



Mr. Ken Salazar  
Secretary of the Interior  
U.S. Department of the Interior  
18<sup>th</sup> and C Streets, N.W.  
Washington, D.C. 20240

July 26, 2010

RE: Sixty-day notice of violation of sections 10(a)(1)(B) and (2)(A and B) and 7(a)(2) of the Endangered Species Act, relating to issuance of a permit to the Arizona Game and Fish Department for incidental take of jaguars.

Dear Secretary Salazar,

This letter serves as a sixty-day notice from the Center for Biological Diversity, Michael Robinson and Noah Greenwald of intent to sue you pursuant to the Endangered Species Act (“ESA”) (1) for issuing an amended permit to the Arizona Game and Fish Department for the incidental take of endangered jaguars under section 10(a)(1)(B) of the Endangered Species Act before receiving a conservation plan from the state agency and without having taken public comment, and for failing to consult over issuance of this permit to ensure issuance of the permit does not jeopardize the continued existence of the jaguar. 16 U.S.C. §§ 1539(a)(1)(B) and (2)(A and B), and 1536(a)(2).

On June 14, 2010, the U.S. Fish and Wildlife Service issued an amended permit to the Arizona Game and Fish Department allowing the Department to “unintentionally” capture jaguars, including through the use of “traps, snares or other capture devices that are of sufficient size to capture a jaguar” within an area where there is an acknowledged “capture concern,” and including during studies for capture of “lions, bears, or wolves.” Arizona Game and Fish TE-812577-1 2010. In effect, the Service has authorized Arizona Game and Fish to capture jaguars under conditions very similar to those that resulted in the death of the last known jaguar in the U.S.—Macho B.

The Endangered Species Act clearly specifies that “[n]o permit may be issued by the Secretary authorizing any” incidental taking unless the applicant prepares a conservation plan specifying:

- (i) the impact which will likely result from such taking;
  - (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
  - (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
  - (iv) such other measures that the Secretary may require as
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being necessary or appropriate for purposes of the plan.

16 U.S.C § 1539(a)(2)(A). The Act further requires that the Secretary allow for public comment with respect to issuance of the permit application and the related conservation plan and that the permit not be issued unless the Secretary finds that

- (i) the taking will be incidental;
- (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- (iii) the applicant will ensure that adequate funding for the plan will be provided;
- (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- (v) the measures, if any, required under subparagraph (A)(iv) will be met;

16 U.S.C § 1539(a)(2)(B).

To date, a conservation plan has not been submitted by Arizona Game and Fish Department, nor has the Secretary allowed for public comment or made the above required findings, and therefore issuance of the permit is unlawful.

Rather than a conservation plan, the Service relies on regulations that allow employees or agents of a “state conservation agency” to take endangered species “when acting in the course of [their] official duties” to undertake conservation programs covered by an approved cooperative agreement such that among other things taking is not reasonably anticipated to result in: “[t]he death or permanent disabling of the specimen.” 50 C.F.R. § 17.21(5). The species and activities authorized under the ESA Section 6 cooperative agreement between Arizona Game and Fish and the Service are identified in annual work plans.

Because this Section 6 agreement and the annual work plans identifying the particular authorized activities do not specify the impact from incidental taking, the steps Arizona Game and Fish will take to minimize and mitigate such impacts, the funding that will be available to implement such steps, what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized, and such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan and because the Service has not made the required findings concerning the Section 6 agreement or annual work plans or taken public comment, reliance on the agreement and work plans for issuing the permit clearly violates the Endangered Species Act.

Issuance of the permit also violates the Act because the Service failed to consult and determine that issuance of the permit would not jeopardize the continued existence of the jaguar as required by 16 U.S.C. § 1536(a)(2).

Even if the Section 6 agreement and annual work plans could qualify as a conservation plan as specified by the Act, the Service has failed to show that issuance of the permit based on the agreement and work plans is not reasonably anticipated to result in the death or permanent disabling of a jaguar as required by regulation. To the contrary, the very actions authorized by issuance of the permit, the setting of snares large enough to capture a jaguar, resulted in the death of Macho B. Accordingly, it may be reasonably anticipated that the permit will result in the death or permanent disabling of a jaguar.

For all of the above reasons, the Service has violated the Endangered Species Act. If you do not correct these violations in the next 60-days, we intend to file suit to correct these violations. Please contact me if you have any questions or concerns.

Sincerely,



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