

## H552

### Testimony outline H552

**Need:** The protection of wildlife, including threatened and endangered species, as a public trust resource is part of the mission of the Department. Threatened and endangered species play an integral role in ecosystems and diversity. The diversity of animal and plant life provides us with food and many of our life-saving medicines. When a species is lost, the benefits it might have provided are gone forever. There is scientific evidence that extinction rates are increasing. Habitat is critical to the survival of all species and habitat protection is an important tool in the implementation of the state program.

### ***Responses to previous testimony and suggestions for changes (highlighted in yellow)***

Page 2, line 11 – *fungi* were part of the plant kingdom when the bill was first passed. Scientific classification has advanced and changed and this proposal is intended to restore the scope of the original language. We have no plans to list or designate habitat for fungi but we want to be thorough and include this fungi in case it becomes necessary to protect in the future.

Page 2 lines 15-16, line 20 and page 3 lines 1-2. In the definitions of Endangered Species and Threatened Species.

The use of the term viable was questioned. "The term generally refers to species whose continued existence as a **viable component** of the State's wild fauna or flora is in jeopardy."

Note that this should be underlined as it is an addition to the statute.

Definition of Viable: capable of surviving or living successfully, especially under particular environmental conditions.

The concept is intended to describe an established species that can continue to sustainably coexist with other native species in the state. It has to be established and not newly arrived, and it needs to be able to continue to survive in a sustainable way.

Here is one possible rewrite:

The term generally refers to species that are established in our state and whose continued existence as a ~~viable~~ **sustainable** component of the State's wild fauna or flora is in jeopardy.

Page 3, line 10 – the addition of the **number of populations of species** is consistent with the Department's current recovery and conservation efforts and does not expand the scope of the statute. Population is defined as a group of individuals of the same species occupying a particular geographic area. Populations may be relatively small and closed, as on an island or in a valley, or they may be more diffuse. The application of the statute to populations is limited because a species must meet the definitions of threatened and endangered and the habitat must meet the definition of critical habitat.

Page 5, lines 3-20 – **Definition of Critical Habitat** – The definition of critical habitat is very loosely based on the federal definition. However, the language has been amended to narrow the scope of the definition and provide greater clarity for the definition. The term "delineated location" indicates that the habitat designation will be a site specific location on a map. The definition provides for 2 possible

critical habitat designations – the first is currently occupied and the second is either historically occupied or hydrologically connected or directly adjacent to occupied habitat. Hydrologically connected means that there is a direct flow or exchange of water from one location to another. Note that each habitat must be identifiable, concentrated, and decisive to the survival of the species. In addition, the habitat must be necessary for the conservation or recovery of the species. Some additional suggestions are on lines 7, 16, and 18 respectively. See below.

(15) “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;
- (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 physically adjacent** to occupied habitat;
- (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.

Page 5 Line 7 and line 18, the use of the terms **identifiable and concentrated** in the definition of critical habitat is taken from the definition of habitat in Act 250.

10 VSA sec. 6001 (12) (12) "Necessary wildlife habitat" means concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life including breeding and migratory periods.

This is well understood concept. Cases involving the definition of necessary wildlife include bear scarred beech and deer wintering areas.

Whether a species has **historically occupied** an area of habitat will be determined by evidence from scientists and records, such as, the Natural Heritage Database, scientific literature and studies.

Page 6 line 1-3. The definition of **destroy or adversely impact** does not expand the definition of critical habitat. A permit is required any time an activity will destroy or adversely impact critical habitat and this definition explains what it is to “destroy or adversely impact critical habitat.” Specifically, it is a direct or **indirect** alteration that negatively affects the value of the habitat for the survival or **recovery** of the species. This means that the negative impact of the development or activity must be significant enough to affect the survival or recovery of the species using the designated critical habitat.

Page 6 line 19, delete **“a viable component of the State's wild fauna or flora”** – it is redundant.

Page 7, line 2 – In ordered to be “threatened” a species numbers must be **declining** AND unless protected it will become endangered.

Page 7, lines 7, 16, and 20 – The factors *fragmentation, climate change, and cumulative impacts* are scientifically defensible and well documented factors in the decline and recovery of threatened and endangered species.

Page 8 line 6 – add Canada and before “other states”

Page 8, line 13 – It makes no sense to protect threatened and endangered species without the authority to protect habitat. No threatened and endangered species will be able to survive without habitat and the Agency needs this tool to effectively protect these species. Designations must meet the definition of critical habitat. This section sets out the considerations for the designation of critical habitat. The designated habitat still has to meet the statutory requirements.

Page 9 lines 1-6 - (b) **REPLACE**

(b) 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 decisive to the survival of the species, necessary to the conservation or recovery of the given species, and special management considerations and strategies for the protection and restoration of the species; including the following:

**WITH**

(b) The Secretary shall only designate critical habitat that meets the definition of critical habitat in this Chapter. The Secretary shall consider the following:

Page 9, line 10 – REPLACE “restoration” with “recovery”

Page 9, line 12 – The Secretary is required to consider a number of factors in the designation of critical habitat, including “the space necessary for individual and population growth.” This is a common sense consideration and the designated habitat must still meet the definition of critical habitat.

Page 9 lines 13 – 15 and page 10 lines 1-3. The Agency draft proposal did not include this language. We recommend deleting it.

**Delete subparagraph (4) and (8)**

Page 9, Line 16 – Another consideration for the designation of critical habitat is the “food, water, air, light, minerals, or other nutritional or physiological requirements of the species.” This is another common sense consideration in that the Secretary is required to consider the physiological requirements of the species as they relate to habitat. ADD of the species after “requirements.”

Page 9, line 19-20 – *Migration corridors* can be decisive to the survival of a species and as such, should be included in the list of considerations for habitat designation. If a salamander cannot get to a breeding pool, no eggs get laid and species dies out. Similarly a species of turtles may need to get from a wetland to a patch of nesting substrate. The agency is willing to consider alternative language such as, movement or travel corridors.

Page 10, lines 6-8 – REPLACE

(2) destroy or adversely impact critical habitat, including destroying or adversely impacting an endangered or threatened species use of or access to the critical habitat.

**WITH**

(2) destroy or adversely impact critical habitat.

Page 10, line 15 –ADD Canada and before “other states”

Page 11, line 7 – REPLACE “impacting” with “altering”

Page 12, lines 1 – 6. The Agency proposal was as follows:

(f) The Commissioner of Fish and Wildlife shall fine a A-person who violates a rule of the Secretary adopted under subsection (c) of this section in accordance with sections 4514 and 4518 of this title. ~~shall be fined not more than \$500.00.~~

Page 16, line 16 – add conservation and before “recovery”

Page 17, lines 8-11– There is no federal law which requires agriculture and silviculture to be exempt or to be subject to “no undue interference.” The requirement that there be no undue interference is not a full exemption but rather a prohibition against threatened and endangered species rules that interfere with silvicultural and agricultural practices in a way that is unreasonable and overly burdensome. While state law cannot be less stringent as to federally threatened or endangered species, the federal Endangered Species Act specifically authorizes states to be more stringent than the federal law. In addition, the purpose of the following provision was to provide additional protection by requiring that the Agency consult the state entities of jurisdiction.

Page 17, lines 12-15 in paragraph (e) AMEND as follows

The Secretary shall not adopt rules that ~~restrain~~ affect normal agricultural practices activities without first consulting with the Secretary of Agriculture, Food and Markets. The Secretary shall not adopt rules that affect normal ~~restrain~~ silvicultural practices activities without first consulting with the Commissioner of Forests, Parks and Recreation.

Page 17, lines 16-18 – ANR is OK with deleting (f) as we believe it is unnecessary. The Agency does not support language that limits our authority in Act 250. We currently have the authority to protect threatened and endangered species and habitat for these species in Act 250.

Page 20, line 16 – replace (g) with (h) – unless (f) is deleted

Page 20, line 19 – replace “continued survival” with “conservation.”

Page 20, line 18-21 and page 21, line 1-9 – See GENERAL PERMIT SECTION

(l) General permits. The Secretary may issue general permits for activities that will not affect the ~~continued survival~~ conservation or recovery of a species. 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 the implementation of best management practices and the adoption of specific mitigation measures and required surveying, monitoring, and reporting. In determining whether an activity warrants a general permit, the Secretary shall consider only those cases where:

- (A) an imminent risk to human health and safety exists;
- (B) a proposed action enhances the overall long-term survival of the species; or
- (C) best management practices or guidelines, or both, have been developed and applied to minimize take to the greatest extent possible.

**ADD**

(2) On or before September 1, 2017, the Secretary shall issue a general permit for vegetation management and operational and maintenance activities conducted by electric utility, telecommunication projects and other similar projects. Until the general permit has been issued, no critical habitat designations for plants shall be made in utility corridors.

Page 21, line 12. AMEND to:

All Except for critical habitat designated under section 5411 of this title, all information regarding the location of threatened or endangered species sites shall be kept confidential in perpetuity except that the 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 for disclosure of threatened or 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 determines that the preservation of the species is not further endangered by the disclosure. The Secretary may also disclose the locations of critical habitat designations to members of the public during the rulemaking process for designation of critical habitat if the Secretary determines that the preservation of the species is not further endangered by the disclosure.

### **Results of a Vermont Opinion Survey**

2015 Responsive Management National Office, Dr. Mark Damian Duda, Executive Director

This study was conducted for the Vermont Fish and Wildlife Department to determine the opinions of residents, hunters, and anglers on issues pertaining to the intersection of land use and the management of fish and wildlife. The study entailed three scientific telephone surveys of Vermont residents, hunters, and anglers.

	Sample Size	Population Size	Sampling Error
Residents (18 years old and older)	802	504,976	3.46
Hunters	200	118,373	6.92
Anglers	203	184,486	6.87

- The large majority of Vermont residents (75%) disagree that economic development is more important than wildlife. Most of that is strong disagreement (49%). Only 12% agree, the rest being neutral.
- The survey presented four statements to respondents that pertain to the tradeoff between land development and habitat protection. For each, respondents indicated if they agree or disagree with it. In general, they side with habitat protection over unfettered use of land.
- Among residents, agreement is high that the use and development of land should be restricted to protect fish and wildlife (83%) and that wildlife habitat must be protected even if it reduces the land use options of some landowners and developers (81%), as shown on the graph. However, statements favoring development are not well received: disagreement ranges from 74% to 77% on the two statements that favor development over wildlife.

Q44. Wildlife habitat must be protected even if it reduces the land use options of some landowners and developers – 81%

Q45. The use and development of land should be restricted to protect fish and wildlife. 83%

Q44. Wildlife habitat must be protected even if it reduces the land use options of some landowners and developers.

Q46. Landowners should be allowed to develop their land regardless of its impact on wildlife. 20%

Q47. If it came down to a choice between preserving wildlife habitat or providing land for new homes, we should always side with providing new homes for the residents of our state. 12%

***Respondents generally placed much importance on protecting endangered species.***

- The huge majority of residents (95%) think protecting endangered species is very or somewhat important (with 76% saying very important). There is little change since 2003.
- Hunters and anglers are like the general population: 95% of hunters and 97% of anglers place importance on this.