

Compatibility Determination

Construction of Permanent Surveillance and Communication Towers

Buenos Aires National Wildlife Refuge

Use

As part of the SBInet, Tucson West Project, the U.S. Department of Homeland Security (DHS) proposes to construct four permanent surveillance towers and one communication tower on Buenos Aires National Wildlife Refuge (Refuge), and up to seven additional towers adjacent to the Refuge that may require access through Refuge lands.

Refuge Name

Buenos Aires National Wildlife Refuge
Sasabe, Pima County, Arizona

Establishing and Acquisition Authority

The Buenos Aires Ranch, located in Pima County, Arizona, was recommended for purchase in the 1977 Recovery Plan for the masked bobwhite quail. Congress approved funding for purchase of the central part of the ranch under authority of the Endangered Species Act of 1973, as amended; and the Fish and Wildlife Act of 1956, as amended, authorizing expenditure of funds for habitat acquisition. The Refuge was officially established in 1985.

Refuge Purposes

The Refuge was established on August 1, 1985 “...to conserve (A) fish or wildlife which are listed as endangered species or threatened species or (B) plants” 16 U.S.C. 1534 (Endangered Species Act of 1973) and for the “...development, advancement, management, conservation, and protection of fish and wildlife resources....” 16 U.S.C. 742f (a) (4) (Fish and Wildlife Act of 1956). Congressional records and other pertinent files show that conservation of the masked bobwhite quail was the major impetus behind establishment of the Buenos Aires NWR. Habitat restoration and the existence of a self-sustaining population of masked bobwhite quail remains a primary goal of the Refuge.

National Wildlife Refuge System Mission

The mission of the System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

Description of Use

DHS proposes over the next year to construct four surveillance towers and one communication tower on the Refuge, and up to seven additional towers adjacent to the Refuge that may require access through Refuge lands (see attached Refuge map) as part of the SBInet, Tucson West Project. The towers would replace and expand on the existing “Project 28” trailer-mounted towers, placed on the Refuge in 2006. As currently designed, each surveillance tower is 80 feet tall and the communication tower is 120 feet tall, both placed on a concrete foundation equipped with a 10’ x 12’ equipment shelter, solar panel, generator, propane tank, parking area; all enclosed by a 50’ x 50’ chain-link fence with three strands of barbed wire at the top. Each generator has a

hybrid solar/propane system which is expected to operate twice per day for one to three hours at a time. Each tower is capable of viewing a 360 degree area 24 hours a day with a radius of approximately 6.2 miles. Initial tower construction could impact approximately a 100' x 100' area at each site which may then ultimately be reduced to no less than 50' x 50'. Each location would be adjacent to an existing road but requires the development of a short access road to the site (45-100 feet) as well as zero to six miles (depending on the site) of road improvements on existing dirt roads to access each tower site. New roads will be 12 feet wide with parallel drains and surfaced with in-situ materials. Road improvements are considered to be the widening, straightening, and surfacing of the road as well as installation of major drainage structures. The temporary area of land impacted during the tower construction phase is estimated to be 3.24 acres, but approximately 2.44 acres could be permanently impacted on the Refuge.

As defined by DHS, the Secure Border Initiative (SBI) is a comprehensive, multi year plan established by DHS in November 2005 to secure America's borders and reduce illegal immigration. *SBI_{net}* is the component of SBI charged with developing and installing technology and tactical infrastructure (TI) solutions to gain operational control of our Nation's borders. The goal of *SBI_{net}* is to field the most effective, proven technology, infrastructure, personnel, and response platforms, and integrate them into a single, comprehensive border security suite for DHS.

According to the Draft Environmental Assessment (EA) prepared by DHS in May 2008 (http://www.cbp.gov/xp/cgov/border_security/sbi/nepa/), the purpose of the proposed action is to employ technological infrastructure capable of providing a more efficient and effective means of assessing illegal immigrant activities along the border, including rapid detection, accurate characterization of the potential threat, coordinated tracking, and deployment of appropriate resources in the apprehension of illegal immigrants. The proposed project is intended to establish and maintain operational control of the U.S. border along the approximately 81 miles of border in the Tucson Sector, encompassing border zones in and around Tucson, Nogales, and Sonoita stations, as well as portions of Ajo and Casa Grande stations.

This *SBI_{net}* Tucson West project is proposed to meet the stated purpose and need by:

- Installing and upgrading technology and infrastructure components to give USBP agent's ability to gain, maintain, and strengthen control of the border within proximity of the international boundary;
- Including improved surveillance technology solutions to enhance border enforcement capabilities;
- Applying surveillance technologies that could refine detection, interception, and apprehension of illegal immigrants, smugglers, and terrorists; and
- Reducing crime in border communities by detecting, apprehending, and deterring smugglers of humans, drugs, and other contraband.

The border issues on the Refuge have been well-documented. The number of illegal border crossings has fluctuated over recent years, but 100,000 – 300,000 illegal immigrants are estimated to cross the area annually. This tremendous volume has resulted in dramatic environmental impacts including trash, abandoned vehicles, illegal trails and roads, wildfire, livestock trespass and increased crime and security issues. There have also been numerous deaths of illegal immigrants in the Altar Valley and public safety has been eroded. The need to address the magnitude of illegal activity and the associated impacts is quite clear. DHS provides a more detailed justification and evaluation for the surveillance towers in the 2008 draft EA.

DHS has a direct mandate from Congress to secure the Nation's borders. While DHS border security activities on National Wildlife Refuges may conflict with the legal mandates under which the U.S. Fish and Wildlife Service (Service) must administer the National Wildlife Refuge System, the Service must recognize this mandate.

In March 2006, DHS entered into a Memorandum of Understanding (MOU) with the Department of Interior (DOI) and the Department of Agriculture regarding cooperative national security efforts on Federal lands along the U.S. borders. Specifically it states, "The Parties are committed to preventing illegal entry into the United States, protecting Federal lands and natural and cultural resources, and – where possible – preventing adverse impacts associated with illegal entry by CBVs (cross border violators)." In addition, "the Parties understand that CBP-BP (Customs and Border Protection- Border Patrol), consistent with Federal laws and regulations, may access public lands and waterways, including access for purposes of tracking, surveillance, interdiction, establishment of observation points and installation of remote detection devices."

The Buenos Aires NWR 2003 Comprehensive Conservation Plan (CCP) references (page 110:4.3) the importance of cooperating with Customs and Border Protection (CBP) and mitigating damages of illegal border activity and enforcement activities. The CCP also mentions surveillance and monitoring of the border using detection devices and proposed installation of eight remote camera stations on or near the southern boundary of the Refuge. However, surveillance towers were not evaluated in the CCP to the degree required to determine their compatibility with Refuge purposes and the NWRS mission. Significant differences exist between the proposed SBInet project and activities considered in the CCP. In light of DHS's Congressional mandate to secure the Nation's borders and the need for the Refuge to work closely with CBP to minimize impacts to the natural resources, a more detailed, in-depth analysis of this proposed project and its impacts through this compatibility determination (CD) process is warranted.

Availability of Resources

Authorizing the construction of the five surveillance/communication towers and associated access traffic to the areas described above, will require some expenditure of Refuge resources, including personnel and funding. DHS will be responsible for the planning, construction and maintenance of all improvements related to the project, but there will be costs associated with the long term coordination, monitoring and evaluation of the tower project in combination with other DHS activities. Refuge resources are limited and when staff time is utilized in coordinating with DHS on border related issues, efforts to stay focused on accomplishing the Refuge purpose can

be compromised. However, administration and management of the proposed SBInet project can be accomplished within the existing financial and personnel resources available to the Refuge.

Anticipated Impacts of the Towers

The construction of infrastructure of any type in natural areas is generally not considered to be beneficial for wildlife or their habitats. However, the lack of a fully effective strategy to reduce illegal border activity on the Refuge has resulted in a significant amount of environmental damage to the area. Illegal immigration and smuggling along the border has taken a toll on the Refuge. The resulting trash, creation of trails, illegal roads, fence cutting, abandoned vehicles, arson, livestock trespass, human waste and human disturbance have been, and continues to be a major impediment to effective wildlife conservation on the Refuge. The recent construction of the seven mile pedestrian fence at the southern boundary of the Refuge (International border) has aided in reducing some of these impacts, but there continues to be great concern over the damage that is occurring to the Refuge's natural resources due to illegal border activities. The summary below illustrates the impacts currently inflicted upon the Refuge by illegal border activities that are partly mitigated by construction of the fence and potentially the SBInet towers:

Trash – During peak illegal border traffic, up to 500 tons of trash are left behind by illegal border crossers each year on the Refuge.

Abandoned Vehicles – At the height of illegal traffic in the area more than 100 vehicles were towed from the Refuge each year.

Trails - More than 1300 miles of illegal trails have been created on the Refuge by illegal border crossers. The direct damage is more than 300 acres of denuded vegetation, erosion, and wildlife disturbance throughout the Refuge as a result of increased human presence.

Illegal Roads - Several miles of unauthorized roads have been created by illegal border crossers as they attempt to evade law enforcement officers. Border Patrol agents utilize these roads as well. Due to the delicate nature of the lands, driving on an area just a couple times can create a permanent road.

Wildfire - Several fires each year are started by illegal border crossers.

Livestock Trespass - Illegal border crossers often damage or cut fences, or leave gates open, which allows cattle to enter the Refuge. This directly impacts our habitat management program for wildlife.

Increased Crime and Eroded Security – Illegal border crossers steal Refuge vehicles, burglarize government quarters and commit vandalism. This has forced the Refuge into a defensive position that has required the installation of expensive security infrastructure and the hiring of additional law enforcement officers.

Indirect Impacts – Diversion away from wildlife management as staff coordinate with CBP and address the various security risks related to staff and the public.

DHS states in their 2008 draft EA that the proposed project would result in overall beneficial impacts within the region through a reduction in illegal activities. Illegal immigrant traffic tramples vegetation and wildlife habitat and disturbs soils and previously unknown cultural resources. If the proposed project performs as predicted, it could reduce illegal immigrant traffic, thereby reducing erosion and compaction in soils resulting in protection of unstable soils from wind and water erosion. With smaller amounts of illegal immigrant traffic there would be also be a reduction in garbage and abandoned cars throughout the surrounding desert region and less impacts to vegetation and wildlife habitat. Also, a decrease in border area crime rates and fewer impacts to cultural resources would be expected from the reduction in illegal activities if the project is successful. DHS also maintains that this project could potentially reduce the number of Border Patrol agents driving through the Refuge which in turn could reduce the adverse impacts their vehicles are having on the landscape. If the SBInet project is successful in reducing illegal immigrant traffic and DHS operational activities on the Refuge, protection of natural and cultural resources could be enhanced. Conversely, this may not be outweighed by the potential negative direct, indirect, and cumulative impacts of current and future DHS activities on the Refuge.

The Service has communicated concerns that the entire area of operations by DHS encompasses too much of the Refuge and that interdiction should be emphasized in closer proximity to the actual border rather than potentially 100 miles to the north. Three of the tower sites proposed on the Refuge are targeted to be placed five, twelve, and thirteen miles north of the international border. This implies that DHS operations are not successful in detecting illegal immigrants near the border and that there is a need to have other mechanisms in place, such as the towers, to detect illegal immigrants further north. Allowing the illegal immigrant activity to take place over such a large area of the Refuge has had dramatic adverse impacts to the natural resources. DHS maintains that placing the towers at this distance from the border will increase their view shed and allow detection of illegal traffic from the border northward, enabling DHS to respond accordingly. The 2006 MOU indicates that Border Patrol will strive to interdict illegal immigrants as close to the U.S. border as is operationally practical, with the long-term goal of establishing operational control along the immediate border. If Border Patrol operations can be limited to a smaller area, adjacent to the International line, the impact to the natural resources would be greatly reduced.

Direct Impacts

Expected direct negative impacts of the SBInet project to Refuge natural resources are likely. These include direct habitat loss at tower and road sites, and wildlife and habitat disturbance during construction, maintenance and operational phases. Some examples of disturbance include the noise produced from the generators, the aviation strobe light on top of each tower, the potential of "strikes" by birds or bats flying near the towers and the disturbance caused by construction vehicles and personnel. In addition, DHS plans on a twice monthly maintenance schedule for all sensor towers and a once monthly maintenance visit to communications towers. Vehicles used to perform tower maintenance would include 2 or 4 wheel drive trucks and propane delivery trucks.

DHS forwarded a Biological Assessment (BA) to the Service as part of the Endangered Species Act consultation process. The Service, in turn, issued a final Biological Opinion (BO) on September 4, 2008. The BO addresses conservation measures to minimize natural resource impacts associated with the SBInet project. These measures include alterations in planning, construction practices, and operations and maintenance that would be necessary to avoid or minimize the effects of DHS actions. It is critical that DHS work closely with the Refuge on a long and short term road maintenance and repair program that includes habitat restoration.

The proposed SBInet use could potentially conflict with, or at least increase, the complexity of the Refuge prescribed fire program, a primary habitat management tool. All proposed tower sites would fall within or immediately adjacent to fire management units. Areas around tower sites would need to be maintained clear of vegetation to reduce the risk of damages caused by fire (both prescribed fire and wildfire). This could result in an increased permanent "footprint" for tower sites beyond the protected 50' x 50' area. It is important that DHS has plans in place to protect the tower infrastructure from fire by maintaining a significant fire break outside the chain link fence. The BO for the Tucson West Project indicates that DHS has agreed to develop a Fire Management Plan as part of tower construction in coordination with the landowner and/or land management agency. The Refuge fire management program recommends having at least 25' cleared around the outside of the fence. The Refuge must be able to conduct routine prescribed fire program without having the added responsibility for ensuring tower sites are kept cleared and protected from fire.

Indirect Impacts

The SBInet tower project may indirectly increase adverse impacts to Refuge wildlife and habitats by altering movement patterns of illegal immigrants traveling through the Refuge. Proposed tower sites would be situated on high points to provide the best possible 360-degree view of the landscape. Surveillance towers are less likely to detect movement in low-lying areas such as drainages with dense vegetation. In order to avoid being detected by cameras, immigrants are more likely to favor these areas. These habitats have higher concentrations of wildlife because they are more shaded, cooler, and more diverse. Therefore, it is possible the towers will divert people into the most highly sensitive areas of the Refuge. It is important to note that with or without the presence of the towers, illegal immigrants have a natural tendency to travel in these low lying areas because they are less detectable.

On page 74 of the BO, it states, "Initially, after tower deployment, we anticipate interdiction activities will increase within areas covered by towers. We assume patrol response will be guided by detections made by the towers, but will result in more targeted response, rather than the current geographically broad-based patrols needed to detect illegal traffic in the absence of the towers. We also anticipate that the proposed action will cause some redirection of illegal activities and associated law enforcement response to areas not covered by the towers, such as canyon bottoms and ravines.... Increased targeted patrol traffic (vehicle and pedestrian) within areas covered by towers, as well as increased illegal traffic and resulting interdiction activities in areas not covered by towers may lead to increased habitat degradation, increased fire risk, and increased disturbance (to wildlife)".

DHS concurs that there is great potential for the traffic patterns of illegal immigrants shifting due to the construction of the towers, and that habitat degradation and shifts in species movement patterns are likely. The EA states that the majority of these effects could be avoided or substantially minimized through the implementation of the conservation measures in the final BO, such as the training of construction project managers, use of biological monitors, avoidance of disturbance in sensitive habitats or during breeding seasons, and efforts to minimize the spread of invasive species. In addition, patrol agents assigned to the area will be given a full training brief in order to educate them on the environmentally sensitive nature of the land.

If the towers assist in more targeted agent responses to the illegal immigrants on the ground and if DHS is committed to implementing proper measures to minimize impacts to wildlife and habitat, then ultimately, the towers could aid in the reduction of habitat degradation and wildlife disturbance. In addition, DHS maintains that although initially there may be an increase in illegal immigrant activity, by utilizing the right mix of personnel, technology and tactical infrastructure, there will be an overall reduction in activity by illegal immigrants and patrol agents. Once illegal immigrants understand that they are unsuccessful in entering the U.S. in a particular area, they tend to quit attempting to enter in that area and move elsewhere to try again.

With regard to the effects on endangered species, the Refuge supports the findings and associated conservation measures in the EA, BA and BO prepared by DHS and the Service. Specifically, these documents indicate that with proper conservation measures, no adverse impacts to masked bobwhite quail, Chiricahua leopard frogs, Pima pineapple cacti, jaguar or the lesser long-nosed bat are expected to occur as a result of this project.

Visitor Use - Most visitors come to the Refuge to bird-watch, hunt or camp. Approximately six campsites could be impacted by the SBInet project development. In addition, the proposed towers would be within Refuge hunt zones. Some reduction in hunting opportunity is likely to occur proximal to tower locations and as a result of operational activities associated with the towers.

Visitors come to enjoy the Refuge's "undeveloped" outdoors and the beauty of the landscape and its wildlife. Presence of the new SBInet infrastructure and operational activities over a larger portion of the Refuge would likely decrease the overall quality of recreational opportunities by negatively affecting views, increasing noise pollution from generators, and increasing wildlife disturbance. Conversely, if the SBInet project is successful, reduction of illegal immigrant traffic could enhance public safety and reduce other negative impacts of illegal border crossings on visitors and recreational opportunities. For example, illegal immigrant traffic near the border resulted in the Refuge closing the southern portion of the Refuge. If the towers function as anticipated these areas could be reopened thus expanding public use opportunities. Reduction of overall DHS operational activities on the Refuge could also increase the overall quality of the visitor experience.

Refuge Roads - The Refuge has nearly 300 miles of existing public use roads which are currently used extensively by Border Patrol agents. Agents often rely on patrolling Refuge roads in order to detect and apprehend illegal immigrants. In addition, Border Patrol agents have often traveled off-road in motorized vehicles in pursuit of illegal immigrants. This use has contributed both to

the deterioration of the roads and to the destruction of some of the Refuge's native vegetation. Some roads are no longer passable. As part of the 2008 draft EA, DHS is developing an Operations and Maintenance Plan and has agreed to work with the Refuge to provide road maintenance and repairs, particularly on the roads associated with the towers.

Although Border Patrol agents are authorized to operate motor vehicles on existing public and administrative roads, the 2006 MOU addresses the importance of the parties cooperating to identify methods, routes and locations for operations that will minimize impacts to natural and cultural resources resulting from CBP-BP operations. It also indicates that Border Patrol will strive to interdict illegal immigrants as close to the U.S. border as is operationally practical, with the long-term goal of establishing operational control along the immediate border. Additionally, the MOU states that CBP-BP will maintain or repair roads to the extent that they are damaged by their activities and they will notify the Refuge Manager of any motorized emergency pursuit, apprehension or incursion either verbally or in a written report.

DHS maintains that as illegal immigrant entries are reduced as a result of the towers, the amount of off-road use by patrol agents is anticipated to decline. Border Patrol agents would not need to be traveling the Refuge roads to the extent they are now. The towers could help guide the agents to intercept illegal immigrants in targeted locations along designated roads and could reduce the need for the agents to travel in the grasslands. This could result in less damage to the roads and grasslands than what is currently occurring.

In conjunction with the proposed towers, DHS plans to deploy mobile surveillance systems (MSS) and unattended ground sensors (UGS) on the Refuge to increase the detection rates of illegal immigrants. Both the MSS (radar-equipped vehicles) and the UGS will aid in detecting illegal immigrants where the towers may not be able to. Although this may make sense for increasing ground coverage for Border Patrol, the additional vehicles and ground sensors raise additional concern regarding impacts to the environment. DHS maintains that the MSS deployments will be in compliance with the current off-road access agreements that the Refuge has with DHS and will primarily be restricted to roads and often times stationary. The UGS will be placed in drainages by agents on foot and there will be no environmental damage resulting. It is very important that the Refuge and DHS work closely to monitor these additional activities to ensure that environmental damage is not occurring.

Cumulative Impacts

SBI-net project activities may conflict with several Refuge wildlife and habitat goals and objectives. While some of these impacts will be short-term, impacts resulting from operations associated with the towers will occur over the long-term and will affect a much larger area on the Refuge. The current SBI-net project proposes to place towers up to 13 miles north of the border. The cumulative impacts of SBI-net project activities and ongoing border security projects and operations are of primary concern. Ongoing activities, all of which impact Refuge wildlife, habitats, and infrastructure, include extensive patrolling (24 hours a day, seven days a week) on and off-Refuge roads by DHS agents; recent construction of a seven-miles of vehicular and pedestrian barriers along the Refuge's southern boundary; and operation of several rescue beacons and temporary camera towers, a heliport with fueling station, and an equestrian facility.

DHS maintains that it is the combination of projects they have proposed on the border that will be the most effective means of curtailing the illegal immigration issue. For example, in conjunction with the development of the SBInet tower project, DHS plans on deploying radar-equipped vehicles to patrol the Refuge as well as ground sensors to be placed along drainages. Although it is understandable to have several mechanisms in place in order to apprehend the highest number of illegal immigrants and to reduce the number of illegal immigrants traveling through this area, there is concern as to when these border related projects proposed by DHS will cease on the Refuge. The proposed tower project in and of itself may have very little direct impact to the natural resources, but it is the combination of DHS related activities and the illegal traffic that have contributed to the deterioration of the Refuge's landscape. The proposed towers may be very effective in combination with the pedestrian fence and other DHS enforcement activities, but there is concern over additional projects that may be planned in the future.

The DHS 2008 draft EA refers to the issue of cumulative impacts, which must be addressed regardless of the final Refuge decision on this project (pg 168/170):

“With continued funding and implementation of USBP's environmental conservation measures, including environmental education and training of its agents, use of biological and archaeological monitors, wildlife water systems, wildlife forage plots, and restoration activities, adverse impacts of future and ongoing projects could be prevented or minimized. However, recent, ongoing, and reasonably foreseeable proposed projects will result in cumulative impacts”.....“In addition to these phased projects, USBP might be required to implement other activities and operations that are currently not foreseen or not within the ROI (region of influence) and therefore not discussed in this document”.

It is reassuring to know that DHS is committed to environmental conservation measures, but the concern over cumulative impacts is accentuated when there is the potential of additional projects proposed in the future. According to local DHS agents, no new towers or other projects are planned. In the event that additional projects are proposed, close coordination between DHS and the Refuge will be essential. Measures must be taken to minimize impacts with the current on-going activities so as to not have significant or cumulative adverse effects on the natural resources.

Conclusion

Since Buenos Aires NWR is situated on the U.S./Mexico border and as a consequence has experienced extreme environmental degradation, the Refuge must consider both the long and short term effects of this proposal. It is challenging to predict both the potentially adverse and beneficial effects that could occur as a result of the towers. The intention of DHS as described in their 2008 draft EA and the conclusion of the Service is that the project will result in increased apprehensions of illegal immigrants on the Refuge and thereby reduce the number traveling through the area overall. If this does occur, the need for Border Patrol agents on the ground will be reduced. With the reduction of overall border related activity on the Refuge, there could be a net benefit to the natural resources.

As mentioned in the beginning of this document, the proposed SBInet project could establish and maintain operational control of approximately 81 miles of the U.S. border in the Tucson Sector;

encompassing border zones in and around Tucson, Nogales, and Sonoita stations, and portions of Ajo and Casa Grande stations. Regardless of the final Service decision on this project, DHS intends to place towers surrounding the Refuge. Therefore, if no towers are constructed on the Refuge, there could potentially be a greater influx of illegal immigrants through the area. This is because illegal immigrants quickly learn where they are most likely to be detected and where they can hide. If towers are detecting illegal immigrants everywhere but the Refuge, then illegal immigrants will be more likely to travel through the Refuge where they are less likely to be detected. This could have detrimental effects to the natural and cultural resources on the Refuge.

DHS proposes to permanently place towers on the Refuge with no assurances regarding their long term effectiveness or functionality. DHS has agreed that if a tower or towers are determined non-functional, they will remove each tower and remediate any impacts caused by the tower construction, operation and removal. DHS is required to perform any conservation measures contained in BO, such as site clean-up and habitat restoration.

The discussion above illustrates the various impacts of the proposed towers and the potential natural resource tradeoffs. The direct, indirect and cumulative impacts resulting from tower construction may result in an overall benefit to the wildlife and grasslands over the long term if the towers function as planned. DHS's commitments to conservation measures during tower construction and operations to minimize impacts to the land and wildlife provide some relief. However, the effectiveness of the towers and the potential benefits to the natural resources is not known at this time.

The charge of this document is for the Refuge to analyze DHS's request to construct the towers as it relates to the Refuge's ability to achieve its' purposes. That is, will the placement of the towers materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the Buenos Aires National Wildlife Refuge? A CD is made by the Refuge Manager using sound professional judgment. Namely a decision must be consistent with the principles of sound fish and wildlife management and administration, available science and resources, and adhere to the requirements of applicable laws and Service policies. Considered as part of this finding, determination, or decision is a Refuge Manager's field experience and knowledge of the particular refuge's resources.

The placement of the towers as proposed may have some immediate direct adverse impacts to the environment of the Refuge. So long as there is close coordination with the local Border Patrol Sector and the Refuge the project should not interfere with or detract from Refuge purposes nor significantly impact fulfillment of the National Wildlife Refuge System mission for the following reasons: (1) increased apprehension of illegal immigrants, (2) decreased traffic by illegal immigrants and Border Patrol agents, (3) improved security on the Refuge for the public, Refuge staff and volunteers, and (4) greater likelihood of habitat recovery and restoration.

Information found in the project's draft EA and the final BO is incorporated by reference. The reader should refer to these documents for a more detailed understanding of the project and its' implications and effects regarding the environment. DHS is also required to implement the conservation measures contained in the BO.

Public Review and Comment

The National Wildlife Refuge System Improvement Act of 1997 requires the Refuge Manager to provide an opportunity for public review and comment for all compatibility determinations. The purpose is to offer the public the opportunity to provide relevant information regarding the compatibility of the proposed use. The Refuge Manager must consider all information provided during the public review and comment period. The Refuge Manager is not required to respond but will use all information available to make the most informed decision possible.

Public review and comment was initially solicited for this compatibility determination for an 11 day period beginning August 22, 2008. A second public notice issued September 2, 2008 extended the comment period an additional 10 days. In total, the comment period was August 22 to September 12, 2008. The availability of the compatibility determination was announced through a press release in the Arizona Daily Star and the Green Valley News. There were also public notices posted in the Sasabe post office; Arivaca post office; Arivaca Mercantile bulletin board; Arivaca public library; Green Valley public library. Copies of the draft CD were also available at the two libraries mentioned above and online at: www.fws.gov/southwest/refuges/.

The following summarizes the comments received: Three letters were received by individuals and two were received by organizations (Defenders of Wildlife and The Friend's of Buenos Aires National Wildlife Refuge). One individual opposed the project, and two supported it. The Friend's of the Refuge support the project as long as the stipulations are enforced. Defenders of Wildlife expressed concerns over potential impacts to listed species as well as a number of direct, indirect, and cumulative impacts and recommend a more thorough analysis to evaluate the compatibility of the project.

Determination

Use is Not Compatible

Use is Compatible with the Following Stipulations

Stipulations Necessary to Ensure Compatibility

For successful implementation of the SBInet project on the Refuge and consistent with the March 2006 MOU between CBP, DOI, and USDA, DHS and their contractors must cooperate closely with the Refuge to implement measures to minimize and/or eliminate the environmental impacts their activities have had and will have on the Refuge. DHS must be held accountable for their activities and commit to cooperate with the Refuge to avoid future and reverse existing environmental impacts. The concerns expressed by Defenders of Wildlife in their comments on the draft CD will be addressed through the legal requirement of DHS to implement conservation measures that are identified in the Service's final BO and in the final EA for the project, as well as by DHS complying with the stipulations provided with this document. These stipulations are specific to tower construction and the associated roads. Additional natural resource impacts associated with tactical infrastructure and overall CBP operations will be addressed through subsequent written agreements with CBP. Construction and operation of the SBInet surveillance and communication towers on the Refuge are approved if DHS agrees to the stipulations below:

Stipulation 1:

Within three months after initiating tower construction, CBP will prepare an **Operations and Maintenance Agreement** that clearly defines their long term Refuge road and tower maintenance schedule and responsibilities while minimizing adverse impacts to Refuge resources. The issue of addressing cooperative road maintenance will be addressed in subsequent decisions between CBP and the Refuge.

Stipulation 2:

CBP must develop, in coordination with the Refuge, a Fire Management Plan for long term maintenance of tower sites.

Stipulation 3:

Tucson Sector will continue to provide monthly reports that summarize illegal activities on the Refuge in accordance with the MOU between CBP, DOI and USDA dated March 2006.

Stipulation 4:

Consistent with 2006 MOU, Tucson Sector will continue to report off-road activities by Border Patrol Agents on the Refuge.

Stipulation 5:

CBP will continue to utilize both formal and informal meetings to ensure ongoing open communications regarding Border Patrol Operations and Strategy on the Refuge, to include technology, and tactical infrastructure, and to evaluate effects on Refuge resources and the status of current cross border activity. On a yearly basis, CBP (Tucson Sector Chief and SBInet local representatives) will be available to meet with the Service's Region 2 Regional Director.

Stipulation 6:

CBP must commit to developing and implementing a **Decommissioning and Restoration Plan**. This plan must include both site clean-up and habitat restoration.

Stipulation 7:

In the event that additional border infrastructure projects are proposed, CBP will coordinate with the Refuge Manager before the anticipated start date of the project and ensure that the Refuge Manager is provided a reasonable time period for compliance with applicable Service policies and regulations related to permitting of secondary uses on units of the NWRS. This typically requires a minimum evaluation and review period of 90 days.

Stipulation 8:

The SUP will be automatically renewed every two years so long as the terms and conditions of the SUP are met by CBP. Should the Service find the CBP out of compliance and unable to satisfy the Refuge Manager's direction for meeting permit conditions, the Service shall issue a sixty day notice in writing to CBP of the intent to terminate the permit. During this sixty day notice, CBP and the Refuge will work together to seek resolution of outstanding permit conditions. Prior to the termination of any such permit, the issue will be elevated to the Secretary of DOI and the Secretary of DHS for review.

National Environmental Policy Act (NEPA) Compliance

DHS completed a Draft Environmental Assessment and Finding of No Significant Impact for this project in May 2008. The document can be found on the web at the following url address: http://www.cbp.gov/xp/cgov/border_security/sbi/nepa/. The final EA had not been prepared at the time this compatibility determination was conducted.

Signature: Refuge Manager Michael M. Harbes 9/17/08

Concurrence: Regional Chief Thomas E. Hamey 9/19/08

Mandatory 10-year Re-Evaluation Date: August 2018

Attachments:

- Refuge map with proposed tower locations