

Jamey Fidel 4/7/16



Testimony from Jamey Fidel, General Counsel/Forest and Wildlife Program Director, Vermont Natural Resources Council on H.552

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Thank you for the opportunity to testify on H.552. By way of background, I participated on the stakeholder group that met this summer to provide the Fish and Wildlife Department input on the proposed bill. The bill has gone through many versions in the House, and many compromises have been made along the way.

VNRC strongly supports updating Vermont's threatened and endangered species act (10 V.S.A., Chapter 123) to authorize the designation of critical habitat. The proposed bill allows for the designation of critical habitat, and provides statutory authority to establish recovery plans for the conservation of threatened or endangered species of wildlife or plants, and critical habitat. These are two extremely important updates to the law.

There has been a long-standing void in the act's ability to designate critical habitat. Like the federal Endangered Species Act, the designation of critical habitat is an important mechanism for ensuring the protection of species that are threatened and endangered. The proposed language by the ANR clarifies that the Secretary shall not be required to designate critical habitat for every threatened or endangered species, but it provides the Secretary with the authority to designate critical habitat after considering an appropriate list of criteria.

We would have preferred that the proposed bill go even farther by requiring the designation of critical habitat and recovery planning for threatened and endangered species, but we understand that the Fish and Wildlife Department has limited resources, and is trying to take an acceptable and reasonable approach to critical habitat designation.

This highlights just one of many compromises that have been made. We are not suggesting that the bill should change, but is important to note that Vermont is listing more species than we are recovering, and that is why this bill is important. There are instances where critical habitat designation is necessary to protect imperiled species, and the ANR has outlined a number of examples where critical habitat designation would be appropriate.

We support the criteria and factors that should be considered to determine whether to list threatened and endangered species and/or designate critical habitat, including the consideration of fragmentation and cumulative impacts. The Vermont Wildlife Action Plan provides extensive background on current threats to Vermont's wildlife species. In particular, habitat fragmentation is recognized as an important factor to consider in the management and conservation of species.

The bill authorizes the Secretary to establish recovery plans for the recovery of threatened or endangered species of wildlife or plants, or for the conservation or recovery of critical habitat.

This is an important addition to the threatened and endangered species law because the overall goal should be moving species off of the threatened and endangered species list and establishing recovery plans will help in this regard.

We would like to acknowledge that there are many mechanisms in the bill that are designed to balance habitat and species protection with economic considerations. Some of these mechanisms include allowing the incidental take of a threatened or endangered species, or the incidental destruction or adverse impact of critical habitat, provisions related to not causing undue interference with farming or forestry operations, and general permits to allow the take of a threatened or endangered species if best management practices are followed.

In regards to incidental take, I would like to point out that the proposed legislation would allow the incidental take of an endangered species, something the federal endangered species act does not allow. Furthermore, in regards to not causing undue interference with forestry operations, the bill expands the kinds of forestry operations that will receive preferential treatment under this provision. Other accommodations have been made along the way, including eliminating the consideration of climate change impacts in determining whether to list a species as threatened or endangered, among many other changes.

In addition there are new proposed amendments to disallow critical habitat designations in designated downtowns and village centers, and to require a cost benefit analysis when imposing mitigation for impacts under an incidental take permit. Beyond our concern that a species could actually become extinct in a village center or downtown, it is the last proposed amendment to require a cost benefit analysis if mitigation is required under an incidental take permit that gives us the most heartburn, and we therefore oppose the last proposed amendment.

As I mentioned already, the federal endangered species does not allow the incidental take of an endangered species. H.552 allows for the incidental take of an endangered species, which is generous, but the last proposed amendment would now require an examination of whether the benefits of a project outweigh the value of the habitat and the recovery of the threatened or endangered species when issuing an incidental take permit. We are concerned that this cost benefit analysis could be used as a rationale to undermine valid mitigation requirements to offset the physical taking of a species or the destruction of critical habitat. In addition, how is the value of the critical habitat of an endangered species going to be valued? How do you put a dollar value on the intrinsic value of a piece of habitat that helps to keep a species alive? On balance we support the bill with all the compromises made to date, but it is this last proposed amendment that gives us the greatest concern.

The Fish and Wildlife Department recently conducted a poll with Vermont residents. The results show very strong support for wildlife conservation, including the protection of threatened and endangered species, even if the protection affects certain land use activities. The poll shows that 96% of the general public agrees that threatened and endangered species must be protected, and 81% of respondents agreed that wildlife habitat must be protected even if it reduces the options of developers and landowners. We believe this bill is consistent with the attitudes expressed through public polling, and we urge you to pass the bill.