TO: HOUSE COMMITTEE ON FISH, WILDLIFE AND WATER RESOURCES

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SUBJECT: H. 552 TESTAMONY **DATE:** January 20, 2016

Please accept these comments and questions on H. 552 Threatened and Endangered Species. Thank you for the opportunity to testify and comment.

INTRODUCTION

These comments are made as a private citizen. I am representing no group or interest other than my own. I am a private consulting forester working with forest landowners. I have over 35 years of experience working as a natural resources professional in the forested ecosystems in Vermont. I also have personal experience working with the Threatened and Endangered Species Law. I served as the Vermont Secretary of Natural Resources under Governor James H. Douglas.

GENERAL COMMENTS AND CONCERNS

The proposed expansion of the law to include "critical habitat" is extremely problematic, unneeded and controversial. There is no documented need for this sweeping change in law.

Expanding the reach of T&E law to include "critical habitat" would bring Vermont the same divisive and damaging land use controversy that has been destructive to natural resource based economies in the western United States for decades. The application of "critical habitat" designations at the Federal level has done little to protect the species intended, but has ripped rural communities apart socially and economically. This will be detrimental to Vermont.

Why would we want to bring this approach to Vermont? Vermont has a rich history of cooperation with landowners and successful environmental protection. We should learn from history. The Spotted Owl, Red-Cockaded Woodpecker, Timber Wolf, Canada Lynx other divisive land use/habitat battles have done little to protect the species but had terrible consequences for landowners, the forest products industry, and government relationships.

Forest landowners are overwhelmingly supportive of habitat protection and forest management that is protective and beneficial to wildlife. There is a long tradition of sharing the land by private landowners for both habitat protection and recreational access. This proposal will threaten both of these traditional Vermont values and practices.

Vermont forest landowners should be notified of this proposed law change. They are not aware of the potential impacts to their financial investments. This will be a very controversial issue.

The forests of Vermont are predominately privately owned (85%). As a society we need to encourage and support forest land ownership. This proposal will add uncertainty, mistrust of government and the possibility of drastic economic consequences for forest landowners.

This is not how Vermont should choose to protect the species and habitats we all cherish and steward. We need to preserve our rich traditions of respect and cooperative efforts to ensure that forests stay forests and that all forest dependent species and forest dependent human communities continue to care for each other and flourish here in the state of Vermont.

COMMENTS AND QUESTIONS ON THE PROPOSED LANGUAGE OF THE BILL

Page 2, Line 11, the addition on "fungi" to the plants list is a large addition of forest dependent species. Why is this needed and what might be the impacts to forest landowners?

Page 3, Lines 10, 11 &12 the additional language that now includes "populations of species" is a large expansion of the reach and impacts of the law.

Page 5 Line 3-20, "critical habitat" the expansion of the law to include critical habitat is an unneeded and controversial proposal that could have devastating economic and social impacts.

Page 5, Line 5, "delineated location" sounds very specific but is way too broad and could include the entire geographical area (or as the text says "outside of the geographic area") of a species.

Page 5, Line 7, the addition of the word "concentrated" is good attempt to limit and define the reach and scope of critical habitat. It does not go far enough and should be changed to "limited" or the "minimal amount necessary". "Critical habitat" is unneeded but if used it must be limited.

Page 5, Line 13, this includes "a delineated area outside the geographical area occupied by a species" This is way too broad and could basically include anything anywhere.

Page 5, Line 15, "historically occupied" When, how long ago? What evidence is to be used?

Page 5, Line 16, "hydrologically or physically connected to occupied habitat" That is everything anywhere! That is not a limiting definition that is an allowance for anything, anywhere.

Page 5, Line18 & 19, "Survival of a population" What is the definition of a population?

Page 6, Line 1, 2 and 3, "adversely impact" for critical habitat will include an "indirect impact" that allows for basically any restriction for any reason no matter how minimal.

Page 6, Line 3, this allows for the designation of "critical habitat" for the "recovery" of a species. That could include restrictions on huge expanses of land for some wide-ranging species.

Page 7, Line 2 the term "significantly" has been stricken from "declining" this will drastically expand the reach of the law. Many, if not most species have population cycles of "decline". This is a basic fact and principal component of wildlife biology. This makes the law too broad.

Page 7, Line 7, the inclusion of "fragmentation" of habitat is inappropriate. Fragmentation is happening to Vermont forests, so this could include anything anywhere.

Page 7, Line 16, "climate change" as a factor to consider is way too broad and expands the law to include things that could happen long into the future. This is not an appropriate provision.

Page 7, Line 20, "cumulative impacts" This term has been abused in the federal NEPA process to unfairly curtail forest management on the National Forest System to the point of causing a national tragedy as our now undermanaged national forest lands in the west decline and burn at extraordinary rates causing unprecedented ecological and economic losses. It would be irresponsible to include this historically litigious terminology to this law in Vermont.

Page 8, line 13, CRTITCAL HABITAT, this expansion is not needed and will serve as a great detriment to long-term forest land investment and ownership. It will also cause unneeded and destructive social unrest and conflict. This will contribute to the conversion of forest land to other uses. We need to stop increasing forest land ownership costs and legal unpredictability.

Page 9, Line 4, expands the law to include "recovery" of a species, as a need for critical habitat designation. That could be vast areas of forested habitat for some species. How will large forest landowners be impacted by this unneeded expansion?

Page 9, Line 7, "historic use" that means a possible designation where nothing now even exists.

Page 9, Line 10 "restoration" is that different than "recovery"? Will it allow for designation of critical habitat to "restore" a species? Like say, Wolves, a currently extirpated species, but a historic species. This needs to be fully explained to forest landowners before it becomes law.

Page 9, Line 12 "the space necessary for individual and population growth" to what level? Think about that provision. Critical habitat designated to allow for the "growth of a population" with no limitation or biological goal. For many of these species they could need thousands of acres for population growth. Who is going to want to own forest land with this type of "taking" possible?

Page 9, Line 13, "physically or hydrologically connected" so, ground water? rivers? streams? The "hydrologic cycle" so anything that rain falls on? This is just way too broad. Physically? So nothing could be designated on the moon I guess. (What is NOT "physically connected"?)

Page 9, Line 16, "physiological requirements" do they really want to be able to designate critical habitat based on anything that is a physiological requirement? That means everything on the planet including all functions and processes, biological, chemical, ecological, genetic, etc. ,etc.

Page 9, Line 19 & 20, including "migration corridors" this is very enlightening and shows that the intent of this massive expansion of the law WILL include major impacts on forest landowners. The needs for wide-ranging species such as Canada Lynx, Pine Marten, Timber Wolf, Bald Eagles, bats, birds, etc. could include thousands of acres of productive forest land.

Page 10, line 1, 2 & 3, this provision is a great example of the "mission creep" that is embedded throughout this proposed language!

"the habitat that meets the physical and biological requirements of the species or are representative of the historic and ecological location of a species".

So,… the habitat only needs to be "representative" of a location! That means anything even remotely like a place the species could live (or historically could have lived).

It seems that Fish and Wildlife are trying to be able to designate anything anywhere.

Page 11, Line 6, 7 &8, "destroy or adversely impact" now will also include a species "use or access to the critical habitat" this would mean that a designation could have impacts on lands not even near the habitat, if it could impact "access". How would this be implemented /enforced?

Page 17, Lines 8 through 15, - Interference with Agricultural or Silvicultural practices. "No rule adopted under this chapter shall cause undue interference with normal agricultural or silvicultural practices". This is existing language and it is legally required that it be retained (Federal law).

Lines 12 through 15 now add a provision for consultation with the Commissioner. This provision uses a different threshold and different language than the above referenced "silviclutural exemption".

It would require that the Secretary not adopt rules that restrain silvicultural activities without first consulting with the Commissioner of Forests, Parks and Recreation.

Why use this language with different terminology and what does that mean?

Plain language usage would seem to indicate an intentional difference in the meaning and purpose.

The term "undue interference" has been around and defined through practice and precedent. The term "restrain" is different and if used as commonly used, is a more restrictive term than "undue interference". When I am practicing silviculture, I would much rather deal with some "undue interference" than be "restrained". "Undue interference is NOT allowed, why would it be OK to "restrain"? I do not believe it would be legal under the existing law to "restrain" silviculture.

Why would the law not allow "undue interference" yet consultation is not even triggered until the activity has been "restrained"? What is the difference between "practices" and "activity"?

Also, why would the "shall not cause" provision be for "practices" and the consultation be for "activities"? This seems designed to be confusing and undefinable.

The goal here clearly looks to be trying to undermine and limit the silvicultural exemption.

The propose language of H.552 is far too broad, unneeded, controversial, and unacceptable.