



American Planning Association

Making Great Communities Happen

Policy Guide on Endangered Species and Habitat Protection

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Issues

Protecting natural system functions (e.g., water and air purification, flood attenuation, speciation, and nutrient recycling) is critical to the support of human, animal and plant populations. As a result, it is critical that efforts are made to incorporate natural resource protection at all levels of government in order to protect natural communities prior to species or their habitats becoming endangered or extinct. This concept of natural community planning should be an integral and required element of local government comprehensive plans. As local units of government and state and federal agencies voluntarily work to protect habitats using their authorities in their areas of jurisdiction, there is reduced need for a regulatory approach. Equally important are reasonable incentives for private landowners to participate in land stewardship that would not only protect natural communities from further degradation but restore and enhance these communities as well.

Legislation such as state or federal Endangered Species Acts (ESA) plays an important role but only when the actions of federal, state, and local governments as well as the public have not adequately protected ecosystem functions. An ESA should be viewed as a "safety net" that provides protection as a last resort.

Since 1983, the ESA has established a process to allow the "incidental take" of a listed animal species if a Habitat Conservation Plan (HCP) is prepared to reduce the adverse impacts. Since 1993, the number of HCPs approved or pending approval has skyrocketed primarily due to the implementation of the "No Surprises" policy of the U.S. Fish and Wildlife Service and National Marine Fisheries Service. Under the "No Surprises" policy, the Services approve a HCP with a "no surprises" caveat which ensures the landowner that further restrictions will not be imposed for the duration of the plan — sometimes 50 or 100 years — even if the government determines that the HCP has failed or was not based on scientific facts. While the number of HCPs has increased dramatically, serious concerns have been raised as to whether this "no surprises" policy adequately protects listed species.

Most people agree that the ESA is in need of some reform, however, the type and degree of change that is needed is under debate. If greater attention was devoted to habitat protection, there would be less need for legislation such as the ESA.

Findings

1. The preservation and enhancement of wildlife and its habitat cannot be distinguished from preservation of human habitat and so is a core function of government. As a core function, habitat preservation should be reflected in the entire process of planning, and managing growth and development.
2. Effective habitat conservation requires the participation of all levels of government. State and federal agencies should establish baseline data and protection criteria as well as provide technical assistance to local governments and landowners.

3. Ideally, species should not be allowed to become imperiled to the point of endangerment, but when this does occur, legal mechanisms such as the Endangered Species Act should be in place to provide the protection needed to prevent extinction.
4. Currently, most laws focus on individual species after they have become threatened or endangered. This is usually too late to stop the decline or even extinction of the species.
5. While the existing ESA has as its purpose "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved...", there are no mechanisms in the statute to accomplish this.
6. There is tremendous regional variability related to the implementation of the ESA which must be recognized. This is based, in part, on the number of endangered species that are known to occur regionally, their life history requirements (e.g., migratory vs. non—migratory), the amount of available habitat and land in federal ownership, the number of federal actions, and the existence of state laws that extend protection beyond that of the ESA. Also important are regional economic concerns, and variability in implementation of the ESA across the nation.
7. Although Habitat Conservation Plans are helpful in encouraging private—public partnerships, additional incentives are needed to involve private landowners in the protection of the larger amounts of land required for habitat protection.
8. The best science practices for Habitat Conservation Plans will require coordination between technical expert resource agencies and locally knowledgeable municipal governments for planning to satisfy not only stringent ESA requirements but also acceptable community standards which thereby affects HCP implementation.
9. A "No Surprises" rule was applied to Habitat Conservation Plans to provide landowners assurances that once approved, their Plan will not change for the life of the Plan. While this eliminates arbitrary and capricious demands for Plan revisions, it also creates a static Plan that may easily fail.

General Policy

This Policy Guide will address endangered species and habitat protection from a planning perspective rather than attempt to cover all aspects of endangered species and the Endangered Species Act. The Endangered Species Act is included in the discussion as it relates to planners and local units of government although not all aspects were intended to be addressed, e.g., providing incentives or compensation to private landowners, or the criteria for determining whether a species should be listed. It is believed that these issues are better dealt with by the federal agencies responsible for implementing the ESA.

APA National and Chapters support legislation and policies that are designed to plan for the preservation of wildlife habitat in order to minimize the possibility of plant and animal species becoming endangered or extinct.

Using guidelines developed by the states, valuable wildlife habitat resources should be identified at the local and regional levels at the earliest stages of planning. This information should then be incorporated into local or regional master plans in order to prevent habitat destruction that threatens potentially vulnerable species and in a manner that protects these sensitive resources from public intrusion, collectors, or other damage. Habitat protection ideally should be as much an element of a master plan as housing and transportation.

The purpose of this approach is to minimize or avoid the listing of species as endangered. Rather, the emphasis should be on protecting ecosystems on a comprehensive basis instead of relying on a narrow, single — species, piecemeal approach. Preservation and protection of animal and plant species and their habitat is important for ecological balance, not just to support the human population.

Specific Policies

SPECIFIC POLICY #1: APA National and Chapters encourage all levels of government to incorporate natural community and biodiversity preservation into their planning process and utilize their authorities to protect these habitats where they exist to sustain natural processes and minimize the likelihood of species becoming extinct. Incorporation of natural community preservation into the planning process includes collection and analysis of relevant data on natural systems and establishment of policies and standards appropriate to protection of the resources.

Reasons to Support Specific Policy #1: Protecting natural system functions is critical to support of human populations. As a result, it is critical that efforts are made to incorporate habitat protection at all levels of government. This should include the identification of rare and sensitive resources, enacting ordinances/laws for protection, working cooperatively with other affected units of government, and providing incentives to encourage protection by the general public.

SPECIFIC POLICY #2: State agencies should establish minimum protection standards and provide technical assistance to local units of government in identifying sensitive habitats, methods of protection and the review of local plans where the state has identified endangered species or their habitat to ensure compliance in the early stages of planning. Local governments, however, should ultimately take the lead in protecting these resources.

Reasons to Support Specific Policy #2: While local units of government bear the responsibility of including habitat protection in their comprehensive plans, they typically lack the expertise and resources needed to identify sensitive resources and develop protection standards. Requiring the state to develop guidelines, identify sensitive resources, and review local comprehensive plans will provide greater certainty to planning agencies and property owners that state and federal requirements have been met. Using the state's expertise and resources, local governments can ultimately take the lead in protecting these resources.

SPECIFIC POLICY #3: APA National and Chapters support the use of innovative development policies and practices to ensure the protection of natural systems; this should include the evaluation of compatibility of various land uses with surrounding natural systems, and the use of buffers to protect sensitive natural resources.

Reasons to Support Specific Policy #3: It should be recognized that there may be many reasons, such as the presence of wildlife habitat, wetlands, or drinking water sources, that requires certain limitations on development; a pro-active planning approach can identify a reasonable level of new construction that can be accommodated while protecting the resources. By employing techniques that identify particularly sensitive resources, planning for development that may be compatible with the need to protect those resources, and being innovative and flexible in accepting new ideas, habitat protection can be achieved without necessarily prohibiting growth.

SPECIFIC POLICY #4: APA National and Chapters support state and federal Endangered Species Acts as a "safety net" to protect species that have become threatened with extinction. These Acts should identify mechanisms to protect both the species and their habitat. APA supports states that have laws more restrictive than federal acts.

Reasons to Support Specific Policy #4: Protection must be afforded species that become threatened with survival despite the best efforts made at all levels of government. States should be allowed to enact legislation that provides greater protection to species than afforded by the federal Act, extends protection to state listed species, and provides technical assistance to local units of government and the public in protecting endangered species and their habitat.

SPECIFIC POLICY #5: APA National and Chapters support a strong federal ESA that is reasonable and uniformly implemented across the country.

Reasons to Support Policy #5: The federal ESA should contain reasonable measures to protect endangered species and their habitat while allowing flexibility to account for regional conditions.

Equally as important, the federal agencies responsible for implementation of the ESA should do so consistently across the country.

SPECIFIC POLICY #6: APA National and Chapters support legislation or policies that encourage private landowners to develop Habitat Conservation Plans where endangered species have been identified that require long-term conservation commitments in exchange for the ability to develop land in accordance with the plan.

Reasons to Support Specific Policy #6: Habitat Conservation Plans should fully integrate conservation planning and impacts to biological resources. Local governments can use these documents in their decision-making processes and requirements for mitigation once development plans are approved. The plans should be reviewed and revised, if needed, at least every ten years.

SPECIFIC POLICY #7: APA National and Chapters support the need for including the concept of a "No Surprises" policy in the development of HCPs, however, believe the HCP should be required to be re-examined on a 10-year basis or a period determined in an implementing agreement and updated where new information supports revisions.

Reasons to Support Specific Policy #7: Entities developing a HCP should not be subject to arbitrary or capricious requirements to revise their Plan. Developers, citizens, and local officials need to proceed with their projects with some level of certainty that the rules will not change without sufficient reason or notice. While the HCP cannot be continually revised, it must be acknowledged that as new information becomes available and circumstances change over time, the re-examination and revising of the HCP is warranted.

SPECIFIC POLICY #8: APA National and Chapters endorse the following policies and techniques for habitat protection planning (1-5 adopted from "Habitat Protection Planning: Where the Wild Things Are — PAS Report 470/471):

1. Maintain large contiguous areas of open space, rather than fragmented parcels.
2. Establish priorities for habitat and species protection so that the distribution and abundance of these species is not compromised.
3. Protect rare vegetative features and steer development toward more "common" areas.
4. Coordinate local habitat protection efforts throughout the region in which endangered species have been identified.
5. Balance public recreational opportunities with habitat protection efforts.
6. Restoration/creation of habitat should be a component of the protection plan although priority should be given to the protection of existing high quality habitat.
7. Identify and protect wildlife corridors which can be incorporated into the habitat protection plans as linkages to larger blocks of land; this would include riparian corridors and other greenways.

Many of these can be accomplished, in part, by incorporating habitat protection at the comprehensive planning level and using techniques such as conservation subdivision design.

SPECIFIC POLICY #9: APA National and Chapters support retaining the existing process of listing species despite focusing policy on habitat preservation. The process must be based on science, adequately funded, and not subject to arbitrary time limits or extraneous factors. An additional process of identifying endangered habitats or ecological systems should be developed as a compliment to the existing process of listing species.

Reasons to Support Policy #9: The classification of a plant or animal species as endangered or threatened must be based on scientific data and not on factors such as economics, which should be addressed as protection strategies are implemented. The contents of a recovery plan or HCP, however, must consider a much broader range of issues, including the potential impact to economic and social structures.

SPECIFIC POLICY #10: APA National and Chapters encourage the acquisition of large, contiguous environmentally sensitive lands by public agencies in rapidly urbanizing areas (e.g., forest preservation districts) to ensure that such lands remain as viable and healthy wildlife communities, despite surrounding development pressures.

Exceptions

Exceptions from the General Policy Position or Specific Policy Positions supported by specific findings and reasoning.

NONE TO DATE

Amendments

This Policy is subject to amendment for the purposes of the following:

1. adding findings or supplementing previous findings with new data or interpretations; and
2. adding Specific Policy Positions based on new findings or reasoning that tend to add to or qualify, but not reject entirely, the General Policy Position, one or more Specific Policy Positions, or one or more Exceptions from Policy Positions.

NONE TO DATE