

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2016**

Bill Number: H.570 Name of Bill: Act relating to hunting, fishing and trapping  
Agency/ Dept: ACCD Author of Bill Review: John Kessler  
Date of Bill Review: 5/27/16 Related Bills and Key Players ANR/DFW

Status of Bill: (check one): ☐ Upon Introduction ☐ As passed by 1<sup>st</sup> body ☒ As passed by both

**Recommended Position:**

☐ Support ☐ Oppose ☒ Remain Neutral ☐ Support with modifications identified in #8 below

**Analysis of Bill**

**1. Summary of bill and issue it addresses.** *Describe what the bill is intended to accomplish and why.*

The bill adds a definition of critical habitat in 10 VSA 5401(16). Under this definition, critical habitat is determined by specific characteristics of threatened and endangered species in certain locations. Critical habitat can be both locations occupied by the species with certain physical and biological features decisive for survival, but also locations **outside** of areas presently occupied by a species, but demonstrating other nexus decisive to conservation, recovery and survival.

Other new definitions are added for "destroy or adversely impact," "forestry," and "harming."

The ANR Secretary is authorized to do rulemaking related to the listing of critical habitat.

Under 10 VSA 5406, all state agencies are charged with reviewing programs and using their authority in a manner that does not jeopardize the threatened or endangered species, critical habitat, or the outcomes of conservation or recovery programs.

Under 5408, the ANR Secretary cannot adopt rules affecting farming, forestry operations or silvicultural practices without first consulting the Secretary of Agriculture or the Commissioner of Forest, Parks and Recreation.

New mitigation strategies and the ability to collect mitigation funds in addition to permit fees. To be paid to T&E Species Fund for uses of that fund.

**2. Is there a need for this bill?** *Please explain why or why not.*

Uncertain.

**3. What are likely to be the fiscal and programmatic implications of this bill for this Department?**

*Please return this bill review as a Microsoft Word document to [Jahala.Dudley@vermont.gov](mailto:Jahala.Dudley@vermont.gov) & [Jessica.Mishaan@vermont.gov](mailto:Jessica.Mishaan@vermont.gov)*

Uncertain – perhaps none.

**4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?**

Uncertainty in the land use planning and economic development areas is almost always a negative impact. This bill leaves a fair amount of uncertainty – not simply in the lack of history with the new provisions, but with the terminology used. There are a number of shades of the same term used in similar contexts, so it is difficult to determine whether the inconsistent terminology is intentional or inadvertent.

**5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)**

Planners, and particularly developers, may find the additional uncertainty to add a layer of difficulty to their work.

**6. Other Stakeholders:**

**6.1 Who else is likely to support the proposal and why?**

Wildlife and environmental interests.

**6.2 Who else is likely to oppose the proposal and why?**

Perhaps some land use planners, but more likely developers.

**7. Rationale for recommendation:** *Justify recommendation stated above.*

ACCD is neutral

**8. Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

Much of H.570 came from H.552. Notwithstanding the instructions to this section of the bill review, the inconsistent and inadequately defined terminology complicate, if not prevent, an accurate understanding of many of the proposed amendments. Additionally, a number of proposed changes raise more questions than provide answers or clarity.

**9. Will this bill create a new board or commission AND/OR add or remove appointees to an existing one? If so, which one and how many?**

No.

**Secretary/Commissioner has reviewed this document:**

 **Date:** 5/31/16

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## Leriche, Lucy

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**From:** Mackay, Noelle  
**Sent:** Friday, May 27, 2016 10:54 AM  
**To:** Kessler, John  
**Cc:** Moulton, Pat; Leriche, Lucy  
**Subject:** H.570

John,

Here is my evaluation of Section 19. Hope this helps as you draft and finalize this.

Thanks, Noelle

Section 19: 10 V.S.A. Section 5401:

This is in Title 10: Conservation and Development Chapter 123: Protection of Endangered Species

Section 5401 updates the Definitions Section:

- Adds fungi to the definition of plant
- Modifies the definition of endangered species to mean those listed as endangered under this chapter for the state or on the federal list.
- Definition of conserve is modified to add "maintain" along with increase and includes not only the number of individuals within a population, but also the number of populations within a species.
- Definition of a taking is clarified and more specific (pursuing, shooting, hunting, capturing, harming, etc; creates risk including harassing, wounding, etc.; gathering seeds or fruit, etc.).
- Defines accepted silviculture practices
- New definition of critical habitat for T&E species:
  - Delineated location within and area occupied by a species that has physical, biological features that are concentrated and identifiable and decisive to survival, conservation or recovery, may require special management considerations or protection
  - Delineated location **outside** of area they occupy, but they have historically occupied, contains habitat that is connected directly or is adjacent to occupied habitat, has habitat that is identifiable, concentrated and decisive to survival, necessary for conservation and recovery
- New definitions of "destroy or adversely impact," "forestry, and " "harming"

Section 5401: Endangered and Threatened Species

- Updates and clarification to the rulemaking process
  - Look at competition, decline in population and cumulative impacts
  - 30 days before rulemaking commencement, notify and consult with officials in Canada and affected landowners were added as well as state officials and officials in Quebec.

Section 5402a: Critical Habitat; Listing

- New subsection added so that critical habitat can now be identified via rulemaking
  - Secretary may do rulemaking
  - Secretary shall consult with Secretaries of Ag, Transportation, ACCD and Commissioner of FPR
  - Listing requirements similar to species listing
  - Adds consultation with Canada and state officials as added in species listing
  - Prior to rulemaking, secretary shall notify owner of land on which critical habitat is proposed for designation and make all reasonable efforts to work cooperatively with affected landowners.
  - Where appropriate, well-established practices and BMPS in rule

- Critical habitat shall not be designated in Designated Downtowns or village centers. Note that growth centers, New town Centers and Neighborhood Development Areas can still have critical habitat designation

Section 5403: Protection of T&E Species:

- Adds critical habitat destruction
- Civil enforcement was changed to environmental enforcement

Section 5404: Committee

- Whether and where to designate critical habitat added to committee advisory list

Section 5405: Conservation programs

- Adds conservation and recovery of critical habitat to list of conservation programs and plans that can be established

Section 5406: Cooperation by other agencies

- Adds that all agencies shall review programs and use authority in a manner that does not jeopardize "the threatened or endangered species, critical habitat, or the outcomes of.."

Section 5408: Authorized takings

- Clarifies when a takings can occur and adds incidental takings where after advice from Committee, Secretary can permit a takings if it is:
  - Necessary to conduct an otherwise lawful activity
  - Impact is minimized
  - Not impair the conservation or recovery of T&E
- Secretary cannot adopt rules that affect farming, forestry operations or silvicultural practices without first consulting Sec. Ag and Commissioner FPR
- Permit application info needed:
  - Activity
  - Steps taken to avoid, minimize or mitigate impact
  - Plan for funding availability for monitoring and mitigation
  - Summary of alternatives considered
- Permit Fees:
  - Takings are similar \$250-\$25,000
  - New mitigation strategies and the ability to collect mitigation funds in addition to permit fees. To be paid to T&E Species Fund for uses of that fund.
- Information on Public Notice added
- Public disclosure/location confidentiality for critical habitats added.

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Please Note: State Emails are changing!

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