An Endangered Habitat Act to Help Landowners Protect Wildlife

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INTRODUCTION

Good morning. I am Tobie Murray, a third generation owner and manager of a 55,000 acre commercial tree farm in Western Washington. I have been asked to contribute some remarks on the experience of Murray Pacific Corporation under the Endangered Species Act and make some suggestions for improving the situation.

1. THE MURRAY PACIFIC EXPERIENCE

In 1990, we discovered a Northern Spotted Owl on our tree farm. A wildlife biologist, hired to perform the appropriate surveys, found a total of three owls, one pair and a resident single. These three owls essentially placed forty percent of our merchantable timber off limits to use for the foreseeable future.

The options available were either to give up forty percent of the tree farm’s assets for fifty to a hundred years, or to pursue a Habitat Conservation Plan under the Endangered Species Act. Since the former was unacceptable to us, we opted to engage in extensive and extremely expensive negotiations with the U.S. Fish and Wildlife Service. To make a very long story short, eighteen months and $750,000 later we reached an agreement and were issued an incidental take permit for the Northern Spotted Owl in September, 1993.

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Ten days later, a Marbled Murrelet dipped its wing over the western edge of the tree farm and we were faced with doing it all over again. This time we decided to respond by dealing with all species.

As a practical matter, we found ourselves dealing with all habitat types. This is "landscape management" or an "ecosystem approach" as it evolved and came to be implemented on our private commercial timberlands. Nine watersheds were studied and must be continually studied in excruciatingly technical detail, at a cost of several hundred thousand dollars for each watershed. This does not include the cost of developing the plan itself and ignores both the diminished value of our company assets because of the burdensome Habitat Conservation Plan requirements, and the negative impact on our competitive flexibility.

We now have in place stringent habitat requirements intended to benefit birds, animals, plants, salamanders, and other wildlife, and even some designed to find and protect any possible archaeological features. Our plan is designed to protect wildlife that might possibly be found on the tree farm in the future, even species which have never been found there before. We are creating a mosaic of age classifications protecting riparian areas, leaving snags and green trees, developing dispersal habitat, protecting steep and unstable slopes, and preserving caves and talus slopes. We have a signed covenant between Murray Pacific and the Federal Government, to which both sides are bound for the next hundred years. We are doing our best to make it work. The lessons we have learned might be useful to the deliberations of this symposium.

II

LIMITATIONS OF THE ENDANGERED SPECIES ACT

The problem with the Endangered Species Act from the standpoint of the private owner is that it deals with species, whereas the landowner can control only habitat and not individual species. Although we might leave the Endangered Species Act alone, and let it function for individual species, we should recognize that, from the standpoint of the private landowner, a focus on species is misdirected. Often a given landowner cannot even identify individual members of a particular species without the assistance of an expert; sometimes even the experts cannot. But the landowner will know his land very well. And he can be educated very quickly about any desirable habitat qualities that are not readily apparent. So, I propose an En-

dangered Habitat Act, or at least a habitat approach to the problem, an approach designed to use the landowner’s expertise and achieve positive results for fish and wildlife.

An Endangered Habitat Act would avoid much of the rancor and litigation surrounding the Endangered Species Act, which continues despite widespread support among most thinking people for its goals (support that includes landowners if I am an example). Landowners want to do what is right. Most timber company owners and workers are interested in science-based environmental protection.

III
A PROPOSAL FOR AN ENDANGERED HABITAT ACT

An Endangered Habitat Act should be structured as follows:

1. The Act’s requirements should be stated prospectively in the form of Model Habitat Plans. A landowner can better fulfill the letter and spirit of the Act if he understands at the outset what is required to obtain an approved habitat plan where his particular property is located.

2. The Act’s requirements should be definite. Only clearly desirable and measurable requirements, well understood by the owner and agency, should be applied to a particular site. Any subjective, evolving, or fluctuating standards should be eliminated. Our own experience, beyond just trying to protect the Spotted Owl and the Marbled Murrelet, demonstrates an owner’s natural concern for letting the camel get his nose into the tent. If what is accomplished on one ownership is not good enough, change the model plan and do better on the next ownership. One should not try to back up and force one willing participant to act as a guinea pig, repeatedly forced to do what is currently thought best. Such guinea pigs are themselves rare to the point of being an endangered species. Remember that the owner who steps forward to do things right and commits to the covenant, by definition, will attract even more species to his land where habitat is improving. This should not be a risk, but rather a cause for rejoicing. Today the opposite is true.

3. The Act should be voluntary and attract willing participation by providing blanket immunity from sanctions under the federal Endangered Species Act. The landowner who elects to take advantage of such a Habitat Act should know he is protected. He should know that the effort and expense of participation is rewarded. Blanket immunity under an approved Endangered Habitat Plan should be perceived as a sensible and fair trade-off by all parties who are concerned with the good of species and their environment.
4. An Endangered Habitat Act should be simple and inexpensive. The landowner must first understand what is needed for him to obtain an approved habitat plan in the area where his particular property is located. The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, representatives of state agencies, and Tribes, should come together and agree upon appropriate habitat protection requirements for given landscapes or ecosystems. Arbitrary jurisdictional boundaries should be set aside. Mother Nature did not decide the State of Washington or counties within the state would be bounded by straight edges. The appropriate agencies, after consultation and public comment, should write and distribute model habitat plans that landowners can understand and can tailor to their own property. After review and modification of a particular landowner's plan, the plan should be approved and the protective measures implemented. Model plans should be widely distributed among all the owners, large and small, and the advantages of implementing the plans made clear to everyone. It must be made clear that if you do something very good for the habitat on your land, the useful biological attributes of your property will be protected for the species who use it, and you will be protected from the worry and terror of the Endangered Species Act.

5. An Endangered Habitat Act should determine the appropriate level of "best science" when formulating habitat requirements. Sound scientific principles are the backbone of the Habitat Conservation Plan process. A bookshelf full of scientific data that seeks scientific perfection, however, is unrealistic. We must make good decisions using the "best science known today" and rely upon adaptive management practices to adjust our techniques in the future. Too often, millions of dollars are invested in pursuit of esoteric science that does nothing to protect endangered species. It is far better to define the scientific requirements of the Habitat Conservation Plan process to ensure that every dollar is spent wisely.

6. An Endangered Habitat Act should not only hold out the carrot of blanket immunity but should also be positive in its approach. The Endangered Species Act requires a negative finding that an incidental take permit will not reduce the likelihood of survival and recovery of a species. In contrast, a Habitat Act should positively emphasize that the plan is designed to increase, protect or conserve beneficial habitat. Perhaps this is a small point, but this positive approach conveys a better message. The owner who com-

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mits can be proud. At the same time, an owner with an approved Habitat Plan who later fails to implement it can expect agency approval to be withdrawn promptly and should be left to the mercies of enforcement sanctions under the Endangered Species Act.

IV

CLINTON'S CERTAINTY POLICY

Let me close by speaking to the Clinton Administration’s certainty policy. Some in the environmental community argue that the policy "goes too far" and imposes "ecological risks" because of the length of some Habitat Conservation Plans. Our Habitat Conservation Plan binds both parties for a hundred years. Certainty is critical to the landowner and for this reason is critical to the resource as well. Certainty allows a landowner to plan and make significant investments to carry out their Habitat Conservation Plan obligations. Without the certainty policy, neither I nor many other landowners would ever consider entering into the Habitat Conservation Plan process.

CONCLUSION

While it cost too much, and it took too long, I believe I did the right thing. I believe that the ecological value of our Habitat Conservation Plan will be great and that a hundred year agreement that uses adaptive management practices will stand the test of time.

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5. See U.S. Dept. of the Interior, Office of the Secretary, Administration's New Assurance Policy Tells Landowners: "No Surprises" in Endangered Species Planning, 1994 WL 440313 (D.O.I.), at *1 (Aug. 11, 1994) ("Landowners who have endangered species habitat on their property and agree to a Habitat Conservation Plan (HCP) under the Endangered Species Act will not be subject to later demands for a larger land or financial commitment if the Plan is adhered to even if the needs of the species changes over time.").