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Road Maintenance/Endangered Species Act: Center for Biological Diversity Notice of Intent to Sue California Department of Transportation/Oregon Division of the Federal Highway Administration

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The Center for Biological Diversity (“CBD”) sent a June 15th Notice of Intent to Sue (“NOI”) to the California Department of Transportation (“Caltrans”) and Oregon Division of the Federal Highway Administration (“FHWA”) alleging violations of Section 7 of the Endangered Species Act (“ESA”).

The alleged ESA violations relate to the state’s maintenance and management of roads affecting coho and chinook salmon and their critical habitat in California and Oregon.

The alleged violations were stated to have been committed by the National Marine Fisheries Service (“Service”).

The Notice states that in 2013 and 2021 the Service authorized the taking of various species of threatened salmonids for highway maintenance projects in California and Oregon. It alleges that after the Service issued the 2021 Oregon Biological Opinion, a study indicated that a single chemical present in stormwater runoff is primarily responsible for die-offs of ESA-listed coho salmon.

The chemical referenced is 6PPD-quinone. Such chemical is alleged to be introduced to the environment via degrading tires. As a result, the Notice alleges that the California and Oregon maintenance projects will contribute to the runoff of 6PPD-quinone from highways into waterways by maintaining the roads for vehicle travel.

A contribution is also alleged to be exacerbated by:

- Increasing the acreage of impermeable surfaces
- Hardening streambanks
- Compacting soil
- Changing slopes and drainage infrastructure
- Facilitating additional vehicle miles travelled

The Notice states that Section 7 of the ESA requires that the Service reinitiate consultation when:

. . . 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.

The discovery of 6PPD-quinone and its alleged impact to listed species is stated to require that the Service reinstate consultation. Therefore, the Service, Caltrans, and FHWA are stated to be in violation of the ESA.

A copy of the Notice can be downloaded [here](#).