



NATIONAL ROUND TABLE ON THE ENVIRONMENT AND THE ECONOMY
TABLE RONDE NATIONALE SUR L'ENVIRONNEMENT ET L'ÉCONOMIE

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National Round Table on the Environment and the Economy

GREENING the BUDGET 1998

Economic Instruments to Encourage Habitat Protection on Private Lands - Notes from Discussion

Ottawa, October 22, 1997

Setting the Parameters

From the outset, participants emphasized the importance of broadening the goal beyond endangered species. It is necessary to also address critical habitat for other species (vulnerable, etc.), "otherwise, we just keep reacting as more and more species become endangered."

It was generally agreed that mechanisms to accomplish conservation goals that did not require additional financial resources had a much greater chance of success in the current fiscal and political climate.

While it was recognized that a different set of incentives is needed for achieving conservation goals on public lands, informing private land owners of the broader context of these goals was seen as important.

There was some concern that the discussion paper prepared for the meeting emphasized tax-based approaches. In the ensuing discussion, a number of other non-tax-based approaches were put forward, and the importance of developing broad policy goals was emphasized.

Participants considered the incentive proposals for endangered species on private lands put forward in a discussion paper by Ian Attridge of the Canadian Institute for Environmental Law and Policy.

It was agreed that the workshop would work through the recommendations as presented in the paper.

Discussion of Proposals

A. CREDIT FARMERS AND WOODLOT OWNERS FOR CONSERVATION INVESTMENTS

1. Disallow costs of clearing or levelling land, unless an appropriate agency has either exempted the property or such clearing or levelling is carried out in accordance with an approved conservation or restoration plan. The application of this measure could be limited in its geographic scope by designating areas where it would (or would not) apply.

Participants emphasized the critical importance of removing tax incentives that inadvertently destroy significant habitat. This proposal was seen as a good first step. However, participants thought it would be difficult and costly to administer, and would raise serious federal/provincial jurisdictional issues. It was therefore suggested that this good idea be approached with caution.

There were a number of suggestions for controlling administrative costs:

Have most of the administration done by provincial governments or agencies. It was noted that the proposal falls almost entirely into provincial areas of tax and policy. The need to avoid clashes between various agencies and government departments was emphasized. As well, it would be appropriate for the NRTEE to consider another forum which brings provincial people into this discussion.

- Avoid the use of new administrative infrastructure; consider the possibility of using existing administrative structures (e.g. Agriculture Canada).
- There is an important barrier - the cost of professional expertise. A peer review process potentially takes out the "professional cost" problem, though this raises questions about who does the reviews?

Simply have the farmer or woodlot owner make a statement when claiming a deduction: "These expenses were not incurred draining wetland."

While participants recognized a need to control administrative costs, they felt that the requirement for identifying important and sensitive habitats was a necessary expenditure and would have to be funded through public sources.

It was generally agreed that just changing the Income Tax Act would not be sufficient to save significant habitats, but it was seen as "a start", and as encouraging adoption of a broader range of mechanisms to support conservation. It was understood that initiatives beyond the tax system might require "new dollars".

It was felt that the proposal had the best chance of success if it were presented in a broader context. This meant taking a longer term approach, rather than going quickly to the Finance minister with the 1998 budget in mind. Such an approach would allow for:

- identifying which lands would qualify and building a database;
- identifying which subsidies contribute to sustainable development and which are unsustainable;
- providing information, and educating the private owner (this would include providing a regional public/private context, e.g. the Yosemite to Yellowknife ("Y to Y") proposal);
- consideration of pilot areas or projects.

It was suggested that the proposal itself could be gradually implemented: it could first apply to a limited geographic area and evolve over time — incrementally building on the existing administrative structure as required.

There was very strong support for reiterating a recommendation made by the NRTEE several years ago for a redirection of agricultural subsidies away from commodity production subsidization. Again, a longer term would allow for an effective redirection of subsidies toward conservation.

Finally, the important potential of voluntary programs was also noted. Reference was made to the success of buffer zones in the United States. For example, fencing to keep cattle away from water courses, which benefits both the farmer and habitat. In some areas in the US, subscription by farmers to voluntary buffer zone programs has been almost 100 percent.

2. Enable expense deductions against current-year income of costs related to plan preparation, specific conservation or environmental mitigation equipment, and the improvement of habitat for wildlife, where

there is a conservation or restoration plan approved by an appropriate federal, provincial or other agency. Ideally, these deductions would be without restriction on amount or period of carry forward, but, if necessary, the initiative could be made subject to certain caps, thresholds, documentation or non-reimbursement requirements, time limits or percentages of area or income, and could be limited to the habitat of species at risk.

There was a clear preference for not limiting the proposed expense deductions to habitat of species at risk. Participants called for inclusion of “significant, ecologically important or sensitive habitats, and anything that affects watersheds.”

An administratively simple approach would be to make initiatives on all private lands potentially eligible. Alternatively, the potential eligibility could be limited to specific lands. In either case, the onus would be on the landowner to demonstrate the public benefit of a given initiative.

There were two aspects to this discussion:

- making provision for equipment and activities that would enhance conservation; and
- the donation of easements for areas not in production and where owners are prepared to agree to them (see item D7)

equipment

It was agreed that this problem could be fixed by extending the existing list of equipment to include eligibility for conservation-oriented items e.g. no till equipment, flush bars, alternate pumping and watering systems.

The group considered activities such as fencing to protect habitat should also be eligible. Most in the group felt that for a farmer or business person, there was already eligibility for this deduction under other claim categories. Yet court cases have prevented this in some situations.

Participants developed a scenario of how this proposal could be evolved to protect more conservation lands. The starting point would be a list of conservation or restoration plans approved by an appropriate federal, provincial or other agency. It was noted that the Canadian Wildlife Service already has such a list, though it is very limited. What is needed is a longer list of broad national, regional or international plans that “qualify”. The landowner has to get his or her initiative linked to one of these plans in order to qualify.

Additions to the list would come from:

- individual landowners (with ideas for ways to conserve or restore portions of their land in a way that demonstrably benefits the public);
- organizations (angler and hunter associations, land trusts, etc.)

Two key challenges would be:

- developing effective criteria for evaluating the public benefit of private activities on private land; and
- evaluating the value of land taken out of productive use.

It was suggested that giving selected conservation organizations a reviewing role for all individual proposals

would be one way of helping to ensure legitimacy and cost effectiveness.

Evaluating the land set aside becomes even more challenging if it is not currently used for business purposes, if the species on the land are not endangered or if an easement is not included in the proposed activity.

Participants said two things were needed:

1. Information and education so that private landowners can understand what can be accomplished in habitat conservation and how such conservation measures can be implemented.
2. Clarification of Revenue Canada guidelines so that private land owners can understand what may be valid claims one example is eco-system investments which are deemed to be business expenses.

In conclusion, a participant emphasized the role of voluntary initiatives, which may not be looking for money or tax breaks, but would appreciate technical assistance for conservation-related activities.

B. ESTABLISH AN INCOME TAX CHECK-OFF FOR CONSERVATION

3. Establish an income tax check-off program to enable taxpayers to direct certain tax refunds, rebates and premiums towards wildlife habitat conservation. New sources should be contemplated and legislative barriers removed, although further authorization would be required. Payments from the fund would require matching grants from private and other governmental sources, as well as accountability measures.

While some participants thought the dollar benefits from such a program would be small, others noted indications that environmental concerns are again rising in the public's mind.

There is a particular opportunity presented by an anticipated massive transfer of funds (in the form of bequests) from one generation to the next.

In general, participants felt that this proposal, with its matching grant component, represented an opportunity for "new" money that should not be ignored.

It was noted that the program would need to be designed so as not to cost the government. Revenue Canada would save administrative costs in not having to issue thousands of small refund cheques.

The check-off would be done in one line on the income tax form. The taxpayer could then claim the amount checked off as a charitable donation in the next year.

A potential complication would be other sectors—arts, health, etc.—wanting a check-off as well and a proliferation of eligible organizations. A suggested solution was a Millennium Fund with one check-off for all participating organizations, and a process for allocating the funds to distinct areas. It was felt, however, that people would more readily contribute to a specific activity of their own choosing such as conservation or the arts.

Another potential problem was the question of who pays if there is a reassessment and the refund is affected. The discussion paper proposes a default option, with the taxpayer being given the opportunity to reclaim part or all of the refund.

A participant commented: "The paper is forcing the discussion into a 'greening the budget' mode. A better

approach might be to allow bequests to go into a special fund for conservation, supplemented with court fines, etc.”

C. EXTEND TRUST TAX BENEFITS TO STIMULATE CONSERVATION FUNDING

The discussion paper proposed that the taxation of trusts be examined to provide incentives for contributing funds towards conservation. Such modification may include:

4. Provide a lower tax rate or a deduction for the transfer of property into or out of a trust where some percentage (e.g. 10%) or more of the income (or capital) is distributed to a qualified conservation organization for habitat conservation purposes;
5. Increase the time period for a deemed disposition of trust capital property from 21 years to 25 years where some percentage (e.g. 10%) or more of the income is distributed to a qualified conservation organization for habitat conservation purposes in ten or more of those years; or
6. Provide that income retained within a living trust will not be taxed at the highest individual marginal tax rate, but rather the lowest rate or the normal progressive rates, where some percentage (e.g. 10%) or more of the income is distributed to a qualified conservation organization for habitat conservation purposes.

Participants did not see significant tax advantages arising from proposals 4 or 5. It was noted that trusts already have a lot of discretion on how they spend their money, and that charitable trusts are tax exempt. Income is taxed in the hands of an individual beneficiary, but the beneficiary has the opportunity to donate to conservation.

Participants did not know whether proposal 6 represented a significant opportunity. It would be necessary to consult with someone familiar with *inter vivos* trusts.

D. OTHER PROPOSALS TO ENCOURAGE LAND AND AGREEMENT DONATIONS

7. Incorporate directions to fully value long-term conservation agreements for lands either certified as ecologically sensitive or otherwise into the *Income Tax Act* and the Regulations.

There was strong support for this proposal.

Considerable discussion took place on the practice of easements for habitat protection. There is a process for the certification of easements for donation (ESL) which is recognised by Revenue Canada and assures the legitimacy of the valuation and also assigns appropriate monitoring provisions for the easement.

There was agreement that the process in place for ecologically sensitive lands receives a sufficiently broad interpretation with respect to species conservation. It was noted in passing that the provision does require broadening of the grounds for easements: cultural, historical, etc. The existing draft should be reviewed for anomalies.

The ESL process brings with it barriers that can stand in the way of donations of lands significant for conservation purposes:

- the process has many levels and is slow (not critical)
- it provides for penalties if you change land use at a later time, and is highly punitive for non-compliance.

After discussion, it was agreed that these provisions are reasonable protections for the taxpayer, but they do stand in the way of donations. It was also emphasized that easements should be valued the same under either the usual 75% or the ESL 100% systems.

The current practice of subjecting transferred ecologically sensitive lands to capital gains tax was seen as a significant barrier to land donation. Participants called for restating the 1995 NRTEE recommendation that capital gains on donations of environmentally sensitive lands be exempted. This was seen as critical because of the opportunity represented by intergenerational land transfer.

8. Recognize in one transaction the donation of property at a discounted price, called a “bargain sale”.

There was also strong support for this proposal.

It was noted that purchasing at a bargain rate can be done now, but it is cumbersome and involves financial risks. The conservation organization purchases the land at the full market price, and then the vendor donates some of the money back for a tax receipt. The conservation organization has to trust the vendor to do so, as having a written agreement would invalidate it as a gift. Furthermore, it requires the conservation organization to raise the bridge financing, which can be difficult and even prevent some large-scale donations from proceeding.

There was support around the table for a “split receipt” approach, analogous to a \$100 a plate fundraising dinner, where \$20 is considered payment for the dinner and \$80 (for example) is considered a donation eligible for a tax receipt. In the case of a property donation to a conservation organization, the split receipt would designate the difference between the appraised value and the “bargain” transaction price as a donation. The conservation organization then only has to raise the transaction price in order to proceed.

9. Negotiate with the United States and other countries to credit and streamline cross-border donations, and remove impediments in Canada’s *Income Tax Act* and Regulations.

The current tax situation was also seen as a serious impediment to Americans donating Canadian lands to Canadian conservation organizations, and so there was very strong support for this proposal.

It was noted that US residents wanting to donate Canadian lands to a Canadian organization sometimes make donations via a US organization. But, without certain cumbersome procedures, this might be considered “money laundering” and the Canadian organization would risk losing its non-profit status. As well, this indirect procedure adds to the transaction cost.

Participants called for an agreement with the United States that would:

- tie in directly to biodiversity;
- focus on priority areas; and
- use equivalency recognition as a model.

It was recognized that international trade implications would need to be considered.

One suggestion as an interim measure would be for the Canadian and US governments to each pick one organization to handle the exchange mechanism for this type of donation. Participants did not see this as an ideal approach longterm, since donations are most often based upon a donor's relationship with a particular organization.

Participants saw an agreement with the US as a priority, but ultimately wanted to see agreements with other countries as well.

Summary

Participants called on the federal government to show leadership by greening the budget and by encouraging the provinces to support conservation initiatives. They emphasized the need to look at the broader picture: e.g. how to prevent draining of key wetlands. It was suggested that the government look at "swamp buster" legislation in the US and consider enacting similar legislation here. It was noted that proposal A1 discussed above addresses this issue to some extent, but that broader policy work is required.

In this context of a broader vision and leadership, participants agreed on eight priorities for the federal government:

Recognize the role of the individual landowner investing in the conservation of habitat. Encourage private land owners to manage their property in a manner that promotes conservation. Use the tax system to encourage individual initiatives in proposing private activities on private lands that contribute to conservation or restoration.

- Invest in conservation programs to protect significant habitat. Leverage these investments through partnerships with the provinces, private businesses and conservation organizations.
- Establish an income tax check-off program for wildlife habitat conservation.
- Allow a capital gains exemption for ecological gifts.
- Recognize in one transaction the donation of property at a discounted price, called a "bargain" sale. A "split-receipt" approach would be one way of doing this, with the difference between market price and bargain price considered a donation.
- Provide GST exemption for land purchases for conservation organizations.
- Establish a Canada/US agreement to resolve the cross-border land donation process for conservation purposes.
- Align spending activities (beyond the budget) with habitat protection goals. Analyze the \$1 billion of spending in agricultural and other subsidies; eliminate those expenditures that inadvertently destroy habitat and redirect part of this to environmental protection.