

August 9, 2013

Public Comments Processing  
Attn: FWS-R2-ES-2012-0042  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Drive, MS 2042-PDM  
Arlington, VA 22203

Subject:

Public Comments Processing, Attn: [Docket Number FWS-R2-ES-2012-0042; 450003014]  
Concerning the Proposed Rule, Designation of Critical Habitat Designation for the Critical  
Habitat for the Jaguar

Apache County Arizona appreciates the opportunity to submit comments and information concerning the proposed rules to designate Critical Habitat (CH) for the jaguar (*Panthera onca*), as published in the Federal Register /Vol. 78, No. 126 /Monday, July 1, 2013 / Proposed Rules, pp 39237 - 39250.

While the public should take advantage of the opportunity to review proposed rules for compliance with the Endangered Species Act, local governments have the additional responsibility for protecting the health, safety and welfare of their citizens, including but not limited to protecting the societal and economic impacts of federal actions. Apache County government ("County") recognizes and accepts this responsibility and therefore endeavors to address the proposed federal actions in a thorough and serious manner.

We submit these comments because it is important for the FWS to recognize and openly disclose the impacts on the health, safety and welfare of local citizens that result from FWS actions. While the Endangered Species Act directs the FWS and other federal agencies to conserve endangered and threatened species and the habitats they depend upon, the National Environment Policy Act (NEPA) also requires the agencies to honestly and openly disclose adverse as well as beneficial effects of agency actions on the human environment.

Numerous other federal laws contain language that requires the FWS to involve and work in a cooperative manner with local governments. A federal/local government working relationship that is based upon mutual respect would add a level of protection for the health safety and welfare of the public that is very much lacking in the current actions of the FWS.

Note that while Apache County is not one of the counties included in the jaguar Northwestern Recovery Unit area, the County feels that it must be proactive with respect to this proposed rule. The sighting of one (1) jaguar over a four months' time at the end of 2012 was used as justification for these proposed revisions that include an increase of approximately 19,905 acres (2 percent) of proposed critical habitat. Furthermore, historical records indicate that jaguars may have occurred as far north as Grand Canyon. The Draft Environmental Assessment dated May 2013, p6, states "Jaguars have large home ranges and require a significant amount of space for individual and population growth and for normal behavior". The potential for a jaguar sighting in Apache County and thus subsequent impact on the County via inclusion in proposed critical habitat is real, and justifies the County's concerns.

**The County recommends that the FWS withdraw the proposed rule to designate critical habitat for the following reasons:**

**Comment 1: Proposed rule fails to demonstrate that habitat features preferred by the jaguar were described based on the best available science and expert opinion.**

Reference: Proposed Rule, page 39239 , column 2: *We based the physical and biological feature and PCEs on a preliminary report we received from the Jaguar Recovery Team in 2011, in which the habitat features preferred by the jaguar were described based on the best available science and expert opinion of the team at that time. Since then, the Jaguar Recovery Team continued to revise and refine these habitat features, resulting in a habitat model that we received in 2013. The changes included: ...*

Discussion: Manipulation of the primary constituent elements (PCE's) of jaguar habitat to force the habitat model to include the Santa Rita Mountains and other politically sensitive areas in the CH designation is a misuse of science and the authority of the FWS. While it is stated that the changes were needed because photographs of a lone wandering male jaguar were caught by a game camera located in the Santa Rita Mountains, this appears to be a bow to political pressures to stop the development of a new mining operation in the north end of the Santa Rita Mountains and has nothing to do with science. This makes it appear that the FWS is playing with the science and data concerning the jaguar to implement a political agenda instead of actually protecting species that are declining in numbers. The manipulation of data renders the whole premise of CH designation for the jaguar at this time meaningless.

**Comment 2: The primary constituent elements fail to demonstrate that the proposed CH is in fact suitable for recovery of the species, or that the proposed CH would support recovery of the species.**

Reference: Page 39239, column 3: *Based on our current knowledge of the physical or biological feature and habitat characteristics required to sustain the jaguar's vital life-history functions in the Northwestern Recovery Unit and the United States, we determine that the primary constituent elements specific to jaguars are: Expansive open spaces in the southwestern United States of at least 100 square km (38.6 square mi) in size which: (1) Provide connectivity to Mexico; (2) Contain adequate levels of native prey species, including deer and javelina, as well as medium-sized prey such as coatis, skunks, raccoons, or jackrabbits; (3) Include surface water sources available within 20 km (12.4 mi) of each other; (4) Contain from greater than 1 to 50 percent canopy cover within Madrean evergreen woodland, generally recognized by a mixture of oak, juniper, and pine trees on the landscape, or semidesert grassland vegetation communities, usually characterized by *Pleuraphis mutica* (tobosagrass) or *Bouteloua eriopoda* (black grama) along with other grasses; (5) Are characterized by intermediately, moderately, or highly rugged terrain; (6) Are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-square-km (0.4-square-mi) area; and (7) Are below 2,000 m (6,562 feet) in elevation.*

Discussion: The above stated CH conditions do not actually describe the primary constituent elements (PCEs) of jaguar habitat, but rather fringe elements. The habitat elements described in the Proposed Rule imply that they are key elements necessary to sustain the jaguar species on into the future; however, they are not congruent with the actual habitat of the existing vast majority of breeding and healthy populations of jaguars. Presenting fringe elements as primary again appears to support the efforts to establish CH for the jaguar in the US for political reasons rather than any science based need to manage for jaguars in the Southwestern US.

Furthermore, the stated PCEs are vague and do not take into consideration adverse impacts to any of the other native predators or prey species found in the Southwest. FWS has given insufficient consideration of competition for hunting territories or of availability of prey species that would occur in the CH areas if jaguars were to actually inhabit the proposed CH. The native mountain lion (*puma concolor*) would likely be adversely impacted by the presence of even low densities of the more aggressive jaguar.

Since only an occasional wandering young male jaguar has been found along the Mexican border in the US in the past 50 years in an area that already contains all the PCEs described above, it is clear that the potential for a breeding population of jaguars is not based on scientific modeling or data, but purely on speculation and probably vain hope.

One would think the lack of good supportive science and that lack of actual breeding jaguars in the US would lead the FWS to forgo the designation of CH until such time there is a need to design CH. If the political motives were removed, the designation of CH could be set aside until better science is available, and until there are science based indications that a substantial population of breeding jaguars could exist without negatively impacting the existing populations of native predator and prey species.

Designation of CH will not provide any benefits to the jaguar at this time. In fact, existing federal laws that prohibit the trapping, hunting, killing or possessing any part of a Jaguar such as a pelt skull or claws, are sufficient to achieve the protection necessary to allow jaguars to enter and establish breeding populations in the US. There is no need for a costly and scientifically unsupported CH. If it appears that jaguars could potentially become established as a viable species in the Southwest and that the existing protections are insufficient, only then should the FWS take action to manage this species in the US.

### **Comment 3: Proposed Rule Economic Analysis fails to analyze impacts on human environment.**

Reference: Economic Analysis, p3-5, section 85: [FWS] *indicates in the Proposed Rule that, "we do not anticipate activities such as grazing, ranching operations, or limited recreational activity would have adverse effects to jaguar critical habitat, nor do we anticipate activities consistent with the stated goals or recovery actions of the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012) or the future recovery plan for the species would constitute adverse modification;* and Draft Environmental Assessment, p103: *The primary purpose of preparing an EA under NEPA is to determine whether a proposed action would have significant impacts on the human environment.*

Discussion: While FWS acknowledges the responsibility to analyze impacts on the human environment, in fact there is no such analysis provided. The Draft Environmental Assessment

discloses that 15% of the lands to be included as CH are privately held (129,246 acres private of 858,137 total). While 20,000 of the more than 129,000 acres of private land are currently held as conservation, preserves or research areas and presumably willing to absorb any negative impacts, the balance of private land potentially impacted by CH designation is significant.

Furthermore, the Economic Analysis unfortunately only analyzes the impacts on taxpayers in general (i.e. costs of administration), rather than address direct and indirect or cumulative impacts on the local ranchers and others who own and use the lands in question.

Currently a stable local predator/prey relationship exists that has evolved over time without a significant jaguar presence. Any increase in predator population would necessarily create an imbalance in that relationship (e.g. an increase in predator population without an increase in prey population due to expansion of jaguar population). The inevitable result of this new imbalance would likely be an increase in livestock predation as soon as the wild prey population was depleted. This has been demonstrated elsewhere when predator populations have been artificially increased by FWS actions at the expense of natural predator/prey balance.

CH designation would increase the jaguar population, then *all* impacts, including those on the human environment, must be disclosed per NEPA. These impacts have not been provided. If CH designation would not increase the jaguar population enough to modify the predator/prey relationship, then there is no need for CH.

## **CONCLUSION:**

The mission of the U.S. Fish and Wildlife Service is to conserve, protect and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people. This mission will work much better when done with the support of local citizens individually and through local governments. Local citizen support is only gained through open honest communications and when a sense of fairness is part of the equation. The FWS needs to honestly consider the impacts of *all* actions on the local citizens.

Due to the potential for controversy and potential for significant impacts to the economy of rural Arizona, including the adverse impact to the health, safety and welfare of the local citizen that could result from the designation of CH for the Jaguar, we feel that it is imperative that the FWS honestly consider the above comments and deal honestly and fairly with the citizen of Arizona and New Mexico.

Thank you for your attention to our comments. Note that if any one comment should prove to contain an error of understanding on our part, FWS should continue to consider the remaining comments as valid and useful.