

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015-2016

Bill Number: H.570 Name of Bill: An act relating to hunting, fishing, and trapping

Agency/ Dept: ANR/Fish and Wildlife Author of Bill Review: Catherine Gjessing

Date of Bill Review: 9 May 2016 Related Bills and Key Players: VT Fish and Wildlife staff

Status of Bill: (check one): ☐ Upon Introduction ☐ As passed by 1st 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.*

This Omnibus bill:

- Authorizes the Fish and Wildlife Board to regulate the commercial sale of angler caught fish.
- Provides the Commissioner with rulemaking authority to require permits to import and introduce fish to Vermont waters.
- Clarifies: the violations of "aiding in a violation:" interference with hunting, fishing and trapping; and possession of Big Game. Clarifies restitution and establishes minimum restitution for big game and endangered species violations.
- Amends the point allocation for several violations to provide for greater consistency related to license suspension periods for hunting violations.
- Re-classifies all biological information collection violations as non-point violations.
- Requires a person convicted of an assault charge resulting in negligent bodily harm with a deadly weapon under 13 V.S.A. § 1023(a)(2) to complete remedial hunting course.
- Adds additional forfeiture authority for additional serious fish and game and big game violations. In addition to Big game taken by illegal means (§ 4747), and Taking Fish by Unlawful Means (§ 4606), the following are added: Shooting from a motor vehicle (§ 4705(a)), Taking Big Game out of season (§ 4745), Possession Big Game Taken Illegally (§ 4781), Purchase and Sale of Big Game (§ 4783), Transport of Big Game Taken Illegally (§ 4784), Taking wildlife during a period of license suspension (§ 4280). Forfeiture does not apply to the first conviction of §§ 4606, 4705(a), 4745, 4781, 4783, and 4784. Directs that the forfeiture proceeds be deposited in the Fish and Wildlife fund.
- Imposes restitution for intentionally or recklessly damaging or destroying the property of Fish and Wildlife.
- Amends the penalties for second and subsequent offenses, and offenses committed under license suspension, to no more than \$4,000.00, nor less than \$2,000.00.
- Repeals Felt Wader ban and the repeal of the authorized use of gun suppressors at sport shooting ranges.
- Deletes references to posting state waters, clarifies that posting of private ponds is permissible and allows the Commissioner to stock private ponds for organizations that allow public use.
- Establishes an Act 250 exemption for existing sport shooting ranges which have a lead management plan for projects that; improve safety, abate noise, and remediate or reduce environmental impacts associated with the range. Requires the range to seek a jurisdictional opinion from Act 250.
- Allows the Secretary to designate and protect critical habitat after notice and consultation with landowners, other state agencies and stakeholders in accordance with the rulemaking process; requires public notice and input for major permits; authorizes the issuance of general permits; clarifies civil and criminal enforcement authority and processes;

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creates clear application requirements; and provides the Secretary with authority to require reasonable mitigation for taking threatened and endangered species or destroying critical habitat.

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

Yes, the bill clarifies several statutory sections, ensures greater fairness and consistency for point violations, provides law enforcement with additional tools to address repeat offenders, allows the Board to promulgate rules regarding commercial fishing to ensure sustainable harvests, authorizes the Commissioner to address fish importation and stocking to protect Vermont fish and aquatic ecosystems, repeals the felt wader ban based on scientific information regarding the role of felt waders in the spread of aquatic nuisances, continues to allow the use of gun suppressors at sport shooting ranges to reduce noise, and ensures that private entities cannot post public state waters but, clarifies that posting of private ponds is permissible and allows the Commissioner to stock private ponds for organizations that allow public use.

The bill explicitly provides an Act 250 exemption for existing sport shooting ranges to facilitate projects which improve safety, abate noise, and remediate or reduce environmental impacts associated with the range. In order to qualify for the exemption, the range must seek a jurisdictional opinion from Act 250 and have an approved lead management plan.

Finally, the bill modernizes the threatened and endangered species statute by providing the Secretary with additional authority to designate and protect critical habitat, in a manner that appropriately balances landowner and economic interests. The Vermont statute is more than 30 years old and did not provide the Secretary with sufficient authority to protect habitat necessary to the survival and recovery of the species and the habitat protections in Act 250 and Section 248 are a very small fraction of the development statewide. In addition, the statutory permit application requirements were vague, there was no clear public input process for permits, the enforcement sections lacked clarity and there was no authority to streamline the permitting process with General Permits. The bill addresses these statutory shortcomings and also eliminates the economic hardship requirement for development permits and replaces them with incidental take permits. This means that developers do not have to demonstrate economic hardship.

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

Fish and Wildlife Department staff may expend more time and effort on critical habitat designations and promulgating General Permits and their requirements. However, the bill will provide for more effective species recovery and greater clarity and flexibility in the administration of the Vermont threatened and endangered species permit administration.

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?

The Secretary worked cooperatively with other state agencies to secure support for those portions of the bill which may affect other state agencies and to ensure that the bill required notice and consultation with other agencies as appropriate. This bill may have some impact on VTrans, FPR, ACCD and AAFM because the fish and wildlife staff will work very closely with these entities on any habitat designations which may respectively affect VTrans properties or right of ways, forestry, municipal designations, or agriculture. The Secretary and fish and wildlife staff will rely on VTrans, FPR, ACCD, or AAFM expertise to inform the designation of critical habitat and the formulation of applicable best management practices.

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)

There is broad support for many of the provisions in the bill which clarify the fish and wildlife statutes. The bill could have an effect on municipalities, public utilities, and businesses because the designation of critical habitat may increase the costs associated with some projects that have an impact on threatened and endangered species. However, most of these projects are already subject to similar requirements under Act 250 and Section 248. The bill will also increase permitting efficiencies through the implementation of general permits and the elimination of economic hardship

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permits. Hunters and hunting associations will support the sport shooting range exemptions from Act 250 and others who oppose such ranges may not support the amendment. Perspectives will be mixed.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? Conservation groups and many members of the public will support the bill. In our outreach, we also secured the support of a broad range of businesses, professional organizations, public utilities and NGOS for the bill.

6.2 Who else is likely to oppose the proposal and why? Some foresters, AIV, Vt Traditions, developers, and agricultural groups oppose the bill based on fears that the Agency will designate large areas of Vermont land as critical habitat. (The statute defines critical habitat narrowly and the statutory language, agency staffing does not allow for such designations, and this would be inconsistent with the Agency's 35 year history of administering the statute).

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

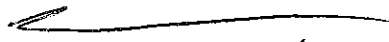
As noted in Number 2 above, there is a need for the bill and it implements many statutory improvements.

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.*

None.

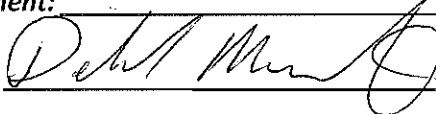
9. Gubernatorial appointments to board or commission? Not Applicable

Commissioner has reviewed this document:



Date: 5/28/16

Secretary has reviewed this document:



Date: 5-26-16

