

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred  
3 House Bill No. 570 entitled “An act relating to hunting, fishing, and trapping”  
4 respectfully reports that it has considered the same and recommends that the  
5 Senate propose to the House that the bill be amended as follows:

6 **First:** In Sec. 2, 10 V.S.A. § 4611, by amending the title of the section as  
7 follows:

8 § 4611. SALE OF ~~SALMON, TROUT, AND BLACK-BASS~~ FISH

9 **Second:** In Sec. 6, 10 V.S.A. § 4503, in the second sentence, after “4781,  
10 4783,” and before “4784” by striking out “and” and inserting or

11 **Third:** In Sec. 7, 10 V.S.A. § 4514, by striking out subdivision (b)(1) in its  
12 entirety and inserting in lieu thereof the following:

13 (1) Big game no more than \$2,000.00  
14 and no less than \$200.00  
15 for the first offense and no  
16 less than \$500.00  
17 each for a second or  
18 subsequent offense

19 **Fourth:** In Sec. 13, 10 V.S.A. § 4745, and in the second sentence, after  
20 “deer~~big game~~ under” and before “of this title” by striking out “sections 4826,  
21 and 4827” and inserting in lieu thereof the following: section 4826 or 4827

1 **Fifth:** By striking out Sec. 19 in its entirety and inserting in lieu thereof the  
2 following:

3 Sec. 19. 10 V.S.A. § 5401 is amended to read:

4 § 5401. DEFINITIONS

5 As used in this chapter:

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

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

8 (3) “Species” ~~includes all subspecies of~~ means wildlife or wild plants  
9 and any subspecies or other group of wildlife or wild plants of the same  
10 species, the members of which may interbreed when mature. ~~The term~~  
11 ~~generally refers to species whose continued existence as a viable component of~~  
12 ~~the State’s wild fauna or flora is in jeopardy.~~

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

18 (5) “Plant” means any member of the plant kingdom, including seeds,  
19 roots, and other parts thereof. As used in this chapter, plants shall include  
20 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. ~~The term~~  
4 ~~generally refers to species whose continued existence as a viable component of~~  
5 ~~the State’s wild fauna or flora is in jeopardy.~~

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

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

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

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

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

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

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

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

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, or netting wildlife;

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~~ a wild plant designated a  
7 threatened or endangered species, means uprooting, transplanting, gathering  
8 seeds or fruit, cutting, injuring, harming, or killing or any attempt to do the  
9 same or assisting 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

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

1 fertilization. “Forestry operations” include 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, or sheltering.

9 Sec. 20. 10 V.S.A. § 5402 is amended to read:

10 § 5402. ENDANGERED AND THREATENED SPECIES LISTS

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

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

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

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

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

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

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

7           (1) the present or threatened destruction, degradation, fragmentation,  
8 modification, or curtailment of the range or habitat of the species;

9           (2) any killing, harming, or over-utilization of the species for  
10 commercial, sporting, scientific, educational, or other purposes;

11           (3) disease or predation affecting the species;

12           (4) the adequacy of existing regulation;

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

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

17           (7) the decline in the population;

18           (8) cumulative impacts; and

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



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

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

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

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

11 Sec. 21. 10 V.S.A. § 5402a is added to read:

12 § 5402a. CRITICAL HABITAT; LISTING

13 (a) Except as provided for under subsection (f) of this section, the Secretary  
14 may, after the consultation required under subsection 5408(e) of this section,  
15 adopt or amend by rule a critical habitat designation list for threatened or  
16 endangered species. Critical habitat may be designated in any part of the State.  
17 The Secretary shall not be required to designate critical habitat for every  
18 State-listed threatened or endangered species. When the Secretary designates  
19 critical habitat, the Secretary shall identify the species for which the  
20 designation is made, including its most recently accepted genus and species  
21 names, and, if available, its common name.

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

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

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

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

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

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

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

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

21          (8) the adequacy of existing regulation;

1           (9) actions relating to the listed species carried out or about to be carried  
2           out by any governmental agency or any other person that may affect the listed  
3           species;

4           (10) cumulative impacts; and

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

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

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

10           (2) notify and consult with appropriate officials in Canada, appropriate  
11           State and federal agencies, other states having a common interest in the  
12           species, affected landowners, any municipality where the proposed designation  
13           is located, and any interested persons at least 60 days prior to commencement  
14           of rulemaking;

15           (3) notify the appropriate officials and agencies of Quebec and any state  
16           contiguous to Vermont in which the species affected is known to occur; and

17           (4) if a critical habitat designation is proposed in a growth center, new  
18           town center, or neighborhood development area designated under 24 V.S.A.  
19           chapter 76A, notify the Secretary of Commerce and Community Development  
20           and any municipality in which the designation is proposed.

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

5        (e) Where appropriate, the Secretary shall include well-established  
6        mitigation practices and best management practices in the critical habitat  
7        designation rule.

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

10       Sec. 22. 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 or 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 application requirements for an

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

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

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

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

18 ~~(f)~~(g) Any person who violates subsection (a) or (b) of this section by  
19 knowingly injuring a member of a threatened or endangered species or  
20 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. 23. 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

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

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

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

11 Sec. 24. 10 V.S.A. § 5405 is amended to read:

12 § 5405. CONSERVATION PROGRAMS

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

1 Sec. 25. 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. 26. 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.



1 Sec. 27. 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 of or adverse impact on  
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  
21 necessary to carry out the purposes of this chapter, the incidental taking of a

1 threatened or endangered species or the destruction of or adverse impact on  
2 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 purpose 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.

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 of or adverse impact on  
20       critical habitat;

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

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 of 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)** Fees ~~or~~ and mitigation payments collected under this subsection and  
19 interest on fees and mitigation payments shall be deposited in the Threatened  
20 and Endangered Species Fund ~~within the Fish and Wildlife Fund, which Fund~~  
21 is hereby created and shall be used solely for expenditures of the Department

1 of Fish and Wildlife related to threatened and endangered species.

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

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

10 (k) Public notice. Prior to issuing a permit for an incidental taking and  
11 prior to the initial issuance or amendment of a general permit under this  
12 section, the Secretary shall provide for: public notice of no fewer than  
13 30 days; opportunity for written comment; and opportunity to request a public  
14 informational hearing. The Secretary shall post permit applications, permit  
15 decisions, and the initial or amended general permits on the website of the  
16 Agency of Natural Resources. The Secretary also shall provide notice to  
17 interested persons who request notice of permit applications, permit decisions,  
18 and proposed general permits or proposed amendments to general permits.

19 (l) General permits.

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

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

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

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

10           (A) the taking of a threatened or endangered species or the  
11           destruction of or adverse impact on critical habitat is necessary to address an  
12           imminent risk to human health;

13           (B) a proposed taking of a threatened or endangered species or the  
14           destruction of or adverse impact on critical habitat would enhance the overall  
15           long-term survival of the species; or

16           (C) the Secretary has approved best management practices that are  
17           designed, when applied, to minimize to the greatest extent possible the taking  
18           of a threatened or endangered species or the destruction of or adverse impact  
19           on critical habitat.

20           (5) On or before September 1, 2017, the Secretary shall issue a general  
21           permit for vegetation management and operational and maintenance activities

1 conducted by a utility. The general permit shall have a five-year term. A  
2 one-time application for coverage by a utility shall be made for activities  
3 authorized by the general permit, and coverage under the general permit shall  
4 be for the term of the general permit. Until the general permit has been issued,  
5 no critical habitat designation for wild plants shall be made in utility  
6 right-of-way. As used in this subdivision (5), “utility” means an electric  
7 company, telecommunication company, pipeline operator, or railroad  
8 company.

9 (6) Prior to issuing an initial or amended general permit under this  
10 subsection, the Secretary shall:

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

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

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

14 (7) For applications for coverage under the terms of an issued general  
15 permit, the applicant shall provide notice on a form provided by the Secretary.

16 The Secretary shall post notice of the application on the Agency website and  
17 shall provide an opportunity for written comment, regarding whether the  
18 application complies with the terms and conditions of the general permit, for  
19 ten days following receipt of the application.

20 (8) The Secretary may require any applicant for coverage under a  
21 general permit to submit additional information that the Secretary considers



1 necessary and may refuse to approve coverage under the terms of a general  
2 permit until the information is furnished and evaluated.

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

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

14 Sec. 28. 10 V.S.A. § 5410 is amended to read:

15 § 5410. LOCATION CONFIDENTIAL

16 (a) ~~All information~~ The Secretary shall not disclose information regarding  
17 the specific location of threatened or endangered species sites ~~shall be kept~~  
18 ~~confidential in perpetuity~~ except that the Secretary shall disclose ~~this~~  
19 information ~~to~~ regarding the location of the threatened or endangered  
20 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. 29. 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 and  
20           alphabetical order and to correct any cross-references in statute to 10 V.S.A.  
21           § 5401 to reflect the renumbered subdivisions.

1       Sec. 30. FEE RECOMMENDATION; PERMIT TO DESTROY OR  
2                   ADVERSELY IMPACT CRITICAL HABITAT

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

12       Sec. 31. 10 V.S.A. § 6081 is amended to read:

13       § 6081. PERMITS REQUIRED; EXEMPTIONS

14           (a) No person shall sell or offer for sale any interest in any subdivision  
15          located in this State, or commence construction on a subdivision or  
16          development, or commence development without a permit. This section shall  
17          not prohibit the sale, mortgage, or transfer of all, or an undivided interest in all,  
18          of a subdivision unless the sale, mortgage, or transfer is accomplished to  
19          circumvent the purposes of this chapter.

20   \* \* \*

1        (w)(1) A permit or permit amendment shall not be required for a change to  
2        a sport shooting range, as defined in section 5227 of this title, if each of the  
3        following applies:

4                (A) The range was in operation before January 1, 2006 and has been  
5        operating since that date.

6                (B) The change is for the purpose of one or more of the following:

7                        (i) To improve the safety of range employees, users of the range,  
8        or the public.

9                        (ii) To abate noise from activities at the range. A qualified noise  
10        abatement professional may certify that a change in a sport shooting range is  
11        for this purpose and this certification shall be conclusive evidence that a  
12        purpose of the change is to abate noise from activities at the range.

13                        (iii) To remediate, mitigate, or reduce impacts to air or water  
14        quality from the range or the deposit or disposal of waste generated by the  
15        range or its use, provided that the range has an environmental stewardship plan  
16        approved by the Department of Environmental Conservation, in accordance  
17        with chapter 159 of this title.

18                (2) Obtaining a certification described in subdivision (1)(B)(ii) of this  
19        subsection shall be at the option of the range's owner.

1       Sec. 32. EFFECTIVE DATES

2               This act shall take effect on July 1, 2016, except that Secs. 1 (regulation of  
3               fish), 2 (commercial sale of fish), and 3 (importation and stocking of fish) shall  
4               take effect on January 1, 2017.

5

6

7               (Committee vote: \_\_\_\_\_)

8

\_\_\_\_\_

9

Senator \_\_\_\_\_

10

FOR THE COMMITTEE