

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Fish, Wildlife and Water Resources to which was
3 referred House Bill No. 552 entitled “An act relating to threatened and
4 endangered 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. § 5401 is amended to read:

8 § 5401. DEFINITIONS

9 As used in this chapter:

10 (1) “Agency” means the Agency of Natural Resources.

11 (2) “Secretary” means the Secretary of Natural Resources.

12 (3) “Species” ~~includes all subspecies of~~ means wildlife or wild plants
13 and any subspecies or other group of wildlife or wild plants of the same
14 species, the members of which may interbreed when mature.

15 (4) “Wildlife” means any member of a nondomesticated species of the
16 animal kingdom, whether reared in captivity or not, including, without
17 limitation, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean,
18 arthropod or other invertebrate, and also including any part, product, egg,
19 offspring, dead body, or part of the dead body of any such wildlife.

20 (5) “Plant” means any member of the plant kingdom, including seeds,
21 roots, and other parts thereof. As used in this chapter, plants shall include
22 fungi.

1 (6) “Endangered species” means a species listed ~~on the state endangered~~
2 ~~species list~~ as endangered under this chapter or ~~determined to be an~~
3 ~~“endangered species”~~ under the federal Endangered Species Act.

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

7 (8) “Endangered Species Act” and “federal Endangered Species Act”
8 means the Endangered Species Act of 1973, Public Law 93-205, as amended.

9 (9) “Habitat” means the physical and biological environment in which a
10 particular species of plant or animal lives.

11 (10) “Conserve,” “conserving,” and “conservation” mean to use and the
12 use of all methods and procedures ~~both~~ for maintaining or increasing:

13 (A) the number of individuals within a population of a species;

14 (B) the number of populations of a species; and

15 (C) populations of wildlife or wild plants to the optimum carrying
16 capacity of the habitat, ~~and for maintaining those numbers.~~

17 (11) “Optimum carrying capacity” for a species means a population
18 level of that species which, in that habitat, can ~~indefinitely~~ sustainably coexist
19 with healthy populations of all wildlife and wild plant species normally
20 present.

21 (12) “Methods” and “procedures” means all activities associated with
22 ~~scientific~~ natural resources management, including, ~~without limitation,~~

1 scientific research, census, law enforcement, habitat acquisition and
2 maintenance, propagation, live trapping, and transplanting. The terms also
3 include the periodic or continuous protection of species or populations, where
4 appropriate, and the regulated taking of individuals of the species or population
5 in extraordinary cases where population pressures within a habitat cannot be
6 otherwise relieved.

7 (13) ~~“Possession” of a member of a species means the state of~~
8 ~~possessing~~ means holding, controlling, exporting, importing, processing,
9 selling, offering to sell, delivering, carrying, transporting, or shipping by any
10 means a member of that a species.

11 (14) ~~“Taking,” “Take” or “taking”:~~

12 ~~(A) with~~ With respect to wildlife ~~means “taking” as defined in~~
13 ~~section 4001 of this title, and~~ designated a threatened or endangered species,
14 means:

15 (i) pursuing, shooting, hunting, killing, capturing, trapping,
16 harming, snaring, and netting wildlife;

17 (ii) an act that creates a risk of injury to wildlife, whether or not
18 the injury occurs, including harassing, wounding, or placing, setting, drawing,
19 or using any net or other device used to take animals; or

20 (iii) attempting to engage in or assisting another to engage in an
21 act set forth under subdivision (A)(i) or (ii) of this subdivision (14).

1 (B) ~~with~~ With respect to wild plants designated a threatened or
2 endangered species, means uprooting, transplanting, gathering seeds or fruit,
3 cutting, injuring, harming, or killing or any attempt to do the same or assisting
4 another who is doing or is attempting to do the same.

5 (15) “Accepted silvicultural practices” means the accepted silvicultural
6 practices defined by the Commissioner of Forests, Parks and Recreation,
7 including the Acceptable Management Practices for Maintaining Water
8 Quality on Logging Jobs in Vermont adopted by the Commissioner of Forests,
9 Parks and Recreation.

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

12 (A) a delineated location within the geographical area occupied by
13 the species that:

14 (i) has the physical or biological features that are identifiable,
15 concentrated, and decisive to the survival of a population of the species; and

16 (ii) is necessary for the conservation or recovery of the
17 species; and

18 (iii) may require special management considerations or
19 protection; or

20 (B) a delineated location outside the geographical area occupied by a
21 species at the time it is listed under section 5402 of this title that:

22 (i)(I) was historically occupied by a species; or

1 (II) contains habitat that is hydrologically connected or directly
2 adjacent to occupied habitat; and

3 (ii) contains habitat that is identifiable, concentrated, and decisive
4 to the continued survival of a population of the species; and

5 (iii) is necessary for the conservation or recovery of the species.

6 (17) “Destroy or adversely impact” means, with respect to critical
7 habitat, a direct or indirect activity that negatively affects the value of critical
8 habitat for the survival, conservation, or recovery of a listed threatened or
9 endangered species.

10 (18) “Farming” shall have the same meaning as used in subdivision
11 6001(22) of this title.

12 (19) “Forestry operations” means activities related to the management of
13 forests, including a timber harvest; pruning; planting; reforestation; pest,
14 disease, and invasive species control; wildlife habitat management; and
15 fertilization. “Forestry operation” includes the primary processing of forest
16 products of commercial value on a parcel where the timber harvest occurs.

17 (20) “Harming,” as used in the definition of “take” or “taking” under
18 subdivision (14) of this subsection, means:

19 (A) an act that kills or injures a threatened or endangered species; or

20 (B) the destruction or imperilment of habitat that kills or injures a
21 threatened or endangered species by significantly impairing continued survival

1 or essential behavioral patterns, including reproduction, feeding, and
2 sheltering.

3 Sec. 2. 10 V.S.A. § 5402 is amended to read:

4 § 5402. ENDANGERED AND THREATENED SPECIES LISTS

5 (a) The Secretary shall adopt by rule a ~~State-endangered~~ State endangered
6 species list and a ~~State-threatened~~ State threatened species list. The listing for
7 any species may apply to the whole State or to any part of the State and shall
8 identify the species by its most recently accepted genus and species names and,
9 if available, the common name.

10 (b) The Secretary shall determine a species to be endangered if it normally
11 occurs in the State and its continued existence as ~~wildlife or a wild plant in the~~
12 State a sustainable component of the State's wildlife or wild plants is in
13 jeopardy.

14 (c) The Secretary shall determine a species to be threatened if:

15 (1) it is a sustainable component of the State's wildlife or wild plants;

16 (2) it is reasonable to conclude based on available information that its
17 numbers are ~~significantly declining because of loss of habitat or human~~
18 ~~disturbance;~~ and

19 (3) unless protected, it will become an endangered species.

20 (d) In determining whether a species is ~~endangered or threatened or~~
21 endangered, the Secretary shall consider:

- 1 (1) the present or threatened destruction, degradation, fragmentation,
2 modification, or curtailment of the range or habitat of the species;
- 3 (2) any killing, harming, or over-utilization of the species for
4 commercial, sporting, scientific, educational, or other purposes;
- 5 (3) disease or predation affecting the species;
- 6 (4) the adequacy of existing regulation;
- 7 (5) actions relating to the species carried out or about to be carried out
8 by any governmental agency or any other person who may affect the
9 species; ~~and~~
- 10 (6) competition with other species, including nonnative invasive species;
11 (7) the decline in the population;
12 (8) cumulative impacts; and
- 13 (9) other natural or ~~man-made~~ human-made factors affecting the
14 continued existence of the species.
- 15 (e) In determining whether a species is ~~endangered or threatened or~~
16 endangered or whether to delist a species, the Secretary shall:
- 17 (1) use the best scientific, commercial, and other data available;
- 18 (2) notify and consult with interested state or appropriate officials in
19 Canada, appropriate State and federal agencies, other states having a common
20 interest in the species, affected landowners, and any interested persons at least
21 30 days prior to commencement of rulemaking; and

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

4 Sec. 3. 10 V.S.A. § 5402a is added to read:

5 § 5402a. CRITICAL HABITAT; LISTING

6 (a) The Secretary may, after the consultation required under subsection
7 5408(e) of this section, adopt or amend by rule a critical habitat designation list
8 for threatened or endangered species. Critical habitat may be designated in any
9 part of the State. The Secretary shall not be required to designate critical
10 habitat for every State-listed threatened or endangered species. When the
11 Secretary designates critical habitat, the Secretary shall identify the species for
12 which the designation is made, including its most recently accepted genus and
13 species names, and, if available, its common name.

14 (b) The Secretary shall designate only critical habitat that meets the
15 definition of “critical habitat” under this chapter. In determining whether and
16 where to designate critical habitat for a State-listed threatened or endangered
17 species, the Secretary shall, after consultation with and consideration of
18 recommendations of the Secretary of Agriculture, Food and Markets, the
19 Secretary of Transportation, and the Commissioner of Forests, Parks and
20 Recreation, consider the following:

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

1 (2) the extent to which the habitat is decisive to the survival and
2 recovery of the listed species, at any stage of its life cycle;

3 (3) the space necessary for individual and population growth of the
4 listed species;

5 (4) food, water, air, light, minerals, or other nutritional or physiological
6 requirements of the listed species;

7 (5) cover or shelter for the listed species;

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

10 (7) the present or threatened destruction, degradation, fragmentation,
11 modification, or curtailment of the range or habitat of the listed species;

12 (8) the adequacy of existing regulation;

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

16 (10) cumulative impacts; and

17 (11) natural or human-made factors affecting the continued existence of
18 the listed species.

19 (c) In determining whether to designate critical habitat for a State-listed
20 threatened or endangered species, the Secretary shall:

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

1 (2) notify and consult with appropriate officials in Canada, appropriate
2 State and federal agencies, other states having a common interest in the
3 species, affected landowners, and any interested persons at least 30 days prior
4 to commencement of rulemaking; and

5 (3) notify the appropriate officials and agencies of Quebec or any state
6 contiguous to Vermont in which the species affected is known to occur.

7 (d) Prior to initiating rulemaking under this section to designate critical
8 habitat, the Secretary shall notify the owner of record of any land on which
9 critical habitat is proposed for designation.

10 Sec. 4. 10 V.S.A. § 5403 is amended to read:

11 § 5403. PROTECTION OF ENDANGERED AND THREATENED SPECIES

12 (a) Except as authorized under this chapter, a person shall not:

13 (1) take, possess, or transport wildlife or wild plants that are members of
14 ~~an endangered or a threatened~~ endangered species; or

15 (2) destroy or adversely impact critical habitat.

16 (b) Any person who takes a threatened or endangered species shall report
17 the taking to the Secretary.

18 (c) The Secretary may, with advice of the Endangered Species Committee
19 and after the consultation required under subsection 5408(e) of this section,
20 adopt rules for the protection ~~and~~ conservation, or recovery of endangered and
21 threatened species. The rules may establish:

1 (1) application requirements for an individual permit or general permits
2 issued under this section, including requirements that differ from the
3 requirements of subsection 5408(h) of this title; and

4 (2) best management practices for general permits.

5 ~~(e)~~(d) The Secretary may bring a ~~civil~~ an environmental enforcement action
6 against any person who violates subsection (a) or (b) of this section or rules
7 adopted under this chapter in accordance with chapters 201 and 211 of this
8 title.

9 ~~(d)~~(e) Instead of bringing a ~~civil~~ an environmental enforcement action for a
10 violation of this chapter or rules adopted under this chapter, the Secretary may
11 refer violations of this chapter to the Commissioner of Fish and Wildlife for
12 criminal enforcement.

13 ~~(e)~~(f) ~~A~~ In a criminal enforcement action, a person who knowingly violates
14 a requirement of this chapter or a rule of the Secretary adopted under
15 subsection ~~(b)~~(c) of this section related to taking, possessing, transporting,
16 buying, or selling a threatened or endangered species shall be fined not more
17 ~~than \$500.00~~ in accordance with section 4518 of this title, and the person shall
18 pay restitution under section 4514 of this title.

19 ~~(f)~~(g) Any person who violates subsection (a) or (b) of this section by
20 knowingly injuring a member of a threatened or endangered species or
21 knowingly destroying or adversely impacting critical habitat and who is

1 subject to criminal prosecution may be required by the court to pay
2 restitution for:

3 (1) actual costs and related expenses incurred in treating and caring for
4 the injured plant or animal to the person incurring these expenses, including
5 the costs of veterinarian services and Agency of Natural Resources staff
6 time; or

7 (2) reasonable mitigation and restoration costs such as: species
8 restoration plans; habitat protection; and enhancement, transplanting,
9 cultivation, and propagation ~~for plants~~.

10 Sec. 5. 10 V.S.A. § 5404 is amended to read:

11 § 5404. ENDANGERED SPECIES COMMITTEE

12 (a) A ~~Committee~~ committee on endangered species is created to be known
13 as the “Endangered Species Committee,” and shall consist of nine members,
14 including the Secretary of Agriculture, Food and Markets, the Commissioner
15 of Fish and Wildlife, the Commissioner of Forests, Parks and Recreation, and
16 six members appointed by the Governor from the public at large. Of the six
17 public members, two shall be actively engaged in agricultural or silvicultural
18 activities, two shall be knowledgeable concerning flora, and two shall be
19 knowledgeable concerning fauna. Members appointed by the Governor shall
20 be entitled to reimbursement for expenses incurred in the attendance of
21 meetings, as approved by the Chair. The Chair of the Committee shall be
22 elected from among and by the members each year. Members who are not

1 employees of the State shall serve terms of three years, except that the
2 Governor may make appointments for a lesser term in order to prevent more
3 than two terms from expiring in any year.

4 (b) The Endangered Species Committee shall advise the Secretary on all
5 matters relating to endangered and threatened species, including whether to
6 alter the lists of endangered and threatened species ~~and~~, how to protect those
7 species, and whether and where to designate critical habitat.

8 (c) The Agency of Natural Resources shall provide the Endangered Species
9 Committee with necessary staff services.

10 Sec. 6. 10 V.S.A. § 5405 is amended to read:

11 § 5405. CONSERVATION PROGRAMS

12 The Secretary, with the advice of the Endangered Species Committee, may
13 establish conservation programs and establish recovery plans for the
14 conservation or recovery of threatened or endangered species of wildlife or
15 plants or for the conservation or recovery of critical habitat. The programs
16 may include the purchase of land or aquatic habitat and the formation of
17 contracts for the purpose of management of wildlife or wild plant refuge areas
18 or for other purposes.

19 Sec. 7. 10 V.S.A. § 5406 is amended to read:

20 § 5406. COOPERATION BY OTHER AGENCIES

21 All agencies of this State shall review programs administered by them
22 which may relate to this chapter and shall, in consultation with the Secretary,

1 utilize their authorities only in a manner which does not jeopardize the
2 threatened or endangered species, critical habitat, or the outcomes of
3 conservation or recovery programs established by this chapter or by the
4 Secretary under ~~its~~ his or her authority.

5 Sec. 8. 10 V.S.A. § 5407 is amended to read:

6 § 5407. ~~ENFORCEMENT~~ AUTHORITY TO SEIZE THREATENED OR
7 ENDANGERED SPECIES

8 In addition to other methods of enforcement authorized by law, the
9 Secretary may direct under this section that wildlife or wild plants ~~which~~ that
10 were seized because of violation of this chapter be rehabilitated, released,
11 replanted, or transferred to a zoological, botanical, educational or scientific
12 institution, and that the costs of the transfer and staff time related to a violation
13 may be charged to the violator. The Secretary, with the advice of the
14 Endangered Species Committee, may adopt rules for the implementation of
15 this section.

16 Sec. 9. 10 V.S.A. § 5408 is amended to read:

17 § 5408. ~~LIMITATIONS~~ AUTHORIZED TAKINGS; INCIDENTAL
18 TAKINGS; DESTRUCTION OF CRITICAL HABITAT

19 (a) Authorized taking. Notwithstanding any provision of this chapter, after
20 obtaining the advice of the Endangered Species Committee, the Secretary may
21 permit, under such terms and conditions as the Secretary may, ~~prescribe by~~
22 rule, require as necessary to carry out the purposes of this chapter, the taking of

1 a threatened or endangered species, the destruction or adverse impact of
2 critical habitat, or any act otherwise prohibited by this chapter if done for any
3 of the following purposes:

4 (1) scientific purposes;

5 (2) to enhance the propagation or survival of a threatened or endangered
6 species; ~~economic hardship~~;

7 (3) zoological exhibition;

8 (4) educational purposes;

9 (5) noncommercial cultural or ceremonial purposes; or

10 (6) special purposes consistent with the purposes of the federal
11 Endangered Species Act.

12 (b) Incidental taking. After obtaining the advice of the Endangered Species
13 Committee, the Secretary may permit, under such terms and conditions as the
14 Secretary require as necessary to carry out the purposes of this chapter, the
15 incidental taking of a threatened or endangered species or the destruction or
16 adverse impact of critical habitat if:

17 (1) the taking is necessary to conduct an otherwise lawful activity;

18 (2) the taking is attendant or secondary to, and not the purposes of, the
19 lawful activity;

20 (3) the impact of the permitted incidental take is minimized; and

21 (4) the incidental taking will not impair the conservation or recovery of
22 any endangered species or threatened species.

1 (c) Transport through State. Nothing in this chapter shall prevent a person
2 who holds a proper permit from the federal government or any other state from
3 transporting a member of ~~an endangered or a threatened~~ endangered species
4 from a point outside this State ~~to another point within or without this~~ through
5 the State.

6 ~~(e)~~(d) Possession. Nothing in this chapter shall prevent a person from
7 possessing in this State wildlife or wild plants which are not determined to be
8 “endangered” or “threatened” under the federal Endangered Species Act where
9 the possessor is able to produce substantial evidence that the wildlife or wild
10 plant was first taken or obtained in a place without violating the law of that
11 place, provided that an importation permit may be required under section 4714
12 of this title or the rules of the Department of Fish and Wildlife.

13 ~~(d)~~(e) Interference with agricultural or silvicultural practices. No rule
14 adopted under this chapter shall cause undue interference with ~~normal~~
15 ~~agricultural or~~ farming, forestry operations, or accepted silvicultural practices.
16 This section shall not be construed to exempt any person from the provisions
17 of the ~~federal Endangered Species Act~~ requirements of this chapter. The
18 Secretary shall not adopt rules that affect farming, forestry operations, or
19 accepted silvicultural practices without first consulting the Secretary of
20 Agriculture, Food and Markets and the Commissioner of Forests, Parks and
21 Recreation.

1 (f) Consistency with State law. Nothing in this chapter shall be interpreted
2 to limit or amend the definitions and applications of necessary habitat in
3 chapter 151 of this title or in 30 V.S.A. chapter 5.

4 (e)(g) Effect on federal law. Nothing in this section permits a person to
5 violate any provision of federal law concerning federally protected threatened
6 or endangered species.

7 (h) Permit application. An applicant for a permit under this section shall
8 submit an application to the Secretary that includes the following information:

9 (1) a description of the activities that could lead to a taking of a listed
10 threatened or endangered species or the destruction or adverse impact of
11 critical habitat;

12 (2) the steps that the applicant has or will take to avoid, minimize, and
13 mitigate the impact to the relevant threatened or endangered species or critical
14 habitat;

15 (3) a plan for ensuring that funding is available to conduct any required
16 monitoring and mitigation, if applicable;

17 (4) a summary of the alternative actions to the taking or destruction of
18 critical habitat that the applicant considered and the reasons that these
19 alternatives were not selected, if applicable;

20 (5) the name or names and obligations and responsibilities of the person
21 or persons that will be involved in the proposed taking or destruction of critical
22 habitat; and

1 (6) any additional information that the Secretary may require.

2 ~~(f)~~(i) Permit fees.

3 (1) Fees to be charged to a person applying to take a threatened or
4 endangered species under this section shall be:

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

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

14 (C) for an incidental taking, \$250.00 for each listed wildlife or wild
15 plant taken up to a maximum of \$25,000.00.

16 (2) The Secretary may require the implementation of mitigation
17 strategies, and may collect mitigation funds, in addition to the permit fees, in
18 order to mitigate the impacts of a taking or the destruction or adverse impact
19 on critical habitat. Mitigation may include:

20 (A) a requirement to rectify the taking or adverse impact or to reduce
21 the adverse impact over time;

1 (B) a requirement to manage or restore land within the area of the
2 proposed activity or in an area outside the proposed area as habitat for the
3 threatened or endangered species; or

4 (C) compensation, including payment of a fee into the Threatened
5 and Endangered Species Fund for the uses of that Fund, provided that any
6 payment is commensurate to the taking or adverse impact proposed.

7 (3) Fees ~~or~~ and mitigation payments collected under this subsection and
8 interest on fees and mitigation payments shall be deposited in the Threatened
9 and Endangered Species Fund within the Fish and Wildlife Fund, which Fund
10 is hereby created and shall be used solely for expenditures of the Department
11 of Fish and Wildlife related to threatened and endangered species.

12 Expenditures may be made for monitoring, restoration, conservation, recovery,
13 and the acquisition of property interests and other purposes consistent with this
14 chapter. Where practical, the fees collected for takings shall be devoted to the
15 conservation or recovery of the taken species or its habitat. Interest accrued on
16 the Fund shall be credited to the Fund.

17 ~~(g)~~(j) Permit term. A permit issued under this section shall be valid for the
18 period of time specified in the permit, not to exceed five years. A permit
19 issued under this section may be renewed upon application to the Secretary.

20 (k) Public notice. Prior to issuing a permit for an authorized or incidental
21 taking and prior to the issuance or amendment of a general permit under this
22 section, the Secretary shall provide for: public notice of no fewer than

1 30 days; opportunity for written comment; and opportunity to request a public
2 informational hearing. The Secretary shall post permit applications, permit
3 decisions, and the initial or amended general permits on the website of the
4 Agency of Natural Resources. The Secretary also shall provide notice to
5 interested persons who request notice of permit applications, permit decisions,
6 and proposed general permits or proposed amendments to general permits.

7 (1) General permits.

8 (1) The Secretary may issue general permits for activities that will not
9 affect the continued survival or recovery of a threatened or endangered species.

10 (2) A general permit issued under this chapter shall contain those terms
11 and conditions necessary to ensure compliance with the provisions of this
12 statute.

13 (3) These terms and conditions may include the implementation of best
14 management practices and the adoption of specific mitigation measures and
15 required surveying, monitoring, and reporting.

16 (4) The Secretary may issue a general permit to take a threatened or
17 endangered species or destroy or adversely impact critical habitat only if an
18 activity or class of activities satisfies one or more of the following criteria:

19 (A) the taking of a threatened or endangered species or the
20 destruction or adverse impact of critical habitat is necessary to address an
21 imminent risk to human health;

1 (B) a proposed taking of a threatened or endangered species or the
2 destruction or adverse impact of critical habitat would enhance the overall
3 long-term survival of the species; or

4 (C) the Secretary has adopted best management practices that are
5 designed, when applied, to minimize to the greatest extent possible the taking
6 of a threatened or endangered species or the destruction or adverse impact of
7 critical habitat.

8 (5) On or before September 1, 2017, the Secretary shall issue a general
9 permit for vegetation management and operational and maintenance activities
10 conducted by a utility. Until the general permit has been issued, no critical
11 habitat designation for wild plants shall be made in utility right of way. As
12 used in this subdivision (5), “utility” means an electric company,
13 telecommunication company, pipeline operator, or railroad company.

14 (6) Prior to issuing a general permit under this subsection, the Secretary
15 shall:

16 (A) post a draft of the general permit on the Agency website;

17 (B) provide public notice of at least 30 days; and

18 (C) provide for written comments or a public hearing, or both.

19 (7) For applications for coverage under the terms of an issued general
20 permit, the applicant shall provide notice on a form provided by the Secretary.
21 The Secretary shall post notice of the application on the Agency website and
22 shall provide an opportunity for written comment, regarding whether the

1 application complies with the terms and conditions of the general permit, for
2 ten days following receipt of the application.

3 (8) The Secretary may require any applicant for coverage under a
4 general permit to submit additional information that the Secretary considers
5 necessary and may refuse to approve coverage under the terms of a general
6 permit until the information is furnished and evaluated.

7 (9) The Secretary may require any applicant for coverage under a
8 general permit to seek an individual permit under this section if the applicant
9 does not qualify for coverage.

10 (10) The Secretary may require a person operating under a general
11 permit issued under this section to obtain an individual permit under this
12 section if the person proposes to destroy or adversely impact critical habitat
13 that was designated under section 5402a of this title after issuance of the
14 general permit.

15 Sec. 10. 10 V.S.A. § 5410 is amended to read:

16 § 5410. LOCATION CONFIDENTIAL

17 (a) ~~All information~~ The Secretary shall not disclose information regarding
18 the specific location of threatened or endangered species sites shall be kept
19 ~~confidential in perpetuity~~ except that the Secretary shall disclose this
20 information regarding the location of the threatened or endangered species to:

21 (1) the owner of land upon which the species ~~has been~~ is located, or to;

1 (2) a potential buyer of land upon which the species is located who has a
2 bona fide contract to buy the land and applies to the Secretary for disclosure of
3 threatened or endangered species information, and to, or

4 (3) qualified individuals or organizations, public agencies and nonprofit
5 organizations for scientific research or for preservation and planning purposes
6 when the Secretary determines that the preservation of the species is not
7 further endangered by the disclosure.

8 (b) When the Secretary issues a permit under this chapter to take a
9 threatened or endangered species or destroy or adversely impact critical habitat
10 and when the Secretary designates critical habitat by rule under section 5402a
11 of this title, the Secretary shall disclose only the municipality and general
12 location where the threatened or endangered species or designated critical
13 habitat is located. When the Secretary designates critical habitat under section
14 5402a of this title, the Secretary shall notify the municipality in which the
15 critical habitat is located and shall disclose the general location of the
16 designated critical habitat.

17 Sec. 11. STATUTORY REVISION

18 The Office of Legislative Council, in its statutory revision capacity, is
19 directed to renumber the subdivisions of 10 V.S.A. § 5401 in numerical order
20 and to correct any cross references in statute to 10 V.S.A. § 5410 to reflect the
21 renumbered subdivisions.

22

