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Institute for Environment and Natural Resources Board Principles

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INSTITUTE FOR ENVIRONMENT AND NATURAL RESOURCES BOARD PRINCIPLES

This forum provided a useful opportunity for people with diverse interests to express concerns and to build consensus on approaches to reasonable solutions. Based on their discussions and drawing on the previous five papers, the Institute Board members (listed below) recommend consideration of the following eight principles related to the ESA and private property during reauthorization discussions. The principles were established through a consensus process facilitated by the Keystone Center.¹ They are not intended to be a comprehensive treatment of the complex issues associated with the ESA, but rather to provide a foundation for progress toward resolving private property issues.

1) IMPLEMENTATION OF THE ESA SHOULD ENGAGE LOCAL STAKEHOLDERS IN A VARIETY OF SUBSTANTIVE ROLES.

Affected landowners should be involved in the ESA process for three reasons: (a) they have a right to know and to understand what is going on, (b) the process will work better if they understand it from the beginning and have a vested interest in the process, and (c) they may have input that improves implementation and generates support for the creation of novel solutions. Successful efforts at stakeholder involvement are based upon three interrelated components: communication, education and cooperation. Each of these components should involve a two-way exchange between stakeholders and those responsible for regulations. Communication and education are the first steps. Good communication and easy access to information can greatly reduce the distrust property owners feel about the process and help to maintain more objective and civil discourse.

Efforts should be made to simplify and broadly disseminate information on endangered species so that laypersons can understand the issues — both biological and economic — as well as the trade-offs to be made in creating solutions. In addition, “internships” or “employee exchanges” could be developed among corporations, small businesses, government agencies, academic institutions and environmental organizations to promote the exchange of ideas and understanding of different viewpoints.

1. The Keystone Center, P.O. Box 8606, Keystone, CO 80435.

Good communication and education will help lead to cooperative solutions. Local involvement and broad public participation in developing solutions are necessary, but frequently neglected, components of government regulations. Numerous success stories with Habitat Conservation Plans, conservation agreements, and safe harbor provisions demonstrate that local stakeholder involvement can lead to safe, responsible and practical solutions while still maintaining accountability to national interests in preserving species. Reauthorization of the ESA should build on these successes by providing agencies with the authority to enter into agreements with landowners engaged in such efforts, and by actively promoting experimentation on a site-specific and/or species-specific basis. In order to facilitate good communication between landowners and the agencies, the fear of restrictions (i.e., disincentives) needs to be removed.

The process for listing threatened and endangered species is a major concern to private landowners because many people fear the financial consequences of having listed species on their land. While the listing procedure currently includes steps for informing the public, implementation of this public information process is not always effective. The Board supports greater efforts to inform and involve stakeholders during the listing process, while maintaining the listing authority provided to the agencies by the Act.

2) **THE ESA SHOULD PROVIDE PRIVATE PROPERTY OWNERS WITH GOAL-BASED FLEXIBILITY IN THE MANAGEMENT AND RECOVERY OF SPECIES.**

Flexibility can be derived by distinguishing between *what* and *how*. Congress decides *what* the ESA should accomplish but should give flexibility to agencies and landowners in determining *how* to achieve it. Currently, the ESA allows flexibility, and numerous voluntary, creative partnerships have been formed between the FWS and farmers, ranchers, developers and timber companies to protect listed species, wetlands and other habitat. Reauthorization of the ESA should support increased emphasis on flexibility in developing partnerships with private property owners.

3) **LANDOWNERS NEED MORE CERTAINTY WITH RESPECT TO IMPLEMENTATION OF THE ESA.**

It is acknowledged that many ranchers and private property owners, both individual and corporate, are good stewards of their lands and would willingly cooperate with the ESA if there were more certainty about how the process will evolve. Landowners fear the financial and livelihood consequences of having an endangered species or designated critical hab-

itat on their land. The FWS and NMFS should continue to explore official agreements that would both protect species and offer long-term certainty to landowners. The recently developed "Safe Harbors" approach, for example, assures landowners that if voluntary land management activities result in increased endangered species numbers beyond the existing numbers on that land, the landowner will not be subject to undue additional restrictions. Ideally, the ESA should encourage testing of private initiatives and dissemination of creative solutions that achieve the goals of the law while addressing landowners' concerns.

4) ENVIRONMENTAL GOALS OF THE ESA SHOULD BE ALIGNED WITH ECONOMIC INCENTIVES.

Evaluation of current implementation of the ESA raises the question of whether private property owners face undue burdens that become disincentives for conservation. Legislative changes related to the ESA should treat citizens as customers with legitimate concerns, and should facilitate development of incentives and removal of disincentives. *The ESA mandates conservation; it should also reward conservation.* When environmental goals are complemented by economic incentives, many of which may involve only modest public financing, we likely will have a more effective, fair and workable law.

Consensus-based reports such as those emerging from the Keystone Center and analyses by groups like the Western Governors' Association and Defenders of Wildlife provide useful points for discussing incentive-based policies. Financial incentives could include income tax credits or deductions for conservation expenses, or property tax credits for lands under permanent conservation easements. Other incentives could take the form of increased participation in decision-making, increased availability of technical assistance, and increased flexibility in management plans. These are provided as examples only; much work is needed in exploring alternatives and developing consensus on efficient approaches.

The evaluation of all incentives should include consideration of what the costs are and who will pay. Efforts are needed in developing creative new and reliable funding sources to support collaborative efforts on private lands.

5) THE ESA SHOULD ENCOURAGE EFFICIENT USE OF RESOURCES THROUGH ELIMINATION OF DUPLICATIVE NEPA REQUIREMENTS AND REDUCTION OF MULTIPLE AGENCY OVERSIGHT.

Private property owners may be contacted by more than one agency (federal, state and/or local) regarding a listed species or the identification of critical habitat. This can result in landowner confusion and agency

inefficiency. It is a worthwhile goal to reduce multiple agency oversight and eliminate duplicative regulatory requirements within the National Environmental Policy Act (NEPA). The lead agency in developing Habitat Conservation Plans under Section 10 with private property owners should be clearly identified, and should define a baseline that enables incremental consultation, allowing changes without reopening the entire process. A reauthorized ESA should establish when agency consultations under Section 7 should be conducted for approving, issuing, or modifying an incidental take permit. Agencies should increase support for personnel training in communication and collaboration on endangered species issues.

- 6) **THE ESA SHOULD RECOGNIZE THE DIFFERENCES IN THE SCALE OF ECONOMIC, CULTURAL AND SOCIAL IMPACTS FOR LARGE AND SMALL PROPERTY OWNERS AND ALLOW FOR IMPLEMENTATION TO BE ADJUSTED ACCORDINGLY.**

Private property interests include individual, tribal and corporate owners. There is a difference in the scale of economic, cultural and social impacts for very large and very small property owners, and in the financial and technical resources available for dealing with those impacts. Agencies need to be responsive to the different objectives, needs and goals of various owners.

- 7) **MUCH MORE EMPHASIS SHOULD BE PLACED ON PROACTIVE MANAGEMENT TO PREVENT THE NEED FOR SPECIES TO BE LISTED UNDER THE ESA.**

Many potential conflicts with private property owners can be reduced or eliminated through efforts to avoid the necessity of listing species under the ESA. Actions to prevent species decline, entered into voluntarily with private property owners, could reduce the number of species requiring ESA intervention. The IENR Board strongly emphasizes the importance of trying to keep species off the endangered lists in the first place. Once a species is endangered, recovery is all the more difficult and costly. Further collaborative discussions are needed to identify adequate sources of funding for these innovations. One way to improve the Act would be for the ESA to provide additional funding for information and administrative resources that encourage voluntary collaborative initiatives and local efforts.

- 8) **DECISIONS REGARDING THE PROTECTION OF SPECIES AND HABITAT CONSERVATION SHOULD BE WELL GROUNDED IN SOUND SOCIAL AND NATURAL SCIENCE.**

As emphasized in a recent National Research Council evaluation of science and the ESA, sound science is an essential starting point through-

out all processes called for in the Act. Efforts to resolve conflicts between private property owners and the ESA would benefit from reliable information, but often information is unavailable or difficult to evaluate. For example, few, if any, thorough, objective studies of the effects of the ESA on private property owners have been published in the scientific literature.

Sound science is especially essential during the listing process. The current Act states that listing must be based on the best scientific and commercial trade data available. Because of the complexity of these deliberations, decisions should be based on transdisciplinary, integrated scientific findings. Further, the ESA should allow the development of consistent and objective criteria for agencies to use when weighing scientific information in the listing process.

The federal government needs to renew efforts to assure that information given to private property owners is clear and comprehensive as to the biological and economic costs and benefits. Evaluating these costs and benefits is often difficult, and additional research is needed in the area of land use economics and how to value preservation of biodiversity.

SUMMARY

Involvement of all stakeholders, provision for goal-based flexibility and certainty for landowners, and alignment of environmental goals with economic incentives could form the basis of innovative approaches to achieving the ESA's management objectives. Reduction of multiple agency oversight, recognition of the different scales of property ownership, and voluntary management to prevent the need to list species would also help diminish conflicts with landowners. All decisions should be grounded in sound science that is communicated as clearly as possible. We must all look at new, creative, bold ways to build bridges with the nation's property owners and provide incentives to them for protection of our natural resources.

The preceding recommendations regarding the Endangered Species Act as it applies to private property are the result of a consensus among the following members of the Institute for Environment and Natural Resources Board.

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