

May 26, 2016

*Sent via Email*

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**Re: Notice of Violations of the Endangered Species Act and its Regulations for Failure to Reinitiate Consultation on Impacts to Ocelots from APHIS-Wildlife Services' Wildlife Damage Management Program**

**Dear Secretary Jewell, Director Ashe, Regional Director Tuggle, Deputy Administrator Clay and State Director Bergman,**

On behalf of the Center for Biological Diversity (the "Center") and the Animal Welfare Institute (AWI), we hereby provide notice, pursuant to Section 11(g) of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540(g), that the U.S. Fish and Wildlife Service ("FWS") and USDA APHIS Wildlife Services ("Wildlife Services") are in violation of Section 7 of the ESA, 16 U.S.C. § 1536, and the ESA's consultation regulations, 50 C.F.R. Part 402.<sup>1</sup>

Specifically, the Center and AWI intend to file a lawsuit challenging Wildlife Services': (1) failure to insure that the Wildlife Damage Management ("WDM") program, including projects and activities that are authorized and implemented through this program, is not likely to

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<sup>1</sup> The agencies' violations of the ESA are also arbitrary and capricious, an abuse of discretion, and not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

jeopardize the continued existence of ocelots; (2) failure to timely reinitiate and complete consultation with the FWS regarding the impacts of the WDM program on ocelots; and (3) continued authorization and approval of activities that may irreversibly and irretrievably commit resources and may foreclose the formulation or implementation of reasonable and prudent alternatives, prior to completing the reinitiation of consultation regarding the impacts of the WDM program on ocelots. In addition, the Center and AWI intend to file a lawsuit challenging the FWS's failure to timely reinitiate and complete consultation concerning Wildlife Services' ongoing implementation of the WDM program and its impacts on ocelots.

The Center for Biological Diversity is a national, nonprofit conservation organization with more than one million members and online activists dedicated to the protection of endangered species and wild places. The Center and its members are concerned with the conservation of imperiled species, including the ocelot, and the effective implementation of the ESA.

The Animal Welfare Institute is a nonprofit charitable organization founded in 1951 and dedicated to reducing animal suffering caused by people. AWI engages policymakers, scientists, industry, and the public to achieve better treatment of animals everywhere—in the laboratory, on the farm, in commerce, at home, and in the wild.

### **STATUTORY BACKGROUND**

When a species has been listed or critical habitat designated under the ESA, all federal agencies – including Wildlife Services – must ensure through consultation with FWS that their programs and activities are in compliance with the ESA. 16 U.S.C. § 1536(a)(2). Through consultation under Section 7 of the ESA, federal agencies work with FWS to determine whether their actions will jeopardize listed species' survival or adversely modify designated critical habitat, and if so, to identify ways to modify the action to avoid that result. 50 C.F.R. § 402.14. An agency is required to review its actions “at the earliest possible time” to determine whether the action may affect listed species or critical habitat. 50 C.F.R. § 402.14(a).

The scope of agency actions subject to consultation are broadly defined to encompass “all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies.” 50 C.F.R. § 402.02 (definition of “action”). Wildlife Services' WDM program is “agency action” subject to consultation.

For each federal action, Wildlife Services must ask FWS whether any listed or proposed species may be present in the area of the agency action. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12. If listed or proposed species may be present, Wildlife Services must prepare a “biological assessment” to determine whether the listed species may be affected by the proposed action. *Id.* The biological assessment must generally be completed within 180 days. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12(i). The threshold for a “may affect” determination and the required ESA section 7(a)(2) consultation is low so as to ensure that listed species are not jeopardized. *Karuk Tribe of Cal. v. U.S. Forest Serv.*, 681 F.3d 1006, 1027 (9th Cir. 2012).

If an agency determines that its action “may affect” but is “not likely to adversely affect” a listed species or its critical habitat, the regulations permit “informal consultation,” during which FWS must concur in writing with the agency’s determination. 50 C.F.R. § 402.14(a)-(b). If the agency determines that its action is “likely to adversely affect” a listed species or critical habitat, or if FWS does not concur with the agency’s “not likely to adversely affect” determination, the agency must engage in “formal consultation,” as outlined in 50 C.F.R. § 402.14 (“General Formal Consultation”). 50 C.F.R. §§ 402.02, 402.14(a). An agency is relieved of the obligation to consult on its actions only where the action will have “no effect” on listed species or designated critical habitat. Effects determinations are based on the direct, indirect, and cumulative effects of the action when added to the environmental baseline and other interrelated and interdependent actions. 50 C.F.R. § 402.02 (definition of “effects of the action”).

To complete formal consultation, FWS must provide Wildlife Services with a “biological opinion” explaining how the proposed action will affect the listed species or habitat. 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14. Consultation must generally be completed within 90 days from the date on which consultation is initiated. 16 U.S.C. § 1536(b)(1)(A); 50 C.F.R. § 402.14(e).

If FWS concludes that the proposed action “will jeopardize the continued existence” of a listed species, the biological opinion must outline “reasonable and prudent alternatives.” 16 U.S.C. § 1536(b)(3)(A). If the biological opinion concludes that the action is not likely to jeopardize the continued existence of a listed species, and will not result in the destruction or adverse modification of critical habitat, FWS must provide an “incidental take statement,” specifying the amount or extent of such incidental taking on the listed species, any “reasonable and prudent measures” that FWS considers necessary or appropriate to minimize such impact, and setting forth the “terms and conditions” that must be complied with by Wildlife Services to implement those measures. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i). Taking of listed species without the coverage of an incidental take statement is a violation of Section 9 of the ESA. 16 U.S.C. § 1538.

Agencies must reinitiate consultation on agency actions over which the federal agency retains, or is authorized to exercise, discretionary involvement or control if:

- (a) If the amount or extent of taking specified in the incidental take statement is exceeded;
- (b) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
- (c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or
- (d) If a new species is listed or critical habitat designated that may be affected by the identified action.

50 C.F.R. § 402.16.

During the consultation process, Wildlife Services is prohibited from making any irreversible or irretrievable commitment of resources with respect to the WDM program which may foreclose the formulation or implementation of any reasonable and prudent alternative measures. 16 U.S.C. § 1536(d). This means that Wildlife Services may not proceed in its predator control activities in occupied ocelot habitat unless it completes reinitiation of Section 7 consultation in regards to ocelots.

Compliance with the Section 7 consultation process is integral to compliance with the substantive requirements of the Act -- that an agency's action will not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat.

## **FACTUAL BACKGROUND**

### **Endangered Ocelots**

The ocelot is a rarely seen endangered cat. Weighing as much as 35 pounds, the ocelot has a graceful body that may be up to four feet long, including the tail. The ocelot's tawny coat has elongated brown spots with black borders.<sup>2</sup>



Photo Credit: Tony Battiste, Portraits in Nature

The ocelot seems to prefer dense cover but can use a variety of habitats. Dens are in caves, hollow trees, thickets, the spaces between the roots of large trees, dense grass or other thick habitats.<sup>3</sup>

Hunting mostly at night, the ocelot eats rabbits, birds, fish, rodents, snakes, lizards, and other small to medium-sized prey.<sup>4</sup> The primary way of hunting is extensive walking until prey is

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<sup>2</sup> U.S. Fish and Wildlife Service. 2010. The Ocelot - *Leopardus pardalis*, available at <http://www.fws.gov/endangered/esa-library/pdf/ocelot.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

encountered. The ocelot is known to use game trails and ranch roads where a greater diversity of prey occurs.<sup>5</sup>

The ocelot's range includes Texas, Arizona, Mexico, Central America, and South America. Monitoring of collared individuals has shown that a dispersing ocelot will move as much as 10 miles outside their home ranges.<sup>6</sup>

In the United States, likely fewer than 100 ocelots exist. It was listed as "endangered" in 1982 under the Endangered Species Act. 47 Fed. Reg. 31670 (July 21, 1982). The ocelot is also listed on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) -- a listing that strictly prohibits trade.<sup>7</sup>

Although never abundant and seldom intentionally trapped, ocelots were historically taken incidentally during the hunting, trapping, and poisoning of coyotes, bobcats, and other predators.<sup>8</sup> Habitat loss also caused historical declines, and only a fraction of the less than five percent of original native vegetation remaining in the Lower Rio Grande Valley is optimal habitat for the cats.<sup>9</sup> Now, continuing habitat loss, collisions with vehicles, and inbreeding resulting from small and isolated groups are keeping the species' population numbers low.<sup>10</sup>

### **Wildlife Services' Wildlife Damage Management Program**

Wildlife Services and its precursors have focused on trapping and killing wildlife for more than 100 years, and are responsible for the eradication of wildlife like wolves, bears, and other animals from much of the United States, particularly in the West. Wildlife Services contracts with other federal agencies, state and local government agencies, and private landowners to fulfill its mission of resolving wildlife conflicts.

Today, Wildlife Services kills millions of animals every year. For example, in Fiscal Year 2014, Wildlife Services reports that it killed more than 2.7 million animals across the United States, including 61,702 coyotes, 580 black bears, 796 bobcats, 305 mountain lions, 2,930

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<sup>5</sup> Murray, J. L. and G. L. Gardner. 1997. *Leopardus pardalis*. Mammalian Species 548:1-10.

<sup>6</sup> USDA APHIS-Wildlife Services. 2010. Biological Opinion (*Leopardus (Felis) pardalis*) ("2010 BiOp") (citing to the draft ocelot recovery plan).

<sup>7</sup> U.S. Fish and Wildlife Service. 2010. The Ocelot - *Leopardus pardalis*, available at <http://www.fws.gov/endangered/esa-library/pdf/ocelot.pdf>.

<sup>8</sup> U.S. Fish and Wildlife Service. 1990. Listed cats of Texas and Arizona recovery plan (with emphasis on the ocelot). FWS, Albuquerque, NM. 131 pp. (cited in BiOp at 6).

<sup>9</sup> Tewes, M. E. 1986. Ecological and behavioral correlates of ocelot spatial patterns. Unpublished Ph.D. dissertation, University of Idaho, Moscow, 10. 128 pp. (cited in BiOp at 6).

<sup>10</sup> U.S. Fish and Wildlife Service. 2010. The Ocelot - *Leopardus pardalis*, available at <http://www.fws.gov/endangered/esa-library/pdf/ocelot.pdf>

foxes, 454 river otters, and 322 gray wolves.<sup>11</sup> Wildlife Services has also unintentionally killed thousands of non-target species, undermining state and federal efforts to conserve and recover the affected species -- which, oftentimes, need protection in part due to Wildlife Services' historic and ongoing practices.

Many of the methods used by Wildlife Services -- including leghold and body-gripping traps, snares, and M-44 gas cartridges -- are fundamentally nonselective, environmentally destructive, inherently cruel, and often ineffective. For example, steel-jaw leghold traps are internationally recognized as inhumane and have been banned in many countries. Animals, upon being trapped, frantically struggle to free themselves both by attempting to pull the trapped limb out of the device and by chewing at the trap itself or even their own limbs. The force of the jaws clamping on the animal's limb and the subsequent struggle can result in severe trauma including fractures, damage to muscles and tendons, lacerations, broken teeth, loss of circulation, frostbite, and amputation.

### **Impacts of Wildlife Services' Wildlife Damage Management Program on Ocelots**

The first biological opinion addressing the effects of Wildlife Services' activities on ocelots was completed on August 15, 1997 and only addressed south Texas. In 2007, Wildlife Services prepared a Biological Assessment ("BA") on the impacts of its WDM program on ocelots, analyzing both Texas and Arizona. In the BA, Wildlife Services concluded that its WDM Program activities -- including use of chemical medication drugs (oral rabies vaccine), M-44 devices, foot-hold traps, cage traps, foot, leg and neck snares, ground shooting, and aerial operations -- are "likely to adversely affect ocelot populations in Texas and Arizona." BiOp. at 2-3. Wildlife Services then engaged in formal consultation with FWS, which in 2010 prepared the Biological Opinion ("2010 BiOp") for impacts of WDM program on ocelots.<sup>12</sup>

The 2010 BiOp provides that "two probable sightings [of ocelot] have been made recently in Arizona," including near Globe in Gila County and in western Cochise County. BiOp at 4, 7-8. It defines "occupied ocelot habitat in Arizona" as "portions of Game Management Units (GMUs) within the San Pedro Watershed (308, 31, 32, 33, 348, 35A, 358) plus the following GMUs outside of the San Pedro Watershed (24A, 248, and 378)." BiOp at 5.

The BiOp explains that there have been "no reports of incidental take of ocelot by [Wildlife Services] personnel using chemical medication drugs (oral rabies vaccine), M-44 devices, foot-hold traps, cage traps, foot, leg or neck snares, or ground shooting and aerial operations." BiOp at 16. However, due to the "similarity in size between ocelot and other mesocarnivore species, some of which are felids," FWS anticipated "a slight potential for effects to ocelot" from the following WDM Program activities: "distribution of chemical medication

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<sup>11</sup> USDA APHIS-Wildlife Services. 2014. FY 2014 Program Data Reports Summary Statements, available at [https://www.aphis.usda.gov/wildlife\\_damage/prog\\_data/2014/FY%202014%20PDR%20Summary%20Statements.pdf](https://www.aphis.usda.gov/wildlife_damage/prog_data/2014/FY%202014%20PDR%20Summary%20Statements.pdf).

<sup>12</sup> USDA APHIS-Wildlife Services. 2010. Biological Opinion (*Leopardus (Felis) pardalis*).

drugs (oral rabies vaccine), use of M-44 devices, foot-hold traps, cage traps, ground shooting, and aerial operations.” BiOp at 16.

For example, FWS explains that bobcats, which are meso-carnivores of similar size to ocelots, have been known to activate M-44 devices. BiOp at 20. Use of foot-hold traps and snares may capture or injure ocelots, especially if the target species is of a similar weight to an ocelot. BiOp at 20. Cage traps are used to capture meso-carnivores of similar size to the ocelot and the potential for incidental take cannot be fully eliminated. BiOp at 20. Furthermore, potential for misidentification of the target species exists during ground and aerial shooting. BiOp at 20.

FWS concluded that Wildlife Services’ WDM program would not jeopardize ocelots. BiOp at 17. The agency gave Wildlife Services an Incidental Take Statement (“ITS”) that exempts the take of one ocelot at some future time. BiOp at 18. The ITS contains two reasonable and prudent measures (“RPMs”) that are “non-discretionary,” “binding conditions” that must be met for Wildlife Services to receive take coverage. BiOp at 19. These are:

1. [Wildlife Services] will assist the FWS and appropriate Federal and State agencies by maintaining interagency coordination and information exchange, through reporting occurrences, discussions about potential habitat, and incidental take of ocelot.

2. [Wildlife Services] will implement measures and adjust its normal WDM Program activities in occupied ocelot habitat and in travel corridors identified by FWS to minimize incidental take of ocelot in accordance with the terms and conditions below. [Wildlife Services]’s measures and adjustments of WDM Program activities in ocelot habitat will minimize the potential for WDM Program activities to adversely impact the species.

BiOp at 21.

To implement RPM #1, FWS provides several mandatory terms and conditions. These include a requirement that Wildlife Services “shall maintain regular (annual or more frequent) contact and coordination with the local FWS office” to have up-to-date records on ocelot occurrence and to coordinate WDM program activities to reduce the likelihood of impacts to ocelots. BiOp at 22.

To implement RPM #2, Wildlife Services “shall notify the local FWS office prior to conducting WDM Program activities in areas within three miles or less (i.e., within 3-mile buffer) of occupied ocelot habitat, including ocelot travel corridors between occupied ocelot habitat areas.” BiOp at 23. The terms and conditions also include numerous restrictions on trap size and placement to reduce likelihood of impacts to ocelots. BiOp at 23.

## **New Information on How Ongoing and Approved WDM Program Activities Affect Ocelots**

Since FWS prepared the 2010 Biological Opinion (“BiOp”) on impacts to ocelots from Wildlife Services’ WDM program, new information exists on ocelot locations in Arizona, including five additional ocelot detections since 2009. As explained by a FWS biologist who works on ocelots: “we have much more information on ocelot detections and habitat associations on ocelots now than we did in 2010; for example, in 2010, the only recent ocelot detections were in the Whetstones and in Globe.”<sup>13</sup>

There is also evidence that Wildlife Services has failed to fully comply with the “reasonable and prudent measures” provided in the 2010 BiOp. An internal FWS email explains that David Bergman, Arizona State Director for Wildlife Services “has not been in touch with our office about ocelot and jaguar detections” and concludes that “[Wildlife Services] has not coordinated with our office per Term and Condition 1.1. of the 2010 BO.”<sup>14</sup>

In addition, since the 2010 BiOp, significant new scientific information has emerged about ocelot use of habitats, the effects of capture on ocelot, and the importance of United States habitats to conservation of ocelot. The new information is found in the following reports published or made available since 2010, arranged chronologically:

Avila-Villegas, S., and J. Lamberton-Moreno. 2013. Wildlife survey and monitoring in the Sky Island Region with an emphasis on neotropical felids. In: Gottfried, G.J.; P.F. Folliott, B.S. Gebow, L.G. Eskew, L.C. Collins, Merging science and management in a rapidly changing world: Biodiversity and management of the Madrean Archipelago III and 7th Conference on Research and Resource Management in the Southwestern Deserts; 2012 May 1-5; Tucson, AZ. Proceedings. RMRS-P-67. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station. p. 441-447, *available at* <http://www.treearch.fs.fed.us/pubs/44469> (**ocelot records in Arizona**).

Booth-Binczik, S.D., R.D. Bradley, C.W. Thompson, L.C. Bender, J.W. Huntley, J.A. Harvey, L.L. Laack, and J.L. Mays. 2013. Food Habits of Ocelots and Potential for Competition With Bobcats In Southern Texas. *The Southwestern Naturalist* 58(4):403-410 (**feeding ecology of ocelots in southern Texas**).

Featherstone, R., S. Jacobs, S. Avila-Villegas, and S. Dumas. 2013. Wildlife surveys and monitoring with the Use of remote camera traps in the Greater Oak Flat Watershed near Superior, Arizona. In: Gottfried, G.J.; P.F. Folliott; B.S. Gebow, L.G. Eskew, L.C. Collins. Merging science and management in a rapidly changing world: Biodiversity and management of the Madrean Archipelago III and 7th Conference on Research and Resource Management in the Southwestern

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<sup>13</sup> Email chain dated Oct. 9, 2014 between E. Fernandez, Fish and Wildlife Biologist/Mexico Program Coordinator, U.S. Fish and Wildlife Service, and J. Calhoun, Assistant Field Supervisor for the Service’s Arizona Ecological Services Office, U.S. Fish and Wildlife Service (attached).

<sup>14</sup> *Id.*

Deserts; 2012 May 1-5; Tucson, AZ. Proceedings. RMRS-P-67. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station. p. 454-459, *available at* [http://www.fs.fed.us/rm/pubs/rmrs\\_p067/rmrs\\_p067\\_454\\_459.pdf?](http://www.fs.fed.us/rm/pubs/rmrs_p067/rmrs_p067_454_459.pdf?) (**Detection of 2010 road-killed ocelot in Arizona**).

Holbrook, J.D., R.W. DeYoung, M.E. Tewes, J.H. Young, J.L. Mays, and E. Meyers. 2011. Natural dispersal or illegal pets? Limitations on assigning origin to road-killed ocelots in the southwestern United States. *Wildlife Society Bulletin* 35(4): 504–507 (**2010 road-killed ocelot of wild origin**).

Janečka, J. E., M. E. Tewes<sup>1</sup>, L. L. Laack, A. Caso, L. I. Grassman, Jr, A. M. Haines, D. B. Shindle, B. W. Davis, W. J. Murphy and R. L. Honeycutt. 2011. Reduced genetic diversity and isolation of remnant ocelot populations occupying a severely fragmented landscape in southern Texas. *Animal Conservation* 14(6): 608–619 (**ocelot status in Texas: genetic diversity**).

Janečka, J.E., M.E. Tewes, L. Laack, A. Caso, L.I. Grassman, and R.L. Honeycutt. 2014. Loss of Genetic Diversity among Ocelots in the United States during the 20th Century Linked to Human Induced Population Reductions. *PLoS ONE* 9(2): e89384, *available at* <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0089384> (**ocelot status in Texas: genetic diversity**).

Janečka, J.E., M.E. Tewes, I.A. Davis, A.M. Haines, A. Caso, T.L. Blankenship, R.L. Honeycutt. 2016. Genetic differences in the response to landscape fragmentation by a habitat generalist, the bobcat, and a habitat specialist, the ocelot. *Conservation Genetics* pp 1-16 (**comparison of ocelot and bobcat ecology**).

Simpson, R. 2010. 2010. Texas Parks and Wildlife Department, Section 6 (Texas Traditional) Report Review, Defining areas of potential ocelot habitat, *available at* [http://tpwd.texas.gov/business/grants/wildlife/section\\_6/projects/mammals/e108\\_final\\_report.pdf](http://tpwd.texas.gov/business/grants/wildlife/section_6/projects/mammals/e108_final_report.pdf) (**ocelot habitat in Texas**).

Stangl Jr., F.B. and J.H. Young. 2011. The Ocelot (*Leopardus pardalis*) in Northern Texas, with Comments on Its Northern Biogeography. *Western North American Naturalist* 71(3): 412-417 (**road-killed ocelot in north-central Texas**).

Zerinskas, D., C.A. Pollio. 2013. U.S. Wildlife Management Plan: Recovery of the Endangered Ocelot (*Leopardus pardalis*) in Arizona, New Mexico, and Texas. *Poult. Fish. Wildl. Sci.* 1: 109, *available at* <http://www.esciencecentral.org/journals/us-wildlife-management-plan-recovery-of-the-endangered-ocelot-leopardus-pardalis-in-arizona-new-mexico-and-texas-pfw.1000109.php?aid=19318> (**threats to ocelot**).

These changed circumstances, new facts and new studies constitute “new information” triggering reinitiation of consultation. 50 C.F.R. § 402.16(b); *Sierra Club v. Marsh*, 816 F.2d 1376, 1388 (9th Cir. 1987) (county’s failures to implement reasonable and prudent measures in a prior Biological Opinion “are certainly ‘new information’ that neither the FWS nor the COE took into account during previous consultations” and thus reinitiation was required). Indeed, the Assistant Field Supervisor for the FWS’s Arizona Ecological Services office concluded that “[i]t does seem that the ocelot BO should be updated and that at a minimum, the DC office should be informed of that need.”<sup>15</sup>

Despite this new information since the 2010 BiOp, Wildlife Services continues to approve and allow projects and ongoing activities that may affect ocelots without further analysis under Section 7 of the ESA. For example, an ocelot was detected in the Huachuca Mountains in 2012.<sup>16</sup> Under its contract with Fort Huachuca for wildlife damage management, Wildlife Services can use snares, padded leghold traps, and hounds to capture and kill wildlife in the area. Reinitiation of consultation with FWS would ensure that the most recent information on ocelots could be used to minimize impacts from these activities on ocelot in the area.

## ESA VIOLATIONS

Multiple events triggering the need to reinitiate consultation have occurred since the FWS issued its 2010 BiOp on impacts to ocelots from Wildlife Services’ WDM program. These include new information on presence of one or more ocelots near WDM program activities, Wildlife Services’ failure to fully comply with the 2010 BiOp, and new science on ocelots. 50 C.F.R. § 402.16(b). Yet Wildlife Services and the FWS have failed to timely reinitiate and complete reinitiated consultation regarding the continued implementation and impacts of WDM program on ocelots, in violation of the ESA. 16 U.S.C. §§ 1536(a)(2), 1536(b)(1)(A); 50 C.F.R. §§ 402.14, 402.16.

By allowing, authorizing, and approving projects and activities to proceed that may affect ocelots, prior to the reinitiation and completion of consultation with FWS, Wildlife Services is failing to protect ocelots from jeopardy, in violation of Section 7(a)(2) of the ESA. 16 U.S.C. § 1536(a)(2). For this same reason, Wildlife Services is also violating Section 7(d) of the ESA. 16 U.S.C. § 1536(d).

## CONCLUSION

For the above stated reasons, Wildlife Services and FWS have violated and remain in ongoing violation of Section 7 of the ESA. If these violations of law are not cured within sixty days, the Center for Biological Diversity and Animal Welfare Institute intend to file suit for declaratory and injunctive relief, as well as attorney fees and costs. 16 U.S.C. § 1540(g). If you

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<sup>15</sup> *Id.*

<sup>16</sup> Arizona Game and Fish Department. 2012. Rare ocelot observed in southern Arizona, available at <http://azgfd.net/artman/publish/NewsMedia/Rare-ocelot-observed-in-southern-Arizona.shtml>.

believe that any of the foregoing is inaccurate or otherwise would like to discuss this notice letter, please contact us.

Sincerely,



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