

**H.552: An Act relating to Threatened and Endangered Species**  
Section by Section Summary

**Sec. 1. 10 V.S.A. § 5401. DEFINITIONS; THREATENED AND ENDANGERED (T&E) SPECIES**

Adds or amends multiple definitions related to T&E species. Key amendment or additions include:

- **“Taking” § 5401(14)**: Amends definition to strike reference to definition of “taking” related to hunting. Adds specific actions that constitute a taking of T&E species:
  - **For wild animals**: Taking means: pursuing, shooting, hunting, killing, capturing, trapping, harming, snaring, and netting wildlife; or acts that create a risk of injury to wildlife, including harassing, wounding, or placing, setting, or using a net or device to take animals; or any attempt at these acts.
  - **For wild plants**: Adds “gathering seeds or fruit” and “harming” to list of actions that take a wild plant
- **“Critical habitat” § 5401(16)**: Adds definition for a T&E species to mean:
  - A. a delineated location within the geographical area occupied by the species that:
    - i. has physical or biological features that are identifiable, concentrated, and decisive to survival of a population of the species; and
    - ii. is necessary for the conservation or recovery of the species; and
    - iii. may require special management considerations or protection; or
  - B. a delineated location outside the geographical area occupied by a species at the time it is listed that:
    - i. was historically occupied by a species; or contains habitat hydrologically connected or directly adjacent to occupied habitat; **and**
    - ii. contains habitat that is identifiable, concentrated, and decisive to the continued survival of a population of the species; **and**
    - iii. is necessary for the conservation or recovery of the species.
- **“Destroy or adversely impact” § 5401(17)**: Added to mean, with respect to critical habitat, an activity that negatively affects the value of critical habitat for survival, conservation, or recovery of a listed species.
- **“Harming” § 5401(20)**: Adds definition, as used in the definition of “take” or “taking” to mean:
  - A. an act that kills or injures a threatened or endangered species; or
  - B. destruction or imperilment of habitat that kills or injures a T&E species by significantly impairing continued survival or essential behavioral patterns, including reproduction, feeding, and sheltering.

**Sec. 2. 10 V.S.A. § 5402. ENDANGERED AND THREATENED SPECIES LISTS**

- **§ 5402(a)**: Under existing statute, ANR designates a species as T&E through adoption by rule of a State endangered species list and a State threatened species list. This requirement is not changing.
- **§ 5402(b)**: ANR shall determine a species is endangered if it is present in the State and its continued existence as a sustainable component of the State’s wildlife or wild plants is in jeopardy.
- **5402(c)**: Provides that ANR shall determine a species to be threatened if:
  1. it is a sustainable component of the State’s wildlife or wild plants; and
  2. it is reasonable to conclude based on available information that its numbers are significantly declining because of loss of habitat or human disturbance; and
  3. unless protected, it will become an endangered species.

- § 5402(d): In determining whether a species is endangered or threatened, ANR shall consider specific criteria. H.552 adds the following additional criteria for ANR review
  - § 5402(d)(1): present or threatened degradation or fragmentation of the range or habitat of the species;
  - § 5402(d)(2): killing or harming a species for commercial, sporting, scientific, educational, or other purpose;
  - § 5402(d)(6): competition with other species, including nonnative invasive species;
  - § 5402(d)(7): the decline in the population; and
  - § 5402(d)(8): cumulative impacts.
- § 5402(e): When listing or delisting T&E species, ANR shall use the best scientific, commercial, and other data available and shall consult affected landowners and appropriate officials in other states and Quebec.

### Sec. 3. 10 V.S.A. § 5402: CRITICAL HABITAT; LISTING

- § 5402(a): Establishes how ANR may designate critical habitat for T&E species. (**Designation is voluntary**)
  - If ANR elects to designate critical habitat for a T&E species it must be done by rule (after consultation with AAFM and DFPR.) Critical habitat may be designated in any part of the State.
  - ANR is not required to designate critical habitat for every State listed T&E species.
  - When ANR designates critical habitat, it shall identify the species for which the designation is made, including its most recently accepted genus and species names, and, if available, its common name.
- § 5402(b): ANR shall designate only habitat that meets the definition of “critical habitat” in § 5401(16).
- § 5402(b): In determining whether and where to designate critical habitat, ANR shall consider:
  - the current or historic use of the habitat by a listed State T&E species;
  - the extent habitat is decisive to survival and recovery of a State listed T&E species at any stage of life;
  - the space necessary for individual and population growth of the species;
  - food, water, air, light, minerals, or other nutritional or physiological requirements of the listed species;
  - cover or shelter for the listed species;
  - sites for breeding, reproduction, offspring, germination, seed dispersal; migration; and overwintering;
  - destruction, degradation, fragmentation, modification, or curtailment of range or habitat of a listed species;
  - the adequacy of existing regulation;
  - actions relating to the species by a governmental agency or any other person who may affect the species;
  - cumulative impacts; and
  - natural or human-made factors affecting the continued existence of the listed species.
- § 5402(c): When designating critical habitat, ANR shall use the best scientific, commercial, and other data available and shall consult affected landowners and appropriate officials in other states and Quebec.

#### **Sec. 4. 10 V.S.A. § 5403: PROTECTION OF ENDANGERED AND THREATENED SPECIES**

- § 5403(a): Amends the existing prohibition on taking T& E species to provide that a person shall not destroy or adversely impact critical habitat unless permitted by ANR.
- § 5403(b): Any person who takes a T&E species shall report the taking to ANR.
- § 5403(c): Requires ANR to consult with AAFM and DFPR prior to adopting rules for T&E species.
- § 5403(d): Authorizes ANR to bring an environmental enforcement action against a person who destroys or adversely impacts listed critical habitat.
- § 5403(e): Clarifies that the type of action that ANR will bring is an environmental enforcement action under § 5403(d). ANR may also refer an environmental enforcement action for criminal enforcement.
- § 5403(f): Provides that in a criminal enforcement action, a person who knowingly violates a statute or rule related to taking, possessing, transporting, buying, or selling a T&E species shall be fined under 10 V.S.A. § 4518, and shall pay restitution under 10 V.S.A. § 4514.
  - The fines under § 4518 currently are \$1,000 max for a first offense, and \$2,000 for second offense.
  - H.570 increased the maximum for a second offense to \$4,000 and clarifies application to T&E.
- § 5403(g): Provides that a person who knowingly destroys or adversely impacts critical habitat and who is subject to criminal prosecution may be required by a court to pay restitution for actual costs of treating or caring for the plant or animal or reasonable mitigation and restoration costs.

#### **Sec. 5. 10 V.S.A. § 5404: ENDANGERED SPECIES COMMITTEE**

- § 5404(a): Provides that the six public members of the Endangered Species Committee, which provides advice to ANR on T&E species, will now include 2 members who are engaged in agricultural or silvicultural activities. Previously they were only required to be engaged in agricultural activities.
- § 5404(b): Provides that the Endangered Species Committee shall advise ANR on whether and where to designate critical habitat.

#### **Sec. 6. 10 V.S.A. § 5405: CONSERVATION PROGRAMS**

- Provides that ANR's authority to adopt conservation programs includes the authority to establish recovery plans for the conservation or recovery of T&E species or conservation or recovery of critical habitat.

#### **Sec. 7. 10 V.S.A. § 5406: COOPERATION BY OTHER AGENCIES**

- Requires all State agencies to utilize their authority in a manner that does not jeopardize T&E species, critical habitat, or recovery programs.

#### **Sec. 8. 10 V.S.A. § 5407: ENFORCEMENT; SEIZURE OF T&E SPECIES**

- Clarifies that ANR may rehabilitate, release, or replant T&E species seized due to a violation of the chapter.
- Also authorizes costs of ANR staff related to a violation to be charged to the violator.

**Sec. 9. 10 V.S.A. § 5408: TAKING; INCIDENTAL TAKING; DESTRUCTION OF CRITICAL HABITAT**

- **§ 5408(a):** Authorized taking: With the advice of Endangered Species Committee, ANR may permit the taking of a T&E species or the destruction or adverse impact on critical habitat for any of the following purposes:
  - Scientific purposes;
  - To enhance the propagation or survival of a threatened or endangered species; economic hardship;
  - Zoological exhibition;
  - Educational purposes;
  - Noncommercial cultural or ceremonial purposes; or
  - Special purposes consistent with the purposes of the federal Endangered Species Act.
- **§ 5408(b):** Incidental taking. With the advice of Endangered Species Committee ANR may permit the incidental taking of a T&E species or the destruction or adverse impact of critical habitat if:
  1. The taking is necessary to conduct an otherwise lawful activity;
  2. The taking is attendant or secondary to, and not the purposes of, the lawful activity;
  3. The impact of the permitted incidental take is minimized; and
  4. The incidental taking will not impair the conservation or recovery of any T&E species.
- **§ 5408(d):** Possession. Provided that an ANR importation permit may be required in order to bring a wild animal or wild plant into the State a when the wildlife or wild plant was lawfully acquired outside the State.
- **§ 5408(e):** Interference with agricultural or silvicultural practices. No ANR T&E rule shall cause undue interference with normal agricultural or farming, forestry operations, or accepted silvicultural practices.
  - The section does not exempt any person from the requirements of the chapter.
  - ANR shall not adopt rules that affect farming, forestry operations, or accepted silvicultural practices without first consulting the Secretary of AAFM and the Commissioner of DFPR.
- **§ 5408(h):** Permit application. An applicant for a takings permit shall submit an application to ANR that includes the following information:
  1. Description of activities that could take a listed T&E species or destroy or adversely impact critical habitat;
  2. Steps the applicant will take to avoid, minimize, and mitigate impact to the T&E species or critical habitat;
  3. A plan for ensuring that funding is available to conduct any required monitoring and mitigation, if applicable;
  4. A summary of the alternative actions to the taking or destruction of critical habitat that the applicant considered and the reasons that these alternatives were not selected, if applicable;
  5. Name and duties of the persons that will be involved in a proposed taking or destruction of critical habitat;
  6. Any additional information that the Secretary may require.

- § 5408(i)(1) Permit fees. A person applying for a takings permit shall pay a permit fee, as follows:
  - \$50 for scientific purposes, to enhance the propagation or survival of the species, noncommercial cultural or ceremonial purposes, or for educational purposes or special purpose;
  - \$250 for each listed animal or plant wildlife or wild plant taken up to a maximum of \$25,000 for a zoological or botanical exhibition; and
  - \$250 for each listed wildlife or wild plant taken up to a maximum of \$25,000 for an incidental taking.
- § 5408(i)(2); ANR may require an applicant for a permit to implement mitigation strategies.
  - Mitigation includes collection of mitigation funds, in addition to the permit fees, in order to mitigate the impacts of a taking, the adverse impact on habitat, or destruction of habitat.
  - Mitigation may include:
    - a requirement to rectify the taking or adverse impact or to reduce the adverse impact over time;
    - a requirement to manage or restore land within the area of the proposed activity or in area outside of the proposed area as habitat for the endangered or threatened species; or
    - compensation, including payment of a fee into the Threatened and Endangered Species Fund for the uses of that Fund, provided that payment is commensurate to the proposed taking or adverse impact.
- § 5408(i)(3): Fees and mitigation payments are deposited in the Threatened and Endangered Species Fund.
  - The Fund is used solely for T&E species, including monitoring, restoration, conservation, recovery, property acquisition and, where practical, conservation or recovery of the taken species or its habitat.
- § 5408(j): Permit term. Taking permits are valid for the time period set in the permit, not to exceed 5 years.
- § 5408(k): Public notice. Prior to issuing a permit for an authorized or incidental taking or prior to issuing a general permit, ANR shall.
  - Provide for public notice, no fewer than 30 days of public comment;
  - Provide the opportunity for public comments; and
  - Provide opportunity to request a public informational hearing.
- § 5408(l): General permits. ANR may issue general permits for activities that will not affect the continued survival or recovery of a species.
  - ANR may issue a general permit to take a T&E species only if the activity satisfies one or more of the following criteria:
    - The taking is necessary to address an imminent risk to human health and safety exists;
    - The proposed taking or impact on critical habitat enhances the long-term survival of the species; or
    - ANR has adopted best management practices that are designed to minimize the taking or impact on critical habitat to the greatest extent possible.
  - By Sept. 1, 2017, ANR shall issue a general permit for vegetation management, operation, and maintenance activities conducted by utilities.
    - “Utility” for this bill means electric and telecommunication companies, railroads, and pipelines.
    - Until a general permit is issued, no critical habitat for wild plants shall be designated in utility corridors.
  - ANR shall provide 10 days of notice for applications for coverage under a general permit.

**Sec. 10. 10 V.S.A. § 5410. LOCATION CONFIDENTIAL**

- ANR shall not disclose specific information regarding location of T&E species, except that:
  - ANR shall disclose information to land owners where a species has been located, or
  - To a potential buyer who has a bona fide contract to buy the land
- When ANR issues a takings permit or designates critical habitat by rule, ANR shall disclose only the municipality and the general location where the T&E species or critical habitat is located.
- When ANR designates critical habitat it shall notify the municipality in which the critical habitat is located of the general location of the T&E species.

**Sec. 11. STATUTORY REVISION**

- Directs Legislative Council in statutory revision to renumber the subdivisions of 10 V.S.A. § 5401 in numerical order.

**Sec. 12. EFFECTIVE DATE**

- The act takes effect on July 1, 2016.