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### Fishing for Answers: Associate Professor Jessica Owley's Research Reveals Large Gaps in Protection of Endangered Species

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# FISHING FOR ANSWERS



The federal agency chiefly in charge of enforcing the Endangered Species Act is the U.S. Fish and Wildlife Service.



## Associate Professor Jessica

**Owley:** *New research reveals large gaps in protection of endangered species*

Using a case study approach to investigate protection of endangered species, SUNY

Buffalo Law School Associate Professor **Jessica Owley** found significant gaps in how public agencies operate. Her article, “Keeping Track of Conservation,” appears in the latest issue of the *Ecology Law Quarterly*.

According to Owley, the federal Endangered Species Act, like many other environmental laws, has a mechanism where landowners can legally kill or harm endangered species as long as they do so with permission from the appropriate federal agency. Landowners and project developers can obtain what are known as Incidental Take Permits under Section 10 of the Endangered Species Act. “These Section 10 permits legalize the killing of endangered species by imposing avoidance and mitigation requirements,” explains Owley.

Curious to examine what type of mitigation measures were being exchanged for the detri-

mental impacts to endangered species, Owley examined several Endangered Species Act permits in California.

“I started this project because I was interested in seeing whether the federal agencies involved were keeping track of the mitigation measures over time, and because I wanted to know how easy it would be for a member of the public to understand the mitigation requirements,” says Owley.

What she found was more worrisome than she expected. In some cases, the public officials involved did not have copies of the permits themselves, let alone know or understand the details of the mitigation measures.

The federal agency chiefly in charge of enforcing the Endangered Species Act is the U.S. Fish and Wildlife Service. “Because the permit process is run by the local Fish and Wildlife Service office, there was a lack of uniformity in the processes for

drafting, monitoring and enforcing mitigation requirements,” she says.

Owley was particularly interested in where conservation easements are used to meet mitigation requirements. Conservation easements restrict the use of private land for conservation purposes, with individually negotiated terms. Conservation easements can be enforced either by non-profit organizations known as land trusts or by public agencies.

While the Fish and Wildlife Service often uses conservation easements to meet mitigation requirements, it does not hold the conservation easements and does not usually retain a right of enforcement. In her investigations, Owley learned that not only do the agencies fail to retain copies of the conservation easements but they can be tricky to track down through the public recording process.

“All in all, it was a series of chilling discovery, about the mitigation and just general recordkeeping. How can the agencies

be keeping track of mitigation when they don’t have the documents detailing what the mitigation is?” Owley asks.

“As many environmental programs at the local, state and federal level involve mitigation measures, this small study indicates the need for a broader investigation into what is being exchanged for the right to degrade the environment.”

