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Executive Summary

The Keystone ESA Working Group on Habitat

February 17, 2006

This document summarizes a more detailed letter sent to Senators Chafee, Clinton, Crapo, Inhofe, Jeffords, and Lincoln in response to their request that The Keystone Center convene and facilitate a Working Group concerning the habitat provisions of the Endangered Species Act. The history and composition of the group is detailed in the letter and the full and final report will be available at the end of this month.

The Keystone ESA Working Group on Habitat agrees that the present regulatory approach to habitat protection could be improved to better address the biological needs of species, increase transactional efficiency, and reduce the concerns of regulated parties. Although the group is not able to offer a single, comprehensive consensus based approach or construct, significant headway was made in clarifying some of the central issues and considerations regarding the habitat listed species need to recover. Further, the group concurs on a number of ways to strengthen recovery planning and on programs and procedures that can provide additional landowner incentives that, if instituted, promise to redound to the benefit of listed species.

Much 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, it 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. The full letter from Keystone, along with the group's final report and recommendations, will offer a number of specific suggestions related to Farm Bill measures, voluntary cooperative agreements, tax incentives and streamlining including:

- ◇ 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.

In their discussions, the group consistently underscored the need for the development of scientifically sound, financially reasonable, and politically credible recovery plans. Some of the central issues considered by the group are articulated in the letter and will be outlined in the final report. These include the need for an articulated policy on what is meant by "recovery," how to address occupied and unoccupied habitat needs, and how the recovery plan should inform other sections of the ESA.

The group devoted considerable effort toward developing a recommendation aimed at reorienting the §7(a)(2) standard to a focus on species recovery. However, the group did not reach agreement on a specific revised standard. Some of the questions that the group grappled with include:

- ◇ Should habitats necessary for recovery continue to be mapped and, if so, should this mapping be integrated with recovery planning?
- ◇ Should protection of habitats identified as necessary for recovery receive explicit protection, receive implicit protection in the consultation process, or receive no regulatory protection at all?

- ◇ Should the substantive standards of §7(a)(2) refer to expected impacts on recovery, survival, conservation, likelihood of extinction, or something else?
- ◇ Should those standard(s) be qualified in some manner?
- ◇ In assessing compliance with the standard, what consideration should be given to indirect or cumulative effects of the action under consideration?
- ◇ What, if anything, should be said about mitigation in §7(a)(2)?
- ◇ Should any change in the standards applicable to federal actions under §7(a)(2) be accompanied by a change in the standard for approval of habitat conservation plans under §10?

We encourage interested individuals, agencies, companies, and non-governmental organizations to read the full text of the Keystone Center's letter to the six senators and to review the full report that will be issued later this month. We thank the members of the Working Group for their diligence, their spirit of cooperation, and for the arduous days and evenings dedicated to the task.

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