



October 25, 2010

Laguna Atascosa National Wildlife Refuge  
Attn: Jody Mays  
22817 Ocelot Road  
Los Fresnos, TX 78566  
Email: [Jody\\_Mays@fws.gov](mailto:Jody_Mays@fws.gov)

SUBMITTED VIA ELECTRONIC MAIL

Re: Ocelot (*Leopardus pardalis*) Draft Revised Recovery Plan

Dear U.S. Fish and Wildlife Service,

I write on behalf of WildEarth Guardians and its 12,500 members and supporters, some of whom live in the range of the ocelot in the United States, and Environment Texas and its 23,000 members and supporters in Texas. We are pleased that the U.S. Fish and Wildlife Service (FWS) is revising the ocelot's recovery plan under the Endangered Species Act (ESA). With a total of just 25 known ocelots in the U.S, there's an urgent need to increase efforts to recover this rare wildcat. We are very supportive of efforts (reported in the revised plan) by the Laguna Atascosa and Lower Rio Grande Valley National Wildlife Refuges to expand and protect ocelot habitat. We also support efforts for ocelot conservation to be a bi-national collaboration between the U.S. and Mexico, as the tiny populations in the U.S. must be reconnected with larger Mexican populations. Hopefully, this effort will expand further in the future to include additional countries in the range of this species.

#### Need for Critical Habitat

Thank you for the careful attention you provide in the plan to the threat to ocelots from habitat destruction, particularly given the decimation of their thornscrub habitat in Texas by agriculture and development. The revised plan also underscores the threat from roads and vehicular mortality, and from border installations and activity. The latter is a serious threat in both the Arizona and Texas management units, as discussed in Guardians' January 21, 2010 petition requesting critical habitat for this species.<sup>1</sup> With this lineup of perils, critical habitat would help provide FWS with more legal leverage to ensure that ocelot conservation moves forward.

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<sup>1</sup>See WildEarth Guardians. 2010. Petition to Designate Critical Habitat for the Ocelot. Submitted to the U.S. Fish and Wildlife Service on January 21, 2010 [Attachment 1].

Indeed, species with critical habitat designation are twice as likely to recover as those which lack such protections.<sup>2</sup> We therefore request that the recovery plan consider how critical habitat designation would further ocelot conservation. FWS' excuse in 1982 that critical habitat designation "would not be in the best interests of conservation of the species" (Draft Plan at p. vi) made no sense in 1982 and makes no sense now, given that habitat loss and degradation is the leading threat to the species in the U.S. Critical habitat on the National Wildlife Refuges may help refuge managers better protect ocelot habitat from other federal agency actions. Alternatively, on private land, FWS can educate landowners about what critical habitat is and is not: for instance, it will have no effect on private land projects that involve not federal funding or permitting.<sup>3</sup> In short, compelling better federal agency actions through critical habitat designation and enforcement could work in tandem with private landowner incentive programs to recover this species.

Presently, the Texas populations of ocelot are stranded on small pockets of suitable habitat and may be unable to access other suitable habitat due to a lack of corridors. Without critical habitat, there is little protection for currently unoccupied areas or corridors that may be vital to ocelot recovery. For instance, FWS may determine in the course of ESA Section 7 consultations that projects harmful to ocelots may proceed in these zones because there are no ocelots present and the projects may be deemed to not jeopardize the survival of the species. With critical habitat, FWS would be better able to identify and protect areas that are important for ocelot recovery whether because they currently contain ocelots or they may be crucial to connect occupied habitat with unoccupied habitat. Protection of unoccupied habitat in order to allow dispersal and inter-mixing is critical to avoid the genetic inbreeding the draft revised plan discusses. However, the plan provides little in the way of enforceable measures to protect this unoccupied habitat.

#### Regulatory Protections for Reintroduced Ocelots

The revised recovery plan contemplates translocation of ocelots from Tamaulipas, Mexico, to Texas to augment the currently small Texas population (fewer than 25 individuals) or to create a new, geographically separate, Texas population. We recognize that the situation in Texas is serious, with the main remnant population losing genetic diversity at a rapid pace. However, any translocation must not endanger the source population and must preserve the ocelot's full ESA protections. An ocelot population released in the U.S. would be essential to the survival of this species in the wild and therefore must not be designated as "non-essential" under ESA Section 10j (16 U.S.C. § 1539(j)). Reintroduced populations that are separate from wild populations should therefore either retain their endangered status or be deemed "essential" populations. *Id.* Individuals or populations that augment or are not physically separate from wild individuals or populations must retain their endangered status. *Id.*

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<sup>2</sup>Taylor, M.F.J., Suckling, K.F., and J.J. Rachlinski. 2005. The Effectiveness of the Endangered Species Act: a Quantitative Analysis. *BioScience* 55(4): 360-367 [Attachment 2].

<sup>3</sup>FWS has an informative website on critical habitat (<http://www.fws.gov/endangered/what-we-do/critical-habitats-faq.html>, Accessed October 2010) explaining the effects of this designation on private landowners.

### Clearer Recovery Goals

The draft plan includes the requirement that populations “south of Tamaulipas and Sonora” continuously qualify under the International Union for Conservation of Nature’s (IUCN) “Least Concern” rank for 5 years for downlisting; and for 10 years with stable or increasing populations for delisting. Currently, the full species ranks as Least Concern and has held that rank since 2002.<sup>4</sup> We suggest that the subspecies *sonoriensis* and *albescens* must have the IUCN Least Concern rank and a stable or increasing population trend for the specified time period for either down- or delisting to be considered.

### Addressing Threat from Border Infrastructure

A leading threat to ocelot populations in the U.S. are their isolation from Mexican populations, as well as mortality from vehicular collisions. Border infrastructure and activities greatly increase both threats. As the draft plan (at p. 26) states:

Thus, ocelot recovery in the U.S. will be greatly hindered as they become more genetically and demographically isolated from the much larger Mexican population.

Actions on behalf of the ocelot will need to consider the cumulative impacts of fencing, lighting, highway traffic, and habitat avoidance due to human activities.

There is little in the plan that will address the grave and growing threat from border walls and fences that are not permeable to ocelots; artificial lighting at night, which may disturb or impede ocelot dispersal or travel; high-speed and high-volume vehicle traffic, which can increase the risk of road mortality; off-road vehicle traffic; and other dangers from border activities. The plan includes the measure that it will “partner” with Homeland Security and Border Patrol on these border issues (e.g., step 4.1.7 on p. 42), but FWS needs to go further. The agency (and the recovery plan) must be clear on how and what measures must be taken to protect the ocelot from this threat sufficient to recover it.

### Actual Plan Implementation

FWS must implement the recovery plan. While this seems obvious, the agency states in the revised plan (p. 68):

The value of this plan depends on the extent to which it is implemented; the USFWS has neither the authority nor the resources to implement many of the proposed recovery actions.

This is quite concerning to us, given the desperate biological straits the ocelot faces in the U.S. Furthermore, the ESA specifically requires that the Interior Secretary implement recovery plans:

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<sup>4</sup>See IUCN account for ocelot at: <http://www.iucnredlist.org/apps/redlist/details/11509/0> (Accessed October 2010).

The Secretary shall develop and implement plans (hereinafter in this subsection referred to as “recovery plans”) for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species.

See 16 U.S.C. § 1533(7). We believe under the provisions of the ESA, particularly Sections 7(a)(1), 7(a)(2), 9, and 10 (16 U.S.C. §§ 1536(a)(1), (2), 1538, and 1539), FWS indeed has authority to require the habitat protection and restoration, protection for individual ocelots, and other steps necessary for the species’ recovery. FWS can also require mitigation funds in the course of approving certain projects and those funds can support the elements of this recovery plan.

Thanks again for revising the ocelot recovery plan. For your convenience, we have also attached the comments we recently submitted on the Laguna Atascosa National Wildlife Refuge’s draft management plan, given the importance of this refuge for ocelots in Texas.<sup>5</sup>

Thank you for your attention.

Sincerely,

/s/Nicole J. Rosmarino

Nicole J. Rosmarino  
Wildlife Program Director  
WildEarth Guardians

On behalf of:

Luke Metzger  
Director, Environment Texas  
815 Brazos, Suite 600  
Austin, Texas 78701

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<sup>5</sup>WildEarth Guardians. 2010. Comments on Laguna Atascosa Comprehensive Conservation Plan and Environmental Assessment. Submitted to the U.S. Fish and Wildlife Service on Feb. 12, 2010 [Attachment 3].