
Working Group on Endangered Species Act (ESA) Habitat Issues Frequently Asked Questions (FAQs)

Background Regarding the Working Group on ESA Habitat Issues: April 28, 2006

In response to a request from six U.S. Senators, The Keystone Center recently moderated a Working Group regarding the habitat provisions of the Endangered Species Act. The group sought to answer three questions posed by Senators Chafee, Clinton, Inhofe, Jeffords, Crapo, and Lincoln:

1. As currently written and implemented, is the ESA adequately protecting and conserving the habitat listed species need to recover?
2. If not, how can the ESA be improved to better conserve habitat and help species recover?
3. What specific changes and recommendations can the regulated and NGO communities jointly recommend, advocate for, and help implement?

At three plenary meetings held in Keystone, Colorado, Shepherdstown, West Virginia, and Washington, DC, the working group engaged in rigorous and collegial discussion on all three of the above questions. Members of the group concluded that the ESA is not protecting and conserving the habitat that listed species need to recover as effectively as it might. The group's final conclusions and recommendations were forwarded to the Senators in a summative letter on February 17, 2006, and are fully described in the Final Report. The Keystone Center encourages interested individuals and organizations to review these documents thoroughly to understand the scope and outcomes of the deliberations.

Who are you?

The Keystone Center is a non-profit organization that was founded in 1975 to help facilitate cross-sector dialogues on pressing environmental, energy, and public health issues. The Keystone Center does not take positions or advocate particular points of view. Instead, it convenes meetings on issues and facilitates practical, consensus-based solutions that break old logjams or that avert unnecessary future science and public policy battles. Please follow this link for more information about The Center for Science & Public Policy.

Who requested this Working Group?

The May 2005 letter requesting this working group was signed by Senators Chafee, Clinton, Inhofe, Jeffords, Crapo, and Lincoln.

What specifically did you focus on?

The discussions focused on the three questions posed to the group:

1. As currently written and implemented, is the Endangered Species Act (ESA) adequately protecting and conserving the habitat listed species need to recover?
2. If not, how can the ESA be improved to better conserve habitat and help species recover?
3. What specific changes and recommendations can the regulated and NGO communities jointly recommend, advocate for, and help implement?

Who participated?

After careful consideration, The Keystone Center invited a small cross-section of people who (a) were knowledgeable about the Act; (b) had standing and recognition among the interest groups they broadly represent; (c) believed that new and creative thinking is needed at this time; and (d) were willing to engage in disciplined give-and-take discussions.

The following people, listed in alphabetical order, participated in working group discussions. Although they all had affiliations with environmental groups, regulated industries, or academic organizations, they spoke from their individual perspectives rather than through the official positions of their respective organizations, trade associations, or coalitions.

Participants

Donald C. Baur, Perkins Coie LLP & Western Urban Water Coalition
Michael J. Bean, Environmental Defense
Bob Broscheid, Arizona Game and Fish Department
Jimmy Bullock, International Paper
Jamie Rappaport Clark, Defenders of Wildlife
Paul J. Conry, Hawaii Department of Land and Natural Resources
Bob Davison, Wildlife Management Institute
Christopher S. Galik, National Association of Home Builders
Paul W. Hansen, Izaak Walton League of America
Robert Irvin, Defenders of Wildlife
John Kostyack, National Wildlife Federation
Richard Krause, American Farm Bureau Federation
John D. Leshy, U.S. Hastings College of the Law
William R. Murray, American Forest & Paper Association
Barry R. Noon, PhD, Colorado State University
Robert J. Olszewski, Plum Creek Timber Company
Cassie Phillips, Weyerhaeuser
Jimmie Powell, The Nature Conservancy
Steven P. Quarles, Crowell & Moring LLP
Daniel J. Rohlf, Lewis and Clark Law School
J.B. Ruhl, Florida State University College of Law
Mark C. Rutzick, P.C.
Sean Skaggs, Ebbin Moser + Skaggs LLP
Gregory Wetstone, International Fund for Animal Welfare (formerly of NRDC)

Observers

Tom Buschatzke, City of Phoenix
 Jessica Eskow, International Paper
 Benjamin Tuggle, US Fish & Wildlife Service
 Andrew E. Wetzler, Natural Resources Defense Council

Co-Chairs

Richard N. Burton, MeadWestvaco Corporation
 Rodger Schlickeisen, Defenders of Wildlife

Project Staff

Peter Adler, President, The Keystone Center
 Meg Kelly, Associate Facilitator, The Keystone Center
 Johanna Raquet, Program Coordinator, The Keystone Center
 Doug Thompson, Senior Associate, The Keystone Center

Aren't there a lot of other groups and individuals who should have been part of this?

The Keystone Center recognizes that the group above did not reflect every important organization and person with knowledge and insight about endangered species issues. The Keystone Center sought to give voice and view to most perspectives, especially those from the environmental and regulated communities. To maintain a workable size, The Keystone Center sought strong voices that could speak to their minds, knowing that many shades and variations of such views could easily also have joined the discussions. The working group understands that others can and should offer valuable critiques of their own, and encourages those voices to be heard.

How often did the Working Group meet?

Three meetings were held: The first one in Keystone, CO in November 2005; the second in Shepherdstown, WV in December 2005; and a third in Washington, DC in January 2006. Who paid for this?

Balanced funding has been received from the regulated and environmental communities including:

Alliance for Habitat Conservation	MeadWestvaco Corporation
American Farm Bureau Federation	Metropolitan Water District of Southern California
American Forest & Paper Association	National Association of Home Builders
American Forest Resource Council	Perkins Coie
California Natural Resources Group	Plum Creek Foundation
City of Phoenix	Turner Foundation
Crowell & Moring LLP	Western Urban Water Coalition
Ebbin Moser and Skaggs	Weyerhaeuser Company
International Paper	

What actually resulted from the Working Group's dialogue?

Most of the group's work was dedicated to exploring a potential new approach to habitat protection that would move away from the current critical habitat framework and build on three interdependent components:

1. centralize the role of recovery and recovery planning;
2. significantly boost the role of incentives; and
3. revise the §7 consultation standard.

Although the group did not reach consensus on a full and comprehensive construct, its deliberations offer important new ideas for consideration. It was generally agreed that, if such a construct could be developed, it would likely need to include the following elements: new provisions for integrating habitat protection and conservation into the ESA to replace the current critical habitat framework; a greater focus on the function, content, scope, and mechanics of recovery plans; clarification of the §7 standard; more effective incentives for non-federal parties, and new sources of funding for better coordinated and more workable ESA provisions pertaining to habitat.

There was a broad consensus that incentives that go beyond simple compliance with the law are necessary to make imperiled species more abundant, widespread, or secure. Some of these include:

- Refinements in the selection criteria and re-enrollment considerations for the Conservation Reserve Program (CRP).
- Strengthened focus of Environmental Quality Incentives Program (EQIP) resources on specific wildlife practices for at-risk species.
- Increased funding for the Wildlife Habitat Incentives Program (WHIP) to provide conservation incentives and technical support to landowners.
- Explicit authorization of cooperative conservation agreements between landowners and the federal government for the conservation or improvement of habitat and species under the ESA.

Why should I bother reading the Final Report?

The habitat provisions of the ESA have been fiercely debated for many years and involve complex and contentious issues. The Keystone Center's Working Group on ESA Habitat Issues Final Report records an important intellectual record and a trail of ideas that others will find useful in the future as the debates continue.