



## **Protecting Endangered Species Habitat on Private Land A Position Statement of the Society of American Foresters**

Initially adopted by the SAF Council on September 23, 1992, under the title *Reauthorization and Amendment of the Endangered Species Act*, and revised and renewed on June 8, 2002, December 3, 2005, and March 8, 2008. This position statement will expire on March 8, 2013, unless after thorough review, the SAF Council decides otherwise.

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### **Position**

The Society of American Foresters (SAF) recognizes that private forestlands are an important source of habitat for threatened and endangered species. Federal laws and their implementing regulations that affect private landowners' obligations to protect endangered species and their habitats can and should balance the needs of people with the protection of endangered species. SAF urges that federal legislation and regulations dealing with threatened and endangered species: 1) articulate in unambiguous terms requirements for habitat protection and management on private lands, and 2) provide appropriate financial and other incentives for landowners to manage and enhance such habitat in ways consistent with their overall objectives. Additionally, SAF urges that Congress and the Administration evaluate the effectiveness of current incentives, tools, and their associated funding levels so as to encourage greater participation of landowners in implementing habitat conservation practices for listed species.

### **Issue**

The Endangered Species Act (ESA) is considered the "broadest and most powerful law" in the world for protecting species (NRC, 1995). It is also one of the most contentious environmental laws, in part because the strict substantive provisions of the law can substantially affect the use of both public and private lands (Buck et al. 2002). Endangered species conservation efforts raise many economic, political, and institutional issues (Tobin 1990). Federal statutory requirements for the protection of habitat on private lands directly and indirectly affect many SAF members and their clients, and are something to which the forestry profession can meaningfully contribute.

### **Background**

The ESA is a regulatory approach to protect threatened and endangered species and considers habitat protection an integral part of the effort (Buck et al. 2002). It has been amended several

times since 1973, most recently in 1988. The 1988 amendments reauthorized the bill through 1992. Several bills have been introduced in Congress since 1992 to reauthorize the ESA, but none have passed, due to significant controversy.

### Critical Habitat

One of the ESA's stated purposes is to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." The means to this end is the listing of individual species and designation of "critical habitat" essential for their conservation (NRC 1995).

Approximately half of listed species have at least 80 percent of their habitat on private lands (USDI 2007). ESA section 9 prohibits all persons from any action causing "take" of a protected species, which is defined to include "harm." The Fish and Wildlife Service (FWS) regulations define "harm" broadly to include "significant habitat modification." In effect, habitat is in force wherever a species happens to be, whether or not critical habitat has been designated. Penalties for violators are significant, and any person can sue any other person suspected of violating the ESA "taking" prohibition.

The ESA has been subject to numerous court battles, particularly in regards to critical habitat (see Bean and Rowland 1997, Feldman and Brennan 1997, SELS 2001). A series of lawsuits by citizen conservation groups has forced the FWS to spend much of its listing budget on court-ordered critical habitat designations. The Supreme Court ruled in *Sweet Home* (1995) that the FWS had devised a reasonable interpretation of "harm" but left the door open as to what "significant habitat modification" might mean (Feldman and Brennan 1997, SELS 2001).

Many landowners are concerned that the presence of a listed species on their land will result in restrictions of current or future activities and subsequent loss of all or some of their property value (Buck et al. 2002). There also is concern that designation of critical habitat could render them susceptible to third party-lawsuits. These perceptions are at least as important as reality (Tobin 1990).

Scientists have criticized the "ambiguity of critical habitat" (Murphy and Noon 1991) and suggested that this uncertainty has hampered the effectiveness of the ESA in protecting habitat for species conservation on private lands. Others have viewed ESA as sometimes having a perverse effect on private landowner behavior, in that some landowners, in order to avoid federal regulation, may be encouraged to harvest their trees before their forests reach a condition that they could become attractive to a listed species, such as the red-cockaded woodpecker (Zhang 2000). In response, under Section 10(a)(2) of the ESA, the FWS has sought to allay landowners' fears by developing a number of tools and policy options designed to reduce a landowner's financial and regulatory risk if private forests are managed in part as habitat for endangered or threatened species (see following section on incentives for private landowners).

### Recovery

The ultimate goal of the ESA is to recover threatened and endangered species (NRC 1995). To that end, recovery plans are required. They are to provide objective and measurable criteria as to when a species can be downlisted or delisted, intermediate goals, and costs of recovery actions. For many listed species, recovery goals are not likely to be achieved without active management and strategies, such as incentives, that go beyond acquiring or regulating private land (Bean and Rowland 1997). Biologists have suggested that non-biological factors, including social, economic, and political considerations, be explicitly identified in recovery plans in order to determine which factors contribute to species decline and recovery (Scott et al. 1995). Recovery plans are one of the principal devices for engaging private landowners cooperatively in species conservation efforts.

### Incentives for Private Landowners

Private lands play an important role in the protection and recovery of many protected species (GAO 1994, USDI 2007). Many private landowners are willing to protect and manage their land for the benefit of endangered species. Over the years, a number of administrative policies and tools have been created to encourage private landowners to do so, including Habitat Conservation Plans, the Safe Harbor Policy, Candidate Conservation Agreements with Assurances, financial grants to individuals and groups, and others (USDI 2007). In 2003, Title V of the Healthy Forest Restoration Act authorized the federal government to acquire short and long-term conservation easements on private lands to promote the recovery of listed species, improve biodiversity, and enhance carbon sequestration. These programs, while helpful in certain circumstances, due to economies of scale tend to be geared to private landowners having large holdings or large financial resources. In 2003, the FWS created the Landowner Incentives Program (LIP) designed to provide technical and financial assistance to landowners to manage their lands for listed or rare species. Participation of small landowners in LIP and other grant and financial incentives programs have been limited due to the chronic under-funding of these programs and the concerns of landowners over federal regulation of their management practices.

### **Literature Cited**

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## **ABOUT THE SOCIETY**

The Society of American Foresters, with about 17,000 members, is the national organization that represents all segments of the forestry profession in the United States. It includes public and private practitioners, researchers, administrators, educators, and forestry students. The Society was established in 1900 by Gifford Pinchot and six other pioneer foresters.

The mission of the Society of American Foresters is to advance the science, education, technology, and practice of forestry; to enhance the competency of its members; to establish professional excellence; and to use the knowledge, skills, and conservation ethic of the profession to ensure the continued health and use of forest ecosystems and the present and future availability of forest resources to benefit society.

The Society is the accreditation authority for professional forestry education in the United States. The Society publishes the *Journal of Forestry*; the quarterlies, *Forest Science*, *Southern Journal of Applied Forestry*, *Northern Journal of Applied Forestry*, and *Western Journal of Applied Forestry*; *The Forestry Source*, and the annual Proceedings of the Society of American Foresters national convention.