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Public Comments Processing
Attn.: FWS-R2-ES-2012-0042; 4500030114
Division of Policy and Directives Management
U.S. Fish & Wildlife Service
4401 N. Fairfax Drive, MS 2042-PDM
Arlington, VA 22203

Re: Revised Proposed Rule to Designate Critical Habitat for the Jaguar, Docket No. FWS-R2-ES-2012-0042; 4500030114; Reopening of Comment Period on the Revised Proposed Rule, the Draft Environmental Analysis of its Effects under NEPA, and the Draft Economic Analysis of its Economic Impacts

These comments, submitted on behalf of each of Jim and Sue Chilton, the Chilton Ranch, the Pima Natural Resources Conservation District (PNRCD), an Arizona State agency of watershed and natural resource management jurisdiction, the Arizona Cattle Growers' Association (ACGA), the Southern Arizona Cattlemen's Protective Association (SACPA), and the Coalition of Arizona / New Mexico Counties respond to the invitation by the USFWS to comment on (1) its revised proposed rule to designate critical habitat for the jaguar in Arizona and New Mexico, 2) the draft EA the Services offers in support of this rule, and 3), the draft Economic Analysis used by the Service to discount its economic effects, published in the Federal Register on July 1, 2013 (78 FR 39237-50, Monday, July 1, 2013).

At the outset, PNRCD et al. once again urge the Service to immediately withdraw this revised proposed rule because, as shown previously, herein, in attachment, and by reference, the best scientific information available clearly shows that critical habitat *essential* to the jaguar's conservation or existence as a species, as required by the ESA, does not exist in either Arizona or New Mexico under any scientifically credible definition of that term. The recent, and perhaps

current, presence of a sole, transient male in southern Arizona is further clear and convincing evidence supportive of that biological fact.

The Service must also withdraw this revised proposed rule because it does not rely solely on the best scientific information available as is also required by Section 4 of the ESA. Instead, the revised proposed rule continues to improperly rely on abundant use of unreliable jaguar records, undisclosed “jaguar events,” speculation, assumption, cave paintings, philosophy / theology, opinion and consensus building, rather than solely sound scientific data, as its basis for determining occupancy, modeling and designating critical habitat for jaguars in the United States. This approach not only offends the ESA’s sound science requirement, but also separately offends similar requirements ensuring the scientific integrity of the data used by the FWS found in both the federal Data Quality Act and the FWS’s own code of ethics (incorporated herein by reference thereto).

Similarly, the revised proposed rule must also be immediately withdrawn because both its text and maps fail to specifically define the boundaries of the areas proposed for critical habitat designation as is also required by law.

Additionally, relative to the PNRCD, the revised proposed rule must also be withdrawn because the FWS did not fulfill its specifically affirmative duty under Section 2 of the ESA to cooperate with the PNRCD to resolve water issues in concert with developing critical habitat for jaguars within the PNRCD’s jurisdiction. Instead, as shown by PNRCD in previous October 8, 2012 comments (incorporated herein by reference thereto), the FWS refused to do so, without explanation, under claim of absolute attorney / client privilege. Nevertheless, in this revised proposed rule, the FWS, in the further absence of cooperation with the PNRCD, has once again unilaterally determined that permanent surface waters must be allocated for use by jaguars every 12.4 miles within the PNRCD’s boundaries and throughout the areas of critical habitat it now proposes to designate for them.

Moreover, this revised proposed rule must also be immediately withdrawn because it is in fundamental noncompliance with NEPA. Specifically, contrary to the claim of the Service made in Draft EA, an EIS, rather than a mere EA, is clearly required where, as here, the action proposed is unprecedented, highly publicly and scientifically controversial, seeks to include portions of a municipality within its ambit (draft Economic Assessment at p. 7-3, para. 181), has no conservation value for the jaguar as a species, and its impacts on the human environment are indeed quite substantial (see: AGFD comments on Jaguar Critical Habitat – AGFD Input October 19, 2012 pp. 1-12; New Mexico Department of Agriculture October 17, 2012 comments, pp. 1-6 (incorporated herein by reference thereto)). The revised proposed rule’s increase in critical habitat acreage correspondingly increases these impacts.

Further, this revised proposed rule must also be immediately withdrawn because the draft economic analysis of its alleged impacts under-includes and under-estimates its actual economic impacts while misstating its actual purpose and ignoring the actual overall economic conditions under which those impacts would occur.

Finally, in addition to the specific comments addressing these issues, PNRCD et al. takes the opportunity afforded by the FWS's invitation to discuss how Congress, the President, the FWS, and the courts can better improve ESA implementation to ensure that Congress's "best scientific data available" evidentiary requirement is actually met, and the actions that can be taken by each to put a stop to the kind of rampant abuse of the ESA's scientific evidentiary standard that this revised proposed rule once again represents.

I. Habitat Essential To The Jaguar's Conservation Or Existence As A Species Does Not Exist In Either Arizona or New Mexico

As amply shown by PNRCD et al. in previous comments made before and after the FWS proposed the designation of critical habitat for jaguars in Arizona and New Mexico (incorporated herein by reference), habitat essential to the jaguar's conservation or existence as a species does not exist in either Arizona or New Mexico. As shown previously by PNRCD et al., there are no documented records of jaguars breeding in Arizona or New Mexico – either in pre-settlement or recent times. In regard to Arizona, no possibly naturally-occurring female jaguar has been documented to have occurred within that state since 1949. In regard to New Mexico, no naturally-occurring female jaguar has ever been documented to have occurred within that state. With minor exception, the Arizona Game & Fish Department's (AGFD's) October 19, 2012, comments concur with this assessment.

In its October 19, 2012 comments regarding the existence of critical habitat essential to the conservation of the jaguar as a species in Arizona and New Mexico, AGFD states the following at page 1:

"We request that USFWS withdraw the proposed rule because habitat essential to the conservation of the jaguar as a species does not exist in either Arizona or New Mexico under any scientifically credible definition of that term. . . . In the course of jaguar conservation efforts since 1996 (including recovery planning in 2010-2012), AGFD has repeatedly stated its belief that designation of critical habitat for the jaguar in AZ-NM is not consistent with the ESA standard of "essential to the conservation of the species" and that it will not provide significant, measurable conservation benefits or recovery potential for the species. AGFD has diligently led jaguar conservation efforts in AZ-NM since 1996 and has affirmed that it would work with USFWS to develop a legally-sound proposal that is informed by science. It was, and continues to be, AGFD's contention that a legally-sound proposal would not include the designation of critical habitat in the U.S. We further believe that designating critical habitat for the less than 1% of historic jaguar range which occurs in the U.S. would jeopardize the credibility and long-term viability of the ESA, and lead to erosion of public support for jaguar conservation activities in AZ. The USFWS proposal also fails to meet the Service's own operational ESA-

implementation standard of a population consisting, at a minimum, of occupancy of a breeding pair for at least two consecutive years. By that standard, occurrence records for recent history (i.e., post 1850s) fail to show that AZ and or NM has ever been occupied by a jaguar “population.”

As PNRCD et al. previously pointed out in October 8, 2012, comments and discrepancies attachment thereto (incorporated herein by reference), occurrence records fail to show that a jaguar “population” occupied either Arizona or New Mexico prior to and including the 1850s, either. Thus, because the revised proposed rule fails to meet the Service’s own operational ESA-implementation standard of occupancy by a breeding pair for at least two consecutive years in those areas of Arizona and New Mexico it now seeks to designate as habitat critical or essential to the jaguar’s conservation or existence as a species, the proposed rule must be withdrawn.

Moreover, because the Service’s new interpretation of the term “essential” relative to the designation of critical habitat is contrary to the Service’s current operational ESA-implementation standard and represents a broad and unprecedented “first impression” interpretation of the ESA’s critical habitat language neither grounded in policy nor regulation, that new interpretation is not entitled to *Chevron* deference from the courts upon judicial review.

II. The Proposed Rule Does not Rely on the Best Scientific Information Available and Fails to Provide Scientific Data Supportive of the Service’s Claim That Jaguars Occupied Habitat in Arizona and New Mexico Essential to the Jaguar’s Conservation Or Existence As A Species At the Time of Jaguar’s Listing in the U.S. in 1997.

Contrary to the Service’s apparent belief, the term “occupy” has a meaning separate and distinct from that which the Service would give it by use of this revised proposed rule. This is because the question in the critical habitat context under Section 3(5)(A)(i)(I) of the ESA is whether the area in question provides habitat *essential* to the jaguar’s conservation or existence *as a species*, such as Brazil and Belize do, and not whether the area in question could briefly host, has hosted, or is hosting a transient male jaguar travelling well beyond the northern limits of its breeding range on very few occasions over the course of the last 50+ years.

Moreover, “occupancy” is determined at the time of listing, not over the course of 30+ years and/or 50+ years as the FWS would now have it as its latest new interpretation of that term (equally un-entitled to *Chevron* deference) by use of this rule. Section 3(5)(A)(i) of the ESA, however, restricts occupancy analysis in the critical habitat context to “the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, . . .”

Here, the jaguar was listed as endangered in the United States on July 22, 1997 (62 FR 140, July 22, 1997, pp. 39147 et seq.) – not in 1992 as the FWS inaccurately claims in this revised proposed rule. Thus, the relevant occupancy analysis in the critical habitat context is of the specific areas within the geographical area of the United States occupied by jaguars in July of 1997. The FWS seemed to have at least partially accepted this clear direction when, on January 13, 2010, it determined that designation of critical habitat for the jaguar in Arizona and New

Mexico would be beneficial to the species and should include the areas of Arizona and New Mexico where jaguars have been documented since 1996 (75 FR 1741 et seq.).

However, the revised proposed rule, like its 2012 predecessor, remains in departure from the FWS's 1996 standard noticed in 2010 by using information from 1982 through 2013, and from 1962 through 2013, or from contorted time periods of 30 + years and 50+ years respectively (FWS *Questions and Answers: Jaguar Critical Habitat Proposal (Revisions and Supporting Analyses)*, July, 2013 at p. 1), to establish occupancy of Arizona and New Mexico by jaguars at the time of this species' listing in the United States in 1997.

Regardless of the FWS's improper use of contorted time periods here, whether occupancy is examined over the course of 50+ years, 30+ years, or in 1997 as the ESA plainly requires, the ultimate result remains the same: Arizona and New Mexico do not provide critical habitat essential to the jaguar's conservation or existence as a species under any scientifically credible definition of that term.

Again, according to AGFD in October 19, 2012, comments (at p. 3):

Thus, between 1962 and 2011, only 10 (possibly 12) different individuals (10 or 11 males; sex unknown for one animal) were documented in AZ and/or NM. Assuming a rangewide population of about 30,000 jaguars, 35 of the 50 years since 1962 the U.S. has had 0 percent of the population and in 15 years from 0.003 to 0.01 percent. . . . At this time, it is not biologically sound or justifiable to designate less than 1% of habitat that accounts for less than 0.003 to 0.01% of the population. Moreover, AZ-NM has never been documented to hold a breeding pair of jaguars. There is no evidence that jaguars in AZ-NM contribute offspring to the rangewide population in a manner that outweighs mortality in the area of dispersal or that they provide some other biological benefit (e.g. novel genetic traits) for the population."

In fact, there is no post-Pleistocene evidence that jaguars in Arizona and New Mexico have ever contributed any offspring whatsoever to the range-wide population of jaguars. This is because no naturally-occurring female jaguar has ever been documented in New Mexico, and few have ever been documented in Arizona (the last of which was possibly in 1949; but see, however, 2012 Discrepancies treatment raising question about this animal's origin, incorporated herein by reference thereto).

Moreover, since AGFD wrote its 2012 comments, the revised proposed rule has effectively removed two highly-suspect, post-1962 records of high elevation jaguars (the Penrod and Culbreath jaguars), de facto, by eliminating elevations above 6562 feet from critical habitat inclusion. Thus, between 1962 and 2011, even fewer possibly naturally-occurring jaguars than thought by AGFD in 2012 were actually documented in Arizona and New Mexico. Not one, documented female was among the aggregate.

The recent, and perhaps current, presence of a lone, transient male jaguar photographed in the Whetstone and Santa Rita Mountains, does not change this equation in the least. Instead, the presence of this transient male is consistent with the historical record of only rare, transient presence of lone-male jaguars in Arizona and New Mexico over time.

III. The Proposed Rule and Its Maps Fail to Specifically Define the Boundaries of the Areas Proposed for Critical Habitat Designation as Required by Law

50 CFR 424.12(c) requires the FWS to define critical habitat “by specific limits using reference points and lines as found on standard topographical maps of the area.” This, the FWS does not do. Instead, the FWS proffers vague and non-detailed maps on its maps link from which little of value can be ascertained because they depict few roads, no boundaries, no reference points, or even the locations of some towns and streams. The FWS also proffers critical habitat maps in the form of GIS files which are inaccessible, however, unless one has some kind of software and user training that is not specified in the revised proposed rule. As a result, the revised proposed rule must be immediately withdrawn because it is in fundamental noncompliance with 50 CFR 424.12(c).

The adverse effects of this revised proposed rule’s use of less than definitive maps are two-fold. First, landowners are left in a precarious position because they have no certain idea of what portions of their properties would be designated as critical habitat and what portions would not. Second, should the FWS give more shrift to its vague and inadequate maps than its printed word in the text of this proposed rule, as appears to be a foregone conclusion here, the proposed critical habitat designation would adversely affect a much broader area and therefore would have far greater adverse economic and private property impacts than could be reasonably or rationally understood or anticipated based on the claims made by the FWS in the text of this proposed rule.

Such is precisely the case presented here by the Town of Patagonia. Here, although unmentioned by the FWS in the text of this revised proposed rule or depicted on its maps of critical habitat, at least one residential neighborhood located within the municipal limits of the Town of Patagonia, along with its Women’s club and Town library, are improperly included within the Unit 3 area proposed for jaguar critical habitat designation. Were it not for very sparing mention in the draft EA (at p. 12) and draft Economic Analysis (at p. 7-3, para. 181), no one could reasonably know about, let alone rationally or reasonably comment on, the revised proposed rule’s inclusion of part of the Town of Patagonia, its Women’s club, and its library as critical habitat for jaguars. Nor could anyone reasonably be aware of the further fact that not even one of the “Primary Constituent Elements” (PCEs) identified by the FWS as “essential” to the existence of jaguars actually exists in the Patagonia neighborhood the FWS nonetheless seeks to designate as critical habitat for jaguars by use of this revised proposed rule.

In short, because this approach not only violates 50 CFR 424.12(c), but is also arbitrary and capricious by definition and specifically non-compliant with the requirements of Section 4 of the ESA, the revised proposed rule must be immediately withdrawn for these additional reasons as well.

IV. The Theory That A Peripheral Population of Jaguars North of the Mexican Border Is Essential to the Conservation of Jaguars Range-Wide Is Sheer Speculation Refuted by the Best Scientific Information Available

The FWS speculates that a single, transient-male jaguar's recent presence, a handful of other records of singular transient male occurrence (8-10 over 50+ years), and other unreliable "jaguar events" the FWS refused to provide in response to FOIA request but has now newly polished and re-posed as "class I records" (March 2013 Jaguar Habitat Modeling Update Report), justify designation of critical habitat for jaguars in Arizona and New Mexico as part of the secondary area of the northwestern recovery unit it identifies. The FWS also speculates, in direct contradiction of the best scientific data available, that peripheral population contributions from Arizona and New Mexico are essential to the conservation or existence of the jaguar range-wide.

Combining that speculation with the equally speculative and unreliable thirteenth iteration of its habitat model, minus high elevation country but arbitrarily adding lower elevation country based on unidentified (and therefore unverifiable), newly-defined, so-called "jaguar events" (see March 2013 Jaguar Habitat Modeling Database Report) caused the FWS to increase its proposal of critical habitat designation in the revised proposed rule by 19,905 acres, including, as mentioned above, even part of the Town of Patagonia, Arizona, as critical habitat for jaguars (see draft Economic Analysis 2013, p. 7-3, para. 181). That approach passes neither scientific nor legal muster under the ESA.

Nonetheless, the FWS now claims that it has "scientifically" identified 858,137 acres in Arizona and New Mexico that are essential to the jaguar's range-wide conservation or existence as a species -- all for a maximum theoretical, "potential" carrying capacity value of just 6 jaguars (March 2013 Jaguar Habitat Modeling Database Update at p. 42) representing a mere two ten-thousandths of the overall range-wide population of jaguars (AGFD 2012 comments estimating the range-wide population of jaguars at about 30,000). Contrary to the claim of the FWS, such miniscule potential for contribution means that the designation of critical habitat in the U.S. is certainly neither essential nor in any way significant to the conservation or existence of the jaguar as a species.

Moreover, because this change in the revised proposed rule amounts to about a 2% increase in critical habitat area for jaguars over that proposed by the FWS in August, 2012, for Arizona and New Mexico, AGFD's 2012 comments on this subject matter are even more relevant and important today than they were when submitted in 2012. According to AGFD (October 19, 2012 comments at p. 4):

"The notice also states that although the U.S. and northwestern Mexico represent the northernmost extent of the jaguar's range, "peripheral populations" generate future evolutionary diversity, as well as maintaining "connectivity with Mexico". (77 FR 50222). The closest known breeding population in northern Mexico is about 140 miles south of the international border. There is little evidence supporting movements back-and-forth to the suspected core breeding

population within northern Mexico, and then only at the periphery of that core. Recently observed AZ-NM jaguars are most likely dispersing members, possibly inter-acting members, of this population (Johnson et al. 2011; Johnson and Van Pelt *in press*). Warshall (2012 Biodiversity & Management of the Madrean Archipelago III conference) presents a simple model of the likelihood of naturally dispersing female jaguars into the U.S. (AZ) at greater than 40 years, based on productivity, known dispersal distances of males versus females, and the currently known breeding population, which suggests that a breeding population is not likely to occur in the near future based on dispersal from the currently Mexico population. If the individual (male) jaguars occurring occasionally in the U.S. do not interact with breeding females from the Northwestern Recovery Unit, then they do not contribute to the population and recovery as a whole. If their genetic stock remains lost because of a lack of movement back to the breeding area or dispersal of breeding females to them, then they are not essential for persistence. Maintaining potential for dispersing females and movement of individual males back to the core area is more important for jaguar conservation than identifying and designating critical habitat in the U.S.”

In short, because there is no evidence that transient, individual male jaguars occurring occasionally in Arizona and New Mexico interact with females from the Northwestern Recovery Unit, or interact with the core breeding population at all for that matter, there is no evidence that designation of critical habitat for jaguars in Arizona and New Mexico, including that identified as occurring within the Town of Patagonia, is “essential” to the conservation or existence of jaguars on a range-wide basis as the FWS nevertheless arbitrarily, capriciously and oppositely speculates.

Instead, that arbitrary and capricious claim, as previously discussed by PNRCD et al. in October 8, 2012, comments, emanates from the Service’s and its recovery team’s improper importation and use of speculation that is either contradicted or unsupported by the scientific record of jaguar occurrence in Arizona and New Mexico, the philosophy / theology of conservation biology, opinion, consensus building, and fatally flawed models (that improperly use unreliable “jaguar events” and other unreliable, unpublished data obtained from McCain and Childs). Use of such speculation by the FWS, as stated by the Supreme Court of the United States in *Bennett v. Spear*, is clearly insufficient to trigger the protections of the ESA.

IV. The Revised Proposed Rule Must Be Withdrawn Because the FWS Did Not Fulfill Its Specifically Affirmative and Mandatory Duty Under Section 2 of the ESA to Cooperate With the PNRCD to Resolve Water Issues in Concert With Developing Critical Habitat for the Jaguar

Section 2(c)(2) of the Endangered species Act states:

“It is further declared to be the policy of Congress that all Federal departments and agencies shall cooperate with State and local agencies to resolve water issues in concert with the conservation of endangered species.”

As stated by PNRCD et al. in previous October 8, 2012 comments (incorporated herein by reference thereto), the FWS is required to cooperate with the PNRCD, an Arizona State agency of watershed management and resource management plan jurisdiction, to resolve water issues in concert with designating critical habitat for the jaguar within the PNRCD’s geographical boundaries. That duty is made mandatory by Congress’s specific use of the word “shall.”

Here, the FWS refused to cooperate with PNRCD to resolve water issues in concert with proposing the designation of critical habitat for jaguars within the PNRCD’s jurisdictional boundaries. Instead, as shown by PNRCD et al. in previous October 8, 2012 comments, the FWS refused to do so, without explanation, under ludicrous claim of absolute attorney / client privilege.

Similarly, in the revised proposed rule, the FWS has once again unilaterally determined in the absence of necessary cooperation with the PNRCD, that permanent surface waters for jaguars must be allocated every 12.4 miles within the PNRCD’s jurisdiction and throughout the areas of critical habitat it now proposes to designate for jaguars in Arizona and New Mexico. Because that approach once again specifically offends Section 2(c)(2) of the ESA, the revised proposed rule must be immediately withdrawn.

PNRCD et al. also note that this newest iteration of “water for jaguars” is apparently based on the FWS’s further revision of the “jaguar event” database it has yet to make available despite previous, point-blank FOIA request, and, the addition of 186 re-defined “class I record” “jaguar events” gleaned from data unpublished by McCain and Childs.

All of these “new” “class I” records, however, pertain to a single male jaguar, Macho B (see March 2013 Jaguar Habitat and Modeling Database Update at p. 3), whose presence and movements were artificially induced by McCain’s and Childs’ improper use of jaguar specific, sexual-scent baiting (using scat of a captive female jaguar in heat). As a result, any and all data obtained by use of this methodology is at best artificial and unreliable per se.

Moreover, as stated previously in October 8, 2012, comment by PNRCD et al. and reiterated once again here, the Service cannot rely on McCain and Childs (2008) for support of its speculations about jaguar occupancy of the United States, allocations of surface waters for jaguars, or as the source of jaguar densities it is currently using in its so-called “scientific” habitat models, as it attempts to do once again by use of the revised proposed rule here. Although the title of McCain’s and Childs’ 2008 work – *Evidence Of Resident Jaguars (Panthera onca) In The Southwestern United States And The Implications For Conservation* – suggests otherwise, as the Service acknowledges in recovery outline, but not in this proposed

rule, the artificial baiting methodology employed by McCain and Childs (2008) fatally compromises both the relevance and reliability, or scientific credibility, of that residency claim.

According to the Service, “[b]ecause female jaguar scat was used at some camera traps at various times throughout their research [McCain and Childs (2008)], it is unknown whether or how this could have influenced the observed range of the jaguar in this study.” (Recovery Outline, at p. 9). The Service, however, fails to divulge the critically relevant fact that the “female jaguar scat” used at these camera-traps was actually scat from captive female jaguars *in heat* -- a fact of which it has been long aware, a fact that is subject to the taking of judicial notice, a fact that clearly explains how this jaguar-specific sexual scent baiting could have easily artificially influenced the observed range of that lone, male jaguar, and a fact which ultimately precludes the extension of scientific validity by the FWS to any conclusion reached by McCain and Childs (2008) relative to the jaguar’s naturally-occurring residency, habitat use, water needs, or densities of occurrence in the United States.

Simply put, because the methodology of studying jaguar residence employed by McCain and Childs (2008) included artificial attraction and location of jaguars by use of potent, jaguar-specific, scat of female-in-heat, sexual scent baiting, the Service, cannot claim, as it attempts to do in April 16 recovery outline, 2012 proposed rule, and again in this revised proposed rule, that McCain and Childs (2008) nonetheless provides reliable scientific evidence of “naturally occurring” resident jaguars in the United States from which distances between waters, habitat use, and estimations of densities can be determined. (See PNRCD et al. October 8, 2012, comments). As shown clearly in previous comments, attachments and herein, that approach is contrary to the best scientific information requirement of Section 4 of the ESA as well.

V. The Revised Proposed Rule Must Be Immediately Withdrawn Because It is in Fundamental Noncompliance With NEPA

According to FWS’s voluminous 122-page draft EA, designation of the 858,137 acres of critical habitat it now proposes for jaguars in Arizona and New Mexico will have no significant effects on the human environment and therefore requires the preparation of only a mere EA under NEPA. The FWS is wrong. An EIS, rather than a mere EA is clearly required where, as here, the action proposed is unprecedented, highly publicly and scientifically controversial, includes a portion of a municipality within its ambit, has no conservation value for jaguars as a species, and its impacts on the human environment are indeed quite substantial (40 CFR 1508.9; see also: AGFD October 19, 2012 comments, pp. 1-12; Chilton 2012 comments; New Mexico Department of Agriculture October 17, 2012 comments; all incorporated herein by reference thereto).

Moreover, according to the Council on Environmental Quality, “the Council has generally advised agencies to keep the length of EAs to not more than approximately 10-15 pages. Some agencies expressly provide page guidelines (e.g., 10-15 pages in the case of the Army Corps). . . . Agencies should avoid preparing lengthy EAs except in unusual cases, where a proposal is so complex that a concise document cannot meet the goals of Section 1508.9 and where it is extremely difficult to determine whether the proposal could have significant

environmental effects. In most cases, however, a lengthy EA indicates that an EIS is needed.” (CEQ 40 FAQs Answers to 30-40, at p. 5).

Such is clearly the case here. Here, the proposal is simple, not complex – designation of critical habitat for jaguars in Arizona and New Mexico. That such is the case, is shown by the fact that the FWS has already reached a preliminary determination that the revised proposed rule will have no significant effects on the environment before receiving even a single comment on that issue (78 FR 39244), and, the further fact that the FWS has already certified that this rule will have no significant economic impact on small business entities under the SBREFA (*Id.* at p. 39244-45). Therefore, a concise 10-15 page draft EA, rather than the voluminous 122-page draft EA the FWS offers, would have met the goals of Section 1508.9.

Moreover, neither is it difficult to determine that the revised proposed rule would have significant impacts on the human environment, including those involving designating a portion of a municipality as critical habitat for jaguars, impacts involving water rights takings and subordination of those water rights to federal primacy, water use, maintenance of surface waters allocated for jaguars every 12.4 miles across 858, 137 acres of Arizona and New Mexico, likely restrictions on grazing, farming, mining, hunting, fishing, other forms of recreation, night-time lighting, human presence, border security, road building and maintenance of existing roads, pipeline building (such as the currently proposed Sierrita natural gas pipeline) and maintenance, and military ground maneuvers. Accordingly, in this case, the FWS’s 122-page draft EA clearly indicates that an EIS is needed here. As a result, the FWS must immediately withdraw this revised proposed rule until it has properly prepared a draft EIS for it and subjected that draft EIS to public review.

VI. The Revised Proposed Rule Must Be Immediately Withdrawn Because the Draft Economic Analysis Under-Includes and Under-Estimates the Rule’s Actual Economic Impacts, Misstates the Rule’s Purpose, and Fails to Consider the Effects It Does Consider in the Context of Current Overall Economic Conditions

The revised proposed rule must also be immediately withdrawn because the draft Economic Analysis of its alleged economic effects under-includes and under-estimates the rule’s actual extent of economic impacts, misstates the rule’s actual purpose, and fails to consider the effects it does address in the overall context of current economic conditions.

Here, the draft Economic Analysis under-includes the actual economic effects of this rule because it does not address whose or what surface waters are to be allocated for jaguar use every 12.4 miles apart (so that a jaguar will never be more than 6.2 miles away from a surface water source), and at what costs, across the 858,137 acres of Arizona and New Mexico now proposed for jaguar critical habitat designation by use of this revised proposed rule. The importance of this issue in the economic context was specifically addressed by the New Mexico Department of Agriculture in October 17, 2012 comments as follows:

“The impacts to agriculture as related to the declaration of critical habitat in New Mexico would be significant.

There would be economic effects to many small agricultural entities and the families of agricultural producers. Small family ranches and farms comprise the bulk of the agricultural community within and surrounding the area proposed as critical habitat. Water related resources make agriculture possible and protection of the quality and quantity of New Mexico's water resources is crucial to agriculture. The designation of critical habitat for endangered species must consider agriculture and its positive economic impact to our state's economy. The jaguar's dependence on year-round water availability within 10 kilometers (6.2 miles) could have severe impacts on agriculture. Livestock watering facilities currently supply year-round water sources in the proposed critical habitat. These manmade watering facilities make it possible for ranchers to graze livestock on federal, state, and private property within the proposed habitat. If this rule is adopted, conflicts related to livestock and wildlife use are a likely outcome. The majority of year-round water in the proposed habitat is manmade and, therefore, man maintained. Who will maintain the watering facilities that create the habitat for the jaguar? Will livestock producers be able to freely use the watering facility they created, or will access be restricted to reduce human impacts within the proposed habitat? Who will be responsible for maintaining watering facilities in the area if ranchers are not using a particular pasture? These questions illustrate the potential conflicts that will occur if this critical habitat designation stands. Any scenario imagined surrounding these questions will have negative impacts on local livestock producers."

The same holds true for Arizona. Yet, based solely on assurances of the opposite from biased federal bureaucrats, these important water issues and the potential economic impacts of restricted use (if not outright takings) are not even addressed in the draft Economic Analysis (i.e., no further restrictions on water use, ranching, and farming are "anticipated" as the result of adoption of this revised proposed rule). Such "anticipation," however, contradicts the FWS's statement made in previous Federal Register notice, as quoted by the court in *Center for Biological Diversity v. Kempthorne* (D. Ariz. 2009), that "[t]he range and numbers of jaguars in the United States has declined due to habitat loss and fragmentation, direct persecution (including through predator control), destruction of riparian corridors and other areas used as movement corridors, and the introduction of livestock in historic jaguar range. 62 Fed. Reg. 39154-55." Nonetheless, the FWS and its economic analysts arbitrarily, capriciously and incredibly conclude, in the absence of competent analysis, that there will no significant effects on water rights, water use, water maintenance, ranching, farming and small business entities brought about by designation of critical habitat for jaguars in Arizona and New Mexico.

Additionally, the draft Economic Analysis fails to adequately examine the economic costs of this revised proposed rule to ranching, farming, and small businesses in terms of “adverse modification” of primary constituent elements (PCEs), Section 7(a)(2) consultations for jaguars. Contrary to the approach taken by the draft Economic Analysis, those economic costs must be examined in conjunction with the “threats” to jaguars, identified by the FWS as requiring “special management,” in order to rationally estimate the actual economic costs of those consultations directly resulting from this revised proposed rule.

According to the FWS (78 FR 39239) the primary constituent elements specific to jaguars, that are “vital” to sustaining the jaguar’s life-history functions in the Northwestern Recovery Unit and the United States, are expansive open spaces in the southwestern United States of at least 100 square kilometers (38.6 square miles) in size which (1) provide connectivity to Mexico; 2) contain “adequate” (but undefined) 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 kilometers (12.4 miles) of each other; 4) contain from greater than 1 to 50% canopy cover within Madrean evergreen woodland; 5) are characterized by intermediately, moderately, or highly rugged terrain; 6) are characterized by minimal to no human density, no major roads, or no stable nighttime lighting over any 1 square kilometer (0.4 square mile) area; and 7) are below 2,000 meters (6,652 feet) in elevation.

Also, according to the FWS, specific “threats” posed to jaguars within the area proposed for critical habitat designation in Arizona and New Mexico include increased human disturbances “into” “remote locations” (which are not defined) through construction of impermeable fences and widening or construction of roadways, power lines and pipelines; mining and development activities, increased human presence as the result of other “development activities” (which are also not defined), and military ground maneuvers.

Further, throughout this revised proposed rule, the FWS states that while grazing, hunting and other recreational activities are predominant activities within the area it would designate as critical habitat for jaguars, they are not activities “anticipated” to require special management and therefore will be insignificantly economically impacted by its finalization. As shown clearly above, such anticipation is unwarranted.

While the draft EA does recognize that the finalization of this rule would usher in a new era of Section 7(a)(2), ESA “adverse modification” of habitat consultations for the jaguar, it grossly underestimates both the numbers and costs of the Section 7 “adverse modification” consultations that will surely arise regarding all of these activities as the direct result of designation of critical habitat for jaguars in Arizona and New Mexico.

This is because, according to the FWS in revised proposed rule (78 FR 39239),

“If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any federal agency. Federal agencies proposing actions affecting critical habitat must consult

with us on the effects of their proposed actions, under Section 7(a)(2) of the Act.

Thus, relative to livestock grazing, if this rule is finalized, every federal grazing permittee within the area of critical habitat for jaguars will be immediately subject to reinitiated Section 7(a)(2) “adverse modification” consultations involving threat analyses relative to the jaguar and their current grazing permits. Moreover, because every grazing permit within the area of critical habitat will also come up for reauthorization twice over the 20 year period covered by the draft EA, that process will be specifically repeated three times.

Yet, the draft Economic Analysis considers only a handful of previous jaguar consultations as its baseline to grossly under-estimate the number of 7(a)(2) consultations that will be triggered by the designation of critical habitat for jaguars and to predict that such designation will result in no significant economic effects to livestock grazing and ranching.

Moreover, in arriving at that conclusion, the draft Economic Analysis entirely ignores the very real, directly associated economic costs to ranchers of these Section 7 consultations in hiring consultants, attending consultations, reviewing biological opinions, participating in NEPA, filing appeals of other federal agency findings if necessary, modifying ranching operations, modifying use of waters, and implementing mitigation measures for jaguars. Those costs, relative to the designation of critical habitat for the jaguar alone, will conservatively exceed \$20,000 - \$25,000 per consultation, or possibly more per consultation than that estimated by the draft Economic Analysis for all consultations over the entire 20 year time period it covers (i.e., \$24,000 for all consultations regarding the jaguar over 20 years posited at page 9.7 in the draft Economic Analysis).

Further, the draft Economic Analysis fails to consider the economic impacts this revised proposed rule would have on the maintenance and development of mining claims (patented and otherwise) that many small ranchers and other small business entities also hold. Those impacts directly resulting from finalization of this proposed rule could conservatively result in millions of dollars of lost income.

Similarly, the draft Economic Analysis fails to consider the millions of dollars in economic impacts due to devaluation of ranches along the border resulting directly from this revised proposed rule.

Finally, the draft Economic Analysis also fails to consider the economic impacts to small ranchers of third-party litigation arising from the finalization of this revised proposed rule. Past experience has shown, and current experience indicates (see Center for Biological Diversity July 2, 2013, press release, attached), that dispute and subsequent litigation brought by environmental advocacy corporations over what constitutes “adverse modification” of jaguar critical habitat relative to grazing use, permit authorizations and renewals will likely occur and that necessary participation in such by small, family ranchers will cost each as much as \$250,000 per case. This same situation also applies to the issuance and/or reauthorization of all federal permits involving federal land use (i.e., mining, etc.). Yet, despite the fact that this revised proposed rule is itself

the product of litigation, the draft Economic Analysis fails to mention or consider the costs of litigation to small business entities that will very likely directly result from its finalization.

As a result, the FWS's certification that the revised proposed rule will not have a significant impact on a substantial number of small entities under SBREFA based on this draft Economic Analysis (78 FR 39244-45) is arbitrary and capricious and therefore must be withdrawn.

While the draft Economic Analysis does at least inadequately attempt to address economic impacts to livestock grazing and ranching, it doesn't attempt to address such impacts to hunting, fishing, or other forms of recreational activities at all. This is a fatal omission because, contrary to the unfounded opinion expressed in the draft Economic Analysis, hunting, fishing, and recreational uses which are funded in whole or in part, are authorized by, or carried out by any federal agency are subject to Section 7(a)(2) "adverse modification" of jaguar habitat consultations as well.

According to AGFD in its October 19, 2012 comments:

"AGFD is also concerned that designation of critical habitat could be used to limit some traditional game management and recreational activities, such as hunting and our ability to manage wildlife, including mountain lions. While we are not aware of any legal means for this to occur directly, we are uncertain if designation would be used in any type of litigation leading to USFWS settlements or court orders that could impact game management activities. Impacts to hunting would have a direct financial impact to the agency and an economic impact to local communities.

AGFD has good reason to be concerned. This is because the "adverse modification" arena of jaguar critical habitat designation will also very likely be used by environmental advocacy corporations in litigation to also attempt to severely restrict hunting under the undefined "adequate prey" (i.e., deer, javelina, etc.) PCE standard stated in this revised proposed rule. Moreover, unmentioned by AGFD, is the fact that the USFWS isn't the only federal agency from which settlements or court orders could emanate from litigation brought by third parties that would impact AGFD's game management activities (i.e., those involving the U.S. Forest Service and the BLM, for example).

Further, these settlements and court orders could also result in dramatic restriction of sport fishing and recreation at the four lakes – Arivaca, Pena Blanca, Parker Canyon, and Patagonia – currently included within the area of critical habitat for jaguars identified in the revised proposed rule. This is because the PCEs of "water for jaguars every 12.4 miles" (of which these currently-recreationally purposed lakes are contributory to) and "minimal to no human population densities" could also be easily used by third party litigants to attempt to dramatically restrict recreational use of these lakes if the critical habitat as proposed is finalized.

As shown in attachment, hunting and fishing revenues from each of the Arizona counties proposed in part as critical habitat for jaguars – Pima County, Cochise County, and Santa Cruz County -- are substantial. In regard to Santa Cruz County, the area proposed as critical habitat for jaguars is particularly substantial, including, as stated previously, even part of the Town of Patagonia.

Economic impacts of hunting and fishing in these three counties together amount to \$111.1 million in fishing and hunting expenditures, \$136.9 million in multiplier effect, \$23.4 million in salaries and wages, 1,597 full-time and part-time jobs, and \$3,984,000 in State tax revenues per year. Hunting and fishing economic impacts are provided separately in attachment for each of these counties.

Similarly, the draft Economic Analysis does not begin to address the actual economic effects of precluding, delaying, or requiring mitigation for the construction of the previously-proposed Sierrita natural gas pipeline which crosses part of the area later proposed by the FWS for critical habitat inclusion by use of this revised proposed rule. As shown clearly in attachment, those costs alone could run into the billions of dollars as is revealed by recent developments relative to both the Sierrita (see WWP June 28, 2013, comments to FERC, attached) and Ruby pipelines (see July 19, 2013, article from the *The Westerner*, attached).

Nor does the draft Economic Analysis even address the economic impacts of this revised proposed rule on manganese production from Wildcat Silver's Hermosa mining project in the Patagonia Mountains, despite the fact that the U.S. currently imports 100% of the manganese it uses, and despite the further fact that production of silver and other metals is also projected to be substantial (see Jonathan DuHamel article, July 19, 2013, attached).

Neither does the draft Economic Analysis adequately address the impacts of this revised proposed rule on national security by including Fort Huachuca as critical habitat for jaguars while omitting rational analysis of border fence construction which also requires the construction of roads, forward observation bases, and communication towers just in the area from west of Nogales to the Buenos Aires National Wildlife Refuge alone. Those costs could run into the billions of dollars as well.

Contrary to the approach taken in the draft Economic Analysis, all of the impacts stated herein must be included in any competent, rational analysis of the revised proposed rule's actual costs and economic impacts in conjunction with its actual purpose – designation of critical habitat “essential” to the jaguar's conservation or existence as a species range-wide. This, however, the draft Economic Analysis also does not do.

Instead, the draft Economic Analysis variously misstates this revised proposed rule's purpose by stating that “the primary purpose of the rulemaking (i.e., the direct benefit) is the potential to enhance conservation of the species” (draft Economic Analysis at p. 2-15, para. 74), and, “to support its [the jaguar's] long-term conservation” (draft Economic Analysis at p. 11-1). Thus, mistaken purpose further fundamentally compromises the credibility of the draft Economic Analysis as well.

Finally, and equally fundamentally damning, is the failure of the draft Economic Analysis to consider economic impacts of this proposed rule in the context of current, overall economic conditions. Here, current overall economic conditions are the worst since the Great Depression of 1929. Nonetheless, the FWS and its Cambridge-based contractors arbitrarily and capriciously treat economic impacts of this revised proposed rule as if they occur solely in an insular vacuum unaffected by the state of the overall economy. Accordingly, for this reason, and all of the others stated herein, the current draft Economic Analysis is both arbitrary and capricious. As a result, it is also both wholly inadequate and entirely unacceptable.

VII. How Congress, the President, the FWS, and the Courts Can Better Improve ESA Implementation to Ensure that the ESA's "Best Scientific Data Available" Requirement is Actually Met

As shown by PNRCD et al. herein and in previous comments, this proposed rule can be best described, in view of the best scientific data available, as "all pain for absolutely no gain." Therefore, how this abusive travesty has occurred, and others like it are occurring, is important to lawmakers, policymakers, the FWS, and the courts if something is to be done to stem this rampant abuse of the ESA and thus restore its integrity.

Travesties such as this one almost invariably begin with 90-day Petition Findings under the ESA where, despite Congress's clearly stated intent that the FWS and NMFS use solely the best scientific information available as the basis of all decision making under the ESA, no procedural safeguard exists to ensure that either agency actually does. As a result, speculation and misrepresentation proffered by biased and self-interested environmental advocacy groups and corporations all too often informs the FWS's and NMFS's finding of substantial "scientific" information at the 90-Day Petition Finding level because neither agency is under any onus of accountability to do otherwise.

Not only does this approach subvert Congress's intent that solely the best scientific data available inform basic threshold implementation of the ESA, it also turns that intent on its head by allowing political policy to drive agency determinations. This is because an affirmative 90-Day Finding on a petition to list establishes a presumption for listing. That presumption consequently biases the one-year review such a finding triggers, where the same speculations and misrepresentations relied on for the 90-Day Finding are also relied on heavily to justify decisions to list. Such is the case of the jaguar.

On August 3, 1992, the FWS received a petition from the instructor and students of the "American Southwest Sierra Institute" and "Life Net" to list the jaguar as endangered in the United States. Among the statements made by the petitioners and accepted carte blanche by the FWS as "scientific," were those that the jaguar should be listed in the United States because a minimum of 64 (presumed to be naturally-occurring jaguars) had been killed in Arizona since 1900, and, that it should also be listed because Brown (1983) presented an analysis suggesting that a resident, breeding population of jaguars existed in the southwestern United States at least into the 20th century. (58 FR 19216, April 13, 1993; 62 FR 39147, July 22, 1997).

As shown clearly in comment herein and previously, both of these claims were then, and are now, actually inaccurate speculations unsupported by the best scientific data available. Nonetheless, these twin speculations formed the “scientific” basis for the FWS’s listing of the jaguar and continue to form the FWS’s basis of justification for designating critical habitat for jaguars by use of this revised proposed rule today.

Deletion of a single word in Section 4 of the ESA could go a long ways towards ensuring that science actually drives policy relative to the ESA, rather than the opposite which is currently the unfortunate case. That one word, “negative,” relative to 90-Day Petition Findings, found in Section 4(b)(3)(C)(ii) of the ESA, currently prevents anyone seeking to hold the FWS accountable for implementing Congress’s intent – that all ESA decisions be based solely on the best scientific data available – from doing so by excluding any judicial challenge of affirmative 90-Day Petition Findings made by the FWS or NMFS on petitions to list.

PNRCD et al. submits that the ESA’s current denial of access to the courts in this manner clearly violates Equal Protection. Where, as here, denial of a fundamental right to some – access to the courts – is involved, further Equal Protection inquiry is triggered, involving as a second step, the question of whether those denied the fundamental right and those allowed to exercise that fundamental right are similarly situated. Here, everyone is similarly situated because they could be from the same family, support the protection of endangered species, and live under the same roof. Thus, those being denied a fundamental right are similarly situated to those who are not.

That brings us to the third and final inquiry: whether the government’s interest is so compelling as to outweigh a similarly situated person’s fundamental right of access to the courts. Here, the government’s interest in excluding judicial challenge of positive 90-Day Petition Findings is not compelling because Congress’s intent that solely the best scientific data available be used as the basis for such a finding can only be ensured through basic, necessary scientific inquiry that weeds out hypotheses and conclusions unsupported by scientific data by disproving them. As a result, the government’s interest in denying the basic and fundamental right of access to the courts for those who would attempt to ensure Congress’s intent through scientific inquiry is neither compelling nor, from a scientific perspective, even remotely rational.

That such is in fact the case is shown by the four steps for testing hypotheses indispensable to scientific validity. As stated succinctly by Kanner and Casey in their 2007 law review article, *Daubert And The Disappearing Jury Trial* (University of Pittsburgh Law Review, Vol. 69:281, at p. 328), incorporated herein by reference thereto, the four steps for testing hypothesis indispensable to scientific validity are:

“1. A hypothesis must be examined for internal consistency. A proposition that is illogical or self-contradictory on its face should be rejected.

2. A hypothesis must be examined to see if it really provides insight and understanding into why observed phenomena occur. Ad hoc hypotheses developed to fit a known set of facts typically have little explanatory power.

3. A new hypothesis must be reviewed for consistency with other hypotheses and theories already accepted as valid to see whether it represents any real improvement over well-established alternatives. Lack of consistency with accepted knowledge does not mandate rejection, but it does call for great caution.

4. The final, and most important step in testing a hypothesis is empirical corroboration. The need for testing hypotheses empirically is best illustrated by examples of what typically happens to ideas that get widely promoted even though they lack empirical support. Some scientists refer to this kind of work as “pathological science,” characterized by a fixation on effects that are difficult to detect, a readiness to disregard prevailing ideas and theories, and an unwillingness to conduct meaningful experimental testing. Cold fusion is a classic example.”

As shown previously, herein and by reference, the revised proposed rule to designate critical habitat of jaguars in Arizona and New Mexico is yet another classic example of the improper use of “pathological science.”

Compounding the improper use of pathological science, is the placement of all ESA judicially challengeable decisions under the umbrella of the Administrative Procedure Act (APA) where, unfortunately, despite Congress’s clear intent that all decisions made under the ESA be based solely on the best scientific data available, the federal rules of evidence do not apply. Thus, scientific challenges of the hypotheses underlying agency decisions are made virtually impossible because *Daubert* scientific evidentiary hearings are not available in actions brought under the APA. Instead, the courts merely defer to the agency (with limited exception) in the absence of any rational scientific inquiry or scrutiny of agency decision making at all.

The paradoxical result of these twin infirmities is that basic scientific inquiry, indispensable to ensuring that Congress’s “solely the best scientific data available” ESA evidentiary standard is met, is rendered virtually irrelevant by both the federal agencies and reviewing courts entrusted with enforcing that intent. As shown previously and herein, this paradoxical result has led and is continuing to lead to ever-greater abuses of citizens, science, the treasury, and the species that the ESA was ostensibly enacted to support.

These abuses can be stopped by adoption of two actions, one of which can be taken by Congress and the other of which can be taken by the President, the FWS, and/or the courts. First, Congress can take a major step in curtailing these abuses by amending the ESA (Section 4(b)(3)(C)(ii)) to allow for judicial challenge of all 90-Day Petition Findings. Such amendment would not only alleviate the very serious Equal Protection defect previously mentioned, but would also embrace necessary scientific inquiry (i.e., hypothesis testing) indispensable to ensuring that Congress’s best scientific data evidentiary standard is actually met.

Secondly, the President (by Executive Order), the FWS (by rule) and/or the courts (by ruling) can also act to stop this pathological science charade by specifically making *Daubert*

rules pertaining to scientific evidence and experts applicable to all ESA actions brought under the umbrella of the APA.

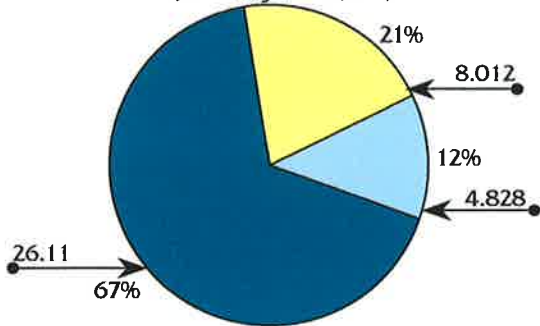
Should these actions be taken, Congress's intent, the interests of the people, and the conservation of endangered and threatened species will be much better served. If not, we can only expect more, all pain for absolutely no gain, incredibly wasteful, and ESA-abusive pathological science charades, as is represented once again here by the revised proposed rule to designate critical habitat for jaguars in Arizona and New Mexico where habitat essential to their conservation or existence as a species does not exist under any scientifically credible definition of that term.

For further information on this important subject matter, please see J. Tavener Holland, *Regulatory Daubert: A Panacea for the Endangered Species Act's "Best Available Science" Mandate*, submitted as attachment to PNRCD et al.'s October 8, 2012, comments, and incorporated herein by reference thereto).

SANTA CRUZ COUNTY

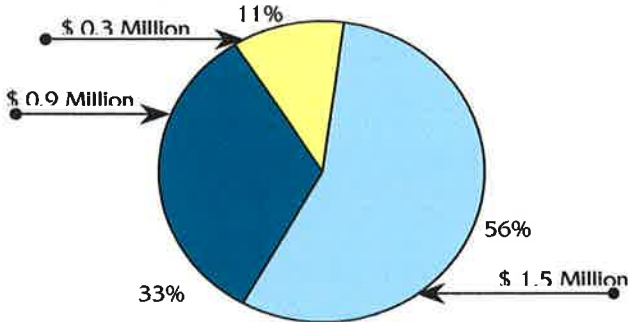
PERCENT OF TOTAL HUNTER DAYS

(Total days = 38,958)



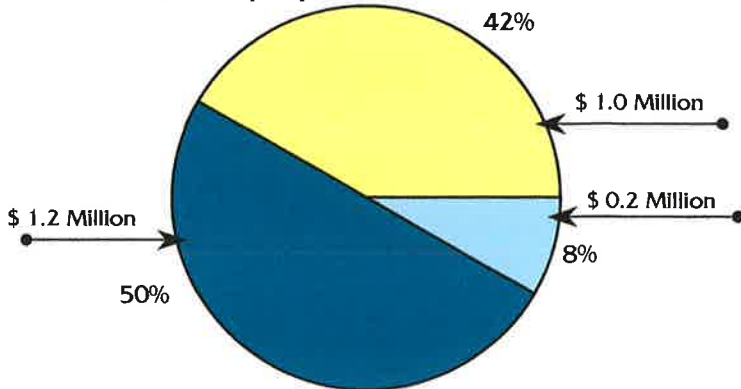
Legend: Santa Cruz Resident (light blue), AZ Traveling (dark blue), Non-Resident (yellow)

PERCENT OF TOTAL HUNTING EXPENDITURES
(Total expenditures = \$2.7 Million)



Legend: Small Game Trip (light blue), Big Game Trip (dark blue), Equipment (yellow)

HUNTING TRIP EXPENDITURES
(Total trip expenditures = \$2.4 Million)



Legend: Santa Cruz Resident (light blue), AZ Traveling (dark blue), Non-Resident (yellow)

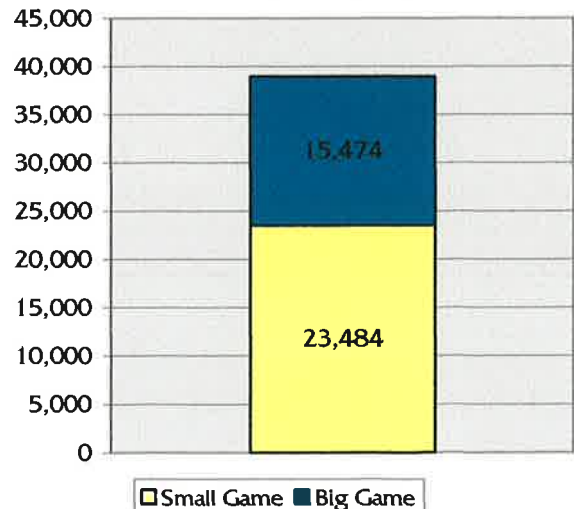
HUNTING: DIRECT ECONOMIC IMPACTS

HUNTER DAYS

TOTAL HUNTER DAYS	38,958
TOTAL SMALL GAME	23,484
Santa Cruz County Resident	3,355
AZ Resident Traveling to Santa Cruz County	12,809
Non-Resident	7,320
TOTAL BIG GAME	15,474
Santa Cruz County Resident	1,473
AZ Resident Traveling to Santa Cruz County	13,309
Non-Resident	692
EXPENDITURES	
TOTAL HUNTING EXPENDITURES	\$2.7 Million
Small Game Trip Expenditures	\$1.5 Million
Big Game Trip Expenditures	\$0.9 Million
Equipment Expenditures	\$0.3 Million

HUNTER DAYS

(Total days = 38,958)



Legend: Small Game (yellow), Big Game (dark blue)

SANTA CRUZ COUNTY

ECONOMIC IMPACTS

FISHING AND HUNTING EXPENDITURES	\$ 13.9 Million
TOTAL MULTIPLIER EFFECT	\$ 16.7 Million
SALARIES AND WAGES	\$ 2.7 Million
FULL-TIME AND PART-TIME JOBS	216
STATE TAX REVENUES	\$ 919,900

FISHING: DIRECT ECONOMIC IMPACTS

ANGLER DAYS

TOTAL ANGLER DAYS

108,574

Santa Cruz County Resident

6,211

AZ Resident Traveling to Santa Cruz County

101,006

Non-Resident

1,357

EXPENDITURES

TOTAL FISHING EXPENDITURES

\$11.2 Million

TOTAL TRIP RELATED

\$6.4 Million

Food, Restaurant

\$1.5 Million

Lodging

\$1.5 Million

Transportation

\$1.3 Million

Other

\$2.1 Million

TOTAL EQUIPMENT EXPENDITURES

\$4.8 Million

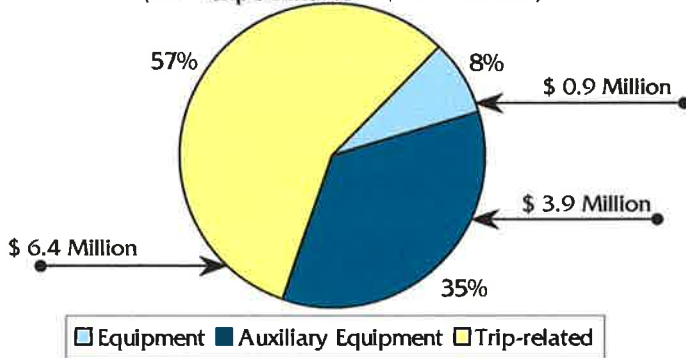
Fishing Equipment

\$0.9 Million

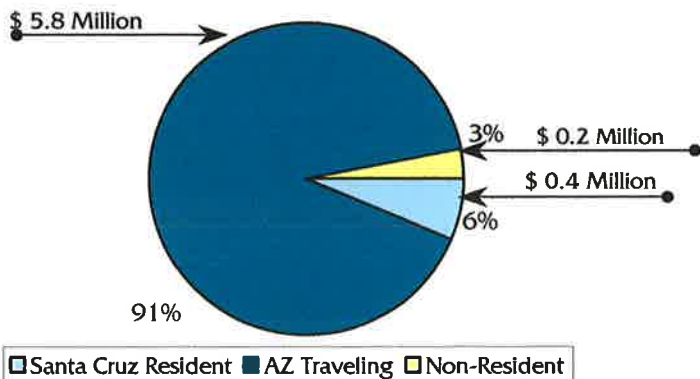
Auxiliary Equipment

\$3.9 Million

PERCENT OF TOTAL FISHING EXPENDITURES
(Total expenditures = \$ 11.2 Million)

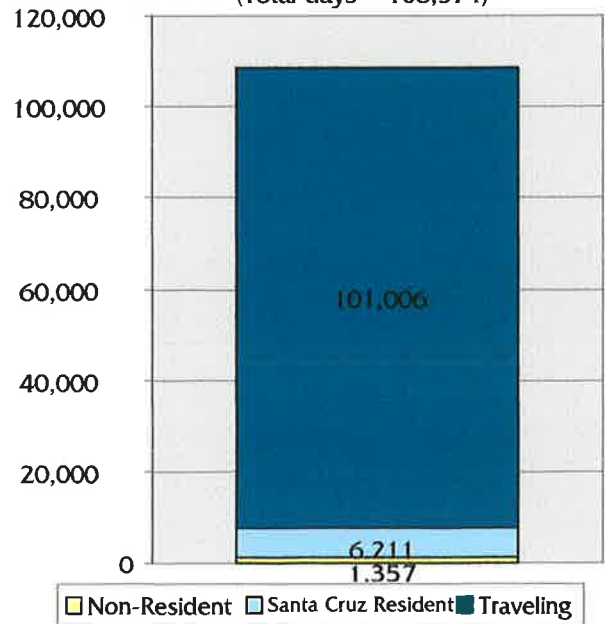


FISHING TRIP EXPENDITURES
(Total trip expenditures = \$ 6.4 Million)



ANGLER DAYS

(Total days = 108,574)



COCHISE COUNTY

ECONOMIC IMPACTS

FISHING AND HUNTING EXPENDITURES	\$ 12.7 Million
TOTAL MULTIPLIER EFFECT	\$ 15.2 Million
SALARIES AND WAGES	\$ 2.4 Million
FULL-TIME AND PART-TIME JOBS	194
STATE TAX REVENUES	\$ 665,700

FISHING: DIRECT ECONOMIC IMPACTS

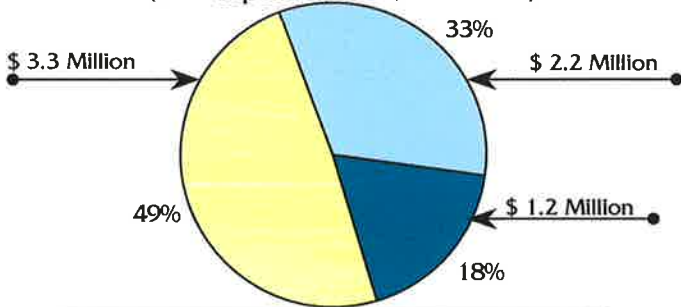
ANGLER DAYS	
TOTAL ANGLER DAYS	
33,499	
Cochise County Resident	
6,409	
AZ Resident Traveling to Cochise County	
26,362	
Non-Resident	
728	

EXPENDITURES

TOTAL FISHING EXPENDITURES	
\$6.7 Million	
TOTAL TRIP RELATED	
\$3.3 Million	
Food, Restaurant	
\$0.9 Million	
Lodging	
\$0.4 Million	
Transportation	
\$0.8 Million	
Other	
\$1.2 Million	
TOTAL EQUIPMENT EXPENDITURES	
\$3.4 Million	
Fishing Equipment	
\$2.2 Million	
Auxiliary Equipment	
\$1.2 Million	

PERCENT OF TOTAL FISHING EXPENDITURES

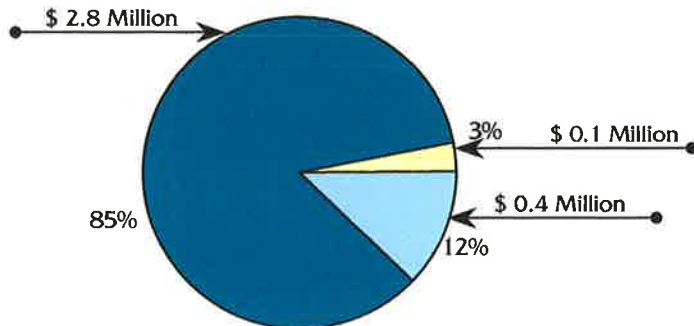
(Total expenditures = \$ 6.7 Million)



■ Equipment
 ■ Auxiliary Equipment
 ■ Trip-related

FISHING TRIP EXPENDITURES

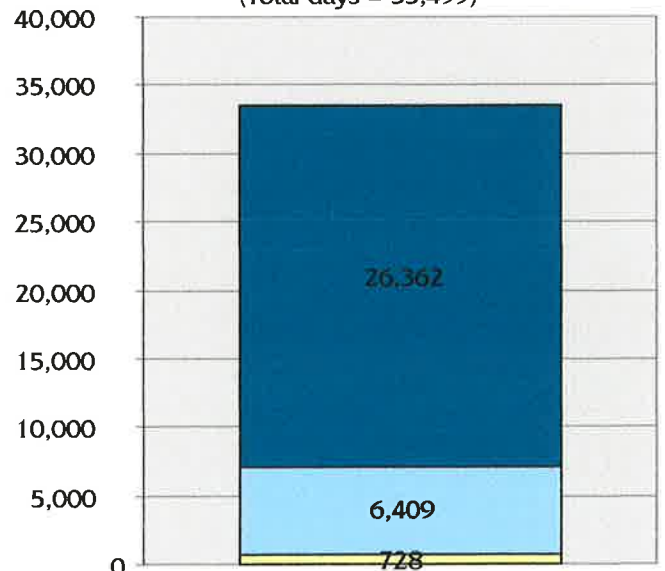
(Total trip expenditures = \$ 3.3 Million)



■ Cochise Resident
 ■ AZ Traveling
 ■ Non-Resident

ANGLER DAYS

(Total days = 33,499)

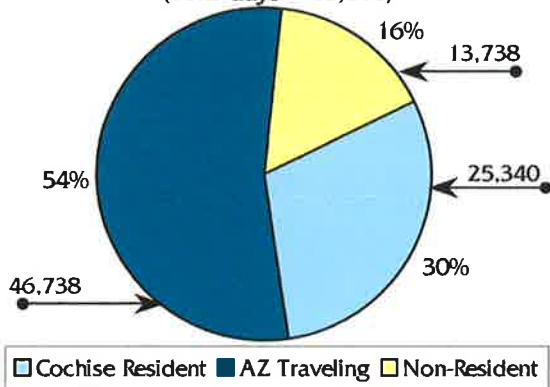


■ Non-Resident
 ■ Cochise Resident
 ■ Traveling

COCHISE COUNTY

PERCENT OF TOTAL HUNTER DAYS

(Total days = 85,816)



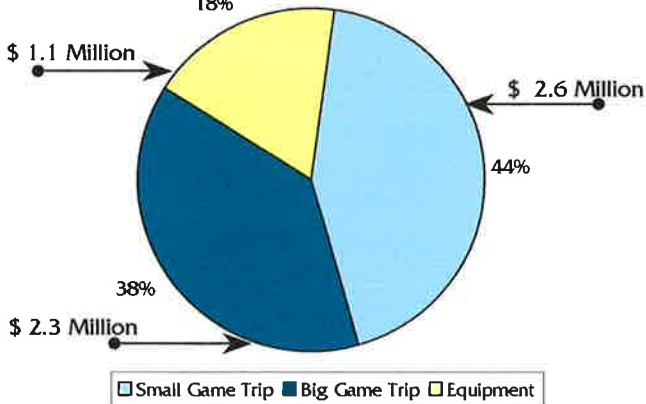
HUNTING: DIRECT ECONOMIC IMPACTS

HUNTER DAYS

TOTAL HUNTER DAYS	85,816
TOTAL SMALL GAME	48,035
Cochise County Resident	15,402
AZ Resident Traveling to Cochise County	21,806
Non-Resident	10,827
TOTAL BIG GAME	37,781
Cochise County Resident	9,938
AZ Resident Traveling to Cochise County	24,932
Non-Resident	2,911

PERCENT OF TOTAL HUNTING EXPENDITURES

(Total expenditures = \$6.0 Million)

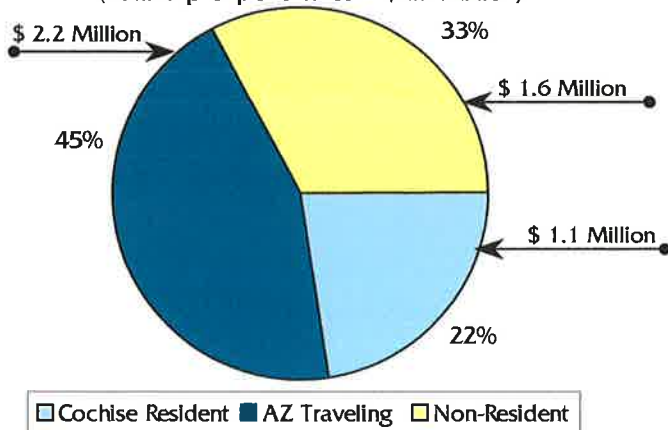


EXPENDITURES

TOTAL HUNTING EXPENDITURES	\$6.0 Million
Small Game Trip Expenditures	\$2.6 Million
Big Game Trip Expenditures	\$2.3 Million
Equipment Expenditures	\$1.1 Million

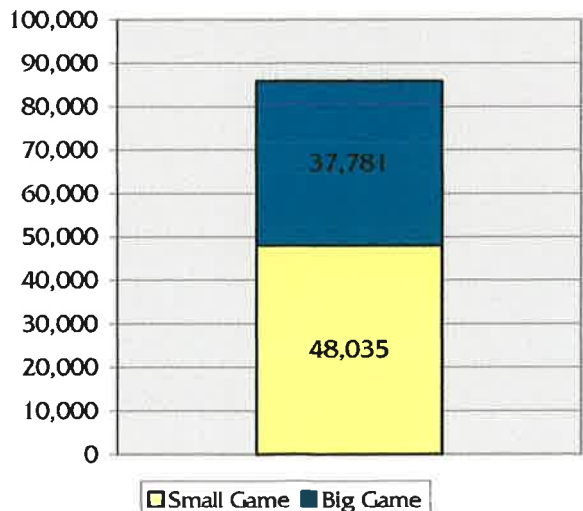
HUNTING TRIP EXPENDITURES

(Total trip expenditures = \$4.9 Million)



HUNTER DAYS

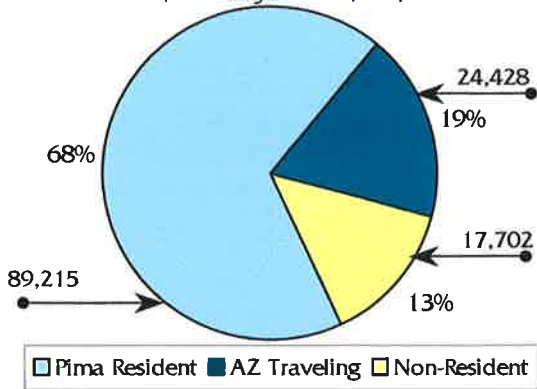
(Total days = 85,816)



PIMA COUNTY

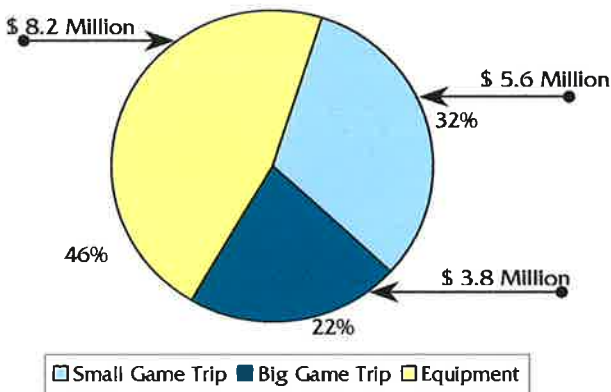
PERCENT OF TOTAL HUNTER DAYS

(Total days = 131,345)



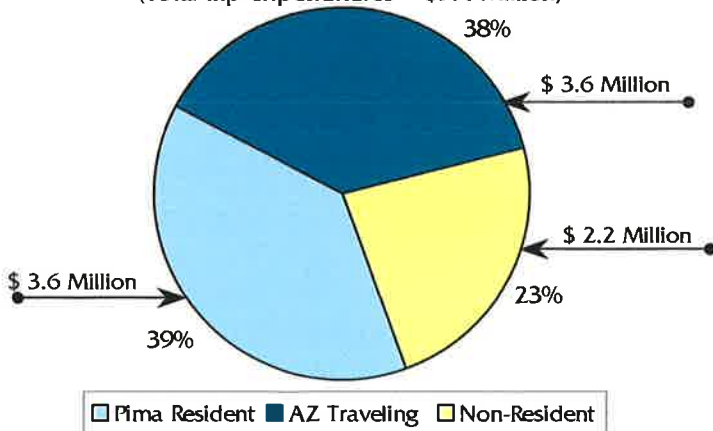
PERCENT OF TOTAL HUNTING EXPENDITURES

(Total expenditures = \$17.6 Million)



HUNTING TRIP EXPENDITURES

(Total trip expenditures = \$9.4 Million)



HUNTING: DIRECT ECONOMIC IMPACTS

HUNTER DAYS

TOTAL HUNTER DAYS

131,345

TOTAL SMALL GAME

83,414

Pima County Resident

61,607

AZ Resident Traveling to Pima County

6,710

Non-Resident

15,097

TOTAL BIG GAME

47,931

Pima County Resident

27,608

AZ Resident Traveling to Pima County

17,718

Non-Resident

2,605

EXPENDITURES

TOTAL HUNTING EXPENDITURES

\$17.6 Million

Small Game Trip Expenditures

\$5.6 Million

Big Game Trip Expenditures

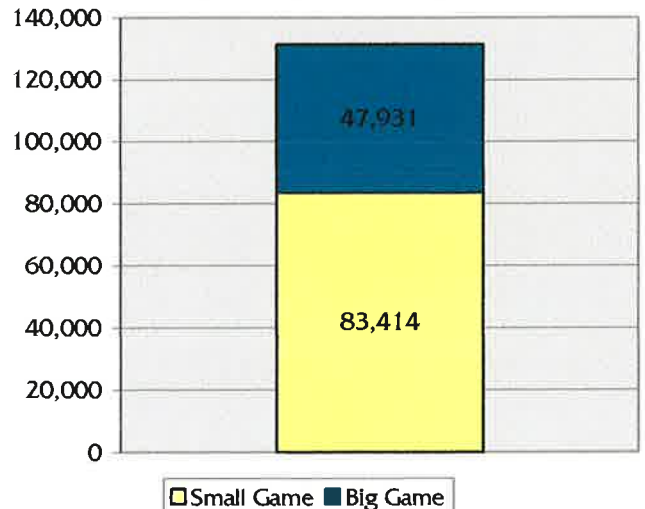
\$3.8 Million

Equipment Expenditures

\$8.2 Million

HUNTER DAYS

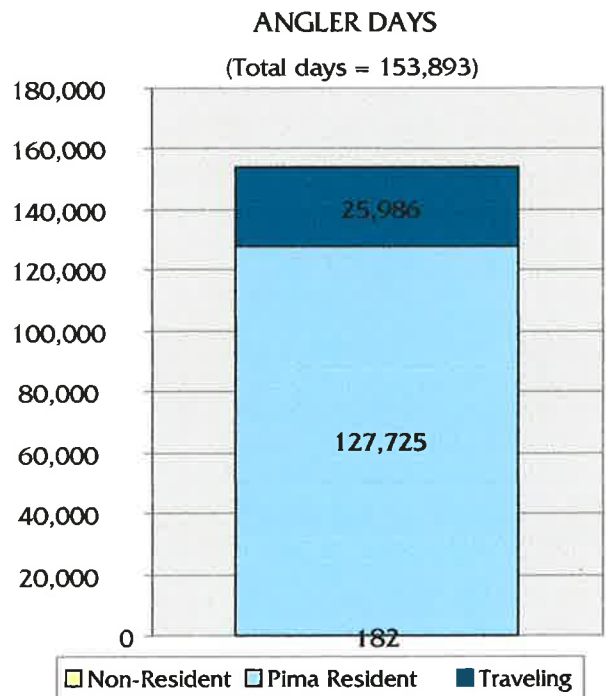
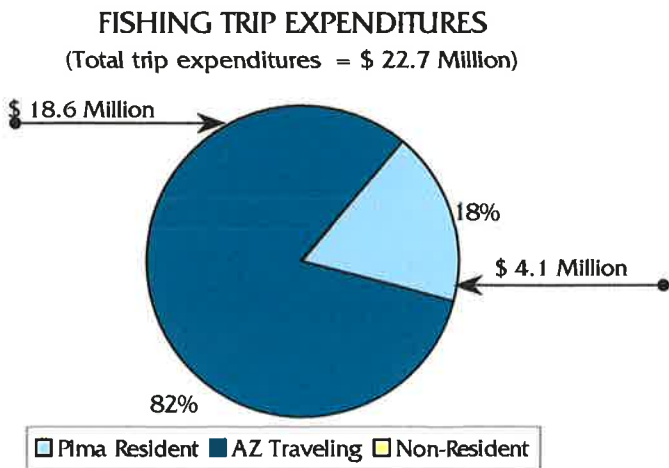
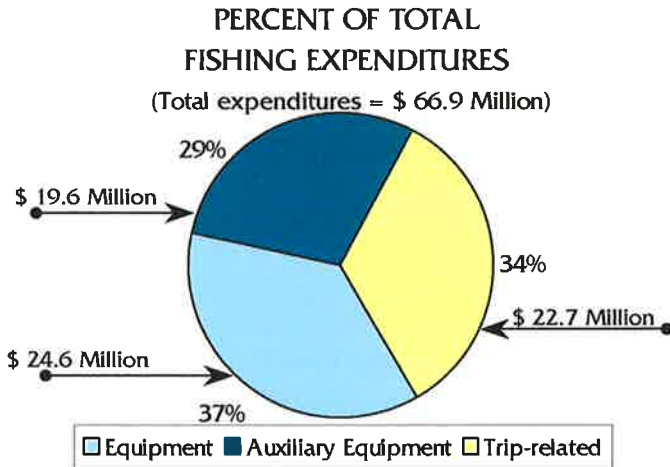
(Total days = 131,345)



PIMA COUNTY

ECONOMIC IMPACTS	
FISHING AND HUNTING EXPENDITURES	\$ 84.5 Million
TOTAL MULTIPLIER EFFECT	\$ 105 Million
SALARIES AND WAGES	\$ 18.3 Million
FULL-TIME AND PART-TIME JOBS	1,187
STATE TAX REVENUES	\$ 5.4 Million

FISHING: DIRECT ECONOMIC IMPACTS	
ANGLER DAYS	
TOTAL ANGLER DAYS	153,893
Pima County Resident	127,725
AZ Resident Traveling to Pima County	25,986
Non-Resident	182
EXPENDITURES	
TOTAL FISHING EXPENDITURES	\$66.9 Million
TOTAL TRIP RELATED	\$22.7 Million
Food, Restaurant	\$6.5 Million
Lodging	\$0.8 Million
Transportation	\$7.4 Million
Other	\$8.0 Million
TOTAL EQUIPMENT EXPENDITURES	\$44.2 Million
Fishing Equipment	\$24.6 Million
Auxiliary Equipment	\$19.6 Million



THE WESTERNER

Issues of concern to people who live in the west: property rights, water rights, endangered species, livestock grazing, energy production, wilderness and western agriculture. Plus a few items on western history, western literature and the sport of rodeo... Frank DuBois served as the NM Secretary of Agriculture from 1988 to 2003. DuBois is a former legislative assistant to a U.S. Senator, a Deputy Assistant Secretary of Interior, and is the founder of the DuBois Rodeo Scholarship.

Friday, July 19, 2013

Judge orders BLM to reassess Ruby Pipeline

Federal land management agencies have been ordered by a judge to reassess the environmental impacts of an existing natural gas pipeline to rectify what conservationists are calling an incomplete and arbitrary assessment, leading to an improperly certified project. The United States Court of Appeals for the Ninth Circuit ordered the U.S. Bureau of Land Management to release a supplemental environmental impact statement (SEIS) to address accusations by a number of conservation groups and concerned citizens that the construction of the Ruby Pipeline violated both the National Environmental Policy Act and the Endangered Species Act. The court found that "the BLM violated its substantive duty to ensure that its authorization of the project would not jeopardize the survival of the nine listed fish or adversely modify the species' critical habitat." The court also voided a U.S. Fish and Wildlife biological opinion issued in 2010 and the BLM's record of decision regarding the project...[more](#)

The pipeline is already built, but "the court ruled it is still possible to mitigate the pipeline's adverse effects on listed species and critical habitats."

We sure do have smart judges these days. Why they even know more about wildlife biology than the folks at USFWS.

Posted by [Frank DuBois](#) at 5:37 AM



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Judge orders BLM to reassess Ruby Pipeline

By ANDREW CREASEY H&N Staff Reporter | Posted: Wednesday, July 17, 2013 11:45 pm

Federal land management agencies have been ordered by a judge to reassess the environmental impacts of an existing natural gas pipeline to rectify what conservationists are calling an incomplete and arbitrary assessment, leading to an improperly certified project.

The United States Court of Appeals for the Ninth Circuit ordered the U.S. Bureau of Land Management to release a supplemental environmental impact statement (SEIS) to address accusations by a number of conservation groups and concerned citizens that the construction of the Ruby Pipeline violated both the National Environmental Policy Act and the Endangered Species Act.

The court found that “the BLM violated its substantive duty to ensure that its authorization of the project would not jeopardize the survival of the nine listed fish or adversely modify the species’ critical habitat.”

The court also voided a U.S. Fish and Wildlife biological opinion issued in 2010 and the BLM’s record of decision regarding the project.

The BLM is now accepting public comment on the draft SEIS, which includes supplemental information about the original and present condition of sage brush steppe habitat, a critical ecosystem that environmentalists say the pipeline construction endangered.

Despite the fact that the pipeline is already built, the court ruled it is still possible to mitigate the pipeline’s adverse effects on listed species and critical habitats.

But it is not known if the BLM’s final supplemental impact statement — expected to be released later this year after the public comment period closes Aug. 19 — will require the additional mitigation efforts.

The draft SEIS provided more detailed analysis of the past, present and future impacts to sage brush steppe habitat, but concluded the impacts from pipeline construction are not significant. The report did not identify further mitigation strategies.

Chief concerns

Conservation organizations are concerned construction of the pipeline had negatives effects on sage brush steppe habitat and nine species of endangered fish — including the Lost River and shortnose sucker — that were not accounted for or properly mitigated after the construction was completed in 2011, said Amy Atwood, a senior attorney for the Center for Biological Diversity.

“Ruby broke its promise, and the agencies are letting them get away with it,” Atwood said. “Whose interests do these agencies serve, anyway? Huge corporations, or the public at large? They act as though they think it is the former.”

Atwood said the original environmental impact statement of the pipeline, which is owned and operated by Kinder Morgan, understated the past impacts to sage brush steppe habitat. In doing so, the company painted a picture of a landscape that could handle the 110-foot-wide right of way required for construction.

But Atwood contends sage brush steppe habitat has been decimated by decades of livestock grazing, wildfires and other energy and mining actions. She said the BLM did not take those into account when they gave Kinder Morgan the approval to proceed.

Essentially, the landscape has enough stressors without adding the impact of a pipeline, Atwood said.

“They’re not in the business of just permitting anything that comes through their door. They have obligations to the American public at large,” Atwood said. “They should have rigorously analyzed this before deciding to throw away another 10,000 acres (of sage brush steppe habitat). It is incumbent on BLM to record what is being done on public lands and what it is sacrificing.”

The court found that the biological opinion from the FWS did not take into account the impact of withdrawing 337.8 million gallons of groundwater from 64 wells along the pipeline. The water was used to test the completed pipeline for leaks and functionality before natural gas was pumped through.

Withdrawing that much groundwater impacts surface water flows, putting endangered fish at risk, Atwood said.

The environmental coalition also raised concern about the mitigation strategies regarding nine endangered fish. The coalition took issue with a conservative action plan that detailed 12 fish-specific conservation measures.

That action plan was not enforceable by the FWS under the endangered species act and therefore could be relied upon in assessing and mitigating the impact of the project on listed species.

Based on the conservative action plan, the FWS authorized mortality to Lahontan cutthroat trout, Warner sucker, Modoc sucker, Lost River sucker, and shortnose sucker, provided the conditions in the action plan were met.

The problem was that the action plan was only enforceable by the BLM and the Federal Energy Regulatory Committee, not the FWS, according to conservative groups and the court.

“Ruby promised to undertake these conservation measures to mitigate the impact to endangered species, but they were not part of the terms and conditions that would allow the FWS to enforce them,” Atwood said.

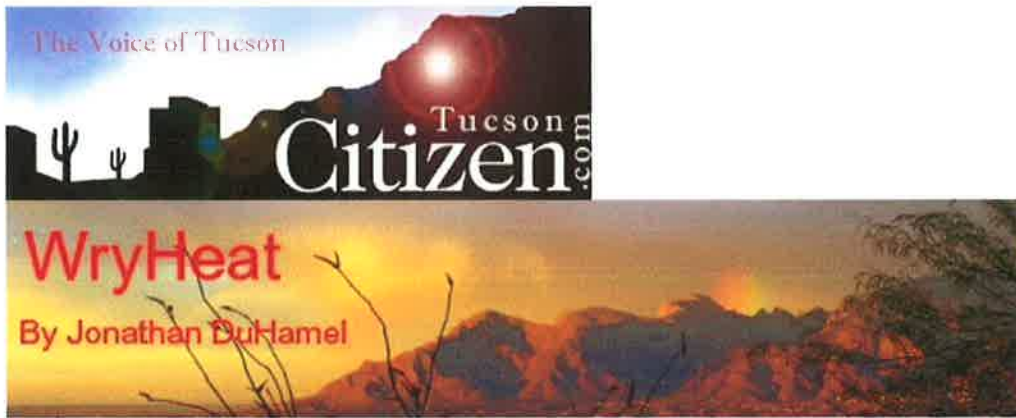
According to the court’s decision, exempting the action plan from enforceability under the ESA “precludes reopening the consultation process when promised conservation measures do not occur, and eliminates the possibility of criminal penalties and exposure to citizen suit enforcement incorporated in the ESA to assure that listed species are protected.”

A revised biological opinion from the FWS was developed in accordance with the ESA and asserts the pipeline does not threaten critical habitat of endangered fish. In doing so, however, the FWS sets aside the conservative action plan that contained all the mitigation plans, despite the court saying such plans should still be considered.

Moreover, the FWS’ original determination that the project would not threaten endangered species was based on the inclusion of the mitigation plans, Atwood said.

“I’m incensed that FWS has evidently not taken the court’s admonitions to heart, and now we must closely consider challenging this new biological opinion in court to ensure that the mitigation measures that were designed to offset the pipeline’s impacts to endangered fish are implemented,” Atwood said.

acreasey@heraldandnews.com; @HN_Creasey



Silver project may become only US source of manganese

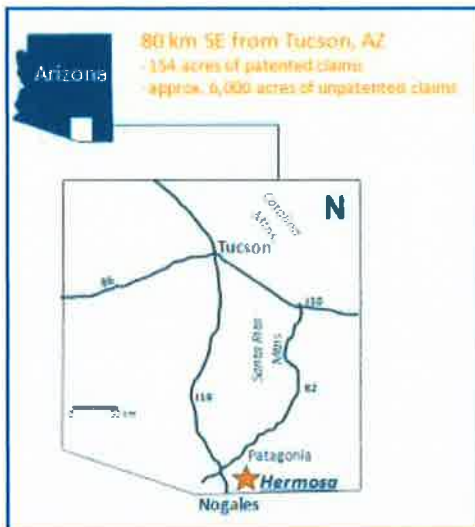
by [Jonathan DuHamel](#) on Jul. 19, 2013, under [Geology](#)

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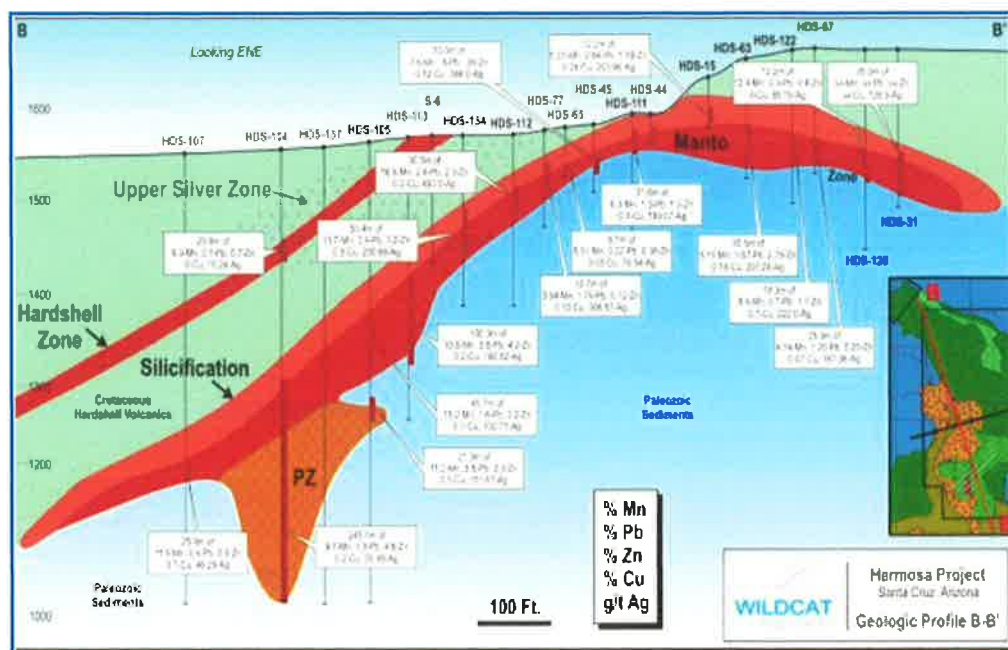
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Manganese is a strategic and critical metal used in alloys, mainly stainless steel. Other uses of manganese include production of dry cell batteries, in plant fertilizers and animal feed, and as a brick colorant. Currently, the U.S. imports 100% of the manganese we use, mostly from Gabon, Australia, and South Africa. There has been no manganese mining in the U.S. since 1970. The USGS estimates the value of imported manganese ore and compounds to be \$1.4 billion in 2012.

That may change if Wildcat Silver's [Hermosa project](#) comes on line. The project is located 50 miles south of [Tucson](#) near the town of Patagonia. The project, in final exploration stage, is being developed for silver, but it contains a considerable manganese resource also. Wildcat's preliminary economic assessment estimates a measured and indicated resource of 236 million ounces of silver and an inferred silver resource of an additional 79 million ounces. Wildcat estimates that annual production will be 4.1 million ounces of silver, 233,000 tons of manganese carbonate, 20,187 tons of zinc cathode, and 960 tons of copper. Project life is estimated at 16 years. The company is researching the most economical way to extract the manganese. You can see some nice cross-sections of the mineralized zones [here](#). The sections show intercepts of mineralization and average metal grades.

manganese!



The project is, of course, receiving heavy opposition from environmentalists who seem to want no mining of anything anywhere.

Numerous manganese deposits are scattered over a large region in western Arizona and extend into southeastern California. These deposits are low grade (generally only a few percent Mn) and formed during the past 25 million years. Most historic production occurred between 1953 and 1955 when the US Government purchased manganese at above-market prices. Total historic production is ~100,000 metric tons of manganese (226 million lbs.) from 24 mining districts.

The Aguila manganese mineral district, with 42 million pounds of historic manganese production, is within the proposed Sonoran Desert Heritage National Conservation Area in the northern Big Horn Mountains west of Phoenix. The Black Dome district, with 344 thousand pounds of historic manganese production, is located north of the Hieroglyphic proposed Special Management Area. Manganese in these districts has not been in economic concentrations historically, but could become so if serious supply disruptions occur and/or prices increase sufficiently. However, if the Sonoran Desert Heritage Area is formally established, these resources will be off limits unless the proposed areas are excluded.

The Arizona Geological Survey has a special report on the mineral potential of the proposed heritage area (download [full report here](#), 25Mb). The proposed heritage area encompasses almost one million acres.

Wildcat's Hermosa project will have to navigate the byzantine bureaucratic maze of the National [Environmental Policy Act](#) (see: [How NEPA crushes productivity](#)), but if it does so successfully, it will become the only manganese producer in the United States.

See also:

[The value of mining in Arizona](#)

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CENTER for BIOLOGICAL DIVERSITY

Because life is good.

For Immediate Release, July 2, 2013

Contact: Michael Robinson, (575) 313-7017

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Nearly 20,000 Acres of Additional Critical Habitat Proposed for Jaguars, Some in Vicinity of Planned Massive Rosemont Copper Mine

TUCSON, Ariz.— An additional 19,905 acres of protected habitat proposed for [jaguars](#) in southern Arizona and New Mexico includes areas in Arizona's Santa Rita Mountains where a lone jaguar has been caught on camera several times in the past nine months. The modified U.S. Fish and Wildlife Service [proposal](#), released Monday, would push to more than 850,000 the number of designated acres for jaguars, including areas in the vicinity of a planned open-pit copper mine. Under law, the protected "critical habitat" for the jaguar could not be harmed, which could rule out federal approval of the Rosemont Mine.

"The fact that a jaguar, one of the most charismatic big cats in the world, is living right outside Tucson should be a source of pride for us and a situation we want to preserve. It wouldn't make any sense to allow a foreign company to permanently destroy the habitat of our country's only known jaguar," said Michael Robinson of the Center for Biological Diversity. "It's important that the Fish and Wildlife Service take this step and protect the Santa Ritas and other mountain ranges that these animals need to recover in southern Arizona."

The desert and woodlands habitat on the eastern flank of the Santa Ritas provides an essential corridor for jaguar dispersal from Mexico into historic habitat in the United States and provides abundant deer and javelina as a food source. But the Rosemont Mine would blast a 1.5-square-mile open pit, then dump toxic mining waste directly onto national forest land.

Remote cameras have captured the lone, male jaguar's image repeatedly in the Coronado National Forest over the past nine months. Once the critical habitat is finalized, it will be illegal for the federal government to approve permits that would cause adverse modification of the species' habitat.

"If jaguars are to recover in the Southwest, at a minimum the areas that they themselves consider good habitat simply must be protected. Safeguarding this irreplaceable dispersal corridor could give this jaguar a chance to eventually start a family in Arizona," said Robinson.

The new federal proposal would designate a total of 858,137 acres (1,341 square miles) in Arizona and New Mexico as critical habitat for the jaguar. The acreage encompasses selected mountain ranges in southern Arizona but neglects important jaguar habitat further north.

Comments on the new proposal are due Aug. 9.

Background

Jaguars are the world's third-largest cats, after tigers and lions, and the largest in the western hemisphere. They originally evolved in North America, later colonized Central and South America, and eventually were exterminated from the southern United States. Jaguars in the United States today are thought to emanate from Mexico, where their range has been shrinking as well.

Both the protection of the jaguar as an endangered species in 1997 and the proposal of critical habitat for it are due to lawsuits by the Center for Biological Diversity to enforce the Endangered Species Act; critical habitat is defined in the Act as the areas necessary for the conservation and recovery of endangered species.

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 500,000 members and online activists dedicated to the protection of endangered species and wild places.

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P.O. Box 710 · Tucson, AZ 85702-0710 tel: (520) 623.5252 fax: (520) 623.9797 www.BiologicalDiversity.org



Remote camera photo of a jaguar in the Santa Ritas, courtesy USFWS. This photo is [available](#) for media use.

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web site: www.westernwatersheds.org

Working to protect and restore Western Watersheds and Wildlife

28 June 2013

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
Sent via U.S. mail and e-filed at FERC Online

RE: Sierrita Pipeline Project

Dear Secretary Bose,

The following comments on the proposed Sierrita Pipeline Project are submitted on behalf of the staff and members of Western Watersheds Project (WWP), a non-profit conservation organization with an interest in protecting and restoring western watersheds for wildlife. WWP has an office in Tucson, Arizona and has a strong interest in protecting the biological integrity of the desert southwest, and the interests of WWP's members will be harmed by the transformation of this area's conversion into an energy pipeline corridor.

WWP is especially concerned with the proposed western route through the Altar Valley southwest of Tucson. In addition to the unique flora and fauna of the Buenos Aires National Wildlife Refuge (BANWR), the refuge is distinct in that it has excluded livestock grazing since it was established in 1985. This was an important step in restoring the Altar Valley that had suffered a century or more of overgrazing, droughts, erosion, and invasion by non-native grass species. Restoration is a long and slow process in the arid desert grassland, and removing livestock disturbance within BANWR is a long-term solution to the extant and ongoing degradation caused by their introduction in the mid-nineteenth century. Allowing the pipeline to create new disturbance— both direct and indirect— in the recovering valley is inappropriate and premature.

Thus far, it does not appear that Kinder Morgan has a comprehensive plan in place that would achieve revegetation or restoration of ecosystem function in the Altar Valley. Indeed, it does not seem that such a large-scale disturbance is even recoverable, given the baseline condition and fragility of the region. The cumulative impacts of the pipeline are broad, and a hard look should be taken at everything from impairment of hydrologic function to increased traffic and the effects on wildlife of construction and future potential for roadway use. The existing degenerative processes of erosion and non-native species

infestations will not be addressed with more disturbance, and this proposal has the potential to set back the progress that has been made in the Valley.

In a recent public meeting, a Kinder Morgan representative said that the company would consider a compensatory mitigation package to offset permanent habitat damage that might occur from the pipeline. WWP hopes that compensatory mitigation would include allocating funds to retire livestock grazing elsewhere in the Valley, improving habitat conditions for wildlife on the majority of lands in the area that are still subjected to livestock damage. Expanding BANWR's restoration efforts through improving management throughout the Valley would be one way to achieve some modicum of mitigation for an otherwise wholly bad idea. Livestock grazing still occurs on the state and Bureau of Land Management allotments within the valley, and removing this impact would benefit the Endangered and imperiled species that live in this region. This should be considered as a mitigation measure under any alternative, but especially for any proposal that harms recovering contiguous landscapes.

Please keep WWP apprised of all future meetings, comment opportunities, or other chances for public participation.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Greta Anderson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Greta Anderson, Deputy Director
Western Watersheds Project