

### **NESARC Encourages Western Governors to Act on ESA Reform**

The **National Endangered Species Act Reform Coalition** is the country's only broad-based, national coalition dedicated solely to achieving legislative improvements to the Endangered Species Act (ESA). NESARC members include rural irrigators, municipalities, farmers, electric utilities, and many other individuals, organizations, and businesses that are directly affected by the ESA. As the Western Governors participate in the Roundtable discussion on the "challenges of conserving species while meeting demands for community growth, agriculture, recreation and water quality and quantity", NESARC urges the Western Governors to continue working to make the ESA a law that gives the affected States, municipalities, businesses and landowners the flexibility and tools with which to effectively conserve listed species in a fair and balanced manner.

The Western States have both the privilege and the burden of being home to a majority of the species listed under the ESA. Under the present ESA, too often the listing of a new species has meant that our Western communities are the targets of litigation that ultimately results in economic disruption and displacement of communities and landowners. While the federal agencies immediately impose "take" prohibitions and engage in Section 7 consultations that create unfunded mandates and place increasing restrictions on businesses and communities, the federal government is less willing and able to do what is actually necessary—implementing ground level programs that provide measurable benefits to listed species. The Western Governors are uniquely situated to address this glaring problem in ESA implementation.

Through the efforts of several Western States and affected stakeholders (many of them NESARC members) there are now several clear models for effective species conservation programs:

- The Upper Colorado River Endangered Fish Program has created a collaborative program between federal agencies, States and stakeholders that has used sound science to develop recovery goals (including specific downlisting and delisting criteria) and program activities funded from multiple sources to help conserve four listed fish species.
- Over the past four years, salmon habitat has been restored on coastal streams in California, Oregon, Washington and Alaska (with Idaho likely to join in 2004) through a federal/state matching fund program called the Pacific Salmon Recovery Initiative.
- Farmers and cattle ranchers in Texas have worked with the State and other interest groups to improve habitat for the golden-cheeked warblers and black-capped vireos through incentives for habitat restoration and land stewardship programs.

For these programs to work, the federal government must not only make a financial commitment to assisting such efforts, but also, it must allow State and local governments to have a greater role in ESA implementation. NESARC supports ESA reform that allows for greater development of cooperative agreements under Section 6 of the ESA, expanding State and stakeholder participation in both the listing and recovery-planning process and recognizing existing State programs that already protect and conserve species.

The ESA reaches its 30<sup>th</sup> anniversary this year. For the past ten years, Congress has failed to reauthorize the ESA and needed reforms have languished. NESARC looks forward to working with the Western Governors Association to move forward on ESA reform so that we can have an effective, balanced law.

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## **NESARC ESA Reform Principles**

### **Incentives to Conserve Habitat**

ESA restrictions apply when land or water serves as habitat for threatened or endangered species. To avoid ESA regulation, some property owners have destroyed habitat to discourage the entry of protected species. The Act should be amended to provide incentives for property owners to conserve, rather than destroy, habitat and to provide regulatory certainty to property owners who voluntarily participate in conservation plans.

### **Citizen Participation**

Private citizens, businesses and communities, especially those directly affected by conservation decisions, should have a prominent role in the ESA decision-making processes. The Act should provide for earlier and more meaningful opportunities for citizens to participate, more citizen involvement in recovery plans, and a more prominent role in the consultation process for applicants for federal licenses and permits.

### **Fairness to Property Owners**

Some ESA mandates have severely restricted the use and value of privately owned property. When severe restrictions occur without compensation by the federal government, the Act shifts costs and burdens to individual businesses and citizens that should be shared by **all** citizens. The ESA must be modified to prevent these inequities and encourage landowners to welcome protected species on their property. Specifically, when private property is preserved in a habitat conservation plan, the landowner must be compensated in a timely fashion.

### **Cost Effective Recovery Plans**

Recovery plans are expensive to implement. Many of the costs are the direct expenses and lost opportunities of private parties and state and local governments. Costs to non-federal parties should be minimized by requiring implementation of the least costly recovery plan that would achieve the recovery of the species.

### **Good Science**

The law requires that every ESA action must be based on scientific information on a species or its habitat. To ensure fair and sensible decision making, this information must be as accurate and thorough as possible. Scientific information can be improved by requiring minimum scientific standards and fair and impartial scientific peer review.

### **Shared Burdens**

The ESA itself calls for "encouraging" states and private parties through a system of incentives to implement a program to conserve fish, wildlife and plants "for the benefit of **all** citizens." Contrary to this statement, however, ESA implementation often has been heavy-handed and inflexible, and the burdens of conservation have been placed disproportionately on private land owners, small and rural communities, and the employees of resource-based industries. If all citizens benefit from species conservation, then all citizens should bear the costs even handedly.

### **Primacy of State Water Law**

The water law of the various states is a complex matrix that often establishes property rights to water. The ESA must be clarified to ensure that the Act is in harmony with, and recognizes the primacy of, state water law.