



## Testimony

Before the Subcommittee on National Parks, Forests, and Public Lands, Committee on Natural Resources, and the Subcommittee on National Security, Defense, and Foreign Operations, Committee on Oversight and Government Reform, House of Representatives

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# SOUTHWEST BORDER

## Border Patrol Operations on Federal Lands

Statement of Anu K. Mittal, Director  
Natural Resources and Environment



Accountability \* Integrity \* Reliability

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April 15, 2011

## SOUTHWEST BORDER

### Border Patrol Operations on Federal Lands

Highlights of [GAO-11-573T](#), a statement before the Subcommittee on National Parks, Forests, and Public Lands, Committee on Natural Resources, and the Subcommittee on National Security, Defense, and Foreign Operations, Committee on Oversight and Government Reform, House of Representatives

#### Why GAO Did This Study

To stem the flow of illegal traffic from Mexico into the United States over the last 5 years along the U.S. southwestern border, the Border Patrol has nearly doubled the number of agents on patrol, constructed hundreds of miles of border fences, and installed a variety of surveillance equipment. About 40 percent of these border lands are managed by the Departments of the Interior and Agriculture, and coordination and cooperation between Border Patrol and land management agencies is critical to ensure national security. As requested, this statement summarizes GAO's findings from two reports issued on southwest border issues in the fall of 2010. The first report, [GAO-11-38](#), focused on the key land management laws that Border Patrol must comply with and how these laws affect the agency's operations. The second report, [GAO-11-177](#), focused on the extent to which Border Patrol and land management agencies' law enforcement units share threat information and communications.

#### What GAO Recommends

This statement contains no new recommendations. In its 2010 reports, GAO made several recommendations to the Departments of Agriculture, Homeland Security, and the Interior to help expedite Border Patrol's access to federal lands and recommended that the agencies take actions to improve communication and information sharing. The departments concurred with GAO's recommendations in those reports.

View [GAO-11-573T](#) or key components. For more information, contact Anu K. Mittal at (202) 512-3841 or [mittala@gao.gov](mailto:mittala@gao.gov).

#### What GAO Found

When operating on federal lands, Border Patrol must comply with the requirements of several federal land management laws, including the National Environmental Policy Act, Wilderness Act, and Endangered Species Act. Border Patrol must obtain permission or a permit from federal land management agencies before agents can undertake operations, such as maintaining roads and installing surveillance equipment, on federal lands. To fulfill these requirements, Border Patrol generally coordinates with land management agencies through national and local interagency agreements. The most comprehensive agreement is a 2006 memorandum of understanding between the Departments of Homeland Security, Agriculture, and the Interior that is intended to guide Border Patrol activities on federal lands.

Border Patrol's access to some federal lands along the southwestern border has been limited because of certain land management laws, according to 17 of 26 patrol agents-in-charge that GAO surveyed. For example, these patrol agents-in-charge reported that implementation of these laws had resulted in delays and restrictions in their patrolling and monitoring operations. Specifically, 14 patrol agents-in-charge reported that they had been unable to obtain a permit or permission to access certain areas in a timely manner because of the time it takes for land managers to conduct required environmental and historic property assessments. The 2006 memorandum of understanding directs the agencies to cooperate and complete, in an expedited manner, all compliance required by applicable federal laws, but such cooperation has not always occurred. For example, when Border Patrol requested permission to move surveillance equipment, it took the land manager more than 4 months to conduct the required historic property assessment and grant permission, but by then illegal traffic had shifted to other areas. Despite the access delays and restrictions experienced by these stations, 22 of the 26 patrol agents-in-charge reported that the overall security status of their jurisdiction had not been affected by land management laws. Instead, factors such as the remoteness and ruggedness of the terrain have had the greatest effect on their ability to achieve operational control in these areas. Four patrol agents-in-charge reported that delays and restrictions had affected their ability to achieve or maintain operational control, but they either had not requested resources for increased or timelier access or their requests had been denied by senior Border Patrol officials because of higher priority needs of the agency.

Information sharing and communication among the agencies have increased in recent years, but critical gaps remain in implementing interagency agreements. Agencies established forums and liaisons to exchange information; however, in the Tucson sector, agencies did not coordinate to ensure that federal land law enforcement officials had access to threat information and compatible secure radio communications for daily operations. GAO found that enhanced coordination in these areas could better ensure officer safety and a more efficient law enforcement response to illegal activity along the southwest border.

Chairman Chaffetz, Chairman Bishop, Ranking Member Tierney, Ranking Member Grijalva, and Members of the Subcommittees:

I am pleased to be here today to participate in your joint hearing on Border Patrol operations on federal lands along the southwestern border. Enhancing the security of the nation's border with Mexico has emerged as a significant policy issue, particularly on federal lands, where illegal cross-border activity threatens not only people but also natural resources. In the mid-1990s, the U.S. Border Patrol increased its personnel and resources in large urban areas along the United States-Mexico border to curtail illegal human and narcotics trafficking. With this strategy, Border Patrol successfully reduced illegal border crossings in places like San Diego, California, and El Paso, Texas. Border Patrol's strategy puts a high priority on border enforcement in urban and populated areas, which can divert large concentrations of illegal traffic to federal lands and other remote areas where vast landscapes and often rugged terrain may take days to cross—giving agents more time to detect undocumented aliens and make apprehensions.

The remoteness and harsh conditions found across much of the southwestern border, however, have not deterred illegal traffic as much as expected. Instead, it has increased substantially since the mid-1990s on federal lands managed by the Departments of the Interior and Agriculture, whose borderlands encompass over 40 percent of the 1,900 miles of southwestern border in Arizona, California, New Mexico, and Texas. In response to the increase in illegal traffic on federal lands along the southwestern border, over the last 5 years, Border Patrol has nearly doubled the number of its agents on patrol, constructed hundreds of miles of pedestrian fences and vehicle barriers, and installed surveillance equipment on and near federal lands. Border Patrol and land management agency officials recognize that Border Patrol's presence can help protect natural and cultural resources on federal lands by deterring undocumented aliens, and they have stated that interagency coordination is therefore needed in the southwestern borderlands region.<sup>1</sup>

This testimony will cover (1) the key land management laws Border Patrol operates under and how it coordinates responsibilities under these laws with land management agencies, (2) how

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<sup>1</sup>The borderlands region encompasses the area extending from the United States-Mexico border north to 100 miles.

Border Patrol operations are affected by these laws, and (3) the extent to which Border Patrol, Interior, and Forest Service law enforcement units operating in these areas are sharing threat information and communications. This statement is based on two GAO reports published in October and November 2010.<sup>2</sup> We conducted our work in accordance with generally accepted government auditing standards for each engagement.

## **Background**

The southwestern borderlands region contains many federally managed lands and also accounts for over 97 percent of all apprehensions of undocumented aliens by Border Patrol. Over 40 percent of the United States-Mexico border, or 820 linear miles, is managed by Interior's land management agencies and the Forest Service.<sup>3</sup> Each of these land management agencies has a distinct mission and set of responsibilities, which are, respectively, managing federal land for multiple uses, such as recreation, minerals, and the sustained yield of renewable resources; conserving the scenery, natural and historical objects, and wildlife of the national park system; preserving and enhancing fish, wildlife, plants, and their habitats; and managing resources to sustain the health, diversity, and productivity of the nation's forests and grasslands to meet the needs of present and future generations.

Border Patrol is organized into nine sectors along the southwestern border. Within each sector, there are stations with responsibility for defined geographic areas. Of the 41 stations in the borderlands region in the 9 southwestern border sectors, 26 have primary responsibility for the security of federal lands, according to Border Patrol sector officials.<sup>4</sup> Apprehensions of undocumented aliens along the southwestern border increased steadily through the late 1990s, reaching a peak of 1,650,000 in fiscal year 2000. Since fiscal year 2006, apprehensions have

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<sup>2</sup>GAO, *Southwest Border: More Timely Border Patrol Access and Training Could Improve Security Operations and Natural Resource Protection on Federal Lands*, GAO-11-38 (Washington, D.C.: Oct. 19, 2010); and GAO, *Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177 (Washington, D.C.: Nov. 18, 2010).

<sup>3</sup>Land management agencies include the Bureau of Land Management, Fish and Wildlife Service, and National Park Service within Interior, and the Forest Service within Agriculture.

<sup>4</sup>Depending on size and location, individual federal borderlands may fall within one or more stations' area of patrol responsibility and across one or two sectors.

declined, reaching a low of 540,000 in fiscal year 2009. This decrease has occurred along the entire border, with every sector reporting fewer apprehensions in fiscal year 2009 than in fiscal year 2006. The Tucson Sector, however, with responsibility for central and eastern Arizona, continues to have the largest number of apprehensions.<sup>5</sup> Border Patrol shares with land managers data on apprehensions and drug seizures occurring on federal land, providing such information in several ways, including in regularly occurring meetings and e-mailed reports.

Border Patrol measures its effectiveness at detecting and apprehending undocumented aliens by assessing the border security status for a given area. The two highest border security statuses—“controlled” and “managed”—are levels at which Border Patrol claims the capability to consistently detect entries when they occur; identify what the entry is and classify its level of threat (such as who is entering, what the entrants are doing, and how many entrants there are); effectively and efficiently respond to the entry; and bring the situation to an appropriate law enforcement resolution, such as an arrest.<sup>6</sup> Areas deemed either “controlled” or “managed” are considered by Border Patrol to be under “operational control.”<sup>7</sup>

The volume of undocumented aliens crossing federal lands along the southwestern border can overwhelm law enforcement and resource protection efforts by federal land managers, thus highlighting the need for Border Patrol’s presence on and near these lands, according to DHS

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<sup>5</sup>Targeted enforcement efforts in other Border Patrol sectors in previous years caused a shift in illegal cross-border activity to the Tucson Sector, according to Border Patrol officials. The Congressional Research Service has stated that the overall borderwide decline in apprehensions is likely due to a combination of decreased opportunities for work in the United States and increased enforcement at the border. Congressional Research Service, *Border Security: The Role of the U.S. Border Patrol*, RL32562 (Washington, D.C., 2010).

<sup>6</sup>Border Patrol is developing a new method for classifying an area’s border security status to be used in Fiscal Year 2012.

<sup>7</sup>Border Patrol classifies an area’s border security status as one of five levels: An area is considered “controlled” when Border Patrol can deter or detect entries at the border, and continual, real-time surveillance and enforcement activities result in a high probability of immediate apprehension at the border. An area is considered “managed” when sufficient Border Patrol resources are available to deter or detect entries in time to apprehend, although not always at the immediate border, and sufficient resources exist to fully implement the sector’s border control strategy and tactics. An area is considered “remote/low activity” when the sector has not defined issues affecting Border Patrol and has not developed a meaningful Border Patrol strategy. An area is considered “low-level monitored” when detection or apprehension is inhibited by a lack of resources or infrastructure. An area is considered “monitored” when the probability of detection is high, but the ability to respond is limited because the terrain is remote and rugged, Border Patrol has limited resources, or both.

and land management agency officials. The need for the presence of both kinds of agencies on these borderlands has prompted consultation among DHS, Interior, and Agriculture to facilitate coordination between Border Patrol and the land management agencies. The departments have a stated commitment to foster better communication and resolve issues and concerns linked to federal land use or resource management.

### **Border Patrol Responsibilities under Key Land Management Laws and Coordination with Land Management Agencies**

When operating on federal lands, Border Patrol has responsibilities under several federal land management laws, including the National Environmental Policy Act of 1969, Wilderness Act of 1964, and Endangered Species Act of 1973. Under these laws, Border Patrol must obtain permission or a permit from federal land management agencies before its agents can undertake certain activities on federal lands, such as maintaining roads and installing surveillance equipment. Because the land management agencies are responsible for ensuring compliance with land management laws, Border Patrol and the land management agencies have developed several mechanisms to coordinate their responsibilities. The most comprehensive of these is a national-level agreement—a memorandum of understanding signed in 2006 by the secretaries of Homeland Security, the Interior, and Agriculture—intended to provide consistent principles to guide their agencies’ activities on federal lands. At the local level, Border Patrol and land management agencies have also coordinated their responsibilities through various local agreements.

#### Several Land Management Laws Govern Border Patrol Operations on Federal Lands

Under key federal land management laws, Border Patrol, like all federal agencies, must obtain permission or a permit from the appropriate federal land management agency to conduct certain activities—such as road maintenance—on federal lands.<sup>8</sup> These land management laws include, but are not limited to, the following:

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<sup>8</sup>Third parties, including Border Patrol, generally cannot undertake any road activities, except for public access, without a permit from a land management agency, and that permit would need to be consistent with the applicable land and resource management plans, which govern road construction, access, maintenance, and decommissioning.

- *National Environmental Policy Act of 1969.*<sup>9</sup> Enacted in 1970, the National Environmental Policy Act’s purpose is to promote efforts that will prevent or eliminate damage to the environment, among other things. Section 102 requires federal agencies to evaluate the likely environmental effects of proposed projects using an environmental assessment or, if the projects would likely significantly affect the environment, a more detailed environmental impact statement evaluating the proposed project and alternatives. Environmental impact statements can be developed at either a programmatic level—where larger-scale, combined effects and cumulative effects can be evaluated and where overall management objectives, such as road access and use, are defined—or a project level, where the effects of a particular project in a specific place at a particular time are evaluated. If, however, the federal agency determines that activities of a proposed project fall within a category of activities the agency has already determined has no significant environmental effect—called a categorical exclusion—then the agency generally does not need to prepare an environmental assessment or an environmental impact statement. The agency may instead approve projects that fit within the relevant category by using one of the predetermined categorical exclusions, rather than preparing a project-specific environmental assessment or environmental impact statement.<sup>10</sup>
- *National Historic Preservation Act of 1966.*<sup>11</sup> The National Historic Preservation Act provides for the protection of historic properties—any prehistoric or historic district, site, building, structure, object, or properties of traditional religious and cultural importance to an Indian tribe, included, or eligible for inclusion in, the National Register of Historic Places. For all projects receiving federal funds or a federal permit, section 106 of the act requires federal agencies to take into account a project’s effect on any historic property. In accordance with regulations implementing the act, Border Patrol and land management agencies often

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<sup>9</sup>Pub. L. No. 91-190 (1970), codified at 42 U.S.C. § 4321-4347.

<sup>10</sup>For a project to be approved using a categorical exclusion, the agency must determine whether any extraordinary circumstances exist in which a normally excluded action or project may have a significant effect. Border Patrol has numerous categorical exclusions in place, including, for example, installation and operation of security equipment at existing facilities to screen for or detect dangerous or illegal individuals and routine monitoring and surveillance activities, such as patrols, investigations, and intelligence gathering.

<sup>11</sup>Pub. L. No. 89-665 (1966), codified as amended at 16 U.S.C. §§ 470 to 470x-6.



incorporate compliance with the National Historic Preservation Act into their required evaluations of a project's likely environmental effects under the National Environmental Policy Act. Thus, the agency or agencies must determine, by consulting with relevant federal, state, and tribal officials, whether a project or activity has the potential to affect historic properties. The purpose of the consultation is to identify historic properties affected by the project; assess the activity's adverse effects on the historic properties; and seek ways to avoid, minimize, or mitigate any of those effects.

- *Wilderness Act of 1964.*<sup>12</sup> The Wilderness Act of 1964 provides for federal lands to be designated as “wilderness areas,” which means that such lands are to be administered in such a manner that will leave them unimpaired for future use and enjoyment and to provide for their protection and the preservation of their wilderness character, among other goals. If Border Patrol proposes to patrol or install surveillance equipment on federal land that has been designated as wilderness, the agency must comply with the requirements and restrictions of the Wilderness Act of 1964, other laws establishing a particular wilderness area, and the relevant federal land management agency's regulations governing wilderness areas.<sup>13</sup> Section 4 of the act prohibits the construction of temporary roads or structures, as well as the use of motor vehicles, motorized equipment, and other forms of mechanical transport in wilderness areas, unless such construction or use is necessary to meet the minimum requirements for administration of the area, including for emergencies involving health and safety. Generally, the land management agencies have regulations that address the emergency and administrative use of motorized equipment and installations in the wilderness areas they manage. For example, under Fish and Wildlife Service regulations, the agency may authorize Border Patrol to use a wilderness area and prescribe conditions under which

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<sup>12</sup>Pub. L. No. 88-577, codified at 16 U.S.C. §§ 1133-1136.

<sup>13</sup>While a few of the wilderness areas along the United States-Mexico border were designated in the 1964 act, most were established later. In one case, the law establishing the area specifically addressed border security: the Arizona Desert Wilderness Act of 1990 established the Cabeza Prieta Wilderness Area in the Cabeza Prieta National Wildlife Refuge and stated that the land's designation as wilderness must not preclude or otherwise affect border operations in accordance with any existing interagency agreement.

motorized equipment, structures, and installations may be used to protect the wilderness, including emergencies involving damage to property and violations of laws.<sup>14</sup>

- *Endangered Species Act of 1973*.<sup>15</sup> The purpose of the Endangered Species Act is to conserve threatened and endangered species and the ecosystems upon which they depend. Under section 7 of the act, if Border Patrol or the land management agencies determine that an activity Border Patrol intends to authorize, fund, or carry out may affect an animal or plant species listed as threatened or endangered, it may initiate either an informal or a formal consultation with the Fish and Wildlife Service—which we refer to as a section 7 consultation—to ensure that its actions do not jeopardize the continued existence of such species or result in the destruction or adverse modification of its critical habitat. The agencies are to initiate informal consultation if they determine that an activity may affect—but is not likely to adversely affect—a listed species or critical habitat.

#### National and Local Agreements Facilitate Coordination of Responsibilities among the Agencies

To help implement key federal land management laws, Border Patrol and the land management agencies have developed several mechanisms to coordinate their responsibilities, including a national-level memorandum of understanding and local agreements. The national-level memorandum of understanding was signed in 2006 by the secretaries of Homeland Security, the Interior, and Agriculture and is intended to provide consistent principles to guide the agencies’

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<sup>14</sup>The National Park Service does not have general regulations governing administration of wilderness areas in national parks. Instead, each Park Service unit administers its wilderness areas in accordance with a wilderness management plan that it develops and the National Park Service’s Wilderness Management Policy. Under the policy, administrative use of motorized equipment or mechanical transport is authorized only (1) in emergency situations—for example, homeland security and law enforcement—involving the health or safety of persons actually within the area or (2) if the unit’s superintendent determines it to be the minimum requirement needed by management to achieve the purposes of the wilderness area. Determining the minimum requirement is a two-step process that first determines whether the proposed management action is appropriate or necessary for administration of the area as wilderness and does not cause a significant impact to wilderness resources and character and then determines the techniques and types of equipment needed to ensure that impacts on wilderness resources and character are minimized.

<sup>15</sup>Pub. L. No. 93-205 (1973), codified as amended at 16 U.S.C. §§ 1531-1544.

activities on federal lands along the U.S. borders.<sup>16</sup> Such activities may include information sharing; placing and installing surveillance equipment, such as towers and underground sensors; using roads; providing Border Patrol with natural and cultural resource training; mitigating environmental impacts; and pursuing suspected undocumented aliens off road in wilderness areas. The memorandum also contains several provisions for resolving conflicts between Border Patrol and land managers, such as directing the agencies to resolve conflicts and delegate resolution authority at the lowest field operations level possible and to cooperate with each other to complete—in an expedited manner—all compliance that is required by applicable federal laws.

We found several instances where Border Patrol stations and land management agencies have coordinated their responsibilities through use of this national-level memorandum of understanding. For example, Border Patrol and land managers in Arizona used the 2006 memorandum of understanding to set the terms for reporting Border Patrol off-road vehicle incursions in Organ Pipe Cactus National Monument, as well as for developing strategies for interdicting undocumented aliens closer to the border in the Cabeza Prieta National Wildlife Refuge and facilitating Border Patrol access in the San Bernardino National Wildlife Refuge. In addition, we found that guidance provided by the 2006 memorandum of understanding has facilitated local agreements between the Border Patrol and land management agencies. For example, for the Coronado National Forest in Arizona, Border Patrol and the Forest Service developed a coordinated strategic plan that sets forth conditions for improving and maintaining roads and locating helicopter landing zones in wilderness areas, among other issues.

We also found that several other mechanisms have been used to facilitate interagency coordination. For example, Border Patrol and Interior established interagency liaisons, who have responsibility for facilitating coordination among their agencies. Border Patrol's Public Lands Liaison Agent program directs each Border Patrol sector to designate an agent dedicated to interacting with Interior, Agriculture, or other governmental or nongovernmental organizations

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<sup>16</sup>Department of Homeland Security, Department of the Interior, and U.S. Department of Agriculture, *Memorandum of Understanding on Regarding Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States' Border* (Washington, D.C., March 2006).

involved in land management issues. The role of these designated agents is to foster better communication; increase interagency understanding of respective missions, objectives and priorities; and serve as a central point of contact in resolving issues and concerns. Key responsibilities of these public lands liaison agents include implementing requirements of the 2006 memorandum of understanding and related agreements and monitoring any enforcement operations, issues, or activities related to federal land use or resource management. In addition, Interior established its own Southwest Border Coordinator, located at the Border Patrol Tucson Sector, to coordinate federal land management issues among Interior component agencies and with Border Patrol. The Forest Service also established a dedicated liaison position in the Tucson Sector to coordinate with Border Patrol, according to Forest Service officials. In addition to these liaison positions, a borderlands management task force provides an intergovernmental forum in the field for officials, including those from Border Patrol, the land management agencies, and other state and local governmental entities, to regularly meet and discuss challenges and opportunities for working together. The task force acts as a mechanism to address issues of security, safety, and resources among federal, tribal, state, and local governments located along the border.

### **Land Management Laws Have Limited Border Patrol's Access in Some Areas, but Most Agents-in-Charge Reported No Effect on Their Stations' Border Security Status**

Border Patrol's access has been limited on some federal lands along the southwestern border because of certain land management laws, according to patrol agents-in-charge in the borderlands region. Specifically, patrol agents-in-charge at 17 of the 26 stations that have primary responsibility for patrolling federal lands along the southwestern border reported that when they attempt to obtain a permit or permission to access portions of federal lands, delays and restrictions have resulted because they had to comply with land management laws. Despite these delays and restrictions, patrol agents-in-charge at 22 of the 26 Border Patrol stations reported that the border security status of their area of operation had not been affected by land management laws.

## More Than Half of Border Patrol Stations Reported That Land Management Laws Have Affected Their Access on Federal Lands

Patrol agents-in-charge of 17 of 26 stations along the southwestern border reported that they have experienced delays and restrictions in patrolling and monitoring portions of federal lands because of various land management laws.

### Implementation of the National Environmental Policy Act and the National Historic Preservation Act Have Caused Delays

Patrol agents-in-charge at 14 of the 26 Border Patrol stations along the southwestern border reported experiencing delays in getting a permit or permission from land managers to gain access to portions of federal land because of the time it took land managers to complete the requirements of the National Environmental Policy Act and the National Historic Preservation Act. These delays in gaining access had generally lessened agents' ability to detect undocumented aliens in some areas, according to the patrol agents-in-charge. The 2006 memorandum of understanding directs the agencies to cooperate with each other to complete, in an expedited manner, all compliance required by applicable federal laws, but such cooperation has not always occurred, as shown in the following examples:

- *Federal lands in Arizona.* For the Border Patrol station responsible for patrolling certain federal lands in Arizona, the patrol agent-in-charge reported that it has routinely taken several months to obtain permission from land managers to move mobile surveillance systems. The patrol agent-in-charge told us that before permission can be granted, land managers generally must complete environmental and historic property assessments—as required by the National Environmental Policy and National Historic Preservation acts—on roads and sites needed for moving and locating such systems. For example, Border Patrol requested permission to move a mobile surveillance system to a certain area but by the time permission was granted—more than 4 months after the initial request—illegal traffic had shifted to other areas. As a result, Border Patrol was unable to move the surveillance system to the locale it desired, and during the 4-month delay, agents were limited in their ability to detect undocumented aliens within a 7-mile range that could have been covered by the

system.<sup>17</sup> The land manager for the federal land unit said that most of these lands and the routes through it have not had a historic property assessment, so when Border Patrol asks for approval to move equipment, such assessments must often be performed. Moreover, the federal land management unit has limited staff with numerous other duties. For example, the unit has few survey specialists who are qualified to perform environmental and historic property assessments. Thus, he explained, resources cannot always be allocated to meet Border Patrol requests in an expedited manner.

- *Federal lands in New Mexico.* In southwestern New Mexico, the patrol agents-in-charge of four Border Patrol stations reported that it may take 6 months or more to obtain permission from land managers to maintain and improve roads that Border Patrol needs on federal lands to conduct patrols and move surveillance equipment. According to one of these patrol agents-in-charge, for Border Patrol to obtain such permission from land managers, the land managers must ensure that environmental and historic property assessments are completed, which typically entails coordinating with three different land management specialists: a realty specialist to locate the site, a biologist to determine if there are any species concerns, and an archaeologist to determine if there are any historic sites. Coordinating schedules among these experts often takes a long time, according to a Border Patrol public-lands liaison. For example, one patrol agent-in-charge told us that a road in his jurisdiction needed to be improved to allow a truck to move an underground sensor, but the process for the federal land management agency to perform a historic property assessment and issue a permit for the road improvements took nearly 8 months. During this period, agents could not patrol in vehicles or use surveillance equipment to monitor an area that illegal aliens were known to use. The patrol agent-in-charge told us that performing such assessments on every road that might be used by Border Patrol would take substantial time and require assessing hundreds of miles of roads.<sup>18</sup> According to federal land managers in the area, environmental and historic property specialists try to expedite support for Border Patrol as much as possible, but these

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<sup>17</sup>Mobile surveillance systems perform a 180-degree sweep every 10 seconds.

<sup>18</sup>The federal land management agency does not always approve access for the entire road needed to reach requested areas; for example, the agency may in some cases perform environmental and historic property assessments only at the location where Border Patrol wants to put the surveillance equipment.

specialists have other work they are committed to as well. Moreover, the office has not been provided any additional funding to increase personnel to be able to dedicate anyone in support of the Border Patrol to expedite such requests.

For some of the stations, the delays patrol agents-in-charge reported could have been shortened if Border Patrol could have used its own resources to pay for, or perform, environmental and historic property assessments required by the National Environmental Policy Act and National Historic Preservation Act, according to patrol agents-in-charge and land managers with whom we spoke. On the Coronado National Forest, agency officials told us that Border Patrol and the Forest Service had entered into a cooperative agreement whereby in some situations Border Patrol pays for road maintenance and the necessary environmental and historic property assessments. According to two patrol agents-in-charge, the development of the Coronado National Forest coordinated strategic plan has helped the agencies shorten the time it takes to begin road maintenance because it allows Border Patrol to use its resources and therefore begin environmental and historic property assessments sooner.<sup>19</sup> The Coronado National Forest border liaison added that without this agreement, Forest Service would have been unable to meet Border Patrol's road maintenance needs in a timely fashion.

In other situations, using Border Patrol resources to pay for or perform road maintenance may not always expedite access; instead, land managers and Border Patrol officials told us that a programmatic environmental impact statement should be prepared under the National Environmental Policy Act to help expedite access. For example, some patrol agents-in-charge, such as those in southwestern New Mexico, told us that to conduct environmental and historic property assessments on every road that agents might use, on a case-by-case basis, can take substantial time and require assessing hundreds, if not thousands, of miles of roads. Moreover, when agents request to move mobile surveillance systems, the request is often for moving such systems to a specific location, such as a 60-by-60-foot area on a hill. Some agents told us, however, that it takes a long time to obtain permission from land managers because

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<sup>19</sup>The one outstanding issue, one agent-in-charge explained, is for the land management agencies to more clearly define all roads that Border Patrol can maintain. According to the Coronado National Forest road manager, special use permits will soon be issued for the roads Border Patrol needs, and the roads will be mapped and identified for Border Patrol.

environmental and historic property assessments must be performed on each specific site, as well as on the road leading to the site. As we stated earlier, National Environmental Policy Act regulations recognize that programmatic environmental impact statements—broad evaluations of the environmental effects of multiple Border Patrol activities, such as road use and technology installation, in a geographic area—could facilitate compliance with the act. By completing a programmatic environmental impact statement, Border Patrol and land management agencies could then subsequently prepare narrower, site-specific statements or assessments of proposed Border Patrol activities on federal lands, such as on a mobile surveillance system site alone, thus potentially expediting access.<sup>20</sup>

In our October 2010 report, we recommended that to help expedite Border Patrol’s access to federal lands, the agencies should, when and where appropriate, (a) enter into agreements that provide for Border Patrol to use its own resources to pay for or to conduct the required environmental and historic property assessments and (b) prepare programmatic National Environmental Policy Act documents for Border Patrol activities in areas where additional access may be needed. The agencies concurred with this recommendation.

#### Wilderness Act Restrictions Have Affected Access to Federal Lands

Patrol agents-in-charge for three stations reported that agents’ access to some federal lands was limited because of restrictions in the Wilderness Act on building roads and installing infrastructure, such as surveillance towers, in wilderness areas. For these stations, the access restrictions lessen the effectiveness of agents’ patrol and monitoring operations. However, land managers may grant permission for such activities if they meet the regulatory requirements for emergency and administrative use of motorized equipment and installations in wilderness areas.

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<sup>20</sup>As part of the contract for tactical infrastructure maintenance and repair—a fiscal year 2011 contract for the maintenance and repair of vehicle and pedestrian fences, among other things, along the southwestern border—Border Patrol is developing a list of what roads it needs for access to fencing. In developing this list, Border Patrol officials told us they will identify what roads have had environmental and historic property assessments. For those roads that have not been assessed, Border Patrol plans to prepare a programmatic environmental impact statement under the National Environmental Policy Act. Border Patrol headquarters officials told us this document will include many—but not all—roads in the borderlands region. According to Border Patrol headquarters officials, they met with all land managers of land units along the border in July 2010 to discuss with them what roads will have environmental and historic property assessments.



Land managers responsible for two wilderness areas are working with Border Patrol agents to provide additional access as allowed by the regulations for emergency and administrative use. For example, at the Cabeza Prieta National Wildlife Refuge, Wilderness Act restrictions have limited the extent to which Border Patrol agents can use vehicles for patrols and technology resources to detect undocumented aliens. The patrol agent-in-charge told us that the refuge has few roads and having an additional east-west road closer to the border would give Border Patrol more options in using its mobile surveillance system to monitor significant portions of the refuge that are susceptible to undocumented-alien traffic. Additionally, the patrol agent-in-charge told us that better access could benefit the natural resources of the refuge because it could lead to more arrests closer to the border—instead of throughout the refuge—and result in fewer Border Patrol off-road incursions. The refuge manager agreed that additional Border Patrol access may result in additional environmental protection, and he is working with Border Patrol to develop a strategy at the refuge that would allow Border Patrol to detect and apprehend undocumented aliens closer to the border. Further, the refuge manager in February 2010 gave permission for Border Patrol to install an *SBI*net tower on the refuge, which may also help protect the wilderness area.

On the other hand, a land manager responsible for the Organ Pipe wilderness area has denied some Border Patrol requests for additional access and determined that additional Border Patrol access would not necessarily improve protection of natural resources. The patrol agent-in-charge of patrolling Organ Pipe, told us that when Border Patrol proposed placing an *SBI*net tower within the monument to help enable agents to detect undocumented aliens in a 30-square-mile range, the land manager denied the request because the proposed site was in a designated wilderness area. Instead, Border Patrol installed the tower in an area within the monument that is owned by the state of Arizona. At this site, however, the tower has a smaller surveillance range and cannot cover about 3 miles where undocumented aliens are known to cross, according to the patrol agent-in-charge, thus lessening Border Patrol's ability to detect entries compared with the originally proposed site. In addition, the patrol agent-in-charge explained that because of the tower's placement, when undocumented aliens are detected, agents have less time to apprehend them before they reach mountain passes, where it is easier to avoid detection. According to the land manager, Border Patrol did not demonstrate to him that the proposed tower site was critical,

as compared with the alternative, and that agents' ability to detect undocumented aliens would be negatively affected.

### Endangered Species Act Requirements Have Affected Patrols of Federal Lands

Patrol agents-in-charge at five Border Patrol stations reported that as a result of consultations required by section 7 of the Endangered Species Act, agents have had to adjust the timing or specific locales of their ground and air patrols to minimize the patrols' impact on endangered species and their critical habitats. Although some delays and restrictions have occurred, Border Patrol agents were generally able to adjust their patrols with little loss of effectiveness in their patrol operations. For example, for a Border Patrol station responsible for patrolling an area within the Coronado National Forest, the patrol agent-in-charge reported that a section 7 consultation placed restrictions on helicopter and vehicle access because of the presence of endangered species. Nevertheless, the patrol agent-in-charge told us the restrictions, which result in alternative flight paths, do not lessen the effectiveness of Border Patrol's air operations. Moreover, according to the Forest Service District Ranger, since the area's rugged terrain presents a constant threat to agents' safety, Border Patrol agents have been allowed to use helicopters as needed, regardless of endangered species' presence.<sup>21</sup> In another instance, a patrol agent-in-charge told us that the Border Patrol wanted to improve a road within the area to provide better access, but because of the proposed project's adverse effects on an endangered plant, road improvement could not be completed near a low point where water crossed the road. Border Patrol worked with Forest Service officials to improve 3 miles of a Forest Service road up to the low point, but the crossing itself—about 8 feet wide—along with 1.2 miles of road east of it was not improved. According to the patrol agent-in-charge, agents still patrol the area but must drive vehicles slowly because of the road's condition east of the low point.

Similarly, for the Border Patrol station responsible for patrolling the San Bernardino National Wildlife Refuge, the patrol agent-in-charge told us that vehicle access has been restricted in the refuge because vehicle use can threaten the habitat of certain threatened and endangered species.

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<sup>21</sup>Forest Service regulations authorize the Chief of the Forest Service to prescribe conditions under which motorized equipment, installations, and structures may be used in emergencies involving the health and safety of persons.

Since establishment of the refuge in 1982, locked gates have been in place on the refuge's administrative roads.<sup>22</sup> But Border Patrol station officials told us that in the last several years, with the increase in the number of agents assigned to the station, they wanted to have vehicle access to the refuge. The terms for vehicle access had to be negotiated with the refuge manager and the refuge manager agreed to place Border Patrol locks on refuge gates and to allow second-level Border Patrol supervisors, on a case-by-case basis, to determine whether vehicle access to the refuge is critical.<sup>23</sup> If such a determination is made, a Border Patrol supervisor unlocks the gate and contacts refuge staff to inform them that access was granted through a specific gate. The patrol agent-in-charge told us that operational control has not been affected by these conditions for vehicle access.

#### Most Agents Reported That Land Management Laws Have Had No Effect on Operational Control

Despite the access delays and restrictions reported for 17 stations, most patrol agents-in-charge told us that the border security status of their jurisdictions has not been affected by land management laws. Instead, factors other than access delays or restrictions, such as the remoteness and ruggedness of the terrain or dense vegetation, have had the greatest effect on their abilities to achieve or maintain operational control. While four patrol agents-in-charge reported that delays and restrictions resulting from compliance with land management laws had negatively affected their ability to achieve or maintain operational control, they had either not requested resources to facilitate increased or timelier access or had their requests denied by senior Border Patrol officials, who said that other needs were greater priorities for the station or sector.

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<sup>22</sup>The 2006 memorandum of understanding states that Border Patrol may operate motor vehicles at any time on existing public and administrative roads or trails and in areas previously designated by the land management agency for off-road vehicle use, *provided that such use is consistent with presently authorized public or administrative use* (emphasis added).

<sup>23</sup>Second-level Border Patrol supervisors are field operations supervisors. At least one such supervisor is on duty during each shift.

## Most Stations' Border Security Status Has Been Unaffected by Land Management Laws

Patrol agents-in-charge at 22 of the 26 stations with jurisdiction for federal lands along the southwestern border told us that their ability to achieve or maintain operational control in their areas of responsibility has been unaffected by land management laws; in other words, no portions of these stations' jurisdictions have had their border security status, such as "controlled," "managed," or "monitored," downgraded as a result of land management laws. Instead, for these stations, the primary factor affecting operational control has been the remoteness and ruggedness of the terrain or the dense vegetation their agents patrol and monitor. Specifically, patrol agents-in-charge at 18 stations told us that stark terrain features—such as rocky mountains, deep canyons, and dense brush—have negatively affected their agents' abilities to detect and apprehend undocumented aliens. For example, a patrol agent-in-charge whose station is responsible for patrolling federal land in southern California told us that the terrain is so rugged that Border Patrol agents must patrol and pursue undocumented aliens on foot; even all-terrain vehicles specifically designed for off-road travel cannot traverse the rocky terrain. He added that because of significant variations in topography, such as deep canyons and mountain ridges, surveillance technology can also be ineffective in detecting undocumented aliens who hide there. Similarly, patrol agents-in-charge responsible for patrolling certain Fish and Wildlife Service land reported that dense vegetation limits agents' ability to patrol or monitor much of the land. One agent explained that Border Patrol's technology resources were developed for use in deserts, where few terrain features obstruct surveillance, whereas the vegetation in these areas is dense and junglelike.

The majority of patrol agents-in-charge also told us that the most important resources for achieving and maintaining operational control on federal lands along the southwestern border are (1) a sufficient number of agents; (2) additional technology resources, such as mobile surveillance systems; and (3) tactical infrastructure, such as vehicle and pedestrian fencing. For example, in the remote areas of one national wildlife refuge, a patrol agent-in-charge told us that even with greater access in the refuge, he would not increase the number of agents patrolling it to gain improvements in operational control. Instead, he said, deploying additional technology resources, such as a mobile surveillance system, would be more effective in achieving operational control of the area because such systems would assist in detecting undocumented

aliens while allowing agents to maintain their presence in and around a nearby urban area, where the vast majority of illegal entries occur. His view, and those of other patrol agents-in-charge whom we interviewed, is underscored by Border Patrol's operational assessments—twice yearly planning documents that stations and sectors use to identify impediments to achieving or maintaining operational control and to request resources needed to achieve or maintain operational control.<sup>24</sup> In these assessments, stations have generally requested additional personnel or technology resources for their operations on federal lands. Delays or restrictions in gaining access have generally not been identified in operational assessments as an impediment to achieving or maintaining operational control for the 26 stations along the southwestern border.

#### Four Stations Reported That Their Security Status Had Been Affected by Land Management Laws

Of the 26 patrol agents-in-charge we interviewed, 4 reported that delays and restrictions in gaining access to federal lands had negatively affected their ability to achieve or maintain operational control. However, 2 of these stations have not requested any additional resources as part of Border Patrol's operational assessments and the other two that did request additional resources were denied these requests because of other higher agency priorities. For example, the patrol agent-in-charge responsible for land unit in southwestern New Mexico told us that operational control in a remote area of his jurisdiction is partly affected by the scarcity of roads. Having an additional road in this area would allow his agents to move surveillance equipment to an area that, at present, is rarely monitored. However, according to a supervisory agent for the sector, station officials did not request additional access through Border Patrol's operational assessments for this additional road, and land managers in this area told us they would be willing to work with Border Patrol to facilitate such access, if requested.

Similarly, the patrol agent-in-charge at a Border Patrol station responsible for patrolling another federal land unit in Arizona reported that his ability to achieve operational control is also affected by a shortage of east-west roads in the unit. He told us that some of his area could

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<sup>24</sup>This national process, known as the operational requirements-based budgeting process and occurring twice each year, was developed to help Border Patrol determine how and where to allocate additional agents, technology, and infrastructure.

potentially reach operational control status if there was an additional east-west road. In this case, the Border Patrol station did request an additional east-west road from the land management agency, but the land manager denied the request because the area is designated as wilderness, according to the patrol agent-in-charge.<sup>25</sup> As a result of this denial, the patrol agent-in-charge did not pursue a request for resources through the Border Patrol's operational assessment. The land manager told us that he would be willing to work with Border Patrol to facilitate additional access if it could be shown that such access would help increase deterrence and apprehensions closer to the border.

For the other two stations reporting that federal land management laws had negatively affected their ability to achieve or maintain operational control, Border Patrol sector or headquarters officials had denied the stations' requests for resources to facilitate increased or timelier access—typically for budgetary reasons. For example, one patrol agent-in-charge reported that 1.3 miles of border in her area of responsibility are not at operational control because, unlike most other border areas, it has no access road directly on the border. Further, she explained, the rough terrain has kept Border Patrol from building a road on the border. Instead, a road would need to be created in an area designated as wilderness. According to the patrol agent-in-charge, her station asked Border Patrol's sector office for an access road, and the request was submitted as part of the operational requirements-based budgeting program. As of July 2010, the request had not been approved because of budgetary constraints, according to the agent-in-charge. In addition, another patrol agent-in-charge told us, few roads lie close to the river that runs through his area of responsibility. As a result, his agents have to patrol and monitor nearly 1 mile north of the international border, much closer to urban areas. According to officials with Border Patrol's relevant sector office, they have been using the operational assessments for several years to request an all-weather road, but approval and funding have not been granted by Border Patrol's headquarters.

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<sup>25</sup>The 2006 memorandum of understanding directs the parties to cooperate with each other to identify methods, routes, and locations for Border Patrol operations that will minimize impacts to natural, cultural, and wilderness resources resulting from Border Patrol operations while facilitating needed Border Patrol access.

## **Federal Agencies Reported That Information Sharing and Communication Had Improved, but Additional Coordination Is Needed to Close Critical Gaps**

Information sharing and communications among Border Patrol, Interior, and Forest Service have generally increased over the last several years, according to Border Patrol and federal land law enforcement officials in the Tucson sector, but critical gaps remained in implementing interagency agreements. As we stated earlier, DHS, Interior, and Agriculture had established the 2006 a memorandum of understanding in part to facilitate the exchange of threat information on federal lands;<sup>26</sup> and a 2008 memorandum of understanding among these agencies established a common secure radio encryption key for communicating information on daily operations.<sup>27</sup> The lack of early and continued consultation among agencies to implement these agreements has resulted in critical information-sharing gaps that compromise officer safety and a timely and effective coordinated law enforcement response to illegal activity on federal lands.

Specifically, Border Patrol officials in the Tucson sector did not consult with federal land management agencies before discontinuing dissemination of daily situation reports that federal land law enforcement officials relied on for a common awareness of the types and locations of illegal activities observed on federal borderlands. Implementation of the 2006 memorandum of understanding's requirement for DHS, Interior, and Agriculture to establish a framework for sharing threat information could help ensure that law enforcement officials operating on federal lands have access to threat information they consider necessary to efficiently and effectively complete their missions.

In addition, DHS, Interior, and Agriculture officials did not coordinate to ensure that all federal law enforcement partners could monitor secure radio communications regarding daily operations on federal lands in the Tucson sector. Specifically, in 2009 Border Patrol changed the secure radio encryption key used by Border Patrol agents in the Tucson sector to communicate on daily operations without consulting with Interior or Agriculture. In order to remedy the communication challenges, Border Patrol headquarters issued guidance in April 2010 instructing

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<sup>26</sup>Department of Homeland Security, Department of the Interior, and U.S. Department of Agriculture, *Memorandum of Understanding Regarding Cooperative National Security and Counterterrorism Efforts on Federal lands along the United States' Border* (Washington, D.C.: March 2006).

<sup>27</sup>Department of Homeland Security, Department of the Interior, and Department of Agriculture, *Memorandum of Understanding Regarding Secure Radio Communication* (Washington, D.C.: July 18, 2008).

that secure radio communications of information regarding daily operations should be switched from the new encryption key back to the common encryption key compatible with Interior and Agriculture. However, since the Border Patrol's April 2010 guidance applies only to the Tucson sector, secure radio compatibility problems could persist in other Border Patrol sectors.

In our November 2010 report, we recommended that DHS, Interior, and Agriculture take necessary action to ensure that personnel at all levels of each agency conduct early and continued consultations to implement provisions of the 2006 memorandum of understanding, including the coordination of threat information for federal lands that is timely and actionable, and the coordination of future plans for upgrades of compatible radio communications used for daily law enforcement operations on federal lands.<sup>28</sup> The agencies concurred with these recommendations.

In January 2011, Customs and Border Protection issued a memorandum to all Border Patrol division chiefs and chief patrol agents emphasizing the importance of Interior and Agriculture partnerships to address border security threats on federal lands. This action is a positive step toward implementing our recommendations and we encourage DHS, Interior, and Agriculture to take the additional steps necessary to monitor and uphold implementation of the existing interagency agreements in order to enhance border security on federal lands.

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Chairman Chaffetz, Chairman Bishop, Ranking Member Tierney, Ranking Member Grijalva, and Members of the Subcommittees, this concludes my prepared statement. I would be pleased to answer any questions that you may have at this time.

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<sup>28</sup>GAO-11-177.



### **GAO Contacts and Acknowledgments**

For further information about this testimony, please contact Anu K. Mittal at (202) 512-3841 or [mittala@gao.gov](mailto:mittala@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Richard Stana, Director; Elizabeth Erdmann, Assistant Director; Lucinda Ayers, Assistant Director; Nathan Anderson; and Richard P. Johnson also made key contributions to this statement.

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Ms. Mittal received a Masters in Business Administration from the University of Massachusetts, and completed the senior executive fellow program at the John F. Kennedy School of Government at Harvard University. She has received numerous GAO honors for sustained leadership and exceptional contributions to the agency's mission.