

**SIERRA CLUB BORDER AMBASSADORS
CENTER FOR BIOLOGICAL DIVERSITY
CENTER FOR LARGE LANDSCAPE CONSERVATION
DEFENDERS OF WILDLIFE
INTERNATIONAL LEAGUE OF CONSERVATION PHOTOGRAPHERS
NATIONAL IMMIGRATION FORUM NO BORDER WALL
NATURAL RESOURCES DEFENSE COUNCIL
PACIFIC RIVERS COUNCIL SIERRA CLUB – VERMONT CHAPTER
TEXAS BORDER COALITION UNITED CHURCH OF CHRIST
WESTERN LAND EXCHANGE WILDERNESS WATCH
YELLOWSTONE TO YUKON CONSERVATION INITIATIVE**

August 5, 2010

Mr. Gregory Giddens
Executive Director
Facilities Management and Engineering
Office of Administration
Customs and Border Protection

RE: *Northern Border Programmatic EIS Scoping Comments*
VIA: e-mail at comments@NorthernBorderPEIS.com

Dear Mr. Giddens:

The undersigned organizations submit these comments in response to the July 6th, 2010, *Federal Register* publication of the U.S. Customs and Border Protection (CBP) Notice of Intent (NOI) to prepare four programmatic environmental impact statements (PEISs) for the northern border from the State of Washington to Maine, encompassing an area of approximately 100 miles south of the border. While we understand the need for security measures at the border, we have serious concerns about the process to date. *Because of those concerns, explained in detail below, we ask that CBP refine its proposed action, identify possible alternatives, publish a new NOI and initiate a new round of scoping meetings in both locations at the border and major population centers (for example, Seattle) that fall within the 100 mile scope of these PEISs. CBP should also invite federal, state and local agencies with special expertise in the resources affected by these activities to be cooperating agencies and should initiate government to government consultation with affected Native American tribes. We also urge consideration of the development of guidelines as part of the proposed action to guide the siting and implementation of future border activities.*

Concerns with the Scoping Process:

First, the articulation of the proposed action is fundamentally unsatisfactory. To the extent one can identify any proposed action in the NOI, it is simply a list of activities that CBP undertakes in the context of border security. We do understand that these are programmatic

environmental impact statements and that they will not analyze proposed site-specific actions. Indeed, many of our organizations have had decades of extensive experience with participation in the development of and commenting on PEISs and tiered analyses under the National Environmental Policy Act (NEPA) for proposed management plans, resource development and other types of federal actions. PEISs typically have well-defined proposed actions – for example, a management plan, guidelines, or a strategy – and alternatives to the proposed action. However, there is no indication in the NOI as to whether CBP is proposing a new northern border plan or strategy, an increase in certain types of activities, criteria or guidelines for activities or any other particular type of programmatic activity. Contrary to the NEPA regulations promulgated by the Council on Environmental Quality's (CEQ) and binding on all federal agencies, the NOI also fails to identify any possible alternatives. 40 C.F.R. § 1508.22(a).

This vagueness about the proposed action and failure to identify any possible alternatives has made it extremely difficult to formulate meaningful scoping comments. We are apparently not alone in our confusion. The CBP representative at the July 19th scoping meeting in Bellingham, Washington, was reported in the press to have “apologized for not having more information” (*see*, Stark, John, “Border meeting raises more questions than answers,” *The Bellingham Herald*, July 19, 2010.)

Certainly, none of us object in theory to preparation of programmatic EISs. Such an approach is often a superior vehicle for robust cumulative effects analysis and for decisionmaking that leads to the setting of standards, criteria or guidelines shaping a program well into the future. And we understand that the process of tiering, referring to “the coverage of general matters in broader EISs (such as national program or policy statements) with subsequent narrower statements or environmental analyses is appropriate when the sequence of statements or analyses is from a program, plan or policy EIS to a site-specific statement or analysis”. 40 C.F.R. § 1508.28(a). However, an EIS is a decisionmaking tool, not just a study to be referenced at some later point. To intelligently participate in such a tiered approach, the agency decisionmakers, other government agencies, and the public must understand what decisions are to be made at each step of the tiered NEPA process. Nothing in the NOI or information on the northern border website informs the public as to what decisions will be made as the results of these PEISs.

Second, the process of notifying the public of the scoping meetings has been abysmal. The NOI was published a mere six days before the initiation of scoping meetings. The schedule for the meetings was not published in the NOI; rather, the reader was referred to the northern border PEIS website. Upon going to the website, one found a “public involvement” tab and a “meeting locations” link under that tab. The information provided there had dates, locations and phone numbers for the locations, but no times for the meetings prior to the initiation of the meetings and running through the first seven meetings. Calls to the various hotels and conference centers elicited confusion, as many of the meetings were not booked under CBP's name, but rather that of a contractor. Answers as to questions regarding the time of the meetings ranged from uncertainty that such a meeting was even taking place there to guesses and apologies on the part of hotel clerks and meeting sales offices to misinformation (unintended, but

the result of confusion) regarding the time. Calls to the CBP representative listed in the NOI went unanswered for the first week. The correct times for the meetings were finally posted in the public involvement section of the website on the day of the 6th and 7th scoping meetings, and a mere 4 days prior to the end of the scoping meetings.

Third, we note the lack of any identified cooperating agencies. Given the thousands of miles of public lands, Native American lands, and urban and rural communities, we would expect to see a number of federal, state, tribal and municipal agencies involved as cooperating agencies in these PEISs.

Scoping comments

We are filing these comments under protest, given the failure to articulate a proposed action and alternatives and the serious deficiencies in public involvement described above. Because of these problems, our comment is broader and more general than would normally be the case, even for a programmatic EIS, and it is no doubt incomplete given this dearth of information. A well defined proposed action would give us the ability to offer more tailored, specific comments.

General observations

We anticipate that border infrastructure and enforcement actions that fall under the non-specific umbrella categories provided in the NOI may have deleterious impacts on sensitive plant, animal and cultural resources. These include, but are not limited to: trampling of vegetation and other direct damage to wildlife habitat and sensitive cultural resources; fragmentation of habitat and wildlife corridors from new roads and border barriers; negative impacts on endangered species recovery efforts, e.g., grizzly bears; introduction and spread of exotic species; increased air, water, noise and light pollution; disturbance of sites sacred to Native Americans, disturbance of Native American burial grounds and disturbance of and damage to Native American artifacts, disturbance and damage to historical sites; wildlife mortality and displacement; modifications of wildlife behavior in response to border enforcement-related disturbances such as vehicular traffic; additional pressure on threatened and endangered species and species of special concern; difficulties in restoring habitat and maintaining habitat improvements, and impairment of cross-border conservation initiatives (Defenders of Wildlife 2006).¹ We anticipate the possibility of impacts to the aquatic environment, including effects on hydrological flows, toxic discharges and disturbance of aquatic habitat. We anticipate air impacts from potential construction and from changes to traffic patterns and impacts to viewsheds. We also anticipate possible negative impacts to the social structure and economy of local communities. We are also concerned about the potential

¹ Defenders of Wildlife. 2006. Addressing the Impacts of Border Security Activities on Wildlife and Habitat in southern Arizona: STAKEHOLDER RECOMMENDATIONS. Available at: http://www.defenders.org/resources/publications/programs_and_policy/habitat_conservation/federal_lands/arizona_stakeholder_recommendations.pdf

for significant impacts to the wilderness character of several units of the National Wilderness Preservation System that are found along the northern border.

The NOI indicates that Customs and Border Protection is engaging in the simultaneous planning and development of many new projects at numerous locations along the U.S.-Canada border. Construction of these projects and initiation of security-related actions will have significant individual, cumulative, and synergistic effects on wildlife and other natural and cultural resources within this region. NEPA requires federal agencies proposing to undertake comprehensive actions for development of a region, or proposing to undertake a series of related actions within a region that will have cumulative and synergistic impacts on the environment, to consider and disclose the environmental impacts of such actions, and related social and economic effects, in a comprehensive or programmatic environmental impact statement.

Wildlife and Habitat Issues

A sampling of major impacts to wildlife from the construction of any physical border barriers and associated patrol roads, improvements to existing access roads, and other possible activities such as new or expanded border patrol camps and facilities includes: altered wildlife behavior and range due to infrastructure construction; operational noise and night lighting; low altitude overflights; increased road mortality along access and patrol roads; isolation of vegetation stands and habitat patches resulting in loss of habitat cover and connectivity²; removal of vegetation; the interruption of genetic exchange necessary to sustain the genetic fitness of wildlife populations over time; and undesirable alterations to hydrologic flows and related processes.

In addition to the need for these imperiled species to safely travel across the borderlands, flora and fauna are vulnerable to significant loss or deterioration of their habitat, and/or significant increases in the risk of human-caused mortality within the borderlands. An example of habitat loss and decline would include clearing a wide swath of forest along the international border, especially if combined with significantly increased access along the border with new roads or off-road vehicle trails that both displace wary species from this habitat, and increase their likelihood of encounters with people that often results in wildlife mortality. The increased risk of human-caused mortality can include direct mortality from poachers or unintended conflicts with armed people, or indirect mortality from cases where animals become habituated to people, machines, food, garbage, or other attractants, which increases their risk of being killed in subsequent encounters with people, property and developments. Grizzly bear recovery zones about the northern border in both the designated “east of” and “west of” Rocky Mountain zones. Road densities within these zones are limited to thresholds above which grizzlies are known to die at unsustainable rates. Any increase in road densities in these areas will threaten grizzly

² Flesch, A. D., C. W. Epps, J. W. Cain, M. Clark, P. R. Krausman, and J. R. Morgart. 2010. Potential effects of the United States-Mexico border fence on wildlife. *Conservation Biology* 24:171-181. Available at: <http://www.aaronflesch.com/Publications/Peer-referred%20articles/Flesch%202010%20Con%20Bio%2024:171-181.pdf>

recovery efforts. These are examples of impacts expected from simple border actions such as clearing vegetation and creating/increasing access along the border for increased monitoring. More intensive actions such as fencing, lighting, noise devices, surveillance equipment,³ are likely to have more detrimental effects on species sensitive to human activity and developments. We urge the PEIS to include an assessment of these and all other wildlife species and populations potentially affected by this project, and to analyze the potential impacts to this wildlife from a full spectrum of potential actions that may be taken to secure the borderlands.

Some of our organizations have very specific information and interests in wildlife on both sides of the border. For example, Vermont has two national wildlife refuges within a few miles of the Canadian border as well as a large parcel of private land. The Vermont Chapter of the Sierra Club has documented the presence of bear, moose, deer, and many smaller animals in this area. On the Canadian side, pine marten, bobcat, Canadian lynx and eastern wolf are known to reside and the local Sierra Club chapter hopes such species will return to Vermont through this border. A disruption of this migration would be of great concern to wildlife supporters throughout the state.

We are also concerned about potential impacts to lakes, rivers, coastline and water dependent wildlife within the borderlands, including the Great Lakes and associated waterways. The PEISs should address potential disturbance impacts to sensitive aquatic and avian species (by vehicles and boats). This analysis should include effects from the transport of invasive species (including seeds), pathogens, and other forms of invasive species on patrol vehicles and boats. Furthermore, the PEISs should address potential impacts to avian species and their habitats, both aquatic and terrestrial, and ensure that the program comply with all relevant laws, such as the Migratory Bird Treaty Act.

Impacts to public lands

There are thousands of miles of public lands at the border and within the 100 mile swath covered by these PEISs. These lands, designated for a multiplicity of purposes including wilderness, protection of wildlife and habitat, recreation, and protection of historic sites, are enjoyed by millions of people and serve critical needs for this country. These include one of America's most visited national parks, Glacier National Park, as well as a number of national wildlife refuges that provide important habitat for migrating waterfowl and hunting and other recreational opportunities and numerous national forests. These also include some of the nation's premier remote Wilderness lands, such as the Boundary Waters Canoe Area Wilderness, Pasayten Wilderness and the Stephen Mather Wilderness in the North Cascades National Park. Potential impacts to the functions which these public lands serve must be carefully analyzed. This analysis would best be done in partnership with public land managers, which is why we urge that public lands agencies' involvement as cooperating agencies be solicited.

³ Where remote surveillance may occur, we urge your agency to consider partnering with the U.S. Fish and Wildlife Service to consider documenting observations of rare wildlife. This may be an opportunity to increase our understanding of where animals cross the international border, and conservation actions can be targeted accordingly.

Impacts related to checkpoints, detention facilities and other infrastructure within 100 miles of the border

Checkpoints, especially permanent checkpoints far inland from the border, can cause serious traffic delays, increased air pollution and economic impacts on nearby communities as potential residents, tourists and other visitors makes decisions to avoid routes with checkpoints. New detention facilities not only have construction impacts, but generate substantial new traffic to and from a facility, including regular transport buses and private vehicles for staff, contractors, and visitors. These types of impacts should be considered, keeping in mind that the no action alternative is a clear alternative in the case of new checkpoints or detention facilities. If new or expanded checkpoints, detention facilities and other infrastructure are proposed, adequate notice, discussion and community input will be critical.

Native American lands and interests

There are a number of reservations with the range of the PEISs, as well as other sites, including sacred sites and burial grounds, of importance to Native American nations and tribes. We urge the commencement of government to government consultation immediately regarding specific issues related to these sites and interests, including species, such as bald and golden eagles, of importance to tribal nations. CBP also needs to assess the cultural impacts on tribes with members on both sides of the border, and the need to accommodate crossing in a respectful and efficient manner.

Economic and social effects

There have been a number of deleterious economic effects on communities and private property owners experienced at the US Mexico border, principally as a result of insufficient consultation in advance of construction of tactical infrastructure. These effects include loss of the use of property, damage to property as the result of poorly engineered infrastructure, and a decline in visitors to tourist destinations and other economic effects as a result of checkpoints. To the extent that border security measures divide communities or act as deterrents to long-standing social arrangements, they can also have a negative impact on the social structure of communities. We urge CBP to consult and where possible to accommodate local concerns to avoid such effects.

Climate change impacts

These PEISs are an excellent vehicle for analyzing the effects of climate change on the northern border region. Analysis at that stage will indeed be useful in future tiered NEPA analyses. For example, as habitat for species shifts, existing corridors may become more important or shift to other areas, and the analysis needs to reflect the latest science in that regards. We also urge consideration of the effects of climate change of proposed actions.

Transboundary impacts

We note the statement on the northern border PEIS website that CBP “will comply with established provisions for considering transboundary effects. In addition, these issues will be considered in the scoping process.” We assume the statement regarding established guidelines refers to the Council on Environmental Quality’s guidance to federal agencies on proposed federal actions within the United States that have transboundary effects (available at <http://ceq.hss.doe.gov/nepa/regs/transguide.html>). This is appropriate as transboundary effects are inherent in the nature of border security activities.

For example, almost all of the wildlife species that need protection in the western U.S. are transboundary in their distribution, and some of the most imperiled species rely on safe, unobstructed travel and connectivity between populations in the U.S. and Canada. Examples of the latter include the grizzly bear (especially small populations in northwestern Montana, Idaho and northern Washington), the Canada lynx (which was listed as a Threatened species in 2000), bull trout (listed in June, 2010), the wolverine (currently under consideration for listing under the Endangered Species Act), and the woodland caribou (whose endangered U.S. population numbers in the single digits). The U.S. populations of each of these species are wide-ranging, low-density, and imperiled such that they are unlikely to be sustainable in the long term without ongoing connectivity with populations in Canada. Thus, activities to secure the border that preclude or reduce the ability of these animals to safely travel across the borderlands will threaten the survival of these U.S. populations. Particularly with the onset of impacts from human-induced climate change, the ability of affected wildlife populations in the contiguous United States to adapt to these changes may depend on their ability to successfully migrate and connect to habitats and populations at more northerly latitudes in Canada. We urge CBP to consult with Canadian agencies having expertise in identified transboundary effects – for example, the Canadian Wildlife Service and provincial level fish and wildlife agencies.

The proposed Northern Border Project may negatively impact several transboundary initiatives currently being pursued by both government and non-government organizations. Examples of this include the recent Memorandum of Understanding signed by the State of Montana and the Province of British Columbia to jointly manage the transboundary Flathead Watershed, the cooperative management of Waterton-Glacier International Peace Park, the collaborative Crown of the Continent Conservation Initiative, Two Countries-One Forest, the Heart of the Continent Partnership, and the continental-scale Yellowstone to Yukon Conservation Initiative. We urge the CBP to include an assessment of how its actions can, at best, support, and at worst, minimize, negative consequences for such innovative cooperative ventures.

Guidelines

We urge CBP to consider refocusing the PEISs on the development of guidelines for typical and/or expected border security activities to minimize adverse impacts on communities, public lands, wildlife, Native American interests and air and water resources. Such guidelines could be used to shape site-specific proposals as they emerge.

Mitigation and monitoring and adaptive management

Where adverse impacts are unavoidable, we urge CBP to consider upfront the types of mitigation it would support. To better identify the effects of actions that are taken, to ensure mitigation that is committed to is implemented, to evaluate the effects of mitigation and to continuously learn from and improve mitigative actions, we urge that a border-wide monitoring plan be developed in cooperation with public lands managers, tribes and local officials as soon as possible.

Conclusion

In conclusion, we recognize the mission of Customs and Border Protection and support sensible border security measures. However, we are concerned that this process has begun badly and we reiterate our request for a reinitiation of the scoping process, beginning with publication of a new NOI including a reformulated proposed action and identification of possible alternatives. We also urge consideration of the development of guidelines as part of the proposed action to guide the siting and implementation of future border activities.

Yours truly,

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