Dated: July 16, 1997.

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Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC61

Endangered and Threatened Wildlife and Plants; Final Rule To Extend Endangered Status for the Jaguar in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) extends endangered status to the jaguar (*Panthera onca*) throughout its range under the authority of the Endangered Species Act of 1973, as amended. With this rule, the jaguar is now also listed as endangered in the United States, as well as in Mexico and Central and South America. In the United States, a primary threat to this species is illegal shooting. A minimum of 64 jaguars were killed in Arizona since 1900. The most recent individual killed in Arizona was in 1986.

Loss and modification of the jaguar's habitat are likely to have contributed to its decline. While only a few individuals are known to survive in the United States (Arizona and New Mexico), the presence of the species in the United States is believed to be dependent on the status of the jaguar in northern Mexico. Documented observations are as recent as 1996. Critical habitat was found to not be prudent and therefore is not being designated.

DATES: Effective August 21, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021.

FOR FURTHER INFORMATION CONTACT: Sam Spiller, Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section) (telephone 602/640–2720; facsimile 602/640–2730).

SUPPLEMENTARY INFORMATION:

Background

The jaguar (*Panthera onca*) is the largest species of cat native to the Western Hemisphere. Jaguars are muscular cats with relatively short, massive limbs and a deep-chested body. They are cinnamon–buff in color with many black spots; melanistic forms are also known, primarily from the southern part of the range. Its range in North America includes Mexico and portions of the southwestern United States (Hall 1981). A number of jaguar records are known from Arizona, New Mexico, and Texas. Additional reports exist for California and Louisiana. Records of the jaguar in Arizona and New Mexico have been attributed to the subspecies *Panthera onca arizonensis.* The type specimen of this subspecies was collected in Navajo County, Arizona, in 1924 (Goldman 1932). Nelson and Goldman (1933) described the distribution of this subspecies as the mountainous parts of eastern Arizona north to the Grand Canyon, the southern half of western New Mexico, northeastern Sonora, and, formerly, southeastern California. The records for Texas have been attributed to *Panthera onca veraecrucis.* Nelson and Goldman (1933) described the distribution of this subspecies as the Gulf slope of eastern and southeastern Mexico from the coast region of Tabasco, north through Vera Cruz and Tamaulipas, to central Texas.

Swank and Teer (1989) indicate that the historical range of the jaguar includes portions of the States of Arizona, New Mexico, Texas and Louisiana. These authors consider the current range to occur from central Mexico through Central America and into South America as far as northern Argentina. They state that the United States no longer contains established breeding populations, which probably disappeared in the 1960's. They also maintain that the jaguar prefers a warm, tropical climate, is usually associated with water, and is only rarely found in extensive arid areas.

Brown (1983) presented an analysis suggesting there was a resident breeding population of jaguars in the southwestern United States at least into the 20th century. The Service (U.S. Fish and Wildlife Service 1990) recognizes that the jaguar continues to occur in the American Southwest, at least as an occasional wanderer from Mexico.

The life history of the jaguar has been summarized by Nowak (1991) and Seymour (1989), among others. Jaguars breed year-round range-wide, but at the southern and northern ends of their range there is evidence for a spring breeding season. Gestation is about 100 days; litters range from one to four cubs (usually two). Cubs remain with their mother for nearly 2 years. Females begin sexual activity at 3 years of age, males at 4. Studies have documented few wild jaguars more than 11 years old.

The list of prey taken by jaguars range-wide includes more than 85 species (Seymour 1989), such as peccaries (javelina), capybaras, pacas, armadillos, caimans, turtles, and various birds and fish. Javelina and deer are presumably mainstays in the diet of jaguars in the United States and Mexico borderlands.

Jaguars are known from a variety of habitats (Nowak 1991, Seymour 1989). They show a high affinity to lowland wet habitats, typically swampy savannas or tropical rain forests. However, they also occur, or once did, in upland habitats in warmer regions of North and South America.

Within the United States, jaguars have been recorded most commonly from Arizona, but there are also records from California, New Mexico, and Texas, and reports from Louisiana. Currently there is no known resident population of jaguars in the United States, though they still occur in northern Mexico.

Arizona

Goldman (1932) believed the jaguar was a regular, but not abundant, resident in southeastern Arizona. Hoffmeister (1986) considered the jaguar an uncommon resident species in Arizona. He concluded that the reports of jaguars between 1885 and 1965 indicated that a small but resident population once occurred in southeastern Arizona. Brown (1983) suggested that the jaguar in Arizona ranged widely throughout a variety of habitats from Sonoran desert scrub upward through subalpine conifer forest. Most of the records were from Madrean evergreen-woodland, shrub-invaded semidesert grassland, and along rivers (Girmandonk 1994).

The most recent records of a jaguar in the United States are from the New Mexico/Arizona border area and in southcentral Arizona, both in 1996, and confirmed through photographs. In 1971, a jaguar was taken east of Nogales, Arizona, and, in 1986, one was taken from the Dos Cabezas Mountains in Arizona. The latter individual reportedly had been in the area for about a year before it was killed (Ron Nowak, Fish and Wildlife Service, pers. comm., 1992).

The Arizona Game and Fish Department (1988) cited two recent reports of jaguars in Arizona. The individuals were considered to be transients from Mexico. One of the reports was from 1987 from an undisclosed location. The other report was from 1988, when tracks were observed for several days prior to the

treeing of a jaguar by hounds in the Altar Valley, Pima County.

An unconfirmed report of a jaguar at the Coronado National Memorial was made in 1991 (Ed Lopez, Coronado National Memorial, pers. comm., 1992). In 1993, an unconfirmed sighting of a jaguar was reported for Buenos Aires National Wildlife Refuge (William Kuvlesky, Fish and Wildlife Service, *in litt.*, 1993). The following are historical accounts of jaguar occurrence:

California. Merriam (1919) summarized several accounts of jaguars, from various locations in California, which were obtained from documents published between 1814 and 1860. Strong (1926) provided evidence the Cahuilla Indians of the Coachella Valley and San Jacinto and Santa Rosa Mountains of southern California were familiar with the jaguar. Nowak (1975) mentioned reports of jaguars in the Tehachapi Mountains from 1855, and the last known individual from California which was killed near Palm Springs in 1860 (Strong 1926). Nowak speculated the animal may have been a breeding individual.

Louisiana. Nowak (1973) speculated on the occurrence of jaguars east of Texas. Several early accounts mentioned jaguars and tigers. He cited Baird (1859) who believed that specimens had been taken from Louisiana. Nowak also discussed the killing of what was probably a jaguar near New River, Ascension Parish, Louisiana in 1886. Lowery (1974) mentioned this killing and included the jaguar in the fauna of Louisiana on a provisional basis.

New Mexico. Barber (1902) speculated that jaguars made their way into the Mogollon Mountains of New Mexico by ascending the Gila River. Bailey (1931) suggested that jaguars seemed to be native in southern New Mexico but were regarded as wanderers from across the United States-Mexico border. He listed nine reports of jaguars in New Mexico from 1855 to 1905. Brown (1983) stated that the last record from New Mexico was from 1905. Nowak (1975) mentioned reports of jaguars along the Rio Grande from as late as 1922. Halloran (1946) reported that dogs ''jumped'' a jaguar in the San Andres Mountains in 1937. Findley *et al.* (1975) stated that jaguars once occurred as far north as northern New Mexico.

Texas. Bailey (1905) stated that the jaguar was once reported as common in southern and eastern Texas but had become extremely rare. Nowak (1975) believed that an established population once occurred in the dense thickets along the lower Nueces River and northeast to the Guadalupe River. He suggested that jaguars probably continued to wander from Mexico into the brush country of the southernmost part of the State. However, brush clearing has possibly reduced chances for reestablishment of the species in Texas.

Mexico. Leopold (1959) believed the distribution of the jaguar in Mexico included the tropical forests of southeastern Mexico, the coastal plains to the mouth of the Rio Grande on the Gulf of Mexico side, and the Sonoran foothills of the Sierra Madre Occidental on the Pacific side. The highest densities of jaguars were found along heavily forested flatlands and foothills of southern Sinaloa, the swamps of coastal Nayarit, the remaining uncut forests along the Gulf coast as far east as central Campeche, and the great rain forests of northern Chiapas. He indicated that occasional wandering individuals were found far from these areas and that some had followed tropical gorges far into the mountains. He believed that jaguars had traveled up the Brazos, Pecos, Rio Grande, Gila, and Colorado Rivers on their northern movements. He mentioned a 1955 record of a jaguar near the southern tip of the San Pedro Martir range, Baja California. Leopold asserted that this individual was 500 miles from regularly occupied jaguar habitat.

Swank and Teer (1989) described the distribution of the jaguar in North America as a broad belt from central Mexico to Central America. They found that the most northerly established populations, as reported by Mexican officials, were in southern Sinaloa and southern Tamaulipas.

Brown (1991) did not believe the jaguar was extirpated from northern Mexico. Although jaguars were considered relatively common in Sonora in the 1930's and 1940's, he cited a population about 800 miles south of the United States-Mexico border as the most northern officially reported. However, Brown suggested that there may be more jaguars in Sonora than are officially reported. He mentioned reports of two jaguars which were killed in central Sonora around 1970. He also discussed assertions by the local Indians that both male and female jaguars still occurred in the Sierra Bacatete about 200 miles south of Arizona. Brown speculated that if a reproducing population of jaguars is still present in these mountains, it may be the source of individuals which travel northward through the Sierra Libre and Sierra Madera until they reach Arizona. Nowak (pers. comm., 1992) reiterated that as late as 1987, the species was still considered common in the Sierra Bacatete near Guaymas, Sonora.

Brown (1989) reported that biologists from Mexico have stated that at least two jaguars have been killed in Chihuahua. In 1987, Nowak (pers. comm., 1992) claimed that jaguars were still regularly present along the Soto la Marina River of central Tamaulipas, which is about 150 miles from the southern tip of Texas. He also hypothesized that jaguars may be entering Arizona from Mexico due to habitat destruction in Sonora. Large stretches of natural forest were cleared in central Tamaulipas. In Arizona, by contrast, jaguar prey populations have increased, and large tracts of brush and canyon woodland are still available to provide cover for jaguars.

Previous Federal Actions

Prior to this final rule, the jaguar was listed as endangered from the United States and Mexico border southward to include Mexico and Central and South America (37 FR 6476, March 30, 1972; 50 CFR 17.11, August 20, 1994). The species was originally listed as endangered in accordance with the Endangered Species Conservation Act of 1969 (ESCA). Pursuant to the ESCA, two separate lists of endangered wildlife were maintained, one for foreign species and one for species native to the United States. The jaguar appeared only on the List of Endangered Foreign Wildlife. In 1973, the Endangered Species Act (Act) superseded the ESCA. The foreign and native lists were replaced by a single ''List of Endangered and Threatened Wildlife,'' which was first published in the **Federal Register** on September 26, 1975 (40 FR 44412).

On July 25, 1979, the Service published a notice (44 FR 43705) stating that, through an oversight in the listing of the jaguar and six other endangered species, the United States populations of these species were not protected by the Act. The notice asserted that it was always the intent of the Service that all populations of the seven species deserved to be listed as endangered, whether they occurred in the United States or in foreign countries. Therefore, the notice stated that the Service intended to take action as quickly as possible to propose the United States populations of these species for listing.

On July 25, 1980, the Service published a proposed rule (45 FR 49844) to list the jaguar and four of the other species referred to above in the United States. The proposal for listing the jaguar and three other species was withdrawn on September 17, 1982 (47 FR 41145). The notice issued by the Service stated that the Act mandated

withdrawal of proposed rules to list species which have not been finalized within 2 years of the proposal.

On August 3, 1992, the Service 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. The petition was dated July 26, 1992. On April 13, 1993 (58 FR 19216), the Service published a finding that the petition presented substantial information indicating that listing may be warranted, and requested public comments and biological data on the status of the jaguar. On July 13, 1994 (59 FR 35674), the Service published a proposed rule to extend endangered status to the jaguar throughout its range.

On September 8, 1994, the Service received a petition from the Trans Texas Heritage Association to list the jaguar as extinct in the United States. The Service responded to the petitioner on December 5, 1994, that the request was not a petitionable action.

On April 10, 1995, Congress enacted a moratorium prohibiting work on listing actions (Public Law 104–6) and eliminated funding for the Service to conduct final listing activities. The moratorium was lifted on April 26, 1996, by means of a Presidential waiver, at which time limited funding for listing actions was made available through the Omnibus Budget Reconciliation Act of 1996 (Public Law No. 104–134, 100 Stat. 1321, 1996). The Service published guidance for restarting the listing program on May 16, 1996 (61 FR 24722). The listing process for the jaguar was resumed in September 1996, when the Southwest Center for Biological Diversity filed a law suit and motion for summary judgment for the Secretary to finalize the listing for the jaguar and four other species.

On January 15, 1997, the Arizona Game and Fish Department and New Mexico Department of Game and Fish requested that the Service reopen the jaguar public comment period for 70 days so that they could finalize and submit an interstate/intergovernmental ''Conservation Assessment and Strategy for the Jaguar in Arizona and New Mexico'' and ''Memorandum of Agreement for the Conservation of the Arizona Jaguar.'' These documents, collectively referred to as the Conservation Agreement (CA), reflect the commitments of the agencies to expedite the development and implementation of conservation measures needed for the Arizona jaguar in the United States.

The Service considered the CA as new information relevant to the listing determination. The comment period was reopened for a total of 15 days, from January 31 through February 14, 1997 (62 FR 4718). The completion date for the final listing determination was reassigned to April 1, 1997. On March 14, 1997, the U.S. District Court for the District including Arizona ordered the Service to list the jaguar as endangered no later than 120 days from the date of the order. On July 3, 1997, the Court clarified that order, noting that the 120-day timeframe was provided for the Service to make a decision as to whether or not to extend endangered status for the jaguar in the United States.

Summary of Comments and Recommendations

In the July 13, 1994, proposed rule (59 FR 35674) and associated notifications, all interested parties were requested to submit factual reports or information that might bear on whether or not the jaguar should be listed. The comment period originally closed on September 12, 1994, but was reopened from November 15 to December 14, 1994 (59 FR 53627; October 25, 1994), to allow submission of additional comments and public hearings. Appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in Arizona in the Arizona Republic, Phoenix Gazette, Arizona Daily Star, Tucson Citizen, and Green Valley News/Sun; in New Mexico in the Albuquerque Journal, Albuquerque Tribune, Las Cruces Sun-News, Santa Fe New Mexican, Alamogordo Daily News, Defensor Chieftain, and Silver City Daily Press and Independent; and in Texas in the Corpus Christi Caller-Times and The McAllen Monitor. The inclusive dates of publication were July 29 to August 3 for the initial comment period. The inclusive dates of publication for the comment period extension and public hearings were November 11 to November 15 and did not include the Green Valley News but did include the El Paso Times/Herald Post.

Public hearings were requested by the Cochise County (Arizona) Planning Department, the Board of Supervisors of Apache County (Arizona), the Eastern Arizona Counties Organization, the County of Otero (New Mexico), and the Texas Wildlife Association. The Service conducted three public hearings. Interested parties were contacted and notified of the hearings. A notice of the hearing dates and locations was published in the **Federal Register** on October 25, 1994 (59 FR 53627). Approximately 60 people attended the hearings. About 15 people attended the hearing in Safford, Arizona, 10 in El Paso, Texas, and 35 in Weslaco, Texas. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

Upon resumption of the listing process following the listing moratorium, a third public comment period was opened, January 31, 1997, through February 14, 1997. Notice of this reopening of the comment period was published between January 31, 1997 and February 8, 1997 (62 FR 4718). Newspaper notices inviting public comment were published in Arizona in the Green Valley News, Arizona Daily Star (Tucson), Tucson Citizen, and Arizona Republic (Phoenix); in Texas in the Corpus Christi Caller Times, Las Cruces Sun-News, The Monitor (McAllen), and El Paso Times/Herald; and in New Mexico in the Albuquerque Journal, Albuquerque Tribune, Silver City Daily Press, Defensor Chieftain (Socorro), Alamogordo Daily News, and Santa Fe New Mexican. No additional formal public meetings were held during this period.

A total of 266 written comments were received during all open comment periods. The listing proposal was supported by 185; 43 opposed the proposed listing; 31 supported the CA in lieu of listing, and 7 either commented on information in the proposed rule but expressed neither support nor opposition, provided additional information only, or were non-substantive or irrelevant to the proposed listing. In addition, a ''petition'' to place the jaguar on the endangered species list included 115 signatures.

Oral or written comments were received from 21 parties at the hearings. Four supported listing, 15 opposed listing, and 2 expressed neither support nor opposition, provided additional information only, or provided comments that were nonsubstantive or irrelevant to listing.

In addition to the public comments, the Service sought out peer review from three independent scientists. Two of the three peer reviewers responded. A discussion of their comments follow the discussion of public comments and Service responses below.

Written comments and oral statements presented at the public hearings and received during the comment periods are incorporated into this rule as appropriate and/or are addressed in the following discussion of issues and responses. Comments of a similar nature or point are grouped into a number of general issues. These issues

and the Service's response to each are discussed below.

Issue 1: The jaguar is not native to the United States. The assumption by the Service that the historical range includes the United States is not borne out by the historical record. The United States was merely peripheral to the historic range. The species was never more than wandering individuals that occasionally crossed the border into the United States. The native jaguar is extirpated from the United States. Only the State of Arizona has had alleged reports of jaguars. No breeding population of the jaguar exists in the United States. The likelihood of establishing a breeding population would be impossible because of previous habitat modification and distances of breeding populations from the United States. Suitable habitat, even for random wanderings, no longer exists. That is why visits were rare in the 1900's and why the visits resulted in the demise of the stray. It is incumbent upon the Service to provide evidence that the jaguar was a breeding species in the United States.

Service response: As discussed in the ''Summary of Factors Affecting the Species,'' the Service believes that the jaguar is native to the United States. The evidence strongly indicates that the historical range of the jaguar included portions of the southwestern United States. The jaguar is not extirpated from the United States as indicated by continuing reports and documentation of individuals in Arizona. The most recent observation was made in late 1996 from Arizona and New Mexico.

The issue of whether a breeding population is wholly supported within the United States is not relevant. The fact that individuals occur in the United States warrants their consideration for listing, evaluation of relevant threats, and development of appropriate conservation considerations.

Issue 2: The Service should list the jaguar as extinct in the United States and herewith is a petition for such a finding. Another commenter stated the actual scientific evidence that either subspecies of jaguar still exists is lacking. Another commenter stated there appears to be no evidence of subspecies identification of jaguars for California, Louisiana, New Mexico, or Mexico.

Service response: As discussed in the section regarding previous Federal action, the Service responded to the petition to list the jaguar as extinct in the United States in a letter dated December 5, 1994 (John Rogers, Fish and Wildlife Service, *in litt.*, 1995). In that letter, the Service stated that it does not add species to the list of endangered and threatened wildlife and plants as extinct, and therefore, the Service believed that the request was not a petitionable action.

As discussed above, there are two subspecies that are known from, and may occur in, the United States. The reports and records of jaguars in Arizona, California, and New Mexico are attributable to *Panthera onca arizonensis.* The type locality for this subspecies is in Navajo County, Arizona. The reports and records of jaguars in Louisiana and Texas are attributable to *P. o. veraecrucis.* Although the subspecies designation of the jaguar is not relevant to the listing proposal, the Service has confirmed that *P. o. arizonensis* is in Arizona; the Service believes that *P. o. veraecrucis* may be extant in Texas.

Issue 3: There are no scientifically valid records to support the idea that jaguars existed in California in recent centuries. No post-Pleistocene remains have been collected in California, nor in the Colorado River corridor from northern Arizona to the Gulf of California. None of the purported sightings in those areas were made by biologists or reputable naturalists. Early 19th century references in central California were based on hearsay or misidentification. The purported sightings in southern California are not reliable. It is conceivable that individuals wandered into California from Arizona or Mexico historically, given their long-range dispersal ability. However, such events would have been rare.

Service response: Available information indicates that California was part of the historical range of the jaguar, but no conclusive data exist. The California Department of Fish and Game (R. Jurek, pers. comm. 1996) does not accept these records as valid. Regardless, this rule extends endangered status to the jaguar in the United States throughout its range. Thus, whether or not California is part of the historical range, jaguars that may occur there are protected by the Act.

Issue 4: A commenter stated that most of the accounts in the proposal are anecdotal. Another stated there were discrepancies in the number of jaguars taken or killed in Arizona and that it is incumbent upon the Service to provide documentation for the information presented in the proposed rule.

Service response: The Service has carefully evaluated the information available regarding the jaguar for accuracy and relevance, whether anecdotal or not. The Service has addressed any discrepancies it has perceived and made changes where appropriate in this final rule. Many accounts of jaguar occurrence are from the historical literature and field accounts. Reconciling historical information is often complex, so the Service has tried to use the best information available, relying primarily on those aspects of the data which are best substantiated. Finally, this rule includes updated information that definitively documents jaguar occurrences as recently as 1996.

Issue 5: One commenter stated that listing of the jaguar will lead to efforts to reintroduce the species. Another commenter stated that until the encroachment of people into these predatory animals' habitat can be stopped, it is not ethical to reintroduce a listed species. Furthermore, there are no areas big enough for reintroduction. Alternatively, another commenter stated the jaguar should be reintroduced in Texas. Places to start should include the Rio Grande River, perhaps in the Big Bend area. The jaguar is a top predator in the food chain and would provide biological control of various ungulates and rodents. The Service should begin a public education program to protect the jaguar and break ground on reintroduction. Another commenter was particularly interested in the prospect of reintroduction of the jaguar to California and other States. Another commenter stated that proper planning is needed for reintroduction.

Service response: Depending on the species involved and the situation it faces, reintroduction may or may not be a viable means to reach recovery. The Service has no plans for reintroduction of the jaguar anywhere in the United States. If reintroduction is contemplated at any time in the future it would be the subject of a separate rulemaking.

Issue 6: None of the jaguars reported taken in recent times were taken as a result of legal, licensed, sport hunting. Thus, the jaguars reported taken were poached and not hunted.

Service response: The accuracy of this statement would depend on the wildlife laws and regulations that were in effect at the time all of the known jaguars were taken. However, the Service acknowledges that the wording in the proposed rule could have been misconstrued to mean jaguars are victims of legal hunting. The appropriate corrections have been made in the text of the final rule.

Issue 7: Property rights may be abridged by this action in the States considered by the Service to be part of the historical range. Activities of the Service are adversely affecting people throughout the State of Texas, with

little, if any, benefit to the species. The proposed rule is seen as another attempt to further restrict legal hunting and predator control activities. Frivolous listings violate citizens' 9th and 10th amendment rights. Another commenter stated listing would require protection of the jaguar, thereby violating livestock owner's 5th and 14th amendments and civil rights. Will landowners not be subject to aerial inspection? Will the Service not be subject to lawsuits from the Humane Society? Possible acquisition of private property to create habitat for nonexisting or reintroduced jaguars would cause great loss to livestock and all other wild animals in south Texas. Listing of other species (Mexican spotted owl) has resulted in affecting other industries (logging) and actually resulted in further endangering the species. If the jaguar is listed, Federal agencies must comply with section 7 of the Act. Activities that may be affected are clearing of habitat, destruction of riparian areas, fragmentation or blocking of corridors that jaguars may use to cross from Mexico into the United States, and any trapping or animal control activities designed to target the jaguar or other large predators. This is an outrageous blatant attack on the agricultural economies of the States involved. Trapping and animal damage control activities designed to target large predators should not be victims of the listing of the jaguar. These programs have a legitimate function and should not be destroyed on behalf of a phantom species.

Service response: Under the Act, listing of species must be considered only on the basis of the best biological information available. Listing decisions cannot be made on the basis of economic factors or possible problems or conflicts that may arise from compliance with section 7 and 9 of the Act. Once listed, however, the Service strives to recover threatened and endangered species in ways that minimize impacts on industry or private citizens. Further discussion of activities that may or may not violate the Act are discussed under the Available Conservation Measures section.

Issue 8: No scientific information has been provided to support the argument that the jaguar requires protection in the United States. The proposed rule fails to demonstrate (under the listing factors) that the species is endangered in the United States.

Service response: The Service believes that the information regarding the threats to the jaguar in the United States discussed under the five factors indicates that the species merits listing.

Issue 9: Jaguars that occur in the United States do not possess the genetics needed to enhance the breeding population.

Service response: The Service does not possess relevant information regarding the genetic status of the jaguar in the United States. However, the genetic contribution of all individuals of a declining species may be of great importance. The listing does not depend on the value of the genetic importance of the individuals. However, if, for example, the jaguar was known to suffer from genetic diseases, that could be considered as a factor to list the species.

Issue 10: It would be a mistake to select boundaries of protected areas based on the conditions that existed 50–100 years ago. What is the basis for stating that clearing of habitat may affect the jaguar? The majority of records were from the turn of the century when there was very little of the current mesquite infestation. It is incumbent upon the Service to provide evidence that riparian areas are being destroyed anywhere in the Southwest. If jaguar habitat stretches from 2,000 to 9,000 feet of elevation, a vast swath of both Arizona and New Mexico would be subject to review.

Service response: Under this listing action, the Service is not setting any boundaries for protected areas. As a result of this action, the species will be protected under the Act throughout its entire range.

Clearing of habitat could affect jaguars either directly or through effects on its prey. Although listing of the jaguar does not hinge on loss of riparian areas that may be used by jaguars, such loss has occurred and is continuing in the Southwest. As outlined in other sections of this rule, the available scientific literature indicates that jaguars do rely on riparian areas for habitat and movement corridors. However, very little is actually known about the habitat requirements and movement corridors for the jaguar in the United States at the northern periphery of its range. The Service agrees that large areas may have to be considered when evaluating effects of activities on the jaguar. However, very localized activities may actually be judged to have less of an effect on jaguars than if jaguars occupied very narrow habitat areas. As discussed in the Available Conservation Measures section, the Service anticipates few projects will be reviewed under section 7 of the Act because jaguars can be expected to occur in few areas.

Issue 11: In Texas, the jaguar is already protected by the State's endangered species law. The State can seek civil restitution for wildlife losses due to intentional harm or negligence, with the current replacement cost for a jaguar being over $7,000. It is highly suspect whether Federal protection would be additive, given the number of Texas game wardens (more than 450) and the handful of Federal agents. The Service refuses to recognize any State regulation as adequate, preferring to increase the burden of Federal regulations on all States involved. Protection of the species from the threat of shooting does not require Federal listing; it can be accomplished through hunting regulations and other means. New Service policies provide for increased emphasis on working with State agencies. Texas Wildlife and Parks Department (TWPD) will undertake to develop an interstate cooperative effort similar to the one for the swift fox. If the Service accepts this strategy, it will have the full support and cooperation of TWPD. Another commenter suggested that instead of listing, the Service should work with the States to get their laws strengthened.

Service response: As discussed under Factor D, the penalties for violation of the Act are much stronger than any current State provisions. The Service believes that such protection provided by the Act is appropriate for the jaguar. The Service understands that despite an offered $4,000 reward, the Arizona Game and Fish Department encountered difficulties in obtaining information relevant to a suspected killing of a jaguar in Arizona. In addition to the take prohibition, listing the species under the Act will provide other protection as well (See Available Conservation Measures). In addition, listing provides an appropriate range-wide perspective when considering the species' recovery needs. In absence of other regulatory mechanisms that will adequately protect the jaguar, the Service believes that listing is warranted.

Issue 12: The Service is precluded from including the jaguar in the list of United States endangered species because the proposal to list was not acted upon in a timely manner by the Service pursuant to the proposal to list in 1980 (45 FR 49844). The Service failed to complete the listing process in 1982, thereby requiring withdrawal of the proposal. The Service should be precluded from the current proposed action based on the Service's earlier oversight and omissions.

Service response: As discussed under Previous Federal Actions, the Service did propose to list the jaguar in the United States in 1980. The proposal was withdrawn in 1982 in accordance with the regulations under the Act in place at that time. That proposal and

withdrawal are not related to the present proposal and do not preclude the Service from proposing or finalizing the current action.

Issue 13: There is no benefit to the species from the proposed rule. It is apparent that the intent of the rule is to prohibit certain practices such as trapping and animal damage control within the States involved and to extend Federal control.

Service response: The fact that jaguars will be afforded the protections of the Act in the United States is clearly a benefit to the species. Prohibition of practices that affect the jaguar is not the intent of this listing. However, some activities could be affected by the listing, as discussed under Available Conservation Measures.

Issue 14: Commenters suggested that livestock losses to jaguars will occur. Jaguars will jeopardize the recreational industry in the Gila Wilderness. Balance of wildlife and the human factor would be completely destroyed. Several commenters expressed uneasiness with the idea of facing or being stalked by a jaguar. Listing would pose a threat to the general public safety, which Arizona counties are charged to protect under Arizona Revised Statutes, Section 11–806(b).

Service response: While not considered as listing factors, the Service does not believe that listing the jaguar will result in losses to the livestock or recreational industries or pose a threat to general public safety.

Issue 15: Designation of critical habitat is needed. Recommended areas include the Animas Range in the bootheel of New Mexico and the San Pedro River Valley, Huachuca Mountains, and Santa Cruz Basin in Arizona. Loss of habitat is a primary threat; habitat loss will prevent jaguar recovery and increase its vulnerability to poaching. Because there is no recovery plan, it is essential that critical habitat be designated at the time of listing. The jaguar requires whole landscapes for survival and recovery; additional knowledge about specific natural community preferences in the Southwest are not a prerequisite for determining critical habitat. Designation of large blocks of critical habitat would not aid poachers and should help alert law enforcement to the need for antipoaching surveillance. Why not designate all riparian ways in the Southwest as critical habitat? Critical habitat will help the Service in controlling activities of Animal Damage Control.

Service response: The July 13, 1994 (59 FR 35674), proposed rule did not include a proposal for designation of critical habitat because it was determined not to be prudent. The Service still believes this to be the case. The Service's reasons for a ''not prudent'' determination are discussed under the Critical Habitat section of this final rule.

Issue 16: Federal listing would require a recovery plan and later designation of critical habitat. The Service has recognized that such a plan would require importing of jaguars into habitat that must be suitable for its foraging, which is not available in the border areas of the United States with Mexico. What guarantee is there that the Service will not designate critical habitat? What would preclude any organization from petitioning the Service to declare critical habitat for the jaguar?

Service response: The jaguar was briefly addressed in a recovery plan for the listed cats of Texas and Arizona (U.S. Fish and Wildlife Service, 1990). Upon listing, it would probably be appropriate to develop a more extensive recovery plan for the species. The existing recovery plan for the listed cats does not recommend importing jaguars.

The July 13, 1994 (59 FR 35674) proposed rule did not include a proposal for designation of critical habitat because it was determined not to be prudent. The Service has no information that critical habitat is prudent. Critical habitat is defined in section 3(5)(A) of the Act as the geographical area on which are found those physical or biological features essential to the conservation of the species. Areas on the periphery of a species range or areas that are only infrequently used by a species often do not exhibit the qualities that would constitute a critical habitat designation. To the extent that identification of habitats that are essential for the recovery of the species rangewide is necessary, the Service would identify these areas as part of the recovery planning process.

Issue 17: Listing of the jaguar could have significant impacts on the success of the Service in the lower Rio Grande Valley, and particularly in the Lower Rio Grande Valley National Wildlife Refuge complex. Listing would frustrate rather than benefit efforts for species. While there may be merit in listing, the protection and restoration of habitat in south Texas may be thwarted. It is difficult to get funding to complete the Lower Rio Grande Valley Refuge. Although the species deserves every protection, listing at this time will be counter-productive. Another commenter stated the Act is a serious law intended for serious problems. The Act is not an animal rights act, and listing the jaguar would be an abuse of the Act.

Service response: As stated previously, listing decisions are to be based on the best available scientific and commercial information and the five listing factors discussed in this rule (see Summary of Factors Affecting the Species section). The Service disagrees that listing would preclude management of the species in Texas, and agrees that the Act is a serious law and that its protections should be afforded to a species that has suffered extensive curtailment of its range and is still vulnerable to a variety of threats.

Issue 18: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) provides stiff penalties for illegal importation. This law should be effective against ''canned hunts.''

Service response: CITES is an international treaty that regulates trade (import/export) in wildlife between countries. CITES does not, however, address activities with wildlife that occur within the United States. So although CITES regulates international trade in jaguars, it offers no protection to the jaguar from ''canned'' or baited hunts. (See Factor D for further information on CITES.) Certain State penalties do apply to the jaguar that may be enforced by the Federal government under the Lacey Act. In the case of transportation across State lines of an illegally obtained jaguar, the Lacey Act would apply.

Issue 19: The Service has not analyzed, under section 7 of the Act, impacts to the ocelot, jaguarundi, Attwater's prairie chicken, and whooping crane that could result from the introduction of exotic jaguars from Mexico. How would the jaguar not impact prey sources of both ocelot and jaguarundi? What would keep the jaguar from preying on the previously mentioned species? How will exotic jaguars not introduce disease?

Service response: Section 7 consultations are not conducted for rules proposing or listing species as threatened or endangered under the Act. Section 7 of the Act applies to those actions that may affect listed species. Listing a species would not be expected to have an adverse affect on any other listed species. If any future Federal actions associated with a listed species may affect another listed species, such as a recovery activity, then a section 7 consultation would be required for that action at the time it is proposed. (See Issue 5 for further information on reintroduction.)

Issue 20: A commenter requested that an environmental impact statement

(EIS) be done before publication of a final rule and that the EIS consider site-specific areas, not the region as a whole. Another commenter stated that the Service needs to study how the listing may affect the social, economic, and human environment. The public involvement process should be designed to address concerns, to answer questions, and to exchange information. Legal, custom, and cultural concerns can be addressed only with adequate notice and time to prepare. Another commenter stated that public notification was not sufficient for the public hearings. Commenters requested that more hearings be held, especially in rural counties. Another commenter suggested a hearing be held in Dallas/Fort Worth or Austin based on the assumption that the wildlife of the United States belongs to all people, not just to those in the areas that are involved.

Service response: As the proposed and final rules state (see National Environmental Policy Act section), the Service has determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. Additionally, the Act precludes addressing the social, economic, and human environment when deciding to list a species.

The April 13, 1993 (58 FR 19216), notice announcing the 90-day finding on the petition to list the species requested public comments and biological data on the status of the jaguar from any and all interested or knowledgeable parties. On July 13, 1994, (59 FR 35674) the Service published a proposed rule to extend endangered status to the jaguar in the United States. Again, the Service sought biological data and comments from the public. In addition, as recounted in the Background section, three public hearings were conducted by the Service as another avenue to obtain relevant information. The Service believes that it has provided interested parties opportunity to present any relevant information.

Issue 21: Listing of the jaguar is not necessary since the conservation intent of the Act has been addressed through the CA. The Arizona Game and Fish Department and New Mexico Department of Game and Fish have coordinated the development of an interstate/intergovernmental ''Conservation Assessment and Strategy for the Jaguar in Arizona and New Mexico'' and ''Memorandum of Agreement for the Conservation of the Arizona Jaguar.'' These documents, collectively referred to as the Conservation Agreement (CA), reflect the commitments of the agencies to expedite the development and implementation of conservation measures needed for the Arizona jaguar in the United States in order to meet the conservation intent of the Act and preclude the need for listing. The primary feature of the CA is the designation of the Jaguar Conservation Team and coordination and implementation of conservation measures through the cooperation of State, Federal, Tribal, and other governmental agencies, and partnerships with private landowners and organizations.

The CA addresses the fact that the conservation of the jaguar and its habitat in Arizona and New Mexico is linked to key Federal and private land ownership patterns, identifies both short and long-term objectives, and sets various time frames to complete species and habitat activities. The State wildlife agencies will reallocate funds and personnel to implement this CA, or will aggressively seek new funds for implementation. The CA addresses risks to the survival and recovery of the Arizona jaguar in the United States through a combination of measures. These measures include: (a) Gathering and disseminating information on status, biology (including habitat use), and management needs; (b) identifying habitat suitable for population maintenance or expansion in Arizona and New Mexico; (c) allowing for management flexibility; (d) creating strong private-public partnerships; and (e) developing stronger legal disincentives for unlawful take. The State wildlife agencies have committed to implementation of the CA regardless of the listing status of the species.

Service Response: The Service acknowledges the conservation benefits of the CA and the lead role of the State wildlife agencies in the conservation and recovery of wildlife species within their respective States. Through implementation of the CA there should be many positive benefits to jaguar conservation. However, the efforts under the CA are based on voluntary participation and it will take time to realize these benefits to the level in which the jaguar is no longer in danger of extinction through all or a portion of its range. As long as the species' status meets the regulatory definition of endangered, the Service has the statutory responsibility to list the species based on biological considerations and analysis of threats. The CA developed to this point in time will serve as the template for those protections that will be necessary for the conservation and recovery of the species subsequent to its listing.

Issue 22: Texas Parks and Wildlife Department evaluated the status of the jaguar in that State and determined that, due to habitat fragmentation, there was no longer any potential for the jaguar to exist in Texas. Therefore, Texas Parks and Wildlife stated there was neither the need to federally list nor to develop a CA for the jaguar in Texas.

Service Response: Extirpation of a species from an area lends evidence to a determination that a species' conservation status has declined range wide and that listing is appropriate.

Issue 23: The Act has not been reauthorized, therefore, the Act is no longer extant. Also, we live in a democracy. Do the majority of the people want the jaguar listed? Another commenter stated that there is no need for endangered species listings. They are a waste of time and money and are based on pseudo-science.

Service response: Although Congress has not reauthorized the Act, it continues to appropriate funds for its implementation. The Service, by authority of the Secretary of the Interior, is still responsible for implementing the Act. According to the Act, listing decisions are based on the best scientific and commercial information available.

Summary of the Opinions of Independent Peer Reviewers

Three independent reviewers were contacted by the Service during the comment period in order to obtain their comments, data, and opinions regarding the pertinent scientific or commercial data and assumptions relating to taxonomy, population status, and biological and ecological information on the jaguar. The reviewers were E. Lendell Cockrum (University of Arizona), David S. Maehr (Endangered Cats Recovery Team), and Michael E. Tewes (Caesar Kleberg Wildlife Research Institute, Texas A&M University). Responses were received from two of the three reviewers.

One reviewer stated that because they are secretive, the status of the jaguar in the United States is based largely on speculation. While some of this speculation suggests some low level of reproduction may have occurred in parts of the Southwest, it is more likely that most of these animals represented dispersers or only sporadic breeders. Such a pattern is to be expected at the fringe of a species' range where habitat conditions, by definition, are sub-optimal relative to the center of its range. That does not mean such

individuals are unimportant. They occupy habitat that serves as a buffer to zones of regular reproduction, and they are potential colonizers of vacant range. Such areas are important to maintaining normal demographics and allowing for the possibility of range expansion as environmental conditions improve.

Because knowledge of jaguar distribution and ecology involves much speculation, there is no way to ascertain key elements of its habitat. However, every effort should be made to describe the ecology of jaguars in northern Mexico in order to understand where some of the records originated and how individuals are finding their way to and from the United States. Corridors and other patches of forest cover may indeed be critical to the jaguar's continuance and possible range expansion in the United States. Work must begin on describing jaguar habitat requirements and dispersal characteristics through sign surveys and, eventually, telemetry studies of the breeding population closest to the United States. Enlisting the owners of significant tracts of private land supporting endangered cats will be essential to jaguar conservation if not all potential jaguar habitat is already on public land that can be managed for them. Involving property owners very early in the process will pay tremendous dividends down the road. Jaguar recovery has much to gain from ranch owners in the southwest.

Another reviewer commented that wide-ranging, large carnivores such as the jaguar travel long distances within their home range and often use a wide variety of habitats. Simple occurrence of a jaguar in a particular habitat does not necessarily convey information about the quality of that particular habitat type. Because there are no ecological studies indicating habitat preferences of jaguars within the United States, an accurate description of important habitats would be almost impossible.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the jaguar should be classified as an endangered species in the United States. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the jaguar (*Panthera onca*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Clearing of habitat, destruction of riparian areas, and fragmentation or blocking of corridors may prevent jaguars from recolonizing previously inhabited areas. Although there is currently no known resident population of jaguars in the United States, wanderers from Mexico may cross the border and take up residency in available habitat. (See Issue 10 for further information.)

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* In Arizona, the jaguar's gradual decline was concurrent with predator control associated with the settlement of land and the development of the cattle industry (Brown 1983, U.S. Fish and Wildlife Service 1990). Lange (1960) summarized the jaguar records from Arizona known up to that time. Between 1885 and 1959, the reports consisted of 45 jaguars killed, 6 sighted, and 2 recorded by evidence such as tracks and/or droppings.

Brown (1991) related that the accumulation of all known records indicated a minimum of 64 jaguars were killed in Arizona after 1900. When plotted at 10-year intervals, records of jaguars reported killed in Arizona and New Mexico between 1900 and 1980 demonstrated a ''decline characteristic of an over-exploited resident population'' (Brown 1983). Brown (1983) argued that if the jaguars killed during this period originated in Mexico, the numbers of killings should not suggest a pattern but should rather be irregular and erratic.

Bailey (1905) listed seven reports of jaguars killed in Texas between 1853 and 1903. Schmidly (1983) reported another jaguar shot in Mills County in 1904. Taylor (1947) mentioned a jaguar killed near Lyford, Willacy County, in 1912. Brown (1991) indicated jaguars were common in Texas until 1870. The last reports from Texas were of individuals killed in 1946 (San Benito, Cameron County) and 1948 (Kleburg County). Nowak (1975) identified killing of jaguars for commercial sale of their furs as a factor in the extermination of a substantial resident population in central Texas during the late 19th century.

Although the demand for jaguar pelts has diminished, it still exists along with the business of illegal hunting of jaguars. In 1992, Arizona Game and Fish Department personnel infiltrated a ring of wildlife profiteers. That operation resulted in the March 1993, seizure of three jaguar specimens, of which one was allegedly taken from the Dos Cabezas Mountains in Arizona in 1986. Two of the specimens had been covertly purchased from the suspects. During the investigation, several ties to Mexico jaguar hunting were discovered. Hounds bred and trained in the United States were sold to Mexican nationals for the purpose of hunting jaguars. Also, Mexican nationals prosecuted by the Service in 1989 for illegally importing jaguar pelts into the United States were continuing the practice of providing jaguar hunts in Mexico (Terry B. Johnson, Arizona Game and Fish Department, *in litt.*, 1993).

C. *Disease or predation.* The Service is unaware of any known diseases or predators that threaten the jaguar at this time.

D. *The inadequacy of existing regulatory mechanisms.*

State Regulations

Jaguars are being considered for inclusion on the Arizona Game and Fish Department's list of ''Wildlife of Special Concern,'' and were included on its previous list of ''Threatened National Wildlife of Arizona.'' In general, violations of Arizona Game and Fish Laws (Arizona Game and Fish Department 1991) are class 2 misdemeanors. The Arizona Game and Fish Commission may, through criminal prosecution, seek to recover a maximum of $750 for each endangered species unlawfully taken, wounded, or killed. Special depredation permits may be issued for jaguars.

Under the California Code of Regulations, it is prohibited to import, transport, or possess jaguars. According to California Fish and Game Code, Section 12011, such acts carry a maximum penalty of a $30,000 fine, 1 year in jail, or both.

In Louisiana the jaguar receives no official protection from the State (Fred Kimmel, Louisiana Department of Wildlife and Fisheries, pers. comm., 1993).

In New Mexico, the jaguar is considered a ''restricted species'' on the State's list of endangered species and subspecies. It is unlawful to take, possess, transport, export, process, sell, or offer for sale a jaguar in New Mexico. Violations are a misdemeanor and, upon conviction, a person shall be fined $1,000 and imprisoned from 30 days to 1 year.

The jaguar is listed as threatened by the State of Texas. It is unlawful to take, possess, transport, export, process, sell or offer for sale, or ship jaguars in Texas. However, some of the above actions may be allowed for zoological gardens, and scientific, commercial, and propagation

purposes with the proper permits. A first violation of the regulations or a permit is a Texas Parks and Wildlife Code C misdemeanor which carries a fine of $25 to $500 (Capt. Harold Oates, Texas Parks and Wildlife, pers. comm., 1994).

In summary, although some States provide limited protection to the jaguar, illegal taking continues to occur. None of the State penalties for illegal taking are as stringent as the $50,000 fine and/or 1 year in jail provided for endangered species under the Act. Thus, listing the species under the Act results in protective measures beyond those provided by the States.

Federal Protection

Prior to this final rule, the jaguar was listed under the Act as an endangered species only from Mexico southward to include Central and South America. It was not listed in the United States. Jaguars which may have occurred in, or immigrated into, the United States were not protected by the Act.

On July 1, 1975, the jaguar was included in Appendix I of CITES. CITES is a treaty established to prevent international trade that may be detrimental to the survival of plants and animals. Generally, both import and export permits are required from the importing and exporting countries before an Appendix I species may be shipped, and Appendix I species may not be exported for primarily commercial purposes. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not prohibit the act of taking, possessing, or transporting a jaguar within the United States and its territories.

The subspecies *Panthera onca veraecrucis*, with historical range in Texas and eastern Mexico, is designated by the United States government as a peripheral animal of concern in a provisional list for the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (Nowak, pers. comm., 1992). *Panthera onca arizonensis* is not so designated. This Convention, as implemented by Sections 2 and 8(A) of the Act, does not require the protection of species listed. Therefore, neither *P. o. veraecrucis* nor *P. o. arizonensis* are currently protected.

E. *Other natural or manmade factors affecting its continued existence.* M–44 ejector devices with cyanide capsules are used by the Animal Plant and Health Inspection Service, Animal Damage Control and may be of threat to the jaguar (Terry B. Johnson, Arizona Game and Fish Department, *in litt.*, 1993). Jaguars may also be victims of traps targeting other predators such as bears and cougars.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the jaguar (*Panthera onca*) as endangered throughout its range. The lack of protection under the Act for jaguars in the United States was due to an uncorrected technicality, rather than to any scientific information that jaguars do not require protection. A decision to take no action would exclude the jaguar in the United States from needed protection pursuant to the Act. A decision to extend only threatened status would not adequately express the drastic distributional decline of the species and the continued jeopardy of any individuals in the United States. Therefore, no action or listing as threatened would be contrary to the intent of the Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

As discussed in factor ''B'' above, a primary threat to the jaguar in the United States is from taking. Jaguars are still in demand for hunts and as trophies and pelts. A jaguar in Arizona was hunted and killed in 1986 approximately 1 year after it was known to be in the area and photographs confirmed another jaguar in New Mexico during 1996. Publication of detailed critical habitat maps and descriptions in the **Federal Register** would likely make the species more vulnerable to activities prohibited under section 9 of the Act. In addition, since the primary threat to the species in the United States is direct taking rather than habitat destruction, designation of critical habitat would not lessen, and may increase, the primary threat to the jaguar. Appropriate parties and landowners have been notified of the location and importance of protecting this species' habitat. Identification of this species' habitat preferences will be addressed through the recovery process. Therefore, it is not prudent to designate critical habitat for the jaguar.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. Federal actions that may affect the jaguar include clearing of habitat known to have been occupied by jaguars and trapping or animal control activities targeting the jaguar or other large predators.

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass,

harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The prohibitions of section 9 will not apply to jaguars which were held in captivity or a controlled environment on December 28, 1973, or the date of this publication, provided that such holding and any subsequent holding of such jaguars was not in the course of a commercial activity. For clarification, the pre-Act date is the date of publication of the final rule listing the species; the jaguar will have two pre-Act dates depending upon its origin. The Service considers jaguars currently held in captivity in the United States to of originated from parental stock outside of the United States and, thus, their pre-Act date is December 28, 1973. Jaguars legally obtained in the United States from the wild could be considered to be pre-Act if obtained on or prior to the date of this rulemaking and not held in the course of a commercial activity.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the Service's Southwest Regional Office, P.O. Box 1306, Albuquerque, New Mexico, 87103 (505/248–6666).

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of listing on proposed or ongoing activities. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with any existing regulations and permit requirements:

1. Normal ranching activities, except predator control targeting large cats which results in inadvertent trapping or mortality of a jaguar.

2. Habitat clearing, except in areas where jaguars are known to exist or have been known to exist.

3. Fencing or other property delineation.

4. If, when using dogs to tree mountain lions, a jaguar is inadvertently chased and/or treed by the dogs, so long as the dogs are called off upon realization that a jaguar is being chased.

The following activities would likely violate section 9 of the Act:

1. Any activity specifically prohibited by the Act (e.g., shooting, hunting, trapping, etc.)

2. Intentional clearing or destruction of habitat known to be occupied by jaguars.

3. Any activities that fall within the definition of harass and harm. The Service has defined the terms harass and harm as follows: Harass means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm has been defined as an act which actually kills or injures wildlife. Such acts may include significant habitat modification or degradation when it actually kills or injures wildlife by significantly impairing essential behavioral patterns including breeding, feeding or sheltering.

4. Predator control activities targeting large cats that trap, kill, or otherwise injure jaguars.

Contacts have been identified to assist the public in determining whether a particular activity would be prohibited under section 9 of the Act. In Arizona, contact the Field Supervisor in Phoenix (see **ADDRESSES** section). In California, contact the Field Supervisor, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008 (619/431–9440). In Louisiana, contact the Field Supervisor, Lafayette Field Office, 825 Kaliste Saloom, #102, Lafayette, Louisiana 70508 (318/264–6630). In New Mexico, contact the Supervisor, Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, New Mexico 87113 (505/761–4525). In Texas, contact the Supervisor, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Hartland Bank Building, Austin, Texas 78758 (512/490–0057).

National Environmental Policy Act

The Service has determined that Environmental Assessments and EIS's, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein is available on request from the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section).

Author: The primary authors of this final rule are William Austin and Bruce Palmer of the Arizona Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by revising the entry for ''Jaguar'' under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	* *		*	*		*
Jaguar	*Panthera onca*	U.S.A. (AZ, CA, LA, NM, TX), Mexico, Central and South America.	Entire	E	5, 622	NA	NA
*	*	* *		*	*		*

Dated: July 14, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–19208 Filed 7–21–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 970129015–7170–04; I.D. 031997B]

RIN 0648–AI84

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NMFS by this action establishes a take reduction plan, and issues an interim final rule implementing that plan, to reduce serious injury and mortality to four large whale stocks that occurs incidental to certain fisheries. The target whale stocks are: The North Atlantic right whale (*Eubalaena glacialis*), western North Atlantic stock, humpback whale (*Megaptera novaeangliae*) western North Atlantic stock, fin whale (*Balaenoptera physalus*) western North Atlantic stock, and minke whale (*Balaenoptera acutorostrata*), Canadian East Coast stock. Covered by the plan are fisheries: For multiple groundfish species, including monkfish and dogfish, in the New England Multispecies sink gillnet fishery; for multiple species in the U.S. mid-Atlantic coastal gillnet fisheries; for lobster in the interim final rule includes time and area closures for the lobster, anchored gillnet and shark drift gillnet fisheries, gear requirements, including a general prohibition on having line floating at the surface in these fisheries, a prohibition on storing inactive gear at sea; and restrictions on setting shark drift gillnets and drift gillnets in the mid-Atlantic. The plan also contains non-regulatory aspects, including recommendations for gear research, public outreach and increasing efforts to disentangle whales caught in fishing gear.

DATES: Except for §§ 229.32 (b), (c)(1), (d)(1), (e)(1), and (f)(1) (the gear marking requirements), the regulations are effective November 15, 1997.

Sections 229.32 (b), (c)(1), (d)(1), (e)(1), and (f)(1) (the gear marking requirements) are effective January 1, 1998. If the Office of Management and Budget gives approval for the information collection requirements in these sections at a later date, NOAA will publish a timely document in the **Federal Register** with the new effective date.

Comments on the plan, the interim final rule, and paperwork burden estimates must be received by October 15, 1997.

ADDRESSES: Comments should be sent to: Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the Environmental Assessment accompanying this interim rule can be obtained by writing to the same address. Comments regarding the burden-hour estimates or any other aspect of the collection of information requirements contained in the interim final rule should also be sent to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, DC 20503. Copies of the 1996 Stock Assessment Reports for northern right whales, humpback whales, fin whales and minke whales may be obtained by writing to Gordon Waring, NMFS, 166 Water St., Woods Hole, MA 02543.

FOR FURTHER INFORMATION CONTACT: Kim Thounhurst, NMFS, Northeast Region, 508–281–9138; Bridget Mansfield, NMFS, Southeast Region, 813–570–5312; or Michael Payne, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) requires commercial fisheries to reduce the incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate by April 30, 2001 (section 118 (b)(1)).

For some marine mammal stocks and some fisheries, section 118(f) requires NMFS to develop and implement take reduction plans to assist in recovery or to prevent depletion. Take reductions plans are required for each ''strategic stock.'' A strategic stock is a stock: (1) For which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) that is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) that is listed as a threatened or endangered species under the ESA or as a depleted species under the MMPA. Fisheries primarily affected by take reduction plans are those classified as ''Category I'' or ''Category II'' fisheries under section 118(c)(1)(A) (i) or (ii) of the MMPA. Category I fisheries have frequent incidental mortality and serious injury of marine mammals. Category II fisheries have occasional incidental mortality and serious injury of marine mammals.

The immediate goal of a take reduction plan is to reduce, within 6 months of its implementation, the mortality and serious injury of strategic stocks incidentally taken in the course of U.S. commercial fishing operations to below the PBR levels established for such stocks. The PBR level is defined in the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The parameters for calculating the PBR level are described by the MMPA.