

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Fish, Wildlife and Water Resources to which was referred
3 House Bill No. 26 entitled “An act relating to the taking of endangered or
4 threatened species” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 10 V.S.A. chapter 123 is amended to read:

8 CHAPTER 123. PROTECTION OF ENDANGERED SPECIES

9 § 5401. DEFINITIONS

10 As used in this chapter:

11 (1) “Agency” means the ~~agency of natural resources~~ Agency of Natural
12 Resources.

13 (2) “Secretary” means the ~~secretary of natural resources~~ Secretary of
14 Natural Resources, unless otherwise specified.

15 (3) “Species” ~~includes all subspecies of~~ means wildlife or wild plants
16 and any subspecies or other group of wildlife or wild plants of the same
17 species, ~~the members of which may interbreed when mature~~ plants, or animals
18 that are capable of interbreeding and producing fertile offspring.

19 * * *

20 (6) “Endangered species” means a species listed on the ~~state~~ State
21 endangered species list under this chapter or determined to be an “endangered

1 species” under the federal Endangered Species Act. The term generally refers
2 to species whose continued existence as a viable component of the ~~state’s~~
3 State’s wild fauna or flora is in jeopardy.

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

7 * * *

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

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

20 (14) “~~Taking~~ Take or taking,” with respect to wildlife, means “~~taking~~”
21 ~~as defined in section 4001 of this title, and~~ pursuing, shooting, hunting, killing,

1 capturing, trapping, harming, snaring, and netting animals, and all other acts,
2 such as disturbing, harassing, wounding, or placing, setting, drawing, or using
3 any net or other device, commonly used to take animals, whether they result in
4 a taking or not; and shall include every attempt to take and every act of
5 assistance to every other person in taking or attempting to take animals.

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

10 (16) “Critical habitat” for an endangered or threatened species means:

11 (A) the site-specific areas within the geographical area occupied by a
12 species, listed in accordance with section 5402 of this title, on which are found
13 those physical or biological features decisive to the survival of the species,
14 necessary for the conservation of the species, and which may require special
15 management considerations or protection; or

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

20 (17) “Destroy or significantly imperil” with respect to critical habitat
21 means a direct or indirect alteration that eliminates or significantly imperils the

1 value of critical habitat for either the survival or recovery of a listed species.

2 Such alterations include undue adverse modification of any of those physical

3 or biological features that are decisive to the survival of a listed species, as

4 well as an undue adverse impact on the use of the habitat by a listed species.

5 (18) “Harm,” within the meaning of take or taking, means an act which
6 actually kills or injures wildlife or wild plants. Such act may include the
7 destruction or imperilment of habitat which kills or injures wildlife by
8 significantly impairing essential behavior patterns, including breeding, feeding,
9 sheltering, and in the case of plants, continued survival.

10 § 5402. ENDANGERED AND THREATENED SPECIES LISTS;

11 CRITICAL HABITAT LIST

12 (a)(1) The ~~secretary~~ Secretary shall adopt by rule a ~~state-endangered~~
13 State-endangered species list and a ~~state-threatened~~ State-threatened species
14 list. The listing for any species may apply to the whole ~~state~~ State or to any
15 part of the ~~state~~ State and shall identify the species by its most recently
16 accepted genus and species names and, if available, the common name.

17 (2) The Secretary may adopt by rule a critical habitat designation list for
18 any State-endangered or -threatened species. The Secretary shall not be
19 required to designate critical habitat for every State-endangered or -threatened
20 species. Except as necessary, as determined by the Secretary, critical habitat

1 shall not include the entire geographical area which can be occupied by the
2 endangered or threatened species.

3 (b) The ~~secretary~~ Secretary shall determine a species to be endangered if it
4 normally occurs in the ~~state~~ State and its continued existence as wildlife or a
5 wild plant in the ~~state~~ State is in jeopardy. The Secretary may list a federally
6 threatened species as an endangered species if that species meets the
7 requirements of this subsection.

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

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

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

17 (2) taking or over-utilization of the species for commercial, sporting,
18 scientific, educational, or other purposes;

19 (3) disease or predation affecting the species;

20 (4) the adequacy of existing regulation;

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

4 (6) competition with other species, including non-native invasive
5 species;

6 (7) the decline in the population; and

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

9 (e) In determining whether and where to designate critical habitat for a
10 State-endangered or -threatened species, the Secretary shall consider physical
11 and biological features that are necessary to the conservation of the listed
12 species and special management considerations and strategies for the
13 protection and restoration of the species, including:

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

15 (2) the extent to which the habitat is necessary to the survival and
16 restoration of the listed species, at any stage of its life cycle;

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

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

20 (5) cover or shelter;

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

3 (7) the habitats that meet the physical and biological requirements of the
4 species or are representative of the historic geographical and ecological
5 location of the listed species;

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

8 (9) the adequacy of existing regulation;

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

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

14 (f) In determining whether a species is endangered or threatened, whether
15 to designate critical habitat for a State-listed species, and whether to delist a
16 listed species or critical habitat designation, the ~~secretary~~ Secretary shall:

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

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

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

3 § 5403. PROTECTION OF ENDANGERED AND THREATENED SPECIES

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

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

8 (2) destroy or significantly imperil critical habitat or its use or
9 accessibility by an endangered or threatened species.

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

13 (c) ~~(1) A~~ The Secretary may bring a civil enforcement action against any
14 person who violates subsection (a) of this section with regard to an endangered
15 species shall be fined not more than \$1,000.00 on the first offense. For a
16 subsequent conviction the person shall be fined not less than \$500.00 nor more
17 than \$1,000.00 or any rules adopted under this chapter, in accordance with
18 chapters 201 and 211 of this title.

19 (2) Instead of bringing a civil enforcement action, the Secretary may
20 refer violations of this chapter to the Commissioner for criminal enforcement.

1 ~~(d) A person who violates subsection (a) of this section with regard to a~~
2 ~~threatened species shall be fined not more than \$500.00 on the first offense.~~
3 ~~For a subsequent conviction the person shall be fined not less than \$250.00 nor~~
4 ~~more than \$500.00.~~

5 ~~(e) A person who violates a rule of the secretary adopted under subsection~~
6 ~~(b) of this section shall be fined not more than \$500.00.~~

7 ~~(f) A Any person who violates subsection (a) or (b) of this section by~~
8 ~~knowingly injuring a member of a ~~threatened or~~ an endangered or threatened~~
9 ~~species, or knowingly destroying or significantly imperiling critical habitat,~~
10 ~~and is subject to criminal prosecution may be required by the court to pay~~
11 ~~restitution of no more than \$500.00 for:~~

12 ~~(1) veterinarian actual costs and related expenses incurred in treating~~
13 ~~and caring for the injured ~~bird~~ plant or animal to the person incurring these~~
14 ~~expenses, including veterinarian and staff time; or~~

15 ~~(2) reasonable mitigation and restoration costs, such as habitat~~
16 ~~protection and enhancement, transplanting, or cultivation and propagation for~~
17 ~~plants.~~

18 § 5404. ENDANGERED SPECIES COMMITTEE

19 (a) A ~~Committee~~ committee on endangered species is created to be known
20 as the “Endangered Species Committee,” and shall consist of nine members,
21 including the Secretary of Agriculture, Food and Markets; the Commissioner

1 of Fish and Wildlife; the Commissioner of Forests, Parks and Recreation; and
2 six members appointed by the Governor from the public at large. Of the six
3 public members, two shall be actively engaged in agricultural or silvicultural
4 activities, two shall be knowledgeable concerning flora, and two shall be
5 knowledgeable concerning fauna. Members appointed by the Governor shall
6 be entitled to reimbursement for expenses incurred in the attendance of
7 meetings, as approved by the ~~chairman~~ Chair. The ~~chairman~~ Chair of the
8 Committee shall be elected from among and by the members each year.
9 Members shall serve terms of three years, except that the Governor may make
10 appointments for a lesser term in order to prevent more than two terms from
11 expiring in any year.

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

17 (c) The Agency of Natural Resources shall provide the ~~endangered species~~
18 ~~committee~~ Endangered Species Committee with necessary staff services.

19 § 5405. CONSERVATION PROGRAMS

20 The ~~secretary~~ Secretary, with the advice of the ~~endangered species~~
21 ~~committee~~ Endangered Species Committee, may establish conservation

1 programs and recovery plans for the conservation of ~~threatened or~~ endangered
2 or threatened species of wildlife ~~or~~, wild plants, and critical habitat. The
3 Department of Fish and Wildlife also has the authority to establish
4 conservation and recovery programs for listed species. The programs may
5 include the purchase of land or aquatic habitat and the formation of contracts
6 for the purpose of management of wildlife or wild plant refuge areas or for
7 other purposes.

8 § 5406. COOPERATION BY OTHER AGENCIES

9 All agencies of this ~~state~~ State shall review programs administered by them
10 ~~which that~~ that may relate to this chapter and shall, in consultation with the
11 ~~secretary~~ Secretary, utilize their authorities only in a manner ~~which that~~
12 not jeopardize the listed species or the outcomes of conservation programs
13 established by this chapter or by the ~~secretary~~ Secretary under ~~its~~ his or her
14 authority.

15 § 5407. ENFORCEMENT AUTHORITY TO SEIZE ENDANGERED AND
16 THREATENED SPECIES

17 In addition to other methods of enforcement authorized by law, the
18 ~~secretary~~ Secretary may direct under this section that wildlife or wild plants
19 ~~which that~~ that were seized because of violation of this chapter be rehabilitated,
20 released, replanted, or transferred to a zoological, botanical, educational, or
21 scientific institution, and that the costs of the transfer and staff time related to

1 the violation may be charged to the violator. The ~~secretary~~ Secretary, with the
2 advice of the ~~endangered species committee~~ Endangered Species Committee,
3 may adopt rules for the implementation of this section.

4 § 5408. LIMITATIONS

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

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

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

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

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

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

12 (1) a description of the activities that could lead to a taking of a listed
13 endangered or threatened species;

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

16 (3) a plan for ensuring that funding is available to conduct any required
17 monitoring and accomplish the steps in subdivision (2) of this subsection;

18 (4) a summary of the alternative actions to the taking that the applicant
19 considered and the reasons that these alternatives were not selected;

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

1 (6) any additional information or conditions that the Secretary may
2 require to be necessary or appropriate.

3 (g)(1) Fees to be charged to a person applying to take a ~~threatened or an~~
4 endangered or threatened species or to destroy or significantly imperil critical
5 habitat under this section shall be:

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

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

15 (C) The administrative permit fee to destroy or significantly imperil
16 critical habitat is \$250.00. Additional mitigation fees or mitigation strategies
17 may be imposed by the Secretary to mitigate the loss of critical habitat. The
18 Secretary shall adopt rules to determine fair and reasonable mitigation fees
19 based on impact. The mitigation fees may be based on the fair market value of
20 habitat replacement.

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

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

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

16 (i) The Secretary shall establish rules for public notice of draft permit
17 decisions based on economic hardship and for initial and amended general
18 permits. The rules shall provide for no less than 30 days of public notice and
19 the opportunity to request a public informational hearing. The rules shall also
20 provide for posting permit applications, permit decisions, and the initial or

1 amended general permits on a publically accessible website, as well as for
2 allowing persons to request notification of permit decisions.

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

9 § 5410. LOCATION CONFIDENTIAL

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

19
20
21

1 (Committee vote: _____)

2

3

Representative _____

4

FOR THE COMMITTEE