adopt rules that affect accepted silvicultural practices as defined by the Commissioner of Forests, Parks and Recreation, including the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation, and forestry operations as defined in XXX; without first consulting with the Commissioner of Forests, Parks and Recreation.</p>	<p>There is no federal provision that deals with undue interference with agriculture or silviculture.</p>

