


Comment on FR Doc # 2010-00479

This is a Comment on the **Fish and Wildlife Service (FWS) Proposed Rule: Endangered and Threatened Wildlife and Plants: Determination That Designation of Critical Habitat is Prudent for the Jaguar**

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Submitter Information

Organization Name:

Southern Arizona Cattlemen's
Protection Association

Submitter's Representative:

Dennis Parker, Attorney at Law

Comment

The attached comments are timely submitted on behalf of the Southern Arizona Cattlemen's Protection Association (SACPA) and address the Fish & Wildlife Service's determination that the designation of critical habitat for the jaguar in the U.S. is prudent. Please let me know if any further information is needed from me to perfect your receipt of these comments. Thank you.

Sincerely,

Dennis Parker,
Attorney at Law,
P.O. Box 1100,
Patagonia, AZ 85624
(520)394-0286
dennis.parker36@verizon.net
representing SACPA

Attachments (1)



[Comment on FR Doc # 2010-00479](#)

View Attachment:



*Dennis Parker
Attorney at Law
P.O. Box 1100
Patagonia, AZ 85624
Tel/Fax: (520) 394-0286*

Via Email

March 15, 2010

Public Comments Processing
Attn: FWS-R2-ES-2009-0091
Division of Policy and Directives Management
U.S. Fish & Wildlife Service
4401 N. Fairfax Drive, Suite 222
Arlington, VA 22203

Re: Comments and Information on Proposed Critical Habitat Designation for the Jaguar in the United States

The following comments and information, submitted on behalf of the Southern Arizona Cattlemen's Protection Association (SACPA), address and correct the misimpression of the Fish & Wildlife Service and the District Court for the District of Arizona (see: *Center for Biological Diversity v. Kempthorne*, 607 F. Supp. 2d 1078, 1081 (D. Ariz. 2009) that Boydston and Lopez Gonzales (2005) represents the best journal-published, scientific information available relative to the designation of critical habitat for the Jaguar in the United States. Because the Boydston and Lopez Gonzales (2005) contribution is, in fact, neither journal published nor representative of science by definition, SACPA urges the Service to revisit its recent finding that critical habitat designation for the jaguar in the United States is prudent in light of the highly relevant information presented herein.

Such review is particularly appropriate here because in *Kempthorne*, or the court decision the Service was required to follow in reaching its finding relative to the prudence of designating critical habitat for the jaguar in the United States, the court mistakenly characterized a presentation made at a conference, Boydston and Lopez Gonzales (2005), as a journal published article representing the best scientific information available relative to the prudence of designating critical habitat for the jaguar in the United States. According to the court:

“As to the importance of fringe populations, a 2005 Journal article published by Erin Boydston and Carlos Lopez-Gonzales concluded that “[r]ange expansion could help prevent genetic isolation and extinction of the northern Jaguars and also increase chance for long-term survival of this species in the face of global anthropogenic change.” The same authors concluded

that habitat exists in the United States to support both male and female, and therefore presumably jaguar reproduction.”

Kemphorne, 607 F. Supp. 2d at 1090-91.

The Boydston and Lopez Gonzales (2005) contribution cited by the court as a journal published article and the best science available relative to potential jaguar residency in the American Southwest is, in fact, neither. First, the Boydston and Lopez Gonzales (2005) contribution consists entirely of a seminar presentation, made at the “Connecting mountain islands and desert seas” conference held in Tucson, Arizona, on May 11-14, 2004. Contrary to the court’s misimpression, it has not been published in any scientific journal.

Second, the Rocky Mountain Research Station (RMRS), or the federal government agency which published the Boydston and Lopez Gonzales contribution as part of the proceedings of that conference, did so simply as an editor of such, and not as a journal publisher of peer-reviewed, relevant and reliable, scientific information. To the best of our knowledge, neither the Boydston and Lopez Gonzales contribution, nor any other contribution to the 2004 Tucson conference, was subjected to peer-review by the RMRS prior to its publication of those contributions in proceedings as editor.

Third, contrary to the Service’s and the court’s further misimpression, the Boydston and Lopez Gonzales (2005) contribution cannot represent the best scientific information available relative to the prudence of designating critical habitat for the jaguar in the United States because that conclusion is actually mere speculation unsupported by scientific evidence.

In their contribution, titled *Sexual Differentiation in the Distribution Potential of Northern Jaguars (Panthera onca)*, Boydston and Lopez Gonzales (2005) estimated the potential geographic distribution of jaguars in the southwestern United States and northwestern Mexico by modeling the jaguar’s ecological niche from “occurrence records.” Those “occurrence records,” however, are not provided by these authors and only a partial list of the ‘records’ actually used by them is apparently available elsewhere. (Boydston and Lopez Gonzales (2005)). Without that necessary data, neither Boydston’s and Lopez Gonzales’s modeling results nor their conclusions drawn from those modeling results can be tested or verified for accuracy by replication. As a result, because Boydston’s and Lopez Gonzales’s modeling results and conclusions drawn there from are not replicable (i.e., the data on which those results are based is not presented), those results and conclusions are not reliable and thus fail to qualify as the best scientific information available – let alone as scientific evidence at all – by definition.

Boydston’s and Lopez Gonzales’s (2005) modeling approach is also unreliable because its premise is based on the fallacious and unscientific assumption that a viable model of jaguar occupancy in the Southwest can be created based on data that are not comparable within a set time period and from a dataset that is also extremely small, highly suspect, and gives no indication of how many individuals it may represent. The facts reveal that the Boydston and Lopez Gonzales model is based entirely on point locations for jaguars. The point locations from northwestern Mexico are all relatively recent (2001-2003). However, the point locations for the southwestern United States are, by necessity, from museum records and other secondary data that may or may not be sound but that is, by definition, dated. Furthermore, Boydston’s and Lopez Gonzales’s (2005) “occurrence records” do not indicate any

number, or even minimum numbers, of jaguars recorded, thus indicating that their N=6 for New Mexico, for example, could be all from one individual. In short, an accurate and scientifically credible model of occupancy or land use cannot be created by the methodology employed by Boydston and Lopez Gonzales .

Moreover, Boydston's and Lopez Gonzales's (2005) modeling results and conclusions are also unreliable because the "verified" "occurrence record" that they claim exists for the jaguar in Arizona – 47 'records' for males and 6 for females, or 53 'verified' jaguar 'records' for Arizona – is excessive and contradicted by other researchers and the Arizona Game & Fish Department. While Hatten, Averill-Murray and Van Pelt (2005) (see: Hatten, J.R., Averill-Murray, A. and W.E. Van Pelt. 2005. *A spatial model of potential jaguar habitat in Arizona*. Journal of Wildlife Management, Vol. 69, Issue 3, Publisher: BioOne, pp. 1024-1033) lists some 51 records that contained physical evidence confirming that the animal in question was a jaguar, jaguar skin, jaguar skull or jaguar photo, Hatten and colleagues then removed those records which did not have very accurate location references for the jaguar mapping project. That narrowed the 'verified' records used to about half, which is consistent with the conclusion relative to credible jaguar accounts in Arizona reached by Girmendonk for the Arizona Game & Fish Department (i.e., only 26 of 81 sightings of jaguars in Arizona were credible accounts).

Further, even this occurrence record for the jaguar in Arizona is likely excessive because it fails to recognize that many credible accounts of jaguars in Arizona are likely those of jaguars which were caught in Mexico by private individuals and then "introduced" into Arizona on many occasions for 'canned-hunt' purposes during the first half of the twentieth century. (Dale Lee, pers. comm. 1985).

Finally, Boydston's and Lopez Gonzales's (2005) modeling results and conclusions are also unreliable because they are also based in part on allegedly "verified" "occurrence records" obtained through interviews with residents of Sonora and Chihuahua. According to Boydston and Lopez Gonzales (2005), such information was viewed as a 'verified' jaguar occurrence when 'ground-truthed' within 25 square kilometers of accuracy and the person interviewed knew or provided a description of the animal's sex. This methodology, of course, cannot provide scientific verification of any particular jaguar's occurrence because it relies wholly on anecdotal information and considerable vagueness relative to location rather than on any semblance of physical, scientific evidence for corroboration.

The importance of physical scientific evidence as necessary support for verbal jaguar reports is clearly illustrated by the experience of the Jag Team in following up on jaguar sightings over the last number of years. During the last decade alone, there have been dozens, if not hundreds, of jaguar sighting reports to the AGFD and the New Mexico Department of Game & Fish (NMDGF). None have ever led to any physical evidence of a jaguar. (Emil McCain, pers. corr. 2010). In short, representing verbal reports of jaguars as 'verified,' 'ground-truthed,' 'jaguar occurrences,' in the absence of physical scientific evidence for support, as Boydston and Lopez Gonzales do, is not only inaccurate, but misleading and unscientific as well. Using verbal reports of jaguars as evidence of jaguar presence is also wholly unreliable because, as the Jag Team's experience following up on verbal jaguar reports graphically reveals, people see what they want to see and, thinking back on what they have seen, can and do transform that information into whatever the imagination can contrive.

In closing, the Fish & Wildlife Service and the District Court for the District of Arizona are laboring under the critical misimpression that Boydston's and Lopez Gonzales's (2005) modeling results and conclusions are both journal published and representative of the best scientific information

available relative to the prudence of designating critical habitat for the jaguar in the United States. Instead, as clearly shown herein, neither is factually the case.

Rather, the facts show that the Boydston and Lopez Gonzales (2005) contribution is merely a conference presentation based on fallacious assumptions and unrepresented data. The facts also reveal that the Boydston and Lopez Gonzales (2005) contribution is not journal published and was very likely not subjected to peer-review before being published by the RMRS as part of the proceedings of the Tucson conference. Moreover, because Boydston's and Lopez Gonzales's modeling results and conclusions are incapable of replication (because the data on which those results are based is not provided), those results and conclusions are not reliable and are therefore reduced by definition to mere speculations which do not qualify as the best scientific evidence available, let alone scientific evidence at all.

Accordingly, SACPA strongly urges the Service to revisit its prudence determination for designating critical habitat for the jaguar along the Mexican border in Arizona and New Mexico – an area where the facts reveal that only males of this species transiently occur, breeding does not occur, and habitat “essential” to this species' existence clearly does not exist. Finally, SACPA also requests that private property and state lands be excluded from any potential critical habitat designation for the jaguar in the United States.

Sincerely,

Dennis Parker,
Attorney at Law,
On behalf of the Southern Arizona Cattlemen's Protection Association (SACPA)

cc: SACPA