

Resolution No. 7

Date: April 23, 2010

City: Washington, D.C.

NAHB Resolution

Title: Endangered Species
Original Sponsor: Environmental Issues Committee

WHEREAS, the Endangered Species Act (ESA) calls on the U.S. Fish and Wildlife Service and NOAA Fisheries (the Services) to undertake measures to protect species listed as threatened or endangered;

WHEREAS, a lack of definitions and coordination between the Services and other agencies has stifled the development of important policy guidance on issues such as the designation and regulation of critical habitat;

WHEREAS, the unstable and inadequate funding of ESA programs has left the Services unable to efficiently and effectively meet their mandates under the Act;

WHEREAS, the Services have improperly attempted to influence local land use decisions by threatening states and municipalities with vicarious liability for “takes” associated with third-party actions;

WHEREAS, the costs associated with preserving a particular species fall disproportionately on local communities to cope with the resulting economic disruption and financial burden;

WHEREAS, local governments, unable to bear these burdens often seek to pass those costs along in the form of developer fees that ultimately are paid by the new home buyer;

WHEREAS, implementation of the ESA causes landowners to unfairly assume the burden for protecting listed species and their habitat;

WHEREAS, regulatory decisions under the ESA are often made without a sound scientific basis or adequate data,

WHEREAS, the ESA requires that critical habitat be designated for all species listed under the Act;

WHEREAS, as a result of inadequate data and continuous litigation, the Services have tended to designate broad areas of land as critical habitat instead of narrowing the designation to those areas that are truly “essential,” as required by the ESA;

NOW, THEREFORE, BE IT RESOLVED that the National Association of Home Builders support sufficient appropriations from Congress to achieve the Endangered Species Act’s objectives, to purchase land for habitat conservation and species recovery,

BE IT FURTHER RESOLVED that NAHB seek such other relief as will allow the Endangered Species Act to advance the goal of preserving species without adverse effects on local, state or national economies, and

BE IT FURTHER RESOLVED that the National Association of Home Builders urge Congress and U.S. Fish and Wildlife Service and NOAA Fisheries (the Services) to amend the Endangered Species Act (ESA) and/or implement regulations to:

1. Reform the listing process to ensure that all ESA decisions — such as listing, delisting, designation of critical habitat and recovery planning — are supported by sound science, including the use of field-tested empirical and peer-reviewed data conducted by an outside blind review panel; and disqualify from serving on the panel any person who may have a financial interest in advocating the listing of a species. Require that the delisting process be subject to scientific standards as required in the listing process,
2. Authorize flexible time schedules for listing decisions in order to adequately assemble and review necessary scientific data,
3. Amend the definitional section to give a biological definition of “species,” “subspecies” and “population segments” and refine the standard of “adverse modification of critical habitat” to distinguish it from the standard of “jeopardy to the continued existence of species” in a manner that is consistent with recent court opinions.
4. Provide limited protection for “subspecies” and “distinct populations” only when necessary for the survival of the “species,”
5. Require a critical habitat designation and recovery plan to be determined at the time of the listing and condition the act’s restrictions upon these determinations,
6. Balance the needs of property owners and a growing population with the need to protect endangered species, including enhanced opportunities for property owners and the public to participate in the process,

7. Ensure that the burden of proving a species' existence on private property is placed on the federal government, and public participation and comment are provided on any survey protocols produced by the Services,
8. Maintain local land use control by removing the threat of ESA liability for states or municipalities issuing permits, approvals or funding for actions that may result in the "take" of an endangered species,
9. Provide adequate federal funding for species protection measures, such as habitat conservation and recovery plans, commensurate with the goals of the Act,
10. Expand the Sec. 10(a) permit program to provide for the issuance of general permits pursuant to approved area-wide habitat conservation plans that would vest development rights in land not located in the designated conservation area,
11. Create explicit authorization for local, state and federal governments to enter into agreements to implement area-wide plans and assign specific responsibility for the long-range maintenance and protection of protected habitats,
12. Authorize, but not require, the use of multi-species plans, and
13. Ensure that the designation of critical habitat:
 - a. Is as precise as possible using a map-based approach that incorporates sufficient points of reference to locate critical habitat boundaries;
 - b. Is limited to areas currently occupied by the species;
 - c. Excludes areas where the costs of designation outweigh the benefits, based on an assessment of the full direct, indirect and cumulative economic and social effects on the areas affected and the nation, not just the incremental effects of the critical habitat designation; and,

- d. Excludes areas where adequate protection is already in place, including areas that are already within or will be within a formal habitat conservation plan (HCP) or state law equivalent.

Board of Directors Action:

Executive Board Action:

Resolutions Committee Action:

Land Development Committee Action:

State and Local Government Affairs Committee Action:

Legal Action Committee Action:

Federal Government Affairs Committee Action:

Environmental Issues Committee Action:

Approved

Recommends Approval

Recommends Approval

Recommends Approval

Recommends Approval

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