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## State Endangered Species Act Statutes:

*Vermont*



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# A National Agricultural Law Center Research Publication

## **State Endangered Species Act Statutes: Vermont**

### **Protection of Endangered Species §§ 5401 – 5410**

*Current with Legislation through Act 130 of the 2019 Session*

#### **§ 5401. Definitions**

As used in this chapter:

(1) “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.

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

(3) “Conserve,” “conserving,” and “conservation” mean to use and the use of all methods and procedures 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.

(4) “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.

(5) “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.

(6) “Endangered species” means a species listed as endangered under this chapter or under the federal Endangered Species Act.<sup>1</sup>

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

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

(9) “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 operations” include the primary processing of forest products of commercial value on a parcel where the timber harvest occurs.

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

(11) “Harming,” as used in the definition of “take” or “taking” under subdivision (18) of this section, 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, or sheltering.

(12) “Methods” and “procedures” means all activities associated with natural resources management, including 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) “Optimum carrying capacity” for a species means a population level of that species which, in that habitat, can sustainably coexist with healthy populations of all wildlife and wild plant species normally present.

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



(15) "Possession" means holding, controlling, exporting, importing, processing, selling, offering to sell, delivering, carrying, transporting, or shipping by any means a member of a species.

(16) "Secretary" means the Secretary of Natural Resources.

(17) "Species" 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.

(18) "Take" or "taking":

(A) With respect to wildlife designated a threatened or endangered species, means:

(i) pursuing, shooting, hunting, killing, capturing, trapping, harming, snaring, or 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 (i) or (ii) of this subdivision (14)(A).

(B) With respect to a wild plant 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.

(19) "Threatened species" means a species listed as a threatened species under this chapter or determined to be a "threatened species" under the federal Endangered Species Act.

(20) "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.

#### **§ 5402. Endangered and threatened species lists**

(a) The Secretary shall adopt by rule a State endangered species list and a 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 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 declining;  
and

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

(d) In determining whether a species is 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;

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

(7) the decline in the population;

(8) cumulative impacts; and

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

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

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

(2) at least 30 days prior to commencement of rulemaking, 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; 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.

#### **§ 5402a. Critical habitat; listing**

(a) Except as provided for under subsection (f) of this section, 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, the Secretary of Commerce and Community Development, 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 that 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, any municipality where the proposed designation is located, and any interested persons at least 60 days prior to commencement of rulemaking;



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

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

(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. The Secretary shall make all reasonable efforts to work cooperatively with affected landowners.

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

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

### **§ 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 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, 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.

(d) The Secretary may bring 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.

(e) Instead of bringing 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.

(f) In a criminal enforcement action, a person who knowingly violates a requirement of this chapter or a rule of the Secretary adopted under subsection (c) of this section related to taking, possessing, transporting, buying, or selling a threatened or endangered species shall be fined in accordance with section 4518 of this title, and the person shall pay restitution under section 4514 of this title.



(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.

#### **§ 5404. Endangered species committee**

(a) A 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, 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.

#### **§ 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.

#### **§ 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 or her authority.

#### **§ 5407. 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 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.

#### **§ 5408. 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 require as necessary to carry out the purposes of this chapter the taking of a threatened or endangered species, the destruction of or adverse impact on 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;
- (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.1

(b) Incidental taking. After obtaining the advice of the Endangered Species Committee, the Secretary may permit, under such terms and conditions as necessary to carry out the purposes of this chapter, the incidental taking of a threatened or endangered species or the destruction of or adverse impact on 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 purpose 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 a threatened or endangered species from a point outside this State through the State.

(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.

(e) Interference with agricultural or silvicultural practices. No rule adopted under this chapter shall cause undue interference with farming, forestry operations, or accepted silvicultural practices. This section shall not be construed to exempt any person from the provisions of the 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.

(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 of or adverse impact on 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.

(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, \$250.00 for each listed wildlife or wild plant taken up to a maximum of \$25,000.00; 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 of 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 into the Threatened and Endangered Species Fund for the uses of that Fund, provided that any payment is commensurate with the taking or adverse impact proposed.

(3) Fees and mitigation payments collected under this subsection and interest on fees and mitigation payments shall be deposited in the Threatened and Endangered Species Fund 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.

(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 incidental taking and prior to the initial 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 of or adverse impact on 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 of or adverse impact on critical habitat would enhance the overall long-term survival of the species; or

(C) the Secretary has 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 of or adverse impact on 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. The general permit shall have a five-year term. A one-time application for coverage by a utility shall be made for activities authorized by the general permit, and coverage under the general permit shall be for the term of the general permit. Until the general permit has been issued, no critical habitat designation for wild plants shall be made in a 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 an initial or amended 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.

**§ 5409. Repealed. 1985, No. 192 (Adj. Sess.), § 5.**

**§ 5410. Location confidential**

(a) The Secretary shall not disclose information regarding the specific location of threatened or endangered species sites except that the Secretary shall disclose information regarding the location of the threatened or endangered species to:

(1) the owner of land upon which the species is located;

(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; 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.

