

Yellow Highlighting = Amendments requested by SNRE

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 House Bill No. 552 entitled “An act relating to threatened and endangered
4 species” respectfully reports that it has considered the same and recommends
5 that the Senate propose to the House that the bill be amended by striking out all
6 after the enacting 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.

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

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

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

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

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

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

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

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

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

20 (11) “Optimum carrying capacity” for a species means a population
21 level of that species which, in that habitat, can ~~indefinitely~~ sustainably coexist

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1 with healthy populations of all wildlife and wild plant species normally
2 present.

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

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

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

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

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

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

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

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

10 (15) “Accepted silvicultural practices” means the accepted silvicultural
11 practices defined by the Commissioner of Forests, Parks and Recreation,
12 including the Acceptable Management Practices for Maintaining Water
13 Quality on Logging Jobs in Vermont adopted by the Commissioner of Forests,
14 Parks and Recreation.

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

17 (A) a delineated location within the geographical area occupied by
18 the species that:

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

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1 (ii) is necessary for the conservation or recovery of the
2 species; and

3 (iii) may require special management considerations or
4 protection; or

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

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

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

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

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

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

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

19 (19) “Forestry operations” means activities related to the management of
20 forests, including a timber harvest; pruning; planting; reforestation; pest,
21 disease, and invasive species control; wildlife habitat management; and

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1 fertilization. “Forestry operation” includes the primary processing of forest
2 products of commercial value on a parcel where the timber harvest occurs.

3 (20) “Harming,” as used in the definition of “take” or “taking” under
4 subdivision (14) of this section, means:

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

6 (B) the destruction or imperilment of habitat that kills or injures a
7 threatened or endangered species by significantly impairing continued survival
8 or essential behavioral patterns, including reproduction, feeding, and
9 sheltering.

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

11 § 5402. ENDANGERED AND THREATENED SPECIES LISTS

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

17 (b) The Secretary shall determine a species to be endangered if it normally
18 occurs in the State and its continued existence as ~~wildlife or a wild plant in the~~
19 State a sustainable component of the State’s wildlife or wild plants is in
20 jeopardy.

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

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

3 (2) it is reasonable to conclude based on available information that its

4 numbers are ~~significantly declining because of loss of habitat or human~~

5 ~~disturbance;~~ and

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

7 (d) In determining whether a species is ~~endangered or threatened or~~ or

8 endangered, the Secretary shall consider:

9 (1) the present or threatened destruction, degradation, fragmentation,

10 modification, or curtailment of the range or habitat of the species;

11 (2) any killing, harming, or over-utilization of the species for

12 commercial, sporting, scientific, educational, or other purposes;

13 (3) disease or predation affecting the species;

14 (4) the adequacy of existing regulation;

15 (5) actions relating to the species carried out or about to be carried out

16 by any governmental agency or any other person who may affect the

17 species; ~~and~~

18 (6) competition with other species, including nonnative invasive species;

19 (7) the decline in the population;

20 (8) cumulative impacts; and

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1 (9) other natural or ~~man-made~~ human-made factors affecting the
2 continued existence of the species.

3 (e) In determining whether a species is ~~endangered or threatened or~~
4 endangered or whether to delist a species, the Secretary shall:

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

6 (2) notify and consult with interested state or appropriate officials in
7 Canada, appropriate State and federal agencies, other states having a common
8 interest in the species, affected landowners, and any interested persons at least
9 30 days prior to commencement of rulemaking; and

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

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

14 § 5402a. CRITICAL HABITAT; LISTING

15 (a) Except as provided for under subsection (f) of this section, the Secretary
16 may, after the consultation required under subsection 5408(e) of this section,
17 adopt or amend by rule a critical habitat designation list for threatened or
18 endangered species. Critical habitat may be designated in any part of the State.
19 The Secretary shall not be required to designate critical habitat for every
20 State-listed threatened or endangered species. When the Secretary designates
21 critical habitat, the Secretary shall identify the species for which the

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1 designation is made, including its most recently accepted genus and species
2 names, and, if available, its common name.

3 (b) The Secretary shall designate only critical habitat that meets the
4 definition of “critical habitat” under this chapter. In determining whether and
5 where to designate critical habitat for a State-listed threatened or endangered
6 species, the Secretary shall, after consultation with and consideration of
7 recommendations of the Secretary of Agriculture, Food and Markets, the
8 Secretary of Transportation, the Secretary of Commerce and Community
9 Development, and the Commissioner of Forests, Parks and Recreation,
10 consider the following:

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

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

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

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

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

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

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- 1 (7) the present or threatened destruction, degradation, fragmentation,
2 modification, or curtailment of the range or habitat of the listed species;
- 3 (8) the adequacy of existing regulation;
- 4 (9) actions relating to the listed species carried out or about to be carried
5 out by any governmental agency or any other person who may affect the listed
6 species;
- 7 (10) cumulative impacts; and
- 8 (11) natural or human-made factors affecting the continued existence of
9 the listed species.
- 10 (c) In determining whether to designate critical habitat for a State-listed
11 threatened or endangered species, the Secretary shall:
- 12 (1) use the best scientific, commercial, and other data available;
- 13 (2) notify and consult with appropriate officials in Canada, appropriate
14 State and federal agencies, other states having a common interest in the
15 species, affected landowners, any municipality where the proposed designation
16 is located, and any interested persons at least 60 days prior to commencement
17 of rulemaking;
- 18 (3) notify the appropriate officials and agencies of Quebec or any state
19 contiguous to Vermont in which the species affected is known to occur; and
- 20 (4) if a critical habitat designation is proposed in a growth center, new
21 town center, or neighborhood development area designated under 24 V.S.A.

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1 chapter 76A, notify the Secretary of Commerce and Community Development
2 and any municipality in which the designation is proposed.

3 (d) Prior to initiating rulemaking under this section to designate critical
4 habitat, the Secretary shall notify the owner of record of any land on which
5 critical habitat is proposed for designation. The Secretary shall make all
6 reasonable efforts to work cooperatively with affected landowners.

7 (e) Where appropriate, the Secretary shall include well-established
8 mitigation strategies and best management practice references in the critical
9 habitat designation rule.

10 (f) The Secretary shall not designate critical habitat in a designated
11 downtown or village center, designated under 24 V.S.A. chapter 76A.

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

13 § 5403. PROTECTION OF ENDANGERED AND THREATENED SPECIES

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

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

17 (2) destroy or adversely impact critical habitat.

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

20 (c) The Secretary may, with advice of the Endangered Species Committee
21 and after the consultation required under subsection 5408(e) of this section,

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1 adopt rules for the protection ~~and~~, conservation, or recovery of endangered and
2 threatened species. The rules may establish application requirements for an
3 individual permit or general permits issued under this section, including
4 requirements that differ from the requirements of subsection 5408(h) of this
5 title.

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

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

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

20 ~~(f)~~(g) Any person who violates subsection (a) or (b) of this section by
21 knowingly injuring a member of a threatened or endangered species or

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1 knowingly destroying or adversely impacting critical habitat and who is
2 subject to criminal prosecution may be required by the court to pay
3 restitution for:

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

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

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

12 § 5404. ENDANGERED SPECIES COMMITTEE

13 (a) A ~~Committee~~ committee on endangered species is created to be known
14 as the “Endangered Species Committee,” and shall consist of nine members,
15 including the Secretary of Agriculture, Food and Markets, the Commissioner
16 of Fish and Wildlife, the Commissioner of Forests, Parks and Recreation, and
17 six members appointed by the Governor from the public at large. Of the six
18 public members, two shall be actively engaged in agricultural or silvicultural
19 activities, two shall be knowledgeable concerning flora, and two shall be
20 knowledgeable concerning fauna. Members appointed by the Governor shall
21 be entitled to reimbursement for expenses incurred in the attendance of

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1 meetings, as approved by the Chair. The Chair of the Committee shall be
2 elected from among and by the members each year. Members who are not
3 employees of the State shall serve terms of three years, except that the
4 Governor may make appointments for a lesser term in order to prevent more
5 than two terms from expiring in any year.

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

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

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

13 § 5405. CONSERVATION PROGRAMS

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

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

2 § 5406. COOPERATION BY OTHER AGENCIES

3 All agencies of this State shall review programs administered by them
4 which may relate to this chapter and shall, in consultation with the Secretary,
5 utilize their authorities only in a manner which does not jeopardize the
6 threatened or endangered species, critical habitat, or the outcomes of
7 conservation or recovery programs established by this chapter or by the
8 Secretary under ~~his~~ his or her authority.

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

10 § 5407. ~~ENFORCEMENT~~ AUTHORITY TO SEIZE THREATENED OR
11 ENDANGERED SPECIES

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

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

2 § 5408. LIMITATIONS AUTHORIZED TAKINGS; INCIDENTAL
3 TAKINGS; DESTRUCTION OF CRITICAL HABITAT

4 (a) Authorized taking. Notwithstanding any provision of this chapter, after
5 obtaining the advice of the Endangered Species Committee, the Secretary may
6 permit, under such terms and conditions as the Secretary may, ~~prescribe by~~
7 rule, require as necessary to carry out the purposes of this chapter, the taking of
8 a threatened or endangered species, the destruction or adverse impact of
9 critical habitat, or any act otherwise prohibited by this chapter if done for any
10 of the following purposes:

11 (1) scientific purposes;

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

14 (3) zoological exhibition;

15 (4) educational purposes;

16 (5) noncommercial cultural or ceremonial purposes; or

17 (6) special purposes consistent with the purposes of the federal

18 Endangered Species Act.

19 (b) Incidental taking. After obtaining the advice of the Endangered Species
20 Committee, the Secretary may permit, under such terms and conditions as the
21 Secretary require as necessary to carry out the purposes of this chapter, the

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1 incidental taking of a threatened or endangered species or the destruction or
2 adverse impact of critical habitat if:

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

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

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

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

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

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

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1 ~~(d)~~(e) Interference with agricultural or silvicultural practices. No rule
2 adopted under this chapter shall cause undue interference with ~~normal~~
3 ~~agricultural or~~ farming, forestry operations, or accepted silvicultural practices.
4 This section shall not be construed to exempt any person from the provisions
5 of the ~~federal Endangered Species Act~~ requirements of this chapter. The
6 Secretary shall not adopt rules that affect farming, forestry operations, or
7 accepted silvicultural practices without first consulting the Secretary of
8 Agriculture, Food and Markets and the Commissioner of Forests, Parks and
9 Recreation.

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

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

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

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

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

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

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

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

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

13 ~~(i)~~ Permit fees.

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

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

20 (B) ~~To~~ to take for a zoological or botanical exhibition ~~or to lessen an~~
21 ~~economic hardship~~, \$250.00 for each listed ~~animal or plant~~ wildlife or wild

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1 plant taken up to a maximum of \$25,000.00 ~~or, if the Secretary determines that~~
2 ~~it is in the best interest of the species, the parties may agree to mitigation in~~
3 ~~lieu of a monetary fee; and~~

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

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

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

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

15 (C) compensation, including payment into the Threatened and
16 Endangered Species Fund for the uses of that Fund, provided that any payment
17 is commensurate with the taking or adverse impact proposed; or

18 (3) Prior to requiring mitigation for adverse impacts under an incidental
19 take permit, the Secretary shall consider the economic impact of avoidance,
20 minimization, and compensation of the affected landowner, developer, or

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1 applicant, and whether the benefits of a proposed action outweigh the value of
2 the habitat and the recovery of the threatened or endangered species.

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

8 Expenditures may be made for monitoring, restoration, conservation, recovery,
9 and the 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 or recovery of the taken species or its habitat. Interest accrued on
12 the Fund shall be credited to the Fund.

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

16 (k) Public notice. Prior to issuing a permit for an incidental taking and
17 prior to the initial issuance or amendment of a general permit under this
18 section, the Secretary shall provide for: public notice of no fewer than
19 30 days; opportunity for written comment; and opportunity to request a public
20 informational hearing. The Secretary shall post permit applications, permit
21 decisions, and the initial or amended general permits on the website of the

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1 Agency of Natural Resources. The Secretary also shall provide notice to
2 interested persons who request notice of permit applications, permit decisions,
3 and proposed general permits or proposed amendments to general permits.

4 (1) General permits.

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

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

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

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

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

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

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

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

14 (6) Prior to issuing an initial or amended general permit under this
15 subsection, the Secretary 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

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1 shall provide an opportunity for written comment, regarding whether the
2 application complies with the terms and conditions of the general permit, for
3 ten days following receipt of the application.

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

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

11 (10) The Secretary may require a person operating under a general
12 permit issued under this section to obtain an individual permit under this
13 section if the person proposes to destroy or adversely impact critical habitat
14 that was designated under section 5402a of this title after issuance of the
15 general permit, unless existing best management practices approved under the
16 general permit adequately protect the critical habitat or have been amended to
17 do so prior to the critical habitat designation pursuant to section 5402a of this
18 title.

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

2 § 5410. LOCATION CONFIDENTIAL

3 (a) ~~All information~~ The Secretary shall not disclose information regarding
4 the specific location of threatened or endangered species sites ~~shall be kept~~
5 ~~confidential in perpetuity~~ except that the Secretary shall disclose ~~this~~
6 information ~~to~~ regarding the location of the threatened or endangered
7 species to:

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

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

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

16 (b) When the Secretary issues a permit under this chapter to take a
17 threatened or endangered species or destroy or adversely impact critical habitat
18 and when the Secretary designates critical habitat by rule under section 5402a
19 of this title, the Secretary shall disclose only the municipality and general
20 location where the threatened or endangered species or designated critical
21 habitat is located. When the Secretary designates critical habitat under section

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1 5402a of this title, the Secretary shall notify the municipality in which the
2 critical habitat is located and shall disclose the general location of the
3 designated critical habitat.

4 Sec. 11. STATUTORY REVISION

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

9 Sec. 12. FEE RECOMMENDATION; PERMIT TO DESTROY OR

10 ADVERSELY IMPACT CRITICAL HABITAT

11 The consolidated Executive Branch fee report and request to be submitted
12 on or before the third Tuesday of January 2018 pursuant to 32 V.S.A. § 605
13 shall include a recommendation from the Agency of Natural Resources of a fee
14 for a permit under 10 V.S.A. § 5408 to destroy or adversely impact critical
15 habitat of a State-listed threatened or endangered species. The
16 recommendation shall include whether the owner of property where critical
17 habitat is designated under 10 V.S.A. § 5402a should be required to pay a fee
18 for a permit to destroy or adversely impact critical habitat on his or her
19 property.

20 Sec. 13. EFFECTIVE DATE

21 This act shall take effect on July 1, 2016.

Yellow Highlighting = Amendments requested by SNRE

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7 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE