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**A Performance Audit  
of the  
Endangered Species  
Mitigation Fund**

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# Digest of A Performance Audit of the Endangered Species Mitigation Fund

## Chapter I: Introduction

The Legislature requested information concerning the effectiveness of the Endangered Species Mitigation Fund (the ESMF). The ESMF was established in fiscal year 1998 to provide money for species protection actions for plants and animals identified as sensitive by the state or as threatened or endangered under the federal Endangered Species Act of 1973 (the ESA). Since fiscal year 2002 to the present, ESMF funds available have ranged between \$3 to \$3.8 million while expenditures have ranged between \$2.3 to \$3 million.

Over half of the ESMF's expenditures are obligated contributions made to three federal endangered fish recovery programs—the Upper Colorado River Basin Recovery program, the Virgin River Resource Management and Recovery program, and the June Sucker Recovery Program. Our ESMF review excluded these obligated contributions for the following reasons:

- These programs are each managed by an administrative committee whose membership is broader than just the State of Utah and which is responsible for the success or failure of the program.
- The fish populations covered by these programs are mostly showing positive signs of recovery.
- It is unlikely the state would withdraw from these programs because of ESA requirements.

## Chapter II: Changes to Sensitive Species List Provide Little Effectiveness Information

As a measure of ESMF effectiveness, we were specifically asked to report on the growth or reduction of the state's sensitive species list over time. This list includes both federal and state identified sensitive species—designated Tier I and Tier II species, respectively. However, the differences between the 2005 sensitive species list and the 1998 sensitive species list provide little information that can be used to measure the state's effectiveness in recovering sensitive species. While the number of species on the 2005 sensitive species list (99) is less than the number listed on the 1998 sensitive species list (130), this reduction is the result of a

**Chapter III:  
Effectiveness  
Criteria Need to Be  
Established**

criteria change rather than successful mitigation efforts. However, Utah’s efforts can be credited with preventing two federal candidate species from being federally listed—the Least Chub and the Wasatch Front population of the Columbia Spotted Frog.

To enable a fair analysis of the state’s effectiveness in recovering sensitive species, additional information is needed that would provide a context against which effectiveness could be measured.

**Prioritizing Species Would Provide a Valuable Context.** A methodology that prioritizes species in terms of biological and state risk factors makes sense. By establishing this criterion, the DNR and the ESMF would be able to explain to the Legislature why it focuses funding on the species that it does. The United States Fish and Wildlife Service (USFWS) has a species prioritization methodology that the DNR may want to consider as a model.

**Species Recovery Measures Would Provide Valuable Information.** Time and cost recovery estimates, as well as specific recovery criteria, should be developed for all 71 Tier II species. The General Accountability Office has determined that the absence of these measures negatively impacts the ability to analyze the effectiveness of species recovery. Also, we believe the Legislature needs to have this information in order to formulate appropriate mitigation expectations and make informed decisions.

1. We recommend that the DNR begin to develop information that prioritizes sensitive species by selected risk factors.
2. We recommend that the DNR begin to develop information that identifies estimated time and cost requirements to protect a species.
3. We recommend that the DNR begin to develop objective, measurable criteria of species protection success.

**Chapter IV:  
Management of  
ESMF Discretionary  
Project Grants Can  
Improve**

**Focusing Applicants on Species of Greatest Risk Could Be Beneficial.** Encouraging ESMF applicants to submit projects that focus on mitigating threats to sensitive species posing the greatest risk to the state would help maximize the ESMF’s effectiveness. In the past, the guidance provided to applicants has been to focus on one or more of the 99 species on the state’s sensitive species list. It is unlikely that all 99

species are equally risky from a biological perspective or from the perspective of impacting state growth and development. Consequently, we believe the state's interests would be better served if the ESMF guided applicants toward making project proposals that address threats to species posing the greatest risk.

**Selection Procedures Are Unclear and Lack Documentation.** First, the project selection criteria is unclear because the criteria stated on the project application forms and the criteria used in the selection meeting are not exactly the same. Second, written documentation supporting the project funding decisions of the selection committee is not available. If questions arose as to why one project was funded over another, the ESMF would have a difficult time providing documentation justifying the decision. Third, not all applicants for funding are treated the same. Although DWR submits many projects for consideration, a DWR representative is also allowed to be present while the selection committee is making project and funding choices, but other applicants are not.

**Funding Practices Need Review and Policies Need Development.** The ESMF fund balance appears large ranging from a low of \$400,000 to a high of \$1 million. Consequently, practices impacting this fund balance need to be reviewed. A positive balance is desirable for unexpected circumstances, but a fund balance that is too large reduces the availability of funding for species mitigation and may be interpreted as evidence that funding levels are too high. While fund balance practices need to be reviewed, formal policies and procedures need to be written outlining how the ESMF will be managed and controlled. Currently, no formal policies and procedures specific to the ESMF exist. In our opinion, policies and procedures are necessary for a well-managed program as they increase process understanding and encourage internal consistency.

1. We recommend that ESMF management adopt a proactive approach in soliciting ESMF applications that would be of the greatest benefit to the state.
2. We recommend the ESMF management formalize project selection criteria to be used and then communicate this criteria to all future applicants.
3. We recommend the ESMF management develop a formal process that documents the justification underlying each ESMF funding decision.
4. We recommend the ESMF management develop a project selection process that treats all applicants similarly.
5. We recommend the DNR and ESMF management review and possibly modify practices impacting the ESMF fund balance, including the fund balance level itself.
6. We recommend the DNR and the ESMF communicate to the Legislature the reasons behind fund balances exceeding the established fund balance level.
7. We recommend the DNR and ESMF management develop formal policies and procedures covering all management aspects of the ESMF.

# Chapter I

## Introduction

The Legislature requested information concerning the funding effectiveness of the Endangered Species Mitigation Fund (the ESMF). A comparison of changes between the 1998 and the 2005 sensitive species lists provides little effectiveness information. In order to fairly assess the ESMF's performance, we believe effectiveness criteria needs to be developed within the Department of Natural Resources (the DNR). Some of this criteria will provide the Legislature with information needed to formulate appropriate mitigation expectations and make informed decisions. Nevertheless, the oversight provided by Endangered Species program staff over discretionary projects—those other than the Colorado River, Virgin River, and June Sucker projects—could improve.

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**The ESMF was established to provide money for endangered, threatened or sensitive species in Utah.**

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The ESMF was established in fiscal year 1998 to provide money for species protection actions for plants and animals identified as sensitive by the state or as threatened or endangered under the federal Endangered Species Act of 1973 (the ESA). These endangered, threatened, and sensitive species are all identified in the state's sensitive species list, a subset of the State Comprehensive Wildlife Strategy.

### **Sensitive Species List a Subset of State Comprehensive Wildlife Strategy**

The State Comprehensive Wildlife Strategy was completed by the Division of Wildlife Resources (the DWR) staff in October 2005. This plan categorizes Utah's species of concern into three tiers.

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**Tier I species are federally listed species.**

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Tier I species are those that are federally listed as follows:

- Endangered – species facing extinction
- Threatened – species likely to face extinction
- Candidates – species proposed for federal listing as either endangered or threatened

In addition, Tier I also includes species that have conservation agreements in place. Conservation agreements are formal agreements initiated and lead by the state between the United States Fish and Wildlife Service (USFWS) and one or more parties to address the conservation needs of

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**Tier II species are identified by the state as sensitive based on strong biological data supporting the decline of the species.**

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**Tier III species are of conservation concern, but the biological evidence is not strong enough to identify the species as sensitive.**

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candidate species or species likely to become candidates before they become listed as endangered or threatened. If the conservation agreement actions are unsuccessful, the species may become federally listed.

Tier II species are those that meet the following requirements:

- Strong biological data exists supporting the decline of the species.
- The species goes through a public comment period and is ultimately ratified by the Utah Wildlife Board as a Tier II species.

Tier II species may become potential candidates for federal listing if action is not taken to reverse the species decline.

Tier III species are those showing a decline in numbers or experiencing a decline in habitat; however, the biological evidence is not strong enough to list the species as a Tier II.

The state's 2005 Sensitive Species list contains only species having strong biological evidence supporting the species decline—Tier I and Tier II species. In the past, species that are now classified as Tier III species were included on the list. However, with the DWR's new requirement that strong biological evidence must exist before a species is listed on the state's sensitive species list, Tier III species are no longer included.

### **ESMF Expenditures Began in 1999**

Expenditures from the ESMF were first made in fiscal year 1999 as shown in Figure 1. The yearly fund balances—the difference between funds available and total expenditures—are discussed in Chapter IV.



**Figure 1. Historical Revenues and Expenditures within the Fund.** Fiscal Year 2002 marked the beginning of increased funding and expenditures. (All dollar amounts expressed in millions.)

Fiscal Year	'99	'00	'01	'02	'03	'04	'05
<b>Funds Available *</b>	\$1.60	\$1.40	\$1.50	\$3.40	\$3.00	\$3.60	\$3.80
<b>Expenditures (Obligated) **</b>	.75	.70	.69	1.70	1.70	1.70	1.80
<b>Expenditures (Discretionary)</b>	.35	.20	.41	1.30	.60	.90	1.20
<b>Expenditures (Total)</b>	<b>1.10</b>	<b>.90</b>	<b>1.10</b>	<b>3.00</b>	<b>2.30</b>	<b>2.60</b>	<b>3.00</b>

\* Funds available include all appropriated revenue plus any fund balance from the previous year.

\*\* These are agreed upon contributions made to three federal endangered fish recovery programs—the Colorado River Program, the Virgin River Program, and the June Sucker Program. FY 2002 is the first year all three programs were funded through the Endangered Species Fund.

ESMF funding increased in fiscal year 2002 along with expenditures. In addition, fiscal year 2002 marks the first year contributions to three federal fish recovery programs were all made through the ESMF. In fact, over half of the ESMF’s expenditures are obligated contributions made to these three federal endangered fish recovery programs.

### **Three Federal Recovery Programs Account for Most Expenditures**

Utah participates in three multi partner federal programs to recover fish listed as endangered or threatened under the ESA. These programs are: the Upper Colorado River Basin Recovery program, the Virgin River Resource Management and Recovery program, and the June Sucker Recovery program. Beginning in fiscal year 2002 and continuing on, contributions to all three programs were made through the ESMF.

These three recovery programs are each managed by their own administrative committee. The three administrative committees are made up of representatives from each programs’ participants. In addition to Utah’s representative, program participants generally include various federal agencies, political subdivisions within Utah, and sometimes other states. The administrative committee is responsible for overseeing and/or

**Beginning in fiscal year 2002, state contributions to three federal fish recovery programs were made through the ESMF.**

implementing all activities necessary to achieve program goals and is ultimately responsible for the success or failure of the program.

A technical committee reports to the administrative committee. Members of this committee are biologists and other technical specialists nominated by the program participants. It is the technical committee's responsibility to make recommendations regarding the implementation of recovery actions. This is primarily accomplished through the development of annual work plans. These plans lay out specific projects, project budgets, and responsible agencies. However, the administrative committee makes the final decision as to what projects and what budget amounts are approved for the year.

### **Program Participation Helps Assure Compliance with ESA Section 7**

One of the reasons Utah is a participant in these three federal recovery programs is to help assure future compliance with Section 7 of the ESA. Whenever a federal agency provides any kind of federal assistance to or approval of a project, the ESA mandates that this federal agency consult with the United States Fish and Wildlife Service (USFWS) as to whether project actions could adversely impact a federally listed species. This is called an ESA Section 7 consultation. Because Utah is a participant in these three programs, future Utah growth and development projects that impact the Colorado River, the Virgin River, or Utah Lake are more likely to receive federal approval than not because these programs serve as offsetting mitigation efforts.

All water development projects require some sort of federal approval. If a Section 7 consultation results in an adverse opinion, the project will probably not be approved by the federal agency. So far, water development in Utah has not been impacted by an adverse Section 7 opinion. Consequently, it is unlikely that Utah would withdraw from any of these three programs.

Our ESMF review excluded expenditures from these three programs for the following reasons:

- These programs are each managed by an administrative committee whose membership is broader than just the State of Utah and which is responsible for the success or failure of the program.

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**Working to assure Section 7 compliance increases the likelihood that projects potentially impacting endangered or threatened species will receive federal approval.**

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- The fish populations covered by these programs are mostly showing positive signs of recovery as shown later in Figure 2.
- It is unlikely the state would withdraw from these programs and risk future adverse Section 7 opinions; plus, in 2001, the State of Utah extended the Colorado River Recovery Program cooperative agreement through 2013.

While expenditures made to these programs were not reviewed, the following background information on the three programs is provided to show financial obligations and fish population estimates.

### **The Upper Colorado River Recovery Implementation Program**

This program was implemented to recover four endangered fish: the Humpback Chub, the Bonytail, the Colorado Pikeminnow, and the Razorback Sucker. Utah has been a participant since 1988 when the governor signed a cooperative agreement with the governors of Colorado and Wyoming, the Secretary of the Interior, and the administrator of the Western Area Power Administration. Utah is one of 13 program partners and contributes up to \$744,600 per year to the program.

Approximately \$637,000 is for capital improvements, and Utah's obligation to make this payment ends around 2008. The remaining amount is for operation and maintenance costs, and Utah's obligation to provide this funding ends around 2013. Beginning in fiscal year 2002, Utah's contribution to this program has been made through the Endangered Species Fund.

### **The Virgin River Resource Management and Recovery Program**

This program was implemented to recover two endangered fish: the Woundfin and the Virgin River Chub. The Virgin Spinedace, a fish that was proposed for federal listing and is now under a conservation agreement, is also benefitting from this program. Utah has participated in this program since 1999 when the executive director of the Department of Natural Resources signed a Memorandum of Understanding with the administrator of the Washington County Water Conservancy District and administrators of three federal agencies. Utah contributes \$730,000 per year to this program through the Endangered Species Fund.

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**Utah has participated in the Upper Colorado River Program since 1988.**

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**Utah has participated in the Virgin River Program since 1999.**

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**Utah has participated in the June Sucker program since 2002.**

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## **The June Sucker Recovery Program**

This program was implemented to recover one endangered fish, the June Sucker. Utah has participated in this program since 2002 when the Executive Director of the Department of Natural Resources signed a cooperative agreement with the administrator of the Central Utah Water Conservancy District and administrators of seven other federal and private participants. Utah contributes \$300,000 a year to this program through the Endangered Species Fund.

## **Some Positive Species Recovery Signs Seen**

As noted earlier, the fish covered by these three programs are showing some positive recovery signs based on data reported by each program. Figure 2 identifies the endangered fish, any available recovery goal, and the estimated number of fish around years 2000 and 2005 for all three programs.

**Figure 2. Recovery Data for the Three Federal Fish Recovery Programs.** For most species, the recovery data appears positive; the Colorado Pikeminnow decline is believed to be drought related.

<b>Fish Species</b>	<b>Population Recovery Goal</b>	<b>2000 Estimate or Nearest Available (1997 to 2002)</b>	<b>Latest Available Estimate (2002 to 2005)</b>
<b>Upper Colorado Program</b>			
Humpback Chub	>2,100 adults	3,000	3,000 (Black Rocks/ Westwater)
Colorado Pikeminnow	>2,600 adults	3,100	2,300 (Green River system)
Bonytail	>4,400 adults	0	Restocking (No estimates made)
Razorback Sucker	>5,800 adults	100	Restocking (No estimates made)
<b>Virgin River Program</b>			
Woundfin	Not developed at this time.	143	40,120
Virgin River Chub	Not developed at this time.	221	47,550
Virgin Spinedace *	Not developed at this time.	1226	14,695
<b>June Sucker Program</b>			
June Sucker	Not developed at this time. Immediate program goal to prevent extinction.	388	63,000 **

\* *The Spinedace is not federally listed. It is being recovered under a conservation agreement developed by the State of Utah.*

\*\* *Estimate includes hatchery and refuge population.*

**The Upper Colorado River recovery goals were established within the last five years.**

With the exception of the Virgin Spinedace, all the fish listed in Figure 2 are federally listed as endangered. Because these fish are federally listed, it is the United States Fish and Wildlife Service’s responsibility to identify recovery goals. As shown, only the Upper Colorado River Basin Recovery Program has population recovery goals, and these goals were established within the last five years. The General Accountability Office(GAO) has recently criticized the USFWS for the absence of

recovery goals in its recovery plans. The USFWS has agreed to develop guidance or policy illustrating the need to develop all necessary recovery criteria in recovery plans. Nonetheless, the population estimates for the fish covered by the three programs appear positive for the most part. The Bonytail and the Razorback Sucker are exceptions and restocking efforts are underway.

## **Audit Scope and Objectives**

The Natural Resources, Agriculture, and Environment Interim Committee requested an audit of the Utah Species Recovery Program and the associated Species Protection Account administered by the Department of Natural Resources. We focused on the discretionary expenditures made by the Endangered Species Mitigation Fund. The expenditures to the three federal fish recovery programs were not reviewed for reasons outlined in this chapter.

Overall, these three objectives guided our audit:

- Evaluate the effectiveness of actions funded by the ESMF in preventing the federal listing of species.
- Evaluate the changes to the state's sensitive species list since the ESMF was created.
- Evaluate the effectiveness of discretionary project selection.

## Chapter II

# Changes to Sensitive Species List Provide Little Effectiveness Information

As a measure of the Endangered Species Mitigation Fund's (ESMF's) effectiveness, we were specifically asked to report on the growth or reduction of the state's sensitive species list over time. The differences between the 2005 sensitive species list and the 1998 sensitive species list provide little effectiveness information. While the number of species on the 2005 sensitive species list is less than the number listed on the 1998 sensitive species list, this reduction is the result of a criteria change rather than successful mitigation efforts. Since 1998, one species has been federally delisted and one has been federally listed. However, given the range of both species, we do not view these changes either positively or negatively with regards to Utah's efforts. On the other hand, Utah's efforts can be completely credited with the prevention of two federal candidate species from being federally listed.

### Sensitive Species Decline Due to Criteria Change

A comparison between the 1998 sensitive species list and the 2005 sensitive species list, broken out by listing category, is shown in Figure 3.

**Figure 3. Changes to the State's Sensitive Species List.** While changes can be seen between the 1998 and the 2005 sensitive species list, the decline in state sensitive species is due to a criteria change.

List	Tier I				Tier II
	Federal Endangered	Federal Threatened	Federal Candidate*	Conservation Agreement **	State Sensitive
1998	10	5	6	3	106 ***
2005	9	6	4	9	71

\* Sufficient information exists to propose species for federal listing, but proposed listing is precluded by other higher priority listing activities.

\*\* Species is currently receiving sufficient special management under a conservation agreement to preclude federal listing. If conservation agreement fails, species will be elevated to appropriate category.

\*\*\* In 1998 species now identified as Tier II and Tier III are included. In 2005, only Tier II is included.

**We looked at effectiveness from a broad departmental level rather than from a specific ESMF level.**

**2005 sensitive species list no longer contains species now identified as Tier III.**

In 1998, there were 130 species listed on the state’s sensitive species list (24 species now classified as Tier I and 106 species now classified as Tiers II and III). In 2005, there were 99 species listed (28 in Tier I and 71 in Tier II). As can be seen in Figure 3, this change is the result of a decline in the numbers of state-designated sensitive species. Although the decline in state sensitive species looks like a positive indicator, it is not the result of successful species recovery. Rather, it is the result of tighter DWR criteria used to define a state sensitive species. In 1998, species now classified as Tier II and Tier III were defined as state sensitive species. In 2005, only Tier II species were so defined.

As part of this analysis of changes to the sensitive species list, we were asked to determine the number of species federally delisted and the number of species whose federal listing was prevented since the creation of the ESMF.

### **One Species Federally Delisted While Another Federally Listed**

Since 1998, one Utah species has been federally delisted—the Peregrine Falcon—and one has been federally listed—the Canada Lynx. We do not view these two changes as either positive or negative effectiveness indicators given the range of both species. The American Peregrine Falcon has an extensive range breeding in Mexico, the United States, and Canada, while large portions of the Canada Lynx’s range are in Washington, Montana, and Idaho. In fact, Canada Lynx are not considered residents in Utah because, so far, there is no evidence of reproduction in Utah. Instead, Canada Lynx are considered “dispersers” in Utah since they are believed to move into Utah only when lynx populations are very high.

Interest in federal listing and delisting exists because species on the federal list are under federal control and this federal control can have an impact on Utah’s ability to use its natural resources. Should federal money or right-of-way be necessary for a project, the United States Fish and Wildlife Services (USFWS) must determine that the requested project will not have an adverse impact on any federally-listed species. If the USFWS concludes an adverse impact will result, the project will generally not receive approval from the federal government. As long as a species is on the federal list, federal constraints remain.

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**Species federally listed as endangered or threatened are under federal control.**

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**Only 17 of the 1,300 federally listed species have been recovered and delisted since 1973.**

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**The removal of the Least Chub and the Wasatch Front population of the Columbia Spotted Frog from the federal candidate list can be completely credited to Utah's efforts.**

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**A fair analysis of the effectiveness of state efforts requires more species-specific information.**

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Historical evidence indicates that once a species is federally listed, the species tends to stay on the list for many years. According to a recent General Accountability Office (GAO) report, only 17 of the 1,300 federally-listed species have been recovered and delisted since 1973. As long as a species remains on the federal list, the federal constraints remain. Based on this information, it might seem logical to try and prevent a federal listing from occurring. However, it should be remembered that although Utah may take preventative action, the ultimate listing outcome is rarely under the state's complete control.

### **Utah Prevented Two Species from Federal Listing**

Utah can be credited with preventing two species from moving to the federal list. This prevention can occur when a species is a federal candidate. Species that are federal candidates are those that could be federally listed but have not yet been placed on the list.

Four species were removed from the 1998 federal candidacy list—two for lack of compelling evidence to list and two for implementation of conservation agreements. These two conservation agreements spearheaded by Utah, removed the Least Chub, a minnow-like fish, and the Wasatch Front population of the Columbia Spotted Frog from the federal candidate list. The removal of these species from the candidate list can be completely credited to Utah's efforts since both species exist only in Utah.

While four species were removed from the 1998 federal candidacy list, two were added in 2005—the Yellow-billed Cuckoo and the Gunnison Sage Grouse. Utah is unlikely to prevent these species from being listed as either endangered or threatened. In both cases, a very small percent of the species' range is in Utah.

It should be noted that both DNR and ESMF management do not believe that the success of the ESMF should be assessed solely on the basis of removing species from the federal endangered species list. Instead they believe that habitat acreage purchased and restored as well as ESMF cooperation in responding to local government concerns should also be considered when assessing ESMF effectiveness.

While we have attempted to analyze some of the historical changes between the 1998 and the 2005 state sensitive species lists, we believe that

a fair analysis of the effectiveness of state efforts requires more species-specific information. In particular, information is needed that would provide a context for analyzing changes as well as funding levels. For example, a prioritization of sensitive species by various risk factors would provide valuable information that would allow an analysis of species funding effectiveness.

In addition, little information exists on how long it should take the DNR to mitigate threats to a specific sensitive species or how much that mitigation should cost. Also, species recovery criteria that is both objective and measurable often does not exist. We believe the DNR and the state would benefit by the development of this information which is discussed in Chapter III.

## Chapter III

# Effectiveness Criteria Need to Be Established

Currently, it is difficult to assess the effectiveness of the state's efforts in recovering sensitive species. Changes within the state's sensitive species list could provide potential effectiveness measures, but before that can occur, additional species information is needed. In particular, we believe the Department of Natural Resources (the DNR) should develop further information that:

- prioritizes sensitive species by selected risk factors
- identifies estimated time and costs requirements necessary to protect a species, and
- identifies objective, measurable criteria of species protection success

Species prioritization by risk factors allows an assessment of the appropriateness of relative funding among species. While the Division of Wildlife Resources (the DWR) prioritizes wildlife projects, the species themselves are not prioritized any further than into one of the three tiers discussed in Chapter I. Estimated time and cost requirements allow an assessment of the appropriateness of actions taken and resources used to aid a species, while measurable species recovery criteria allows a determination of species protection success. By developing these criteria, the DNR and the ESMF would be in a better position to present meaningful effectiveness information to both the Legislature and the taxpayers.

Further, the DWR has indicated that some species may require long periods of time (40-plus years) and large amount of money before threats are satisfactorily mitigated. It is also possible that some threats will never be satisfactorily mitigated. We believe the Legislature needs to have this information in order to formulate appropriate mitigation expectations and make informed decisions.

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**Some species may require long periods of time (40-plus years) and large amounts of money before threats are satisfactorily mitigated.**

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## Prioritizing Species Would Provide a Valuable Context

A methodology that prioritizes species in terms of biological and state risk factors makes sense. By establishing this criterion, the DNR and the ESMF would be able to explain to the Legislature why it focuses funding on the species that it does. The United States Fish and Wildlife Service (USFWS) has a species prioritization methodology that the DNR may want to consider as a model.

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**It is unlikely that all 99 species on Utah's sensitive species list are equally risky from a biological perspective or from the perspective of impacting state growth and development.**

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There are 99 species (excluding those species eradicated or being experimentally reintroduced in Utah) on the state's sensitive species list (28 Tier I and 71 Tier II species). It is unlikely that all are equally risky from a biological perspective or from the perspective of impacting state growth and development. To maximize effectiveness, funding needs to be focused on those species posing the most risk to the state, specifically, those in the most biological danger with the greatest potential to economically impact the state.

The USFWS uses a matrix methodology to help prioritize the 1,300 species on the Federal Endangered Species list. The following three broad ranking criteria are used:

- Degree of threat to the species (High, Medium, Low)
- Likelihood of successfully recovering the species (High, Medium, Low)
- Genetic distinctiveness of the species (Yes, No)

In addition, a designation is added to a species ranking if there is conflict with economic activities, like development. This designation elevates the species in priority over other species with the same ranking but without the designation.

A species that has a high degree of threat, a high potential for recovery, and a high degree of genetic distinctiveness would be given a ranking of one, the highest priority ranking. There are 18 priority rankings in all. By prioritizing species, the 1,300 species on the federal list are organized in such a way to help maximize the likelihood of providing funding where it can have the greatest effect.

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**Species prioritization would provide a context against which species funding effectiveness could be analyzed.**

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The federal model provides examples of possible ranking criteria and how the criteria are used. The DNR may choose to adopt these criteria or develop their own. While the federal government is not requiring states to prioritize sensitive species by risk factors as the USFWS does, the state and the Legislature would benefit from species risk prioritization. This information would provide a context against which species funding effectiveness could be analyzed.

There should be an apparent, defensible logic that supports the funding of one species over the funding of another. While species funding might not always rigidly follow the prioritization of a species, prioritization still provides the basis of a defensible funding logic. (For information on historical ESMF discretionary expenditures by species, see Appendix A.)

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**Species prioritization could be used by the Endangered Species project selection committee to pro-actively focus applicants on species of highest risk.**

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Coupled with the project prioritization that the DWR already does, species prioritization based on selected risk factors would enable the DNR to explain to the Legislature why some species are targeted and others are not, and why specific projects were selected for funding and others were not. Further, species prioritization information could be used by the Endangered Species project selection committee in two ways:

- to pro-actively focus applicants on species of most concern (i.e., highest risk) and
- as part of a rational basis for making project selections.

Use of species prioritization information by the ESMF will be discussed more in Chapter IV.

In addition to species prioritization, species recovery time and cost estimates as well as objective measures of species recovery success are needed.

## **Species Recovery Measures Would Provide Valuable Information**

The DNR should ensure that time and cost recovery estimates, as well as specific recovery criteria, are developed for all Tier II species. The GAO has determined that the absence of these measures negatively impacts the ability to analyze the effectiveness of species recovery. Also,

without these measures, there is incomplete information for the Legislature.

Certainly, the DNR has a great deal of information on the state's sensitive species. In particular, the DWR recently completed the State Comprehensive Wildlife Strategy. This plan provides excellent information by species on specific actions that need to be taken to mitigate threats and enable the species to recover.

We believe the DNR should now build on this information by providing time and cost estimates for recovery as well as objective, measurable recovery criteria. This effort would probably be most effective by starting first with those species prioritized in the highest risk categories.

A 1988 amendment to the Endangered Species Act (ESA) requires the USFWS to incorporate, to the maximum extent practicable, three key elements in each endangered and threatened species recovery plan:

- Site-specific management actions—descriptions of such site-specific management actions to achieve the plan's goal for the conservation and survival of the species.
- Time and cost estimates—estimates of the time required and costs necessary to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps towards that goal.
- Recovery criteria—objective, measurable criteria which, when met, would result in a determination that the species be removed from the list of threatened and endangered species (i.e., delisted).

The GAO has recently stated that without these three key elements, a fair assessment of species protection effectiveness cannot take place. In an April 2006 release, the GAO criticized the USFWS for not adequately addressing all three elements in their recovery plans for endangered and threatened species (Tier I species).

### **Tier II Species Lacking Time and Cost Estimates as well as Recovery Criteria**

The State Comprehensive Wildlife Strategy, completed in October 2005, contains specific, prioritized actions necessary to mitigate threats to

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**Time and cost estimates as well as recovery criteria are necessary for an assessment of species protection effectiveness.**

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**The Legislature needs to have time and cost estimates in order to formulate appropriate mitigation expectations and make informed decisions.**

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Tier II species as well as all other species covered by the plan. These specific actions are analogous to one of the elements noted as essential by the GAO (i.e., site-specific management plans). However, time and cost estimates as well as objective, measurable recovery criteria are generally not available for Tier II species.

The DWR staff expressed concern over developing and providing estimates of costs and time required to mitigate species threats. It is possible that some species will require long periods of time (40-plus years) and large amounts of money before threats are satisfactorily mitigated. While the resulting estimates may be alarming, we believe the Legislature needs to have this information in order to formulate appropriate mitigation expectations.

Both the DWR and ESMF staff expressed concern over the development of objective, measurable recovery criteria as well. The DWR staff believe that successful mitigation may not have a finite measurable ending point, that mitigation may continue indefinitely. If this is the case, then the Legislature should be made aware of those species in order to have reasonable mitigation expectations. Further, the ESMF staff believe it will be difficult to reach a consensus of opinion among biologists as to what constitutes evidence of species recovery or successful mitigation. While we agree this task may be difficult, we also believe it is necessary. Without these criteria, the ESMF will not be able to demonstrate species success, or ultimately, program effectiveness. Consequently the DNR should ensure this information is developed.

In summary, it is currently difficult to assess the effectiveness of the state's efforts in recovering sensitive species. In our opinion, the prioritization of species by risk factors and the development of recovery time and cost estimates as well as objective, measurable recovery criteria would provide needed information to enable the DNR and the ESMF to provide logical effectiveness measures to the Legislature.

## **Recommendations**

1. We recommend that the DNR begin to develop information that prioritizes sensitive species by selected risk factors.

2. We recommend that the DNR begin to develop information that identifies estimated time and cost requirements to protect a species.
3. We recommend that the DNR begin to develop objective, measurable criteria of species protection success.



## Chapter IV

# Management of ESMF Discretionary Project Grants Can Improve

Key procedures used to allocate and control Endangered Species funding can improve. First, the Endangered Species Mitigation Fund (ESMF) grant application process should more actively encourage applications that focus on species and projects of highest priority. If applicants for funding are not well focused, then the effectiveness of the fund may ultimately suffer. Second, the selection process procedures for awarding ESMF project grants are unclear, do not provide necessary decision documentation, and do not treat all applicants similarly. Decisions need to be clear, well documented and equitable, particularly when taxpayer money is involved. Third, ESMF funding practices need to be reviewed and policies need to be written.

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**The ESMF grant procedures are fairly informal.**

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ESMF discretionary project grants are awarded once a year by the ESMF project selection advisory committee made up of industry and wildlife representatives. Prior to this project selection meeting, the ESMF program administrator solicits, collects and summarizes all the project proposals received from various sources. The Division of Wildlife Resources (DWR) submits the majority of the project proposals and receives the majority of the discretionary funding. Project summary information is sent out to the selection committee for their review prior to the April selection meeting.

The selection committee's annual April meeting results in a prioritized list of projects and funding. This prioritized list is then presented for approval to the DNR's executive committee comprised of all DNR division directors plus the executive director. The DNR's executive director has final ESMF project and funding approval. Upon final approval, notifications of project and funding awards are sent to all who applied.

## **Focusing Applicants on Species of Greatest Risk Could Be Beneficial**

Encouraging ESMF applicants to submit projects that focus on mitigating threats to sensitive species posing the greatest risk to the state would help maximize the ESMF's effectiveness. In the past, the guidance provided to applicants has been to focus on one or more of the 99 species on the state's sensitive species list. Beyond this general guidance, the applicants are free to choose and propose projects on whichever species they want; thus, the ESMF's funding choices are limited by what the applicants choose to propose rather than what would best serve the state's interests.

It is unlikely that all 99 species are equally risky from a biological perspective or from the perspective of impacting state growth and development. Yet, the general guidance currently given treats species as though they are equally risky from both a biological and economic perspective. We believe the state's interests would be better served if the ESMF guided applicants toward making project proposals that address threats to species posing the greatest risk.

In fairness, the ESMF staff have not had the information necessary to focus project applicants beyond the general designations of endangered and protected species. Therefore, the prioritization of species, discussed in Chapter III, would be a valuable tool for the ESMF staff. In short, this tool would allow the ESMF to identify those species posing the greatest state risk and then encourage applications focused on those species.

This species focus would then allow the October 2005 State Comprehensive Wildlife Strategy to be put to optimal use. In this plan, the specific actions necessary to protect each state species of concern are listed and prioritized in importance. Thus, not only could the ESMF encourage applicants to focus on species of greatest state risk, but they could also encourage applicants' projects to focus on high-priority, species-specific actions.

These two pieces of information would allow the ESMF to take a proactive stance when soliciting proposals, a stance recently encouraged by the DNR's executive director. By encouraging project proposals directed at high-risk species and focused on high-priority actions, the potential effectiveness of the ESMF could be enhanced.

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**The general ESMF guidance currently given treats species as though they pose equal risk to the state from both a biological and economic perspective.**

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**A species focus would allow the October 2005 State Comprehensive Wildlife Strategy to be put to optimal use.**

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## Selection Procedures Are Unclear and Lack Documentation

The project selection procedures used by the ESMF selection committee are not clear or well documented. First, the project selection criteria is unclear because the criteria stated on the project application forms and the criteria used in the selection meeting are not exactly the same. Second, written documentation supporting the project funding decisions of the selection committee is not available. If questions arose as to why one project was funded over another, the ESMF would have a difficult time providing documentation justifying the decision. Third, not all applicants for funding are treated the same. Although DWR submits many projects for consideration, a DWR representative is also allowed to be present while the selection committee is making project and funding choices, but other applicants are not.

The ESMF awards project grants rather than contracts, and this seems reasonable given the difference between the two. According to the federal Office of Management and Budget, a grant is used when the principal purpose is to accomplish a public purpose authorized by statute, while a contract is used when the principal purpose is to acquire property or services for the direct benefit or use of government. According to the director of the Division of Purchasing, the *Utah Code* has statutory language covering contracts (i.e., the Procurement Code) but is silent on the subject of grants. Nonetheless, we have taken the underlying basis of the Procurement Code—that of ensuring process clarity and treatment equitability—and used that basis to suggest improvements to the ESMF’s selection process.

### Project Selection Criteria Is Unclear

There is a lack of clarity as to the actual criteria used by the project selection committee when selecting projects to fund. ESMF staff indicated that three criteria are used during the selection process; however, these criteria are different from what is stated on the application and in the ESMF brochure. Figure 4 compares the selection criteria identified on the application and the selection criteria used by the ESMF funding committee.

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**The ESMF awards project grants rather than contracts. A grant is used when the principal purpose is to accomplish a public purpose authorized by statute.**

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**Figure 4. ESMF Decision Standards.** The criteria on the application are not exactly the criteria used by the committee.

Application Criteria	Advisory Committee Criteria
<ul style="list-style-type: none"> <li>• Project Deliverables Consistent with Organizational Mission</li> <li>• Benefits to Endangered and Protected Species</li> <li>• Fiscal Responsibility</li> <li>• Agency and Public Involvement and Commitment</li> <li>• Consistency with Laws and Programs</li> <li>• Other Contributions</li> </ul>	<ul style="list-style-type: none"> <li>• Potential Lawsuits or Status of Species</li> <li>• Existing Funding Commitments (i.e., Cooperative Agreements)</li> <li>• Number of Partners and Amount of Matching Monies</li> </ul>

**If the selection criteria is not clearly communicated, then applicants may not adequately address what is important to the selection committee.**

In addition to the application criteria, the ESMF brochure—which provides information about what kinds of projects are eligible for funding—states that selection priority is given to on-the-ground actions instead of research, planning, or monitoring. However, no evidence of this priority is obvious in the criteria used by the selection committee.

Essentially, neither the brochure nor the application criteria appear to be exactly what the advisory selection committee uses. In the interest of process clarity, the criteria told to the applicants and the criteria used by the selection committee should be the same. If the selection criteria is not clearly communicated, then applicants may not adequately address what is important to the selection committee.

Since worthy projects may be rejected simply because the actual selection criteria was not clearly stated, the ESMF program administrator should take this opportunity to formally identify strong project selection criteria. In our opinion, one strong criterion would be the priority ranking of the species (i.e., the result of the species prioritization discussed in Chapter III) and another would be the priority ranking of the threat mitigation actions proposed in the project. Further, the criteria should be specific where possible. For example, if matching money is to remain a criteria, the level of match required (1 to 1; 2 to 1) should be specified.

Once criteria has been formally adopted, the ESMF program administrator should ensure that all applicants have a clear understanding of that selection criteria.

### **Selection Documentation Is Not Available**

The selection committee does not adequately document the underlying basis of project selection decisions. Accountability requires a written, logical justification of individual selections, especially when taxpayer money is used to fund all ESMF project grants. Procedures used by the Commission on Criminal and Juvenile Justice (CCJJ)—a state agency that awards many state grants—could provide useful elements for the ESMF to model.

Our observation of the April 2006 advisory selection committee meeting confirmed committee members do not utilize formal project ratings. Instead, the project selection process was informal. The group discussed each project and then discussed whether or not it deserved to be funded. In making these funding decisions, the members made no documented use of criteria. Instead, it appeared to be more of a negotiated consensus form of decision making. When a consensus was reached among the members, a vote was taken to show that consensus. The ultimate output of this work was a prioritized list of projects and approved budgets.

References to past selection committee processes imply more formality and rigor, but the documentation of these processes was not maintained. For example, past selection committee meeting minutes imply that individual selection committee members formally ranked projects. However, no documentation of these rankings or how they were used in the final decision-making process was found.

Another example concerns the past use of a project selection decision matrix. The following statement was found in the ESMF's *Guidelines for the Submission of Proposals*: "Proposal evaluation is based on a decision matrix with several decision factors as included in the instructions." Again however, no documentation of the decision matrix and how it was used to make project selections was found.

Based on the informality of documenting the process, the ESMF staff would have a difficult time logically justifying the underlying rationale of

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**During the April 2006 selection committee meeting, we observed no documented use of criteria by the members.**

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**The ESMF staff have a duty to logically document the underlying basis of each decision since taxpayer money funds the ESMF.**

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each funding decision. We believe the ESMF staff have a duty to logically document the underlying basis of each decision since taxpayer money funds the ESMF.

To provide documentation of the underlying basis of each decision, the ESMF program director could model the ESMF methodology after the grant selection methodology used by other state agencies. For example, one state agency that awards many state grants, the CCJJ, uses the following elements in its grant award process:

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**By adopting elements of other grant award processes used in state government, the ESMF would be able to provide justification underlying project selection decisions.**

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- Formal selection criteria
- The weighting of criteria in importance
- A project ranking by each selection committee member using chosen project selection criteria
- The ultimate selection of projects based, in large part, on the overall ranking scores received

The CCJJ keeps their records on file for three years and uses these records to explain grant awards. By adopting this or a similar methodology, the ESMF would be able to account to the Legislature and the taxpayers by providing a logical, defensible justification underlying project selection decisions.

### **Funding Applicants Not Treated Similarly**

The director of the DWR is allowed to be present as an advisor while the ESMF project selection committee is making project selection decisions. The DWR is the state's wildlife expert and does submit the majority of the projects under consideration. However, other public and private entities submit projects as well, and representatives from these entities are not present during the selection process. All applicants for funding should be treated similarly during the project selection process.

For all applicants except the DWR, the ESMF project selection committee bases its decision strictly on the written application submitted. A DWR representative is present during the deliberations for project selection and provides additional information on DWR projects and funding needs as well as additional information on other applicant's projects. Applicants other than the DWR are not present during the project selection decisions and so cannot present any additional project information to the ESMF project selection committee. This creates an

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**Representatives from the DWR are present during the project selection process while other applicants are not.**

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inequity in the current project selection system. To eliminate this inequity, the ESMF project administrator could do the following:

- Allow all applicants to make project presentations to and answer questions from the ESMF project selection committee.
- Allow no applicant to be present during project selection and funding deliberations.

The ESMF program administrator has indicated that the DWR representative provides valuable insight into the worthiness of a proposed project. For example, the DWR knew that one 2006 applicant had already received a substantial federal grant for the project being proposed. This raised the question of why a large ESMF grant was also being requested for the same project.

Since the DWR is the state's wildlife expert and all wildlife projects must ultimately be approved by the DWR, the ESMF program administrator may have a legitimate point. We identified two possible modifications to the existing process that would take advantage of DWR's expertise, while still treating applicants similarly. These modification suggestions are the following:

- The DWR is allowed to suggest questions for the selection committee to ask applicants during their project presentations. The selection committee could then weigh the answers and make their decision.
- A DWR representative is made available for individual project consultation upon selection committee request.

A different way to handle the equitability issue would be for the ESMF to change its existing process and target a percentage of the ESMF funding to the DWR exclusively. The remaining percentage would be targeted to all other interested groups. In this way, the DWR's projects would compete amongst themselves. In addition, the DWR's expertise could be used with the funding targeted to other interested groups since the DWR is no longer competing for that funding. The State of Colorado targets one of its endangered species funds in this way.

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**One way to take advantage of DWR's expertise might be to have a DWR representative available for individual project consultation upon committee request.**

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By clarifying project selection criteria, documenting the methodology justifying project selections, and treating all applicants in a similar fashion, the ESMF fund administrator will take significant steps toward strengthening the ESMF funding process.

## **Funding Practices Need Review and Policies Need Development**

The ESMF fund balance appears large. Consequently, practices impacting this fund balance need to be reviewed. A positive balance is desirable for unexpected circumstances, but a fund balance that is too large reduces the availability of funding for species mitigation and may be interpreted as evidence that funding levels are too high.

While fund balance practices need to be reviewed, formal policies and procedures need to be written outlining how the ESMF will be managed and controlled. Currently, no formal policies and procedures specific to the ESMF exist. In our opinion, policies and procedures are necessary for a well-managed program as they increase process understanding and encourage internal consistency.

### **ESMF Fund Balance Practices Need Review**

The ESMF's year-end fund balance appears large, generally \$500,000 or more. Two reasons have been given for these large balances. First, the DNR informally encourages an ESMF fund balance of \$500,000 primarily because of revenue uncertainty. Second, not all project money awarded by the ESMF is actually spent. Fiscal year-end unexpended money reverts to the ESMF general fund balance for reallocation. Historical ESMF fund balances are shown in Figure 5.

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**The ESMF's year-end historical fund balance has ranged from a low of \$400,000 to a high of \$1 million.**

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**Figure 5. ESMF Fund Balances Over Time.** Fund balances since fiscal year 2003 are higher than those in previous fiscal years. (Dollars expressed in millions.)

Fiscal Year	'99	'00	'01	'02	'03	'04	'05
<b>Funds Available*</b>	\$1.60	\$1.40	\$1.50	\$3.40	\$3.00	\$3.60	\$3.80
<b>Expenditures</b>	1.10	.90	1.10	3.00	2.30	2.60	3.00
<b>Fund Balance</b>	.50	.50	.40	.40	.70	1.00	.80

\* Funds available includes the revenue received for the fiscal year plus the previous fiscal year's fund balance.

As can be seen, the ESMF's fund balance has ranged from a low of \$400,000 to a high of \$1 million. Of concern is the fact that each year's fund balance represents the amount of money not spent that year on projects to mitigate threats to endangered and protected species.

**The DNR Encourages a \$500,000 Fund Balance to Cover Funding Uncertainties.** The actual ESMF revenues—in particular the brine shrimp royalty monies—do not meet the ESMF's projected revenues. The brine shrimp royalty money was designated by the Legislature as a funding source for the ESMF. The difference between brine shrimp revenue projected and received was very pronounced in fiscal years 2004 and 2005. In fiscal year 2004, \$687,200 in brine shrimp royalty money was projected, but only \$410,569 was received. In fiscal year 2005, \$1,105,000 in brine shrimp royalty money was projected, but only \$418,700 was received. In fiscal year 2006, brine shrimp royalty projections appear less optimistic than in the past— \$550,000.

In addition, other uncertainties impact the ESMF. One uncertainty is the purchase of property. ESMF funds are often used to purchase property and, under these circumstances, money often needs to be available on short notice. Another uncertainty involves long-term projects. When projects span multiple years, unanticipated expenditures sometimes occur that the ESMF may need to fund. By maintaining an ESMF fund balance, the impact of these uncertainties can be minimized.

Because of the revenue and expenditure uncertainty, the ESMF is encouraged by the DNR to maintain a \$500,000 fund balance. We are concerned that this fund balance goal may be too high, especially in light

of the fact that actual project expenditures are often less than approved project expenditures and thus contribute to the fund balance.

**Total ESMF Awards Are Not Spent by Recipients.** Although the ESMF's project awards generally equal the revenue expected for the year, project recipients do not always spend all the money awarded. Project money not spent in the award year becomes incorporated into the ESMF's fund balance for reallocation in the upcoming year.

In fiscal year 2004, the ESMF allocated project awards totaling approximately \$3.1 million; however, only \$2.5 million was expended resulting in a \$600,000 contribution to the ESMF's fund balance. Fiscal year 2005 saw a similar event happen. The ESMF awarded projects totaling \$3.5 million, but only \$3.0 million was spent, resulting in a \$500,000 contribution to the ESMF's fund balance.

The ESMF program director is sympathetic to the fact that project budgets are often underspent. He believes it is very difficult to predict the various factors that may negatively impact a project and points to projects involving the purchase of land or easements as good examples of this uncertainty.

It is true that a significant amount of both the fiscal year 2004 and 2005 fund balance contributions comes from a few projects that involve the purchase of land or easements. For example, \$300,000 of the \$500,000 fiscal year 2005 fund balance contribution resulted from one property purchase that did not occur. In fiscal year 2004, \$266,000 of the \$600,000 contribution to the fund balance resulted from two purchases of land and conservation easements that did not occur.

Regardless, while we agree that uncertainty will always be present, it is important to remember that these fund balance contributions represent money not spent to mitigate threats to endangered and protected species in Utah. In other words, the money was not put to productive use.

An analysis of the project planning and budgeting process within the DNR was not in the scope of this audit. We believe an internal review of this issue could provide recommendations that might increase the productivity of the ESMF. Further, when the ESMF fund balance exceeds the established fund balance level, we believe the ESMF should

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**ESMF year-end fund balances represent money that was not spent to mitigate threats to endangered and protected species in Utah.**

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communicate to the Legislature the reasons for the large balance (i.e., designated for property purchase, etc.).

### **ESMF Grant Policies and Procedures Need Development**

Currently, the ESMF has no written policies and procedures outlining how grant awards will be selected, funded, and monitored. Without adequate policies and procedures, misunderstandings are likely. In fact, a misunderstanding occurred in fiscal year 2005 over the availability to the DWR of ESMF project carryover funds. As a result, almost \$500,000 that was intended for the DWR's fiscal year 2005 ESMF projects was instead diverted to cover current expenditures from the DWR's prior-year ESMF projects.

Policies and procedures are an important management tool that enhance clarity, consistency, and understanding. While an ESMF brochure provides general information about the ESMF and the application process, the ESMF has no formal policies and procedures detailing the selection procedures and funding methodology of ESMF project grants. For example, policies and procedures should address these questions:

#### **Selection:**

- Are all applications received considered by the ESMF project selection committee or is there an initial screening process? If there is an initial screening process, who is responsible and what screening criteria are used?
- What criteria are used to prioritize projects for presentation to the project selection committee?
- What process is used by the project selection committee when evaluating projects? How is this process documented? How long will this documentation be kept?
- Who ultimately decides the projects to be funded? What process is used, what documentation is produced and how long will this documentation be kept?

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**The ESMF has no formal policies and procedures detailing the selection procedures and funding methodology of ESMF project grants.**

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## **Funding:**

- What is the funding philosophy of the ESMF? Does the ESMF want to fund as many projects as possible or focus funding on a smaller number of projects?
- Should project grants have a funding cap? If so, what should it be?
- How are multi-year projects going to be funded?
- What process is going to be followed and what documentation is going to be produced when project budgets are amended?
- What level of documentation must be produced by ESMF grant recipients when requesting expense reimbursement?

This list is not all-inclusive, but it provides a general idea of what should be outlined in policy and procedure. When important issues are not clearly addressed in policies and procedures, the possibility of miscommunication is increased.

**A Miscommunication Occurred Concerning Project Carryover Funds.** As indicated earlier, it is not unusual for the DWR to underspend project budgets. In the past, when project budgets were underspent, the DWR believed a positive project fund balance still existed that would be available to cover any future project expenses. Using a hypothetical example, the DWR would believe a \$10,000 fund balance from a 2003 approved project would be available in 2005 to cover project expenses. Further, the DWR would believe this positive project fund balance would be in addition to all new money granted them for the upcoming year.

However, the DNR management believed project fund balances should not carry over within the ESMF because this unnecessarily ties up the fund. Instead, the DNR management wanted all unused fund balances swept into the general ESMF to become available for reallocation to other projects the following year. If no reapplication is made for project money, then no project money is available regardless of any prior-year project approval.

These two beliefs clashed in fiscal year 2005. The DWR had incurred expenses on some past-year projects on which they wanted reimbursement

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**The DWR believed positive project fund balances carried over into the new year, whereas DNR management did not want that to occur.**

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**\$500,000 of the DWR's 2005 approved projects were not done in order to cover past-year project costs.**

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from the ESMF. They were told by the DNR that no past-year project money existed and the DWR would have to adjust their current year project budget. Consequently, the DWR was required by the DNR to re-prioritize and reallocate almost \$500,000 of their fiscal year 2005 project budgets to cover past-year projects. This means that \$500,000 of approved 2005 projects were not done.

The DNR believes that the DWR was told more than once that ESMF project funds cannot be carried over into the next year. The fiscal year 2005 reallocation was the DNR's attempt to forcefully make that point. The DWR staff, on the other hand, believes this fact was communicated to them only recently. In our opinion, this issue should have been clearly outlined in ESMF policies and procedures and it was not.

We believe the DNR and ESMF staff should work together to adopt policies and procedures outlining the overall management of the ESMF. Once in place, these policies and procedures should be adhered to with few exceptions, and any exceptions should be documented.

In summary, management of ESMF discretionary expenditures can improve by ESMF management:

- Proactively focusing applicants towards submitting high priority projects involving high-priority species
- Clarifying selection process procedures for awarding ESMF projects
- Providing written documentation underlying ESMF project funding decisions
- Ensuring all ESMF project applicants are treated similarly
- Reviewing and possibly modifying practices impacting the ESMF fund balance
- Developing written ESMF policies and procedures covering all management aspects of the ESMF.

## Recommendations

1. We recommend that ESMF management adopt a proactive approach in soliciting ESMF applications that would be of the greatest benefit to the state.
2. We recommend the ESMF management formalize project selection criteria to be used and then communicate this criteria to all future applicants.
3. We recommend the ESMF management develop a formal process that documents the justification underlying each ESMF funding decision.
4. We recommend the ESMF management develop a project selection process that treats all applicants similarly.
5. We recommend the DNR and ESMF management review and possibly modify practices impacting the ESMF fund balance, including the fund balance level itself.
6. We recommend the DNR and the ESMF communicate to the Legislature the reasons behind any fund balances exceeding the established fund balance level.
7. We recommend the DNR and ESMF management develop formal policies and procedures covering all management aspects of the ESMF.

## **Appendix A**

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**Species Funding from FY 99 through FY 05.** Of the 91 discretionary species (the eight endangered species for which Utah has expenditure obligations are excluded from this count), the ESMF has funded actions specific to at least 21 species on the sensitive species list. Not listed in this table are other, more general, ESMF expenditures that benefit many species.

Tier	Species	Order	Total Expenditures
I (CA)	Colorado River Cutthroat Trout	Fish	\$ 891,762
I (T)	Utah Prairie Dog	Mammal	601,290
II II	Greater Sage Grouse Sharp-tailed Sage Grouse	Bird	393,394
I (CA)	Spotted Frog	Amphibian	325,913
I (T) III	Canada Lynx Wolverine	Mammal	265,582
I (CA)	Least Chub	Fish	189,024
I (Can)	Gunnison Sage Grouse	Bird	164,877
II	Leatherside Chub	Fish	132,415
II	Boreal Toad	Amphibian	126,064
II	Bats (species not specified, six are listed as Tier II)	Mammal	100,235
I (CA) I(CA) I(CA)	Roundtail Chub Bluehead Flannelmouth Sucker	Fish	79,022
I (T)	Desert Tortoise	Reptile	65,460
II	Pygmy Rabbit	Mammal	49,968
I (T)	Mexican Spotted Owl	Bird	29,282
II II	Preble's Shrew Dark Kangaroo Mouse	Mammal	25,428
II	Gila Monster	Reptile	9,842
I (CA) *	Coral Pink Tiger Beetle	Insect	8,605
III	Tri-colored Kingsnake	Reptile	1,992
I (Can)	Fat-whorled Pondsail	Mollusk	1,304

*E: Endangered; T: Threatened; Can: Candidate; CA: Conservation Agreement*

*\* The state does not include insects on its sensitive species list. This is the category the Coral Pink Tiger Beetle would have if the Coral Pink Tiger Beetle were listed.*

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**Agency Response**

July 12, 2006

Mr. John M. Schaff, CIA  
Auditor General  
Office of the Legislative Auditor General  
PO Box 145315  
Salt Lake City, Utah 84114-5315

Dear Mr. Schaff:

The Department of Natural Resources appreciates the opportunity to participate in a review and evaluation of our Endangered Species Mitigation Fund (ESMF) Program and to increase the efficiency and effectiveness of our efforts to help recover federally listed species and reduce the likelihood that any new species may be listed in the future. Implementation of the audit's recommendation will require an internal reassessment of our current guidelines, a prioritization of species' status, a review of our current project selection process and the minimization of any end of year balances. We concur in the need to address those shortcomings.

As we rewrite the guidelines and develop consistent criteria for the species prioritization and project selection, however, we will continue to focus on the needs of private groups, local and county authorities and state and federal agencies seeking help in complying with the Endangered Species Act. We believe the ESMF has contributed beneficially to a number of local and state-wide efforts to balance protection of sensitive species with continued economic development and growth.

Finally, we will reduce the annual fund balance as recommended in the audit. We hope to accomplish this by allocating all available appropriated, brine shrimp royalty and carryover funding as well as following up on individual projects to completion. Hopefully, closer tracking of individual projects will allow for a more complete and timely expenditure of ESMF funding.

Again, we appreciate the cooperation of your staff and administration in this important process.

Sincerely yours,

Michael R. Styler  
Executive Director

MRS/RH/btb  
cc: Reed Harris

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