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Foreword

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Conserving Endangered Species on Private Land

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Foreword

*William D. Ruckelshaus**

Rarely has a law with such humble beginnings had such a far-reaching effect on the American people as the Endangered Species Act. Likewise, it is remarkable that a law intended to rally public support around the preservation of deeply-rooted American symbols such as the grizzly bear and the bald eagle can be so divisive in practice. Frequently, it pits well-intentioned landowners, many of whom care deeply about the land and its heritage, against equally well-intentioned conservationists and government officials.

There is widespread acknowledgment that the Endangered Species Act, passed by Congress in 1973, is in need of reform. For every species the Fish and Wildlife Service has removed from the endangered species list, it has added more than one hundred others. Those whose property is impacted by the law charge that it provides strong disincentives for hosting endangered species on private lands (where close to 90 percent of endangered species find habitat), and unfairly imposes the cost of preservation on a few for the benefit of the many. This is not to suggest that the law has not had notable successes. It has. The Habitat Conservation Program, for example, has in some cases provided the necessary flexibility to accommodate the concerns of landowners while preserving the integrity of the Act. But with Congress and the Administration committed to reauthorization, there may be a rare opportunity to revisit and significantly improve upon the original law.

In the next several years, as a nation, we will either consciously or by default make many momentous decisions. Certainly the decision to prevent the permanent extinction of a species falls into this category. The Endangered Species Act is a strong national expression of a deep commit-

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ment to biodiversity. Yet we are not winning the fight against extinction. The increasing number of threatened species after almost twenty-five years of the Endangered Species Act is evidence that simply pledging support for the concept of conserving biodiversity is not enough. Like King Canute, commanding the incoming tide to stop doesn't work. If we are serious about protecting species, we must commit adequate resources to underwrite the true cost of species protection, and spread these costs fairly and evenly among those realizing the benefits — the American public.

It is evident that the current system, despite certain strengths, is not presenting us with clear, honest choices of what we can preserve, what we must preserve, and how we can best accomplish it. As currently implemented, the Act does not encourage enough discussion among parties with conflicting interests, and often results in delays, lawsuits, and too many disaffected citizens. This benefits no one, least of all the species in need of protection.

As we consider revisions to the Endangered Species Act, we should be careful not to confuse the assessment of risk, in this case the possibility of species loss, with the small "p" political decisions about how best to manage that possibility. Assessing the risk should be as pure a scientific exercise as possible. If the scientific decision to list a species as threatened or endangered automatically triggers regulatory actions, without leaving adequate room for discussion, flexibility, and tailoring solutions to local circumstances, this inevitably will result in attacks on the science. Clearly separating the two, risk assessment and risk management, will foster more publicly acceptable rendering of the science, while laying the groundwork for a more open and honest discussion among affected parties regarding a fair and effective remedy.

There may be legitimate concerns that unless specific actions are automatically triggered by a scientific finding, nothing will be done to prevent a species from slipping into extinction. However, once a decision is made that a species is endangered, it is often counterproductive for government to attempt to control exactly what actions must be taken to preserve it. There is an increasing body of evidence in environmental regulation that allowing flexibility in the attainment of required performance goals is more likely to result in attaining and even exceeding the goals. Engaging citizens, industry, and governments at all levels in meaningful, collaborative discussion regarding how best to achieve the desired result can be far more effective. This approach is more likely in the long term to result in the recovery and reestablishment of a species.

In fact, many collaborative decision-making processes for natural resource management have arisen spontaneously and in increasing numbers throughout the country. In some parts of the federal government, there is a growing willingness to allow such groups to settle their differences and make recommendations. This does not mean that public officials will abdicate their authority or responsibilities or that the overall goals of the Act must be compromised. If designed properly, these cooperative efforts can supplement and amplify the democratic processes, and assist leaders in building the public support necessary to fashion and implement solutions.

For collaborative decision-making processes to work it is critical that all interests be included in order to make the decision stick. One good example of a locally-driven effort is found in the state of Washington. The state Department of Natural Resources worked with local citizens on the Commission on Old Growth Alternatives to craft unprecedented consensus-based recommendations for managing state-owned old growth timber. Another example is in Montana, where the Clark's Fork Basin Committee developed recommendations, later incorporated into statute by the Montana Legislature, to resolve disputes over instream flow and water rights in the Clark Fork River.

These and many other examples illustrate that collaborative decision-making offers a path out of gridlock. By no means is this a panacea for every environmental problem. A well-constructed process can require a great deal of time and patience from the participants. They do not always work! But it is vital that we develop settings where people can learn the habit of listening before passing judgment — not the typical public meeting where people state their positions and afterward are under no obligation to listen to any other statements. In cooperative processes, you *have* to listen to the other side. Even if consensus is not achieved, useful work is accomplished by identifying those areas where consensus is possible, and uncovering those areas where more work, possibly more research or creative thinking, must be done.

We've learned that ordinary citizens have the ability to filter through scientific information that may contain contradictions and come up with reasonable findings. Economic impacts have to be confronted in some detail. These processes are ultimately about who gets what — the genius lies in discovering that different sides can each get what they need, and that the pie can be artfully cut so as to be bigger than we thought. We must find ways to move, for example, from saying jobs *or* wildlife to saying jobs *and* wildlife.

One of the keys to making all this work lies in restoring an ingredient that is lacking or nonexistent in many of these disputes: trust — trust

in the ability of democratic institutions to adapt and meet the real needs of those who rely on them; trust in government officials who by law are the custodians and trustees of the public welfare; trust in unbiased and sound science to provide underpinnings and parameters, and dispel myths which lead to irrational and costly decisions or even hysteria; and at least a modicum of trust that those with opposing or different viewpoints are not manipulating or distorting facts to achieve their own ends.

This restoration of trust, and the creation of a forum where such trust among traditional adversaries can germinate and take root, was a primary purpose for the establishment of the Institute for Environment and Natural Resources at the University of Wyoming.

The policy board of the Institute, comprised of citizens and leaders from government, industry, academia, ranching, and the environmental community, devoted its May 1996 forum to one particular aspect of the Endangered Species Act: protection of species on private land. A thorough, well-researched set of background papers was prepared by faculty from the University of Wyoming and outside experts, with assistance and direction from policy board members. These papers fulfilled a critical need for accurate information, and provided a sound underpinning for the scientific, technical, and policy issues considered by the board.

The board set about the task of developing a set of principles which would benefit those directly impacted by the Endangered Species Act, and would help guide policy makers during reauthorization discussions of private property issues. The resulting recommendations acknowledge that there are wide variations of opinion regarding the impact of the Endangered Species Act on landowners and the effectiveness of the Act. Despite these differences, a diverse group, after sometimes impassioned discussion, was able to agree that early and meaningful involvement of stakeholders, flexibility in achieving goals, and proactive management of habitat to prevent the need for species listings would markedly improve our current approach to protecting species.

The Institute's goal is to assist in the development of farsighted, balanced and comprehensive solutions to environmental and natural resource conflicts, based on good science and tempered by realistic policy considerations. The work presented in these papers is part of the Institute's continuing efforts to advance solutions to conflicts arising from implementation of the Endangered Species Act on private property.