

1 H.552

2 Introduced by Representative Sheldon of Middlebury

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; fish and wildlife; threatened and
6 endangered species

7 Statement of purpose of bill as introduced: This bill proposes to amend
8 requirements related to the conservation and recovery of threatened or
9 endangered species. The bill would authorize the Secretary of Natural
10 Resources to designate critical habitat that is necessary for the conservation or
11 recovery of a threatened or endangered species. The bill clarifies how
12 threatened or endangered plants are regulated. In addition, the bill would
13 authorize the Secretary of Natural Resources to issue a permit for the
14 authorized or incidental taking of a threatened or endangered species.

15 An act relating to threatened and endangered species

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 ~~Sec. 1. 10 V.S.A. § 5401 is amended to read:~~

18 ~~§ 5401. DEFINITIONS~~

19 ~~As used in this chapter:~~

20 ~~(1) "Agency" means the Agency of Natural Resources.~~

1 ~~(2) "Secretary" means the Secretary of Natural Resources.~~

2 (3) "Species" ~~includes all subspecies of~~ means wildlife or wild plants
3 and any subspecies or other group of wildlife or wild plants of the same
4 species, the members of which may interbreed when mature.

5 (4) "Wildlife" means any member of a nondomesticated species of the
6 animal kingdom, whether reared in captivity or not, including, without
7 limitation, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean,
8 arthropod or other invertebrate, and also including any part, product, egg,
9 offspring, dead body, or part of the dead body of any such wildlife.

10 (5) "Plant" means any member of the plant kingdom, including seeds,
11 roots, and other parts thereof. As used in this chapter, plants shall include
12 fungi.

13 (6) "Endangered species" means a species listed ~~on the state endangered~~
14 ~~species list~~ as endangered under this chapter or ~~determined to be an~~
15 ~~"endangered species"~~ under the federal Endangered Species Act. The term
16 generally refers to species whose continued existence as a viable component of
17 the State's wild fauna or flora is in jeopardy.

18 (7) "Threatened species" means a species listed ~~on the State~~ as a
19 ~~threatened species list~~ under this chapter or determined to be a "threatened
20 species" under the federal Endangered Species Act. The term generally refers

1 ~~to species whose continued existence as a viable component of the State's wild~~
2 ~~fauna or flora is in jeopardy.~~

3 (8) "Endangered Species Act" and "federal Endangered Species Act"
4 means the Endangered Species Act of 1973, Public Law 93-205, as amended.

5 (9) "Habitat" means the physical and biological environment in which a
6 particular species of plant or animal lives.

7 (10) "Conserve," "conserving," and "conservation" mean to use and the
8 use of all methods and procedures ~~both~~ for increasing or maintaining:

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

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

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

13 (11) "Optimum carrying capacity" for a species means a population
14 level of that species which, in that habitat, can ~~indefinitely~~ sustainably coexist
15 with healthy populations of all wildlife and wild plant species normally
16 present.

17 (12) "Methods" and "procedures" means all activities associated with
18 ~~scientific~~ natural resources management, including, without limitation,
19 scientific research, census, law enforcement, habitat acquisition and
20 maintenance, propagation, live trapping, and transplanting. The terms also
21 include the periodic or continuous protection of species or populations, where

1 ~~appropriate, and the regulated taking of individuals of the species or population~~
2 in extraordinary cases where population pressures within a habitat cannot be
3 otherwise relieved.

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

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

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

12 ~~(i) pursuing, shooting, hunting, killing, capturing, trapping,~~
13 ~~harming, snaring, and netting wildlife;~~

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

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

20 ~~(B) with With respect to wild plants designated a threatened or~~
21 ~~endangered species, means uprooting, transplanting, gathering seeds or fruit,~~

1 ~~cutting, injuring, or killing or any attempt to do the same or assisting another~~
2 who is doing or is attempting to do the same.

3 (15) "Critical habitat" for a threatened species or endangered species

4 means:

5 (A) a delineated location within the geographical area occupied by
6 the species that:

7 (i) has the physical or biological features that are concentrated and
8 decisive to the survival of a population of the species;

9 (ii) is necessary for the conservation or recovery of the
10 species; and

11 (iii) may require special management considerations or
12 protection; or

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

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

16 (II) contains habitat that is hydrologically or physically
17 connected to occupied habitat;

18 (ii) contains habitat that is decisive to the continued survival of a
19 population of the species; and

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

1 ~~(16) "Destroy or adversely impact" means, with respect to critical~~
2 ~~habitat, a direct or indirect alteration that negatively affects the value of critical~~
3 ~~habitat for either the survival or recovery of a listed species.~~

4 ~~(17) "Harming," as used in the definition of "take" or "taking" under~~
5 ~~subdivision (14) of this subsection, means:~~

6 ~~(A) an act that kills or injures wildlife or wild plants; or~~

7 ~~(B) the destruction or imperilment of habitat that kills or injures a~~
8 ~~wild plant or wildlife by significantly impairing continued survival or essential~~
9 ~~behavioral patterns, including reproduction, feeding, and 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 species list and a
13 State-threatened species list. The listing for any species may apply to the
14 whole State or to any part of the State and shall identify the species by its most
15 recently accepted genus and species names and, if available, the common
16 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 viable component of the State's wild fauna or flora is in jeopardy.

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

21 (1) it is a viable component of the State's wild fauna or flora;

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, the
6 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) taking or over-utilization of the species for commercial, sporting,
10 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) climate change;

17 (7) competition with other species, including non-native invasive
18 species;

19 (8) the decline in the population;

20 (9) cumulative impacts; and

1 ~~(10) 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 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~~ State and federal agencies,
7 other states having a common interest in the species, affected landowners, and
8 any interested persons at least 30 days prior to commencement of
9 rulemaking; and

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

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

13 § 5402a. CRITICAL HABITAT; LISTING

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

1 ~~(b) In determining whether and where to designate critical habitat for a~~
2 State-endangered or -threatened species, the Secretary shall consider physical
3 and biological features that are decisive to the survival of the species,
4 necessary to the conservation or recovery of the given species, and special
5 management considerations and strategies for the protection and restoration of
6 the species; including the following:

7 (1) the current or historic use of the habitat by a listed State-endangered
8 or -threatened species;

9 (2) the extent to which the habitat is decisive to the survival and
10 restoration of a listed State-endangered or -threatened species, at any stage of
11 its life cycle;

12 (3) the space necessary for individual and population growth;

13 (4) whether the habitat is physically or hydrologically connected to
14 occupied habitat and is necessary for the continued survival or recovery of the
15 species;

16 (5) food, water, air, light, minerals, or other nutritional or physiological
17 requirements;

18 (6) cover or shelter for the species;

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

1 ~~(8) the habitat that meets the physical and biological requirements of the~~

2 species or are representative of the historic geographical and ecological

3 location of a species;

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

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

6 (10) the adequacy of existing regulation;

7 (11) actions relating to the species carried out or about to be carried out

8 by any governmental agency or any other person who may affect the species;

9 (12) cumulative impacts; and

10 (13) natural or human-made factors affecting the continued existence of

11 the species.

12 (c) In determining whether to designate critical habitat for a State-listed

13 threatened or endangered species, the Secretary shall:

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

15 (2) notify and consult with interested State and federal agencies, other

16 states having a common interest in the species, affected landowners, and any

17 interested persons at least 30 days prior to commencement of rulemaking; and

18 (3) notify the appropriate state officials and agencies of any state

19 contiguous to Vermont in which the species affected is known to occur.

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

2 § 5403. PROTECTION OF ENDANGERED AND THREATENED SPECIES

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

4 (1) take, possess, or transport wildlife or plants that are members of an
5 endangered or threatened species; or

6 (2) destroy or adversely impact critical habitat, including destroying or
7 adversely impacting an endangered or threatened species use of or access to
8 the critical habitat.

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

11 (c) The Secretary may, with advice of the Endangered Species Committee,
12 adopt rules for the protection ~~and~~ conservation, or recovery of endangered and
13 threatened species.

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

18 ~~(d)~~(e) Instead of bringing a ~~civil~~ environmental enforcement action for a
19 violation of this chapter or rules adopted under this chapter, the Secretary may
20 refer violations of this chapter to the Commissioner of Fish and Wildlife for
21 criminal enforcement.

1 ~~(e)(f) A In a criminal enforcement action, a person who violates a~~
2 ~~requirement of this chapter or a rule of the Secretary adopted under subsection~~
3 ~~(b)(c) of this section shall be fined not more than \$500.00 \$5,000 and~~
4 ~~imprisoned not more than five years, or both, and the person shall pay~~
5 ~~restitution under section 4514 of this title.~~

6 ~~(f)(g) Any person who violates subsection (a) or (b) of this section by~~
7 ~~knowingly injuring a member of a threatened or endangered species or~~
8 ~~knowingly destroying or adversely impacting critical habitat and who is~~
9 ~~subject to criminal prosecution may be required by the court to pay~~
10 ~~restitution for:~~

11 ~~(1) actual costs and related expenses incurred in treating and caring for~~
12 ~~the injured plant or animal to the person incurring these expenses, including~~
13 ~~the costs of veterinarian services and Agency of Natural Resources staff~~
14 ~~time; or~~

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

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

19 § 5404. ENDANGERED SPECIES COMMITTEE

20 (a) A ~~Committee~~ committee on endangered species is created to be known
21 as the “Endangered Species Committee,” and shall consist of nine members.

1 ~~including the Secretary of Agriculture, Food and Markets, the Commissioner~~
2 of Fish and Wildlife, the Commissioner of Forests, Parks and Recreation, and
3 six members appointed by the Governor from the public at large. Of the six
4 public members, two shall be actively engaged in agricultural or silvicultural
5 activities, two shall be knowledgeable concerning flora, and two shall be
6 knowledgeable concerning fauna. Members appointed by the Governor shall
7 be entitled to reimbursement for expenses incurred in the attendance of
8 meetings, as approved by the Chair. The Chair of the Committee shall be
9 elected from among and by the members each year. Members who are not
10 employees of the State shall serve terms of three years, except that the
11 Governor may make appointments for a lesser term in order to prevent more
12 than two terms from expiring in any year.

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

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

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

2 § 5405. CONSERVATION PROGRAMS

3 The Secretary, with the advice of the Endangered Species Committee, may
4 establish conservation programs and establish recovery plans for the
5 conservation or recovery of threatened or endangered species of wildlife or
6 plants or for the conservation or recovery of critical habitat. The programs
7 may include the purchase of land or aquatic habitat and the formation of
8 contracts for the purpose of management of wildlife or wild plant refuge areas
9 or for other purposes.

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

11 § 5406. COOPERATION BY OTHER AGENCIES

12 All agencies of this State shall review programs administered by them
13 which may relate to this chapter and shall, in consultation with the Secretary,
14 utilize their authorities only in a manner which does not jeopardize the
15 threatened or endangered species, critical habitat, or the outcomes of
16 conservation or recovery programs established by this chapter or by the
17 Secretary under ~~its~~ his or her authority.

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

2 § 5407. ENFORCEMENT AUTHORITY TO SEIZE THREATENED OR
3 ENDANGERED SPECIES

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

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

13 § 5408. LIMITATIONS AUTHORIZED TAKINGS; INCIDENTAL
14 TAKINGS; DESTRUCTION OF CRITICAL HABITAT

15 (a) Authorized taking. Notwithstanding any provision of this chapter, after
16 obtaining the advice of the Endangered Species Committee, the Secretary may
17 permit, under such terms and conditions as the Secretary may prescribe by
18 rule, the taking of a threatened or endangered species, the destruction or
19 adverse impact of critical habitat, or any act otherwise prohibited by this
20 chapter if done for any of the following purposes:

21 (1) scientific purposes;

1 ~~(2) to enhance the propagation or survival of a threatened or endangered~~
2 species; ~~economic hardship;~~
3 ~~(3) zoological exhibition;~~
4 ~~(4) educational purposes;~~
5 ~~(5) noncommercial cultural or ceremonial purposes; or~~
6 ~~(6) special purposes consistent with the purposes of the federal~~
7 ~~Endangered Species Act.~~

8 (b) Incidental taking. The Secretary may permit, under such terms and
9 conditions as the Secretary may prescribe by rule, the incidental taking of a
10 threatened or endangered species or the destruction or adverse impact of
11 critical habitat if:

12 (1) the taking is necessary to conduct an otherwise lawful activity;
13 (2) the taking is attendant or secondary to, and not the purposes of, the
14 lawful activity;
15 (3) the impact of the permitted incidental take is minimized; and
16 (4) the incidental taking will not impair the recovery of any endangered
17 species or threatened species.

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

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

8 ~~(e)(e) Interference with agricultural or silvicultural practices. No rule~~
9 adopted under this chapter shall cause undue interference with normal
10 agricultural or silvicultural practices. This section shall not be construed to
11 exempt any person from the provisions of the federal Endangered Species Act.
12 The Secretary shall not adopt rules that restrain agricultural activities without
13 first consulting with the Secretary of Agriculture, Food and Markets. The
14 Secretary shall not adopt rules that restrain silvicultural activities without first
15 consulting with the Commissioner of Forests, Parks and Recreation.

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

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

- 1 ~~(b) Permit application. An applicant for a permit under this section shall~~
2 ~~submit an application to the Secretary that includes the following information:~~
- 3 ~~(1) a description of the activities that could lead to a taking of a listed~~
4 ~~endangered or threatened species or the destruction or adverse impact of~~
5 ~~critical habitat;~~
- 6 ~~(2) the steps that the applicant has or will take to avoid, minimize, and~~
7 ~~mitigate the impact to the relevant endangered or threatened species or critical~~
8 ~~habitat;~~
- 9 ~~(3) a plan for ensuring that funding is available to conduct any required~~
10 ~~monitoring and mitigation, if applicable;~~
- 11 ~~(4) a summary of the alternative actions to the taking or destruction of~~
12 ~~critical habitat that the applicant considered and the reasons that these~~
13 ~~alternatives were not selected, if applicable;~~
- 14 ~~(5) the name or names and obligations and responsibilities of the person~~
15 ~~or persons that will be involved in the proposed taking or destruction of critical~~
16 ~~habitat; and~~
- 17 ~~(6) any additional information that the Secretary may require.~~
- 18 ~~(i) Permit fees.~~
- 19 (1) Fees to be charged to a person applying to take a threatened or
20 endangered species or destroy or adversely impact critical habitat under this
21 section shall be:

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

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

10 ~~(C) for an incidental taking, \$250.00 for each listed animal or plant~~
11 ~~taken up to a maximum of \$25,000.00.~~

12 ~~(2) The Secretary may require the implementation of reasonable~~
13 ~~mitigation strategies, and may collect reasonable mitigation funds, in lieu of or~~
14 ~~in addition to the permit fees, in order to mitigate the impacts of a taking, the~~
15 ~~adverse impact on habitat, or destruction of habitat.~~

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

21 Expenditures may be made for monitoring, restoration, conservation, recovery,

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

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

8 (k) Public notice. The Secretary shall establish rules for public notice of
9 draft permit decisions based on incidental take and for initial and amended
10 general permits. The rules shall provide for public notice, no fewer than
11 30 days of public comment, and the opportunity to request a public
12 informational hearing. The rules shall also provide for posting permit
13 applications, permit decisions, and the initial or amended general permits on a
14 publicly accessible website, as well as for allowing persons to request
15 notification of permit decisions. The rules may set application requirements
16 for general permits that deviate from subsection (g) of this section and
17 establish best management practices for different types of general permits.

18 (l) General permits. The Secretary may issue general permits for activities
19 that will not affect the continued survival or recovery of a species. A general
20 permit issued under this chapter shall contain those terms and conditions
21 necessary to ensure compliance with the provisions of this statute. These terms

1 ~~and conditions may include the implementation of best management practices~~

2 and the adoption of specific mitigation measures and required surveying,

3 monitoring, and reporting. In determining whether an activity warrants a

4 general permit, the Secretary shall consider only those cases where:

5 (1) an imminent risk to human health and safety exists;

6 (2) a proposed action enhances the overall long-term survival of the

7 species; or

8 (3) best management practices or guidelines, or both, have been

9 developed and applied to minimize take to the greatest extent possible.

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

11 § 5410. LOCATION CONFIDENTIAL

12 ~~All~~ Except for critical habitat designated under section 5411 of this title, all

13 information regarding the location of threatened or endangered species sites

14 shall be kept confidential in perpetuity except that the Secretary shall disclose

15 this information to the owner of land upon which the species has been located,

16 or to a potential buyer who has a bona fide contract to buy the land and applies

17 to the Secretary for disclosure of threatened or endangered species information,

18 and to qualified individuals or organizations, public agencies and nonprofit

19 organizations for scientific research or for preservation and planning purposes

20 when the Secretary determines that the preservation of the species is not

21 further endangered by the disclosure.

1 ~~Sec. 11. EFFECTIVE DATE~~

2 ~~This act shall take effect on July 1, 2016.~~

Sec. 1. 10 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) “Methods” and “procedures” means all activities associated with ~~scientific~~ natural resources management, including, ~~without limitation,~~ scientific research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplanting. The terms also

include the periodic or continuous protection of species or populations, where appropriate, and the regulated taking of individuals of the species or population in extraordinary cases where population pressures within a habitat cannot be otherwise relieved.

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

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

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

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

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

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

(B) ~~with~~ With respect to wild plants designated a threatened or endangered species, means uprooting, transplanting, gathering seeds or fruit,

cutting, injuring, harming, or killing or any attempt to do the same or assisting another who is doing or is attempting to do the same.

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

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

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

(i) has the physical or biological features that are identifiable, concentrated, and decisive to the 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 under section 5402 of this title that:

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

(II) contains habitat that is 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.

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

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

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

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

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

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

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

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

§ 5402. ENDANGERED AND THREATENED SPECIES LISTS

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

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

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

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

(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.

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

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

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

(3) disease or predation affecting the species;

(4) the adequacy of existing regulation;

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

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

(7) the decline in the population;

(8) cumulative impacts; and

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

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

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

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

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

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

§ 5402a. CRITICAL HABITAT; LISTING

(a) The Secretary may, after the consultation required under subsection 5408(e) of this section, adopt or amend by rule a critical habitat designation list for threatened or endangered species. Critical habitat may be designated in any part of the State. The Secretary shall not be required to designate critical habitat for every State-listed threatened or endangered species. When the Secretary designates critical habitat, the Secretary 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.

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

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

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

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

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

(5) cover or shelter for the listed species;

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

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

(8) the adequacy of existing regulation;

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

(10) cumulative impacts; and

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

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

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

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

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

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

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

§ 5403. PROTECTION OF ENDANGERED AND THREATENED SPECIES

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

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

(2) destroy or adversely impact critical habitat.

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

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

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

~~(2) best management practices for general permits.~~

~~(c) The Secretary may, with advice of the Endangered Species Committee and after the consultation required under subsection 5408(e) of this section, adopt rules for the protection and, conservation, or recovery of endangered and threatened species. The rules may establish application requirements for an individual permit or general permits issued under this section, including requirements that differ from the requirements of subsection 5408(h) of this title.~~

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

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

~~(e)(f) A In a criminal enforcement action, a person who knowingly violates a requirement of this chapter or a rule of the Secretary adopted under~~

subsection ~~(b)~~(c) of this section related to taking, possessing, transporting, buying, or selling a threatened or endangered species shall be fined ~~not more than~~ \$500.00 in accordance with section 4518 of this title, and the person shall pay restitution under section 4514 of this title.

~~(f)~~(g) Any person who violates subsection (a) or (b) of this section by knowingly injuring a member of a threatened or endangered species or knowingly destroying or adversely impacting critical habitat and who is subject to criminal prosecution may be required by the court to pay restitution for:

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

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

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

§ 5404. ENDANGERED SPECIES COMMITTEE

(a) A ~~Committee~~ committee on endangered species is created to be known as the “Endangered Species Committee,” and shall consist of nine members, including the Secretary of Agriculture, Food and Markets, the Commissioner

of Fish and Wildlife, the Commissioner of Forests, Parks and Recreation, and six members appointed by the Governor from the public at large. Of the six public members, two shall be actively engaged in agricultural or silvicultural activities, two shall be knowledgeable concerning flora, and two shall be knowledgeable concerning fauna. Members appointed by the Governor shall be entitled to reimbursement for expenses incurred in the attendance of meetings, as approved by the Chair. The Chair of the Committee shall be elected from among and by the members each year. Members who are not employees of the State shall serve terms of three years, except that the Governor may make appointments for a lesser term in order to prevent more than two terms from expiring in any year.

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

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

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

§ 5405. CONSERVATION PROGRAMS

The Secretary, with the advice of the Endangered Species Committee, may establish conservation programs and establish recovery plans for the

conservation or recovery of threatened or endangered species of wildlife or plants or for the conservation or recovery of critical habitat. The programs may include the purchase of land or aquatic habitat and the formation of contracts for the purpose of management of wildlife or wild plant refuge areas or for other purposes.

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

§ 5406. COOPERATION BY OTHER AGENCIES

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

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

§ 5407. ENFORCEMENT AUTHORITY TO SEIZE THREATENED OR ENDANGERED SPECIES

In addition to other methods of enforcement authorized by law, the Secretary may direct under this section that wildlife or wild plants ~~which~~ that were seized because of violation of this chapter be rehabilitated, released, replanted, or transferred to a zoological, botanical, educational or scientific institution, and that the costs of the transfer and staff time related to a

violation may be charged to the violator. The Secretary, with the advice of the Endangered Species Committee, may adopt rules for the implementation of this section.

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

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

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

(1) scientific purposes;

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

(3) zoological exhibition;

(4) educational purposes;

(5) noncommercial cultural or ceremonial purposes; or

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

(b) Incidental taking. *After obtaining the advice of the Endangered Species Committee, the Secretary may permit, under such terms and conditions as the Secretary require as necessary to carry out the purposes of this chapter, the incidental taking of a threatened or endangered 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 endangered species or threatened species.

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

~~(e)~~(d) Possession. *Nothing in this chapter shall prevent a person from possessing in this State wildlife or wild plants which are not determined to be “endangered” or “threatened” under the federal Endangered Species Act where the possessor is able to produce substantial evidence that the wildlife or wild plant was first taken or obtained in a place without violating the law of*

that place, provided that an importation permit may be required under section 4714 of this title or the rules of the Department of Fish and Wildlife.

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

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

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

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

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

(2) the steps that the applicant has or will take to avoid, minimize, and mitigate the impact to the relevant threatened or endangered 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) the name or names and obligations and responsibilities of the person or persons that will be involved in the proposed taking or destruction of critical habitat; and

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

(f)(i) Permit fees.

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

(A) ~~To~~ take for scientific purposes, to enhance the propagation or survival of the species, noncommercial cultural or ceremonial purposes, or for

educational purposes or special purposes consistent with the federal Endangered Species Act, \$50.00;

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

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

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

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

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

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

(3) Fees ~~or~~ and mitigation payments collected under this subsection and interest on fees and mitigation payments shall be deposited in the Threatened and Endangered Species Fund within the Fish and Wildlife Fund, which Fund is hereby created and shall be used solely for expenditures of the Department of Fish and Wildlife related to threatened and endangered species. Expenditures may be made for monitoring, restoration, conservation, recovery, and the acquisition of property interests and other purposes consistent with this chapter. Where practical, the fees collected for takings shall be devoted to the conservation or recovery of the taken species or its habitat. Interest accrued on the Fund shall be credited to the Fund.

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

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

interested persons who request notice of permit applications, permit decisions, and proposed general permits or proposed amendments to general permits.

(l) General permits.

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

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

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

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

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

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

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

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

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

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

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

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

(7) For applications for coverage under the terms of an issued general permit, the applicant shall provide notice on a form provided by the Secretary. The Secretary shall post notice of the application on the Agency website and shall provide an opportunity for written comment, regarding whether the application complies with the terms and conditions of the general permit, for ten days following receipt of the application.

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

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

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

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

§ 5410. LOCATION CONFIDENTIAL

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

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

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

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

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

Sec. 11. STATUTORY REVISION

The Office of Legislative Council, in its statutory revision capacity, is directed to renumber the subdivisions of 10 V.S.A. § 5401 in numerical order

and to correct any cross references in statute to 10 V.S.A. § 5410 to reflect the renumbered subdivisions.

*Sec. 12. FEE RECOMMENDATION; PERMIT TO DESTROY OR
ADVERSELY IMPACT CRITICAL HABITAT*

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

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2016.