

## (Excerpt from Fall 2016 Woodlot Tips)

### Changes to Vermont's Endangered Species Law

By Bill Guenther, Windham County Forester

As I wrote in our last newsletter, there was a flurry of activity in the 2016 Vermont Legislative session regarding forestry matters. In addition, there was a large omnibus bill dealing with a wide variety of issues relative to the Fish & wildlife Dep't.—House Bill 570, which can be found at:

<http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT145/ACT145%20As%20Enacted.pdf>.

A number of changes were to Vermont's Endangered Species laws. I will try to give you a condensed overview of this very complex bill. The first deals with the ESC (Endangered Species Committee). This group advises the Secretary of the Agency of Natural Resources on all aspects of the law. In addition to state agency/department heads, there are six members of the public appointed by the governor. Two of these members in the past would have to be actively engaged in agricultural activities. The law was now amended to also allow folks engaged in *silvicultural* activities to serve on the committee. This will give forestry a seat at the table.

A number of new definitions were also added, and those relating specifically to forestry are: ***Accepted silvicultural practices:*** 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.

***Forestry operations:*** 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.

***“Critical habitat” for a threatened species or endangered species:*** a delineated location within the geographical area occupied by the species that has the physical or biological features that are identifiable, concentrated, and decisive to the survival of a population of the species; is necessary for the conservation or recovery of the species; and may require special management considerations or protection; ***or*** a delineated location outside the geographical area occupied by a species at the time it is listed under section 5402 of this title that was historically occupied by a species; contains habitat that is hydrologically connected or directly adjacent to occupied habitat; contains habitat that is identifiable, concentrated, and decisive to the continued survival of a population of the species; and is necessary for the conservation or recovery of the species. Several key phrases that include these definitions are: “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.”

“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.”

These law changes now give the Secretary of ANR the ability to 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. This process though must go through a number of rigorous steps and cannot be applied without considerable oversight.

Another change to the law was allowing limited “takings” of an endangered species if a strict set of criteria are met. Some examples where this would be allowed would be for scientific study, educational purposes, ceremonial or cultural reasons, botanical or zoological exhibitions and if there was an imminent risk to human health. There are various fees and fines associated with an unauthorized taking. The law is very detailed and complicated in this area, so I will refer the reader to the law should they want more specifics.

These law changes have both added protections to Rare & Endangered species, while also not overly restricting the rights of landowners, especially where silvicultural practices are going to be implemented. I will continue to follow this process and report on any future changes or Rule additions.