

A RIVER RUNS THROUGH IT: THE CASE FOR AN INTERNATIONAL PEACE PARK ON THE U.S.-MEXICO BORDER

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I. INTRODUCTION

Threats to species biodiversity are increasing at an alarming rate.¹ Presently, species extinctions are running at about 1,000 times the natural pace, a rate that has led some biologists to

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1. Richard Black, *World's Biodiversity 'Crisis' Needs Action, says UN*, BBC NEWS, <http://news.bbc.co.uk/2/hi/8449506.stm> (last updated Jan. 11, 2010).

“contend that we are in the middle of the Earth’s sixth great extinction.”² What is unique about the current extinction is that it is largely anthropogenic in nature, while the previous five were caused by natural events like asteroid impacts.³

Protecting biodiversity is important because it provides a wide range of “ecosystem services” that are of immense importance to humans.⁴ These services include “detoxification and decomposition of wastes, purification of air and water, generation and renewal of soil and soil fertility, pollination of crops and natural vegetation, control of harmful agricultural pests, support of cultural activities, and the provision of aesthetic beauty and pleasure.”⁵ Additionally, the economic value alone of these ecosystem services has been calculated in the trillions of dollars, a fact in its own right that should give credence to protecting biodiversity.⁶

Biodiversity protection is a massive project, but like others of a similar scale, can be tackled one step at a time. One place to start is with the Chihuahuan Desert (the “Desert”); an environment lying in our own backyard and containing one of the most important and diverse ecosystems in the world.⁷ Encompassing millions of acres⁸ of land, and housing thousands of plant and animal species,⁹ the Chihuahuan Desert is one of the most biologically diverse desert eco-regions in the world.¹⁰

2. *Id.*

3. *Id.*

4. JAMES SALZMAN & BARTON H. THOMPSON, JR., ENVIRONMENTAL LAW AND POLICY 257 (2003).

5. *Id.*

6. *Id.*

7. *See infra* Part II.A.

8. Clay Carrington, *Texas by Nature: Mexico-Protected Area Benefits Texas Conservation*, NATURE CONSERVANCY (May 16, 2011), <http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/texas/explore/texas-by-nature-ocampo.xml> [hereinafter *Texas by Nature*].

9. *See Southern North America: Northern Mexico into Southwestern United States*, WORLD WILDLIFE FUND, <http://worldwildlife.org/ecoregions/na1303> (last visited Nov. 2, 2013) [hereinafter *Southern North America*] (describing the biodiversity of the Chihuahuan Desert).

10. *Id.*

Yet for all of its ecological richness, this area is lonely country.¹¹ Long known as “El Desoblado,” the land of no people, humans are still outnumbered by the wildlife population there,¹² and for all of its natural beauty, distance between the desert and major population centers have kept it a secret,¹³ and its landscapes “seldom grace calendars or coffee-table books.”¹⁴

Though rugged in nature, the Chihuahuan Desert ecosystem is fragile,¹⁵ and despite its remoteness, it faces a number of threats.¹⁶ Population encroachment, water scarcity, illegal immigration, narcotics smuggling, and air pollution are all challenges,¹⁷ and a historical lack of funding and political willpower have made the fight against these threats an uphill battle.¹⁸

In the face of these challenges, supporters of the Desert have shown resilience through their efforts to enact a number of protections for the environment.¹⁹ Starting with the formation of Big Bend National Park in 1944,²⁰ the United States and Mexico

11. See generally Joe Nick Patoski, *Desolate Majesty*, NAT'L GEOGRAPHIC MAG. (Feb. 2007), <http://ngm.nationalgeographic.com/print/2007/02/big-bend/patoski-text> (describing the solitude of the Chihuahuan Desert).

12. *Id.*

13. BELINDA SIFFORD & CHARLES CHESTER, *Bridging Conservation across La Frontera: An Unfinished Agenda for Peace Parks along the US-Mexico Divide*, in PEACE PARKS—CONSERVATION AND CONFLICT RESOLUTION 205, 206 (Saleem H. Ali ed., 2007).

14. SUSAN J. TWEIT, BARREN, WILD, AND WORTHLESS: LIVING IN THE CHIHUAHUAN DESERT 10 (1995).

15. Patoski, *supra* note 11.

16. See Susan Lieberman Goodwin, *Conservation Connections in a Fragmented Desert Environment: The U.S.-Mexico Border*, 40 NAT. RESOURCES J. 989, 994–99 (2000) (addressing major issues that affect border ecology).

17. *Id.*; see *Chihuahuan Desert Network—Air Quality*, NAT'L PARK SERVICE, <http://science.nature.nps.gov/im/units/chdn/monitor/airquality.cfm> (last visited Nov. 2, 2013) (discussing air quality concerns for national parks located within the Chihuahuan Desert region).

18. Patoski, *supra* note 11; see generally SIFFORD & CHESTER, *supra* note 13, at 206–10 (discussing reluctance on the part of the Mexican Government to create a transnational park).

19. See Goodwin, *supra* note 16, at 1009–10 (providing examples of bi-national efforts made to protect the Big Bend region of the Chihuahuan Desert).

20. SIFFORD & CHESTER, *supra* note 13, at 208.

have gradually set aside parcels of land in the name of conservation.²¹ In addition to these conservation areas, both countries have enacted a number of environmental laws over the years to afford some legal protections over habitat and biodiversity.²²

Yet in spite of these protections, the Chihuahuan Desert remains at risk.²³ Lack of funding threatens protected areas in both the U.S. and Mexico, while the Mexican areas in general offer less than ideal protection due to the allowance of private activity and development along the border region.²⁴ Furthermore, while both nations' environmental laws offer some protection to habitat and biodiversity, no comprehensive legal framework exists to provide a complete safety net.²⁵

Hope may lie with the creation of a bi-national protected area to straddle the U.S.-Mexico border and connect the patchwork of lands and laws under the guise of an international "peace park."²⁶ Not only would a peace park serve as a vessel for a unified habitat management program, it would also intimately connect a portion of two countries with a common culture and promote goodwill in a region recently embroiled in turmoil²⁷.

The two countries have flirted for decades with this idea,

21. See Clay Carrington, *Ocampo Flora and Fauna Protected Area*, NATURE CONSERVANCY, <http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/texas/explore/ocampo-flora-and-fauna-protected-area-natureorg-page.xml> (last updated Jan. 14, 2011) (listing protected areas in the U.S. and Mexico, culminating in the creation of Ocampo Flora and Fauna Protected Area in 2009).

22. See *infra* Part II.B.2, .4–.5.

23. See *infra* Part II.A.

24. See Karen L. Smith, *Habitat Protection for the New Millennium: An Analysis of Domestic and International Regimes in North America*, 13 GEO. INT'L ENVTL. L. REV. 509, 539 (2001) (noting that the ESA could function more effectively to protect the desert if the ESA had better funding to acquire sensitive areas); Goodwin, *supra* note 16, at 1002 (noting the relative lack of financial resources available to devote to conservation in Mexico); *Border Issues*, U.S.-MEXICO CHAMBER OF COM., <http://www.usmccoc.org/b-nafta13.php> (last visited Nov. 2, 2013) (noting the ecological impact of rapid growth in the border region).

25. See *infra* Part II.B.2, .4–.5 (analyzing environmental laws in the United States and Mexico while pointing out their shortcomings).

26. See *infra* Part III.A (defining "peace park").

27. SIFFORD & CHESTER, *supra* note 13, at 218–20.

and while they have come close on a few occasions, the park has never come to fruition.²⁸ A joint statement by Presidents Obama and Calderon in 2010,²⁹ and a cooperative action plan signed by Secretaries Salazar and Quesada in 2011,³⁰ has reignited the long smoldering idea of a transnational park.³¹ Legislation in 2012 allowed for the reopening of an historic border crossing on the Rio Grande that will reconnect the two nations both physically and symbolically and could serve as the perfect first step to finally bringing the peace park idea to fruition.³²

This Comment delves into the history of the Desert region and the efforts to protect it, and ultimately posits that a transnational park would benefit both countries as well as the greater ecosystem that it would encompass.

Part II of this Comment will discuss the importance of bio-diversity preservation, the nature of the Chihuahuan Desert ecosystem, the threats that it faces, and the efforts that have been put forth to protect it. Part III explores the history of transnational parks and their use as conservation tools, looking first to successes as precedent before addressing obstacles the idea would face.

II. PROTECTING BIODIVERSITY IN THE DESERT

Biodiversity has been generically defined as “the totality and variety of life on Earth,”³³ but ecologists and biologists have

28. Goodwin, *supra* note 16, at 1009–10.

29. Press Release, U.S. Dep’t of Interior, Joint Statement on Cooperative Action for Conservation in the Big Bend/Rio Bravo Region (Oct. 24, 2011) [hereinafter Press Release], available at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=262524>.

30. Press Release, U.S. Dep’t of Interior, U.S., Mexico Announce Binational Cooperative Conservation Action Plan (Oct. 24, 2011) [hereinafter Action Plan], available at <http://www.doi.gov/news/pressreleases/US-Mexico-Announce-Binational-Cooperative-Conservation-Action-Plan.cfm>.

31. Alexa Garcia-Ditta, *Talks Renewed Over Texas-Mexico Park*, TEX. TRIBUNE (Apr. 26, 2010), <http://www.texastribune.org/texas-mexico-border-news/texas-mexico-border/talks-renewed-over-texas-mexico-park>.

32. See *infra* Part III.D (discussing the Boquillas crossing and its importance to the border region).

33. CHARLES C. CHESTER, CONSERVATION ACROSS BORDERS: BIODIVERSITY IN AN

worked out “a more rigorous definition proposing a three-tiered hierarchy of diversity: the diversity of ecosystems, the diversity of species, and the diversity of individuals and populations within a single species.”³⁴

Six general categories of anthropogenic threats to biodiversity have been identified by scientists and conservationists: “overexploitation, loss of habitat, degradation of habitat, invasive species, climate change, and secondary effects.”³⁵ The six categories have been described as “direct” causes of biodiversity loss, while underlying causes such as “human population growth, overconsumption, and technological change” are considered “root causes.”³⁶ In some form or another, the Chihuahuan Desert ecosystem is confronted with all of these threats.³⁷

One major, general threat to biodiversity is the habitat “fragmentation” that can occur when political boundaries intersect with the natural range of species.³⁸ Oftentimes political borders will correspond to natural land features, like mountain ranges and rivers, but many North American borders are nothing more than a straight line on a map.³⁹ As a consequence, borders can “create severe cultural, political, and biological effects.”⁴⁰ Biodiversity, on the other hand, doesn’t follow political boundaries, but rather has evolved “in accordance with the biogeographic forces of natural selection.”⁴¹

International borders present particularly difficult challenges to conservation efforts; these challenges include

INTERDEPENDENT WORLD 6 (2006) [hereinafter CONSERVATION ACROSS BORDERS].

34. *Id.*

35. *Id.* at 7.

36. *Id.*

37. See *infra* Part II.A (discussing specific threats faced by the Chihuahuan Desert).

38. Guy N. Cameron, *Envtl. Inst. of Hous., Effects of Habitat Fragmentation on Biodiversity: Implications for Management of Wetlands in Texas* (1995), available at http://prtl.uhcl.edu/portal/page/portal/EIH/publications/annual_reports/ar_1995/cameron_95.

39. CONSERVATION ACROSS BORDERS, *supra* note 33, at 1–2.

40. *Id.* at 2.

41. *Id.* at 3.

“legal and governmental differences that complicate coordination and implementation; barriers to communication, movement, and information; social and cultural differences, including language differences, that inhibit the development of trust and a common sense of community; and economic disparities that constrain certain stakeholders’ willingness or ability to participate in the process.”⁴² The Desert ecosystem is broken up by political boundaries both natural and otherwise, resulting in habitat fragmentation that operates as one of its largest threats.⁴³

A. *Threats to the Desert*

The Chihuahuan Desert stretches from deep within central Mexico to the southeastern corner of Arizona and across southern New Mexico to the far western portion of Texas.⁴⁴ Bisecting the region, the Rio Grande brings much needed water to the desert and serves as the political boundary between the United States and Mexico.⁴⁵ The landscape is ninety percent desert yet also includes mountain ranges towering above 8,900 feet.⁴⁶

The Chihuahuan Desert is one of the three most biologically rich and diverse desert regions in the world.⁴⁷ Over 3,500 plant species call the Desert home,⁴⁸ including more than 400 species of cactus.⁴⁹ The Desert also supports a large number of

42. *Id.* at 17.

43. The U.S.-Mexico international border follows the natural course of the Rio Grande, but borders of the independent protected areas within either country are more arbitrary in nature. *See infra* Part II.A, B.1, .3 (discussing the international border and those of the protected areas); Rick Van Schoik, *Conservation Biology in the U.S.-Mexican Border Region*, WORLD WATCH, Nov.–Dec. 2004, at 36, 36, available at <http://www.worldwatch.org/system/files/EP176C.pdf>.

44. *Southern North America*, *supra* note 9.

45. *Id.* The river is known as the *Rio Bravo del Norte* in Mexico. *Rivers*, WORLD ATLAS, <http://www.worldatlas.com/webimage/countrys/nariv3.htm> (last visited Nov. 2, 2013).

46. Patoski, *supra* note 11.

47. *Southern North America*, *supra* note 9.

48. *Id.*

49. *Texas by Nature*, *supra* note 8.

wide-ranging mammals, such as pronghorn antelope, mule deer, grey fox, jaguar, and javelina.⁵⁰ Common bird species include the greater roadrunner, scaled quail, Scott's oriole, and cactus wren.⁵¹

Despite this great diversity, the Desert faces a number of threats.⁵² The highest rate of species endangerment in the United States is found along the U.S.-Mexico border.⁵³ Some thirty-one percent of the species listed as endangered are found here.⁵⁴ On the Mexican side of the border are eighty-five endangered species of plants and animals.⁵⁵

While seemingly hard on the surface, desert regions are easily injured and slow to recover,⁵⁶ and it has been said that even "a single tire track over the desert floor can last for hundreds of years."⁵⁷ Human-induced problems such as "population growth, water and air pollution, water diversion, agriculture, smuggling of humans and drugs, and budget shortfalls" are a major threat to the desert.⁵⁸ These threats are exacerbated by the fact that a political boundary divides the ecosystem, fragmenting species habitat and making conservation efforts much more complicated.⁵⁹

One major threat to biodiversity in the Desert is the explosion of population growth along the U.S.-Mexican border.⁶⁰ Since 1950, the border area has grown in population from one million people to over twelve million and continues to grow at a rate faster than the rest of the United States.⁶¹ This growth has

50. *Southern North America*, *supra* note 9.

51. *Id.*

52. *Id.*

53. Van Schoik, *supra* note 43, at 36.

54. *Id.*

55. *Id.*

56. Goodwin, *supra* note 16, at 994.

57. *Id.*

58. *Id.* at 994–1002; *Southern North America*, *supra* note 9; Van Schoik, *supra* note 43.

59. Van Schoik, *supra* note 43.

60. *Id.*

61. Goodwin, *supra* note 16, at 994.

been largely attributed to economic opportunities brought forth by NAFTA and the Mexican *maquiladora* program.⁶² While arguably good for the border economy, this population boom has brought with it an increased demand for infrastructure that can fragment or destroy the sensitive border ecosystem.⁶³

This rapid population growth has also led to water quality issues.⁶⁴ As the population has steadily outgrown the development of wastewater treatment infrastructure, many communities have been left without access to clean drinking water.⁶⁵ Raw sewage and insufficiently treated wastewater is being discharged into sources of drinking water, causing problems both to the public health and to the health of the desert ecosystem.⁶⁶

Pollution isn't the only water problem though as scarcity is also an issue.⁶⁷ This issue manifested itself most spectacularly in 2001, when the Rio Grande failed to reach the Gulf of Mexico at all.⁶⁸ These reduced flows have contributed to water quality problems⁶⁹ by raising the salinity level of the river some thirty percent since 1969.⁷⁰ Additionally, arsenic, lead, copper, and mercury levels exceed U.S. Environmental Protection Agency ("EPA") standards for protection of aquatic life, and concentrations of metals in fish tissues are higher than in most

62. *Id.*; see *Border Issues*, *supra* note 24 (explaining the rate of growth along the border over a twenty-five year period). The *maquiladora* program is a special regime that attempts to encourage industrialization in Mexico by granting certain foreign corporations duty-free imports into the country. *Id.*

63. Goodwin, *supra* note 16, at 994.

64. *Id.* at 995.

65. *Id.*

66. *Id.*

67. *Id.*

68. Brian Richter, *Are We Running Out of Water?*, NAT'L GEOGRAPHIC (Mar. 14, 2012), <http://newswatch.nationalgeographic.com/2012/03/14/are-we-running-out-of-water>.

69. NAT'L PARKS CONSERVATION ASS'N, STATE OF THE PARKS BIG BEND NATIONAL PARK: A RESOURCE ASSESSMENT 12 (2003) [hereinafter STATE OF THE PARKS], available at http://www.npca.org/about-us/center-for-park-research/stateoftheparks/big_bend/bigbend.pdf.

70. *Id.*

parts of the country.⁷¹ On top of that, ambient sediment and water toxicity levels exceed aquatic life protection levels, and harmful chemicals have been found in the water.⁷²

The reduced annual flows and general water quality degradation has had a widespread impact on the plants and animals that depend on the Rio Grande for survival.⁷³ Four of the thirty-six known native fish species have become extinct.⁷⁴ One of the remaining native species is critically endangered, and the U.S. Fish and Wildlife Service has identified eight others as species of concern.⁷⁵ Of the fourteen native mussel species that have historically populated the River, not a single live colony was found in recent park surveys.⁷⁶

B. Protections in Place

Between protected areas and environmental laws, both the United States and Mexico have tools in place to provide for biodiversity protection in the desert region.⁷⁷ While these protections offer some promise for conservation, none of them are comprehensive in scope and most suffer from a lack of enforcement or funding neglect.⁷⁸ A brief examination of these protections will expose their shortcomings and help make the case for the creation of a trans-boundary protected area.

1. American Protected Areas

In the United States, three major areas of protection have been set aside that encompass portions of the Desert. Created in 1944, Big Bend National Park is the largest protected area of

71. *Id.*

72. *Id.*

73. STATE OF THE PARKS, *supra* note 69.

74. *Id.*

75. *Id.*

76. *Id.* at 14.

77. See Smith, *supra* note 24, at 513, 532 (discussing U.S. protected areas and environmental law); Carrington, *supra* note 21 (discussing Mexico protected areas and environmental law).

78. See Smith, *supra* note 24, at 538 (noting shortcomings of protections in place).

the Chihuahuan Desert in the United States⁷⁹ and features broad expanses of desert shrub-land and grassland interspersed with smaller areas of high-elevation woodland in the Chisos Mountains.⁸⁰ The black bear, mountain lion, javelina, and federally threatened and endangered animal and plant species such as the black-capped vireo and Big Bend mosquitofish all call the Park home.⁸¹

Adjacent to the national park and encompassing over 300,000 acres of Chihuahuan Desert, Big Bend Ranch is the largest state park in Texas.⁸² It affords protection to seventy-eight species of mammals, fifty-six species of reptiles, and over thirteen hundred species of birds.⁸³ When the tract was purchased in 1988, it roughly doubled the size of the state park system.⁸⁴

Sharing the northwestern boundary of Big Bend is the Black Gap Wilderness Management Area.⁸⁵ This wilderness area borders twenty-five miles of the Rio Grande and contains approximately 103,000 acres.⁸⁶ Used primarily as a research facility, Black Gap has served as a reintroduction point for native desert bighorn sheep which have since expanded back into their historic range, including portions of Big Bend and into Mexico.⁸⁷

79. Eryn Gable, *75 Years on, Effort to Create U.S.-Mexico Park Hampered by Security Concerns*, N.Y. TIMES (June 24, 2010), <http://www.nytimes.com/gwire/2010/06/24/24greenwire-75-years-on-effort-to-create-us-mexico-park-ha-13949.html?pagewanted=all>.

80. STATE OF THE PARKS, *supra* note 69, at 2.

81. *Id.* at 2–3.

82. *Big Bend Ranch State Park*, TEX. PARKS & WILDLIFE, <http://www.tpwd.state.tx.us/state-parks/big-bend-ranch> (last visited Nov. 2, 2013).

83. STATE OF THE PARKS, *supra* note 69, at 8.

84. LAURENCE PARENT, OFFICIAL GUIDE TO TEXAS STATE PARKS AND HISTORIC SITES 8 (2008).

85. *Black Gap WMA*, TEX. PARKS & WILDLIFE, http://www.tpwd.state.tx.us/huntwild/hunt/wma/find_a_wma/list/?id=2 (last visited Feb. 3, 2013).

86. *Id.*

87. *Id.*

2. *American Environmental Laws*

Starting with the Endangered Species Preservation Act (“ESPA”) in 1966, the United States has recognized the need to protect habitats of endangered species.⁸⁸ The ESPA provided for protection of listed endangered species by allowing the Fish & Wildlife Service to acquire land for the purpose of habitat preservation.⁸⁹

In 1973, Congress passed the Endangered Species Act (“ESA”) that, among other things, made plants and all invertebrates eligible for protection, required federal agencies to use their authority to conserve listed species, and prohibited federal agencies from authorizing, funding, or carrying out any action that would jeopardize a listed species or destroy or modify its “critical habitat.”⁹⁰ Additionally, section 9 of the ESA reaches private actors by prohibiting anyone from “taking” an endangered species of fish or wildlife.⁹¹

Unfortunately, despite the broad prohibitions against “taking” endangered species, the ESA has not been able to prevent many forms of habitat modification that lead to species endangerment.⁹² Two such forms of adverse habitat modification are particularly relevant to the Desert: habitat fragmentation, which leads to “edge effects” by opening up formerly safe habitat to predation by other animals, and the introduction of non-native species that threaten naturally occurring ones.⁹³ Also, because the ESA focuses on the protection of individual

88. *Endangered Species Act: A History of the Endangered Species Act of 1973*, U.S. FISH & WILDLIFE SERVICE, <http://www.fws.gov/endangered/laws-policies/esa-history.html> (last updated Aug. 28, 2012).

89. *Id.*

90. *Id.*

91. SALZMAN & THOMPSON, *supra* note 4, at 265; 16 U.S.C. § 1538(a)(1)(B)–(C) (2012); 16 U.S.C. § 1532(19) (2012) (defining “taking” to include actions that “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect” an endangered species); 50 C.F.R. § 17.3 (2013) (defining “harm” to include habitat modification and degradation).

92. ROBERT V. PERCIVAL ET AL., ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY 999 (2009).

93. *Id.* at 999–1000.

species rather than ecosystems, and even then, only those species listed as endangered or threatened, it fails to protect biodiversity on a large scale.⁹⁴

Passed in 1969, the National Environmental Policy Act (“NEPA”) is another environmental statute that can afford some protections to habitat and biodiversity by requiring federal agencies to create environmental impact statements (“EIS”) prior to undertaking projects or enacting legislation that could “significantly affect[] the quality of the human environment.”⁹⁵ NEPA differs from other environmental laws in the sense that it relies on information, and the hope that an agency will use it, rather than mandating conservation the way that the ESA does.⁹⁶ Should an agency recognize potential adverse impacts in an EIS, citizens are able to bring suit pursuant to the Administrative Procedure Act, but NEPA itself lacks an enforcement mechanism.⁹⁷

In its narrow goals, NEPA has been successful to a degree,⁹⁸ but as a broad protection for habitat and biodiversity it isn’t the right tool for the job.⁹⁹ One large concern regarding NEPA’s effectiveness is the fear that it can be used “*post hoc*,” as simply a means to rationalize previously decided agency actions.¹⁰⁰

94. See SALZMAN & THOMPSON, *supra* note 4, at 272–73 (discussing problems with ESA and potential reforms).

95. See *id.* at 275 (discussing the purpose and background of NEPA); National Environmental Policy Act of 1969, 42 U.S.C. § 4332(c) (2012).

96. SALZMAN & THOMPSON, *supra* note 4, at 275.

97. *Id.* at 276.

98. See Calvert Cliffs’ Coordinating Comm., Inc. v. U.S. Atomic Energy Comm’n, 449 F.2d 1109, 115 (D.C. Cir. 1971) (temporarily enjoining an AEC project in spite of full compliance with NEPA’s requirement to prepare an EIS, because the agency had never considered or even read the EIS prepared by the licensing board); See SALZMAN & THOMPSON, *supra* note 4, at 276–77 (discussing case where court required the licensing board to consider the EIS rather than just prepare it).

99. See Mark W. Anderson, *National Environmental Policy Act United States, effective 1970*, BERKSHIRE ENCYCLOPEDIA OF SUSTAINABILITY: THE LAW AND POLITICS OF SUSTAINABILITY, 2010, at 393, available at <http://umaine.edu/soe/files/209/06/National-Environmental-Policy-Act1.pdf> (discussing common criticism of the NEPA).

100. *Id.* at 284 (“placing agencies in charge of conducting an EIS that may challenge their proposed actions is like placing the fox as guard of the hen house”).

3. *Mexican Protected Areas*

On November 7, 1994, Mexican President Carlos Salinas de Gotari declared as Protected Areas of Flora and Fauna both the *Maderas del Carmen* and *Canon de Santa Elena* regions.¹⁰¹ Later, in the summer of 2009, then Mexican President Felipe Calderon issued a decree creating the 826,000 acre *Ocampo* Flora and Fauna Protected Area in the northernmost part of the state of Coahuila.¹⁰² *Ocampo* connected the existing Protected Areas of *Maderas del Carmen* and *Cañón de Santa Elena*, and became the final piece in the creation of a nearly contiguous conservation area stretching across two million acres of Chihuahuan Desert.¹⁰³

These Mexican protected areas, in conjunction with their American counterparts, serve to create a large, though patchwork, conservation area in the Desert. The combination of this patchwork nature and differing administrations ultimately fails to provide adequate protection for the Desert and leaves the fragile ecosystem vulnerable to further degradation.

4. *Mexican Environmental Laws*

In 1994, Mexico created its current environmental agency: the Secretariat of the Environment, Natural Resources, and Fisheries (*Secretaria de Medio Ambiente, Recursos Naturales y Pesca* (SEMARNAP)).¹⁰⁴ SEMARNAP is tasked with creating national environmental policy and also oversees all activities “regarding the protection and conservation of ecosystems and natural resources.”¹⁰⁵ Creating SEMARNAP led to more efficient environmental policymaking, while also increasing its effectiveness.¹⁰⁶

101. *Big Bend National Park—Partners in Protection*, NAT'L PARK SERVICE, <http://www.nps.gov/bibe/naturescience/mexareas.htm> (last visited Nov. 2, 2013) [hereinafter *Partners in Protection*].

102. Carrington, *supra* note 21.

103. *Id.*

104. Smith, *supra* note 24, at 533–34.

105. *Id.* at 534.

106. *Id.* at 533–34.

Though Mexico lacks a comprehensive legal regime for the regulation of biological diversity or wildlife, there are three distinct pieces of legislation that work in concert to address wildlife and habitat protection, with the Ecology Law being the most thorough.¹⁰⁷

Title II of the Ecology Law “establish[es] procedures for developing and managing protected natural areas” (“PNA”s), while also “provid[ing] general protection for wildlife.”¹⁰⁸ There are eight types of PNAs, two of which are of significance here.

The most stringently safeguarded PNAs are Biosphere Reserves.¹⁰⁹ The Ecology Law permits the Mexican government to issue total or partial land use controls to restrict human activity on the Reserves, even extending to the use of private land.¹¹⁰ Any new human habitation is strictly forbidden.¹¹¹ On their face, Biosphere Reserves seem like an ideal approach to habitat protection, but the prohibition against human habitation would not work in the populated border region.

A second type of PNA are the Wild Flora and Fauna Protected Areas, which are managed less stringently than Biosphere Reserves, allowing for recreation and sustainable exploitation.¹¹² This type of PNA better comports with the border populace and is in fact the type of protection presently in place.¹¹³

Though some protections exist in Mexican law, the lack of an effective environmental public policy is apparent.¹¹⁴ What Mexico has is “an incomplete, segmented legislation aimed at

107. *Id.* at 534.

108. *Id.* at 534–35.

109. *Id.* at 535 (stating that the law prohibits any new human habitation in Biosphere Reserves).

110. *Id.*

111. *Id.*

112. *Id.*

113. See Carrington, *supra* note 21 (discussing the various Mexican protected areas in the Desert).

114. Benjamín Revuelta Vaquero, *Environmental Law in Mexico: A New Paradigm*, 3 MEXICAN L. REV. 129, 132 (2010), available at <http://info8.juridicas.unam.mx/pdf/mlawrns/cont/5/nte/nte6.pdf>.

protecting the environment, but lacking efficiency.”¹¹⁵ Because of this, in practice, the legal aspect of environmental protection in Mexico has rarely been enforced.¹¹⁶ Some of this can be attributed to the near impossibility of obtaining access to the courts to advocate collective environmental rights.¹¹⁷ Another important factor is the lack of sufficient earmarked funds going towards the implementation of environmental legislation and public policy.¹¹⁸

Finally, there is no single Mexican law or regulation that deals with habitat or ecosystem protection.¹¹⁹ This lack of unified conservation protection leaves the Desert environment vulnerable and provides support for the creation of an international park.

5. *NAFTA Protections*

The United States, Canada, and Mexico signed the North American Free Trade Agreement (“NAFTA”) in 1992 and made it the first major trade agreement to address the environmental effects of free trade in the agreement itself.¹²⁰ It incorporated provisions protecting environmental regulations from downward pressures caused by free trade, and gives precedence to the member countries’ responsibilities under international environmental agreements when those responsibilities come into conflict with NAFTA.¹²¹ Additionally, the parties came to terms on an “Environmental Side Agreement” called the North American Agreement on Environmental Cooperation (“NAAEC”).¹²² NAAEC was intended to “promote environmental cooperation, increase citizen participation in environmental protection, and ensure that each party effectively enforced its

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.* at 132.

119. *See id.*

120. SALZMAN & THOMPSON, *supra* note 4, at 225.

121. *Id.*

122. *Id.*

environmental laws.”¹²³

Initial drafts of NAFTA contained no environmental protections at all.¹²⁴ This omission led to an outcry by environmentalists who were concerned that the varying degrees of existing environmental protection in the member countries might lead to a “race to the bottom” in order to avoid industry movement to the country with the least enforcement.¹²⁵ Addressing these concerns, the agreement was supplemented with three last-minute provisions that led to its characterization as the “greenest” trade liberalization treaty of all time,¹²⁶ and the first time that a multi-lateral trade agreement had been linked with sustainable development.¹²⁷

First, in addressing the potential “race to the bottom” problem, Article 1114.2 provides that as pertaining to “health, safety, or environmental measures,” the three nations “should not waive or otherwise derogate from or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion, or retention in its territory of an investment of an investor.”¹²⁸ This provision made it clear that lowering environmental protection standards would not be an acceptable approach to encouraging investment and development.¹²⁹

NAFTA also addressed the potential conflict that could arise if a country, for environmental reasons, were to ban a product

123. *Id.*; North American Agreement on Environmental Cooperation, U.S.-Can.-Mex., Sept. 13–14, 1993, 32 I.L.M. 1480 [hereinafter NAAEC].

124. SALZMAN & THOMPSON, *supra* note 4, at 225.

125. *Id.* at 225–26. In the decades leading up to NAFTA, the United States and Canada had enacted a number of sophisticated and relatively stringent environmental regimes, while those in Mexico remained relatively weak. *Id.* The *maquiladora* border facilities are a prime example of this, as they were essentially unregulated for the bulk of their history. See *Border Issues*, *supra* note 24 (describing the *maquiladora* program).

126. SALZMAN & THOMPSON, *supra* note 4, at 226.

127. Steven P. Mumme, *NAFTA and Environment*, FOREIGN POLY IN FOCUS (Oct. 1, 1999), http://www.fpif.org/nafta_and_environment.

128. North American Free Trade Agreement, U.S.-Can.-Mex., arts. 1114.1–2, Dec. 17, 1992, 32 I.L.M. 289 (1993).

129. SALZMAN & THOMPSON, *supra* note 4, at 226–27.

and in so doing, impede trade.¹³⁰ To this end, the treaty provides that parties have the right to determine their own “appropriate levels of protection,” and so long as their actions are non-discriminatory, the party can ban a product or service if they determine that the risks are too high.¹³¹ Were a challenge to be raised against the restriction, the burden would fall upon the moving party rather than the government—a change from the World Trade Organization practice requiring the nation to bear the burden of justifying its technical, health, and environmental standards in the face of a trade challenge.¹³²

Even with the aforementioned provisions, NAFTA faced significant opposition from trade and environmental groups, and NAAEC was added to provide clarification.¹³³ Article 3 recognizes each Party’s right to establish its own levels of domestic environmental protection, adding that “each Party shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations.”¹³⁴ This allowed Mexico to continue on with lower relative environmental protections, but it required them to enforce their laws to make sure the protections were met.¹³⁵

Most importantly, NAAEC created a centralized forum for environmental cooperation among the parties by establishing the North American Commission for Environmental Cooperation (“CEC”).¹³⁶ The CEC is directed and funded equally by the three parties, and is comprised of three divisions—the Council, the Secretariat, and the Joint Public Advisory Committee (“JPAC”).¹³⁷ The Council is the political body of the CEC and is made up of one cabinet-level representative from each of the

130. *Id.* at 227. For example, banning imports of vegetables unless they were first radiated. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. NAAEC, *supra* note 123, art. 3.

135. SALZMAN & THOMPSON, *supra* note 4, at 228.

136. NAAEC, *supra* note 123, art. 8.

137. SALZMAN & THOMPSON, *supra* note 4, at 228.

three member nations.¹³⁸ It oversees implementation of the agreement, directs the Secretariat, addresses disputes between the parties, and serves as a general forum for environmental cooperation among the parties.¹³⁹ The JPAC is made up of fifteen members, five appointed by each nation, and serves as a formal mechanism by which non-governmental organizations and individuals may influence the CEC's decision making process.¹⁴⁰

The overall purpose behind creating the CEC was to provide a mechanism for investigating non-enforcement of national environmental laws and for monitoring the adverse environmental impacts of NAFTA.¹⁴¹ Because NAFTA has greatly increased trade along the U.S.-Mexico border where the Desert ecosystem is located, the CEC could, if effective, serve as an important safeguard to protecting biodiversity in the region.¹⁴²

Article 14 of the NAAEC creates a mechanism for citizens to file submissions in which they assert that a party is failing to effectively enforce its environmental law.¹⁴³ In reviewing these citizen submissions, the CEC Secretariat takes into consideration whether the submission "appears to be aimed at promoting enforcement rather than harassing industry, whether it provides sufficient information to allow for proper review, and whether it was filed by a person or organization residing or

138. *Id.* The members represent Canada's Minister of the Environment; Mexico's Secretary of Environment, Natural Resources and Fisheries; and the United States EPA. *Id.*

139. *Id.*

140. *Id.*

141. Mumme, *supra* note 127.

142. To this end, the CEC has played an important role in publicizing and investigating cases of environmental violations or non-enforcement. In 1995, for example, in response to a complaint from U.S. and Mexican NGOs, the Secretariat prepared a report on and investigated the death of forty thousand migratory birds at a Mexican reservoir. SALZMAN & THOMPSON, *supra* note 4, at 228. As a result of the investigation, the Mexican government and CEC worked together to clean up the reservoir. *Id.*

143. NAAEC, *supra* note 123, art. 14; SALZMAN & THOMPSON, *supra* note 4, at 229.

established in the territory of a party.”¹⁴⁴ If these criteria are met, the Secretariat will determine if a response from the party named in the submission is warranted.¹⁴⁵ In making that decision, the Secretariat considers whether “the submission alleges harm to the person or organization making the submission, if it raises matters whose study would advance the directive of the NAAEC, and whether the submitting party has already pursued any available private remedies.”¹⁴⁶ If a response is found to be warranted, a “factual record” identifying specific instances of noncompliance and their causes will be prepared and presented to the noncomplying party.¹⁴⁷ Though the CEC lacks any enforcement authority, they may offer technical assistance to parties found to be noncompliant and arbitrate any disputes.¹⁴⁸

Additional environmental institutions and programs spawned by NAFTA include the Border Environment Cooperation Commission (“BECC”), the North American Development Bank (“NADBank”), and the Border XXI Program.¹⁴⁹ BECC and the NADBank have infused much-needed resources for environmental infrastructure into cash-strapped border communities, promoting sustainable development and public participation in environmental decision making.¹⁵⁰

In spite of NAFTA’s environmental provisions, it remains insufficient to protect biodiversity along the border on its own.¹⁵¹ Notwithstanding its purported concern with sustainable development, NAFTA was intended to promote intraregional economic integration, and as such, it privileges trade and

144. NAAEC, *supra* note 123, art. 14.1; SALZMAN & THOMPSON, *supra* note 4, at 229.

145. NAAEC, *supra* note 123, art. 14.2.

146. *Id.*

147. SALZMAN & THOMPSON, *supra* note 4, at 229.

148. *Id.*

149. Mumme, *supra* note 127.

150. *Id.*

151. *See id.* (discussing the shortfalls of NAFTA’s various environmental provisions).

investment over the environment.¹⁵² Thus, national environmental regulations are viewed with suspicion and are forced to prove they are not trade barriers if they are to be enforced.¹⁵³ Additionally, NAFTA's environmental agencies and programs are deficient in government support¹⁵⁴, and because they lack an enforcement mechanism, they are "institutionally weak."¹⁵⁵

Thus NAFTA, along with the myriad of other patchwork environmental provisions found scattered throughout U.S. and Mexican law, offers some protection to the biodiversity of the Desert, yet ultimately comes up short in offering the unified protection that could be achieved with a singular trans-boundary protected area.

III. THE IDEA OF AN INTERNATIONAL "PEACE" PARK

One possible solution to address the threat to biodiversity in the desert region is the creation of a trans-boundary peace park straddling the border between the United States and Mexico. In addition to protecting this delicate ecosystem, a peace park would bring cultural and economic benefits to both countries and serve as a common ground for addressing situations of strife along the border.

A. Peace Parks as Conservation Tools

The term "peace park" is defined by the World Conservation Union as an area "formally dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and to the promotion of peace and cooperation."¹⁵⁶ Peace parks are but one kind of trans-boundary

152. *See id.* (delineating shortcomings of NAFTA's environmental provisions).

153. *Id.*

154. The annual CEC budget is only nine million dollars, although fifteen million dollars was originally promised. *Id.*

155. *See* Danielle Knight, *Environment-Trade: Reconciling Trade and the Environment*, INTER PRESS SERVICE, Oct. 21, 1999, <http://www.ipsnews.net/1999/10environment-trade-reconciling-trade-and-the-environment> (discussing the benefits and weaknesses of NAFTA).

156. Charles Chester, *Transboundary Protected Areas*, ENCYCLOPEDIA OF EARTH

protected area, an area defined as one:

of land and/or sea that straddles one or more boundaries between states, sub-national units such as provinces and regions, autonomous regions and/or areas beyond the limits of national sovereignty or jurisdiction, whose constituent parts are especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed cooperatively through legal or other effective means.¹⁵⁷

In large part, the success of a peace park is directly related to the amount of cooperation that takes place between the bordering entities.¹⁵⁸ Four factors have been identified that correlate with high levels of cooperation.¹⁵⁹ In general, high-level cooperation takes place “(1) if the idea of trans-frontier cooperation and ecosystem-based management was important to the protected area managers and personnel, (2) if there were adequate communication technologies in place, (3) if there were individuals willing to take leadership roles, and (4) if land managers were able to make personal contact across the border.”¹⁶⁰ The ability to make cross-boundary personal contact is seen as the factor that is most directly related to a strong level of cooperation.¹⁶¹

1. Benefits of Peace Parks

Numerous possible benefits of trans-border cooperation have been put forth by proponents. One such benefit is the notion that “a larger contiguous area will better safeguard biodiversity, since very large areas are needed to maintain minimum viable populations of many fauna species.”¹⁶² Also, “where populations

(Sept. 24, 2008, 7:24 PM), http://www.eoearth.org/article/Transboundary_protected_areas [hereinafter *Transboundary Protected Areas*].

157. *Id.*

158. CONSERVATION ACROSS BORDERS, *supra* note 33, at 26.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* at 27.

of flora or fauna cross political or administrative boundar[ies],” as is the case on the U.S-Mexico border, cross-border cooperation promotes ecosystem management.¹⁶³ Invasive species that “adversely affect native biodiversity are also more easily controlled if joint control is exercised.”¹⁶⁴ In the absence of cross-border cooperation, efforts to control the invasive species on one side of the border can be stymied by the lack of control on the other side.¹⁶⁵ A joint-control approach would be particularly beneficial along the Rio Grande corridor, where exotic salt cedar trees may choke the river.¹⁶⁶

Contrary to concerns of international park opponents, trans-boundary cooperation has been shown to actually improve security and reduce illegal trade where joint patrols and cooperation between customs and immigration officials exists.¹⁶⁷ Also, because “human rights violations in transnational parks are likely to gain publicity,” cross-border management can serve as “a deterrent to assaults on human dignity.”¹⁶⁸

As a further economic benefit, trans-boundary cooperation can “enhance nature-based tourism” by creating a greater attraction for visitors.¹⁶⁹ Possibilities also exist for “joint approaches to marketing and tour operations, and agreements on fees and visitor management.”¹⁷⁰ Currently, Big Bend National Park sees only a fraction of the visitors that are attracted to more famous parks like Yosemite and the Great Smoky Mountains.¹⁷¹ An international park would allow access

163. *Id.*

164. *Id.*

165. *Id.*

166. See Melissa L. Lamberton, *The Thirsty Tree: Confronting Invasive Salt Cedar in the American Southwest*, TERRAIN.ORG, <http://www.terrain.org/articles/27/lamberton.htm> (last visited Nov. 2, 2013) (discussing the nature of the invasive salt cedar tree).

167. CONSERVATION ACROSS BORDERS, *supra* note 33, at 27.

168. *Id.* at 26.

169. *Id.* at 27.

170. *Id.*

171. Compare *Big Bend NP Reports—Annual Park Visitation*, NAT'L PARK SERV., [https://irma.nps.gov/Stats/SSRSReports/Park Specific Reports/Annual Park Recreation Visitation \(1904 - Last Calendar Year\)?Park=BIBE](https://irma.nps.gov/Stats/SSRSReports/Park%20Specific%20Reports/Annual%20Park%20Recreation%20Visitation%20(1904%20-%20Last%20Calendar%20Year)?Park=BIBE) (last visited Nov. 2, 2013) (listing Big Bend total visitation in 2011 as 361,862), with *Yosemite NP Reports—Annual Park*

to areas in Mexico that are nearly unreachable at present,¹⁷² which should lead to increased visitation and the economic boost that would come along with it.

2. *Criticisms of Peace Parks*

In spite of the numerous benefits put forth by proponents of international peace parks, there has been criticism levied on “both social and biological grounds.”¹⁷³ Even supporters acknowledge that there are numerous impediments to the creation of a peace park including “conflicting laws, language barriers, differing stages of economic development, discrepancies in discretionary authority,” and questions about whether the costs justify the benefits.¹⁷⁴

One criticism, based on biological grounds, is that peace parks “can unduly shift conservation priorities” for political reasons rather than those based on conservation efforts.¹⁷⁵ The concern is that the protected area could divert resources away from domestic conservation actions that are ultimately more valuable from a conservation perspective.¹⁷⁶

A larger debate within the conservation community exists over the dichotomy between conserving biodiversity and meeting the needs of growing populations.¹⁷⁷ On one side of the argument are those who question whether “the traditional form of conservation, i.e., putting a wall around nature,” can continue to work in a developing world. Rather, they argue, long-term

Visitation, NAT'L PARK SERVICE, [https://irma.nps.gov/Stats/SSRSReports/Park Specific Reports/Annual Park Recreation Visitation \(1904 - Last Calendar Year\)?Park=YOSE](https://irma.nps.gov/Stats/SSRSReports/Park%20Specific%20Reports/Annual%20Park%20Recreation%20Visitation%20(1904%20-%20Last%20Calendar%20Year)?Park=YOSE) (last visited Nov. 2, 2013) (2011 visitation of 3.9 million), and *Great Smoky Mountains NP Reports—Annual Park Visitation*, NAT'L PARK SERVICE, [https://irma.nps.gov/Stats/SSRSReports/Park Specific Reports/Annual Park Recreation Visitation \(1904 - Last Calendar Year\)?Park=GRSM](https://irma.nps.gov/Stats/SSRSReports/Park%20Specific%20Reports/Annual%20Park%20Recreation%20Visitation%20(1904%20-%20Last%20Calendar%20Year)?Park=GRSM) (last visited Nov. 2, 2013) (2011 visitation of nine million).

172. See generally Michael W. Robbins, *The Treasure of the Sierra Del Carmen*, NAT'L WILDLIFE FED'N, Feb. 1, 2007, at 30P.

173. CONSERVATION ACROSS BORDERS, *supra* note 33, at 26.

174. *Id.*

175. *Id.* at 28.

176. *Id.*

177. *Id.*

protection depends on teaching people to live sustainably.¹⁷⁸ Those on the other side of the argument posit that the sustainable-living approach has been ineffective at protecting biodiversity and a direct habitat protection approach is required.¹⁷⁹

B. History of the Peace Park Movement

Peace Parks have long been championed as a counter to conflicts along international borders and a method for furthering conservation goals in the face of fragmented ecosystems. As early as 1780, a Treaty of Alliance between the King of France and the Prince-Bishop of Basel stated that nothing “is more proper for maintaining good relations and peace between two bordering states” than punishing offenses related to forests, hunting, and fishing.¹⁸⁰ The treaty designated “an equal and uniform jurisprudence” over the issues within their shared border region, and was notable for stipulating that the two parties adopt the French Forest Ordinance of 1669, which set out a land management plan for all of France.¹⁸¹

The modern peace park concept is said to have begun with the 1924 Krakow Protocol, which was tasked with resolving the remnants of a boundary dispute between Poland and Czechoslovakia left over from World War I.¹⁸² It would take until 1932 before the Protocol’s call for regional protection of culture, plants, animals, and scenery led to the creation of a park on the Polish-Czechoslovakian border.¹⁸³ Earlier that same year, the Canadian Parliament and U.S. Congress passed legislation recognizing the Waterton-Glacier International Peace Park.¹⁸⁴

While the peace park movement dates back to the early

178. *Id.* at 28–29.

179. *Id.* at 29.

180. *Id.* at 20.

181. *Id.*

182. *Transboundary Protected Areas*, *supra* note 156.

183. *Id.*

184. *Id.*

twentieth century, there has been a relatively recent resurgence of enthusiasm for the trans-boundary conservation approach, and “internationally adjoining protected areas are now being established at an unprecedented rate.”¹⁸⁵ In 1988, there were a total of 59 such protected areas involving 136 countries; by 2005, the number climbed to over 188.¹⁸⁶

The recent movement towards trans-boundary projects “have been generally welcomed as a sign of goodwill and cooperation, particularly in areas with relatively recent histories of conflict, where peace parks represent the confluence of several mutually reinforcing interests, namely those of biodiversity conservation, economic development, cultural integrity, and regional peace and security.”¹⁸⁷ Going forward, peace parks present the possibility of “large, contiguous ecological habitats that simultaneously protect biodiversity, create widespread opportunities for tourism venture investment, and promote good political relations between neighboring states.”¹⁸⁸

C. History of the U.S.-Mexico Peace Park Idea

The idea for a peace park in the Big Bend Region began in 1933 when the Alpine, Texas, Chamber of Commerce proposed an international park on the United States-Mexico border and commissioned a landscape architect to conduct studies and prepare plans.¹⁸⁹

Early in 1935, U.S. Senator Morris Sheppard of Texas wrote to President Roosevelt proposing an international park in the Big Bend region.¹⁹⁰ Later that same year, Congress authorized the creation of Big Bend National Park.¹⁹¹

When the National Park was finally established on June 12,

185. ANNE HAMMILL & CHARLES BESANCON, *Measuring Peace Park Performance: Definitions and Experiences*, in PEACE PARKS—CONSERVATION AND CONFLICT RESOLUTION 23, 24 (Saleem H. Ali ed., 2007).

186. *Id.*

187. *Id.* at 25.

188. *Id.*

189. *Partners in Protection*, *supra* note 101.

190. *Id.*

191. *Id.*

1944, President Roosevelt wrote to Mexican President Camacho: “I do not believe that this undertaking in the Big Bend will be complete until the entire park area in this region on both sides of the Rio Grande forms one great international park.”¹⁹²

D. Current Progress towards Creating a U.S.-Mexico Peace Park

The international park idea flew under the radar for a number of years until a joint statement by Presidents Obama and Calderon in 2010,¹⁹³ and a cooperative action plan signed by Secretaries Salazar and Quesada in 2011, reignited the idea.¹⁹⁴

Border security is probably the greatest hurdle to overcome if the notion of a trans-boundary park is ever to become a reality.¹⁹⁵ Violence along the border has surged in recent years and officials at varying levels of government have been hesitant to endorse the idea of a park.¹⁹⁶ Illicit activity is commonplace and often goes unnoticed along the vast stretches of empty border country.¹⁹⁷

Proponents of an international park argue that its creation would actually enhance border security while also breathing new life into the area’s economy.¹⁹⁸ The economic suffering has been particularly acute in the three small Mexican villages just

192. Press Release, *supra* note 29.

193. *See id.* (noting the 65 year period of inaction in creating a cross-border park, from Franklin Delano Roosevelt’s proposal of the idea until 2010).

194. Action Plan, *supra* note 30.

195. *See Gable, supra* note 79 (raising concerns that border security might hamper any plan for a trans-boundary park on the U.S.-Mexico border).

196. *See id.* (statement of Texas Senator Kay Bailey Hutchison’s spokeswoman) (“The Senator would not be supportive of any undertaking that could compromise border security, so she would need to have a clear understanding of how border crossings and other security interests would be protected . . .”).

197. *See* John Burnett, *Security Worries Overshadow U.S.-Mexico Park Plan*, NAT’L PUB. RADIO (June 16, 2010, 4:00 AM), <http://www.npr.org/templates/story/story.php?storyId=127874281> (sharing a law enforcement officer’s response to those who assert that illegal activity in the Big Bend region is relatively light). Brewster County Sheriff Ronnie Dodson is quoted as saying “[w]ithin a month, between us and Border Patrol, we’ve caught 6,000 pounds of marijuana coming out of there [and] numerous illegal aliens . . . [and] [t]he problem is when people say we’re the least, it’s because we’re the biggest—and we miss a lot.” *Id.*

198. Gable, *supra* note 79.

across the border from Big Bend National Park.¹⁹⁹ For years, an unofficial border crossing led across the Rio Grande and towards the villages and protected areas beyond.²⁰⁰ For a small fee, a rowboat operator would ferry both Park personnel and residents of the Mexican villages to the other side.²⁰¹ Park employees used the crossing “to work with ranchers in the Mexican villages to prevent livestock trespass, to carry out cooperative law enforcement investigations, and to attend village meetings and public briefings.”²⁰² The villagers used the crossing to access the Park to purchase food and use the public telephones and postal service.²⁰³

Following the events of 9/11, unofficial crossings ceased.²⁰⁴ Travel that once took about half an hour via river crossing now took one to two days through the closest port of entry.²⁰⁵ The village of Boquillas was hit the hardest by the closing; with tourists no longer coming across, the village lost an estimated two-thirds of its population.²⁰⁶ Across the border, the National Park’s general store lost forty percent of its business.²⁰⁷

In response to the 2010 joint statement in support of designating trans-boundary protection in the Rio Grande area, U.S. Customs and Border Patrol began working with the National Park Service to establish a border crossing that would allow for official travel between the United States and Mexico.²⁰⁸ Then, on December 28, 2012, U.S. Customs and Border Protection and the Department of Homeland Security

199. Goodwin, *supra* note 16, at 998–99.

200. *Id.* at 998.

201. *Id.*; ROBERT EARL KEEN, *Gringo Honeymoon, on GRINGO HONEYMOON* (Sugar Hill Records 1994).

202. Laura Tillman, *Opening a Break in Big Bend Country*, DAILY YONDER (Dec. 12, 2011), <http://www.dailyonder.com/big-break-bend/2011/12/05/3631>.

203. *Id.*

204. Ana Campoy, *Crossing Into U.S. Will Ease in One Spot*, WALL ST. J., Oct. 24, 2011, at A3.

205. Goodwin, *supra* note 16, at 999.

206. Campoy, *supra* note 204.

207. *Id.*

208. Opening of Boquillas Border Crossing and Update to the Class B Port of Entry Description, 77 Fed. Reg. 76,346 (Dec. 28, 2012) (to be codified at 8 C.F.R. pt. 100).

(“the Agencies”) published a final rule in the Federal Register reopening the Boquillas crossing.²⁰⁹ The rule became effective and the crossing was scheduled to officially open on January 28, 2013, as a Class B point of entry.²¹⁰ The crossing will not process vehicles, cargo, or commercial entries, but only pedestrians, and only during daylight hours.²¹¹

The crossing will be the first unmanned, computerized crossing station on the border with Mexico and will be operated by scanner-equipped, remotely operated kiosks and monitored by surveillance cameras.²¹² Those crossing the border will use the kiosks to present travel documents in compliance with the Western Hemisphere Travel Initiative, which Customs and Border Patrol has used at border stations since 2009.²¹³ The kiosks will be connected to the port of entry at El Paso, Texas, where Customs and Border Patrol agents will remotely process border crossers.²¹⁴ Surveillance cameras will monitor the border crossing twenty-four hours a day, while the cameras themselves are monitored around the clock by agents at the Alpine Border Patrol Station in Alpine, Texas.²¹⁵

As part of the proposed rule making process, the Agencies solicited and responded to a number of citizen concerns regarding the reopening of the Boquillas crossing; notably, citizens had concerns regarding security, and the overall economic and social value of undertaking the project.²¹⁶ The Agency responses to these concerns address many of the same arguments that have been levied against the idea of creating a

209. *Id.*

210. *Id.*

211. *Id.* at 76,347; *Port of Boquillas Border Crossing Open Once Again In Big Bend National Park*, National Parks Traveler (Apr. 23, 2013, 1:07 AM), <http://www.nationalparkstraveler.com/2013/04/port-boquillas-border-crossing-open-once-again-big-bend-national-park23114>.

212. *CBP Using Remote Tech for Unmanned Border Crossing with Mexico*, GCN (Jan. 2, 2013, 11:34 AM), <http://gcn.com/blogs/pulse/2013/01/cbp-remote-tech-unmanned-border-crossing.aspx> [hereinafter *CBP*].

213. *Id.*

214. *Id.*

215. *Id.*

216. Opening of Boquillas Border Crossing, 77 Fed. Reg. at 76,347–51.

trans-boundary park in the area, and thus function as a microcosm of arguments in favor of the idea.

Regarding security, a former superintendent of the park stated that prior to closing the crossing, some illegal activity did take place and with the recent uptick in drug cartel activity in the area, the crossing could be seen as a “backdoor” entrance to the United States.²¹⁷ Another stated concern centered on safety of park employees and visitors in light of the violence along the border.²¹⁸ Responding to these security concerns, the Agency disagreed that the re-opening of the border crossing would lead to a decrease in security in the area.²¹⁹ The proposal to reopen the crossing was made after extensive analysis and consultation and was seen as an opportunity to actually enhance area security by providing a way for legitimate travelers to identify themselves to Border Patrol while otherwise discouraging illegal activity.²²⁰

In addition to security, the border reopening has elicited some concern over the economics of the project, with opponents questioning whether the expense is worth the benefit to be derived from the ability to cross between the two countries at this point.²²¹ The Agency’s belief is that the opening of the Boquillas border crossing will produce benefits from both a conservation and economic perspective.²²²

For one thing, the crossing will allow for the development of a model of bi-national cooperation for the conservation and enjoyment of shared ecosystems for current and future

217. *Id.* at 76,348.

218. *Id.*

219. *Id.*

220. *Id.*; see *CBP, supra* note 212 (discussing the unlikelihood that that someone would choose to cross illegally at this particular point in the border, in light of its remote nature). After the plan proposal, then Big Bend Park Superintendent William Wellman was quoted as saying, “You’d have to be a real idiot to pick the only place with security in 300 miles of the border to try [to] sneak across.” *Id.*

221. See *Opening of Boquillas Border Crossing*, 77 Fed. Reg. at 76,350–51 (highlighting some of the concerns voiced during the proposal stage of the border crossing).

222. See *generally id.* (providing Agency responses to citizen comments on the proposed border crossing).

generations.²²³ Over 268 river miles and 3 million acres of contiguous parks and protected areas surround the border; a crossing here will facilitate research and conservation efforts along the Rio Grande and within Big Bend National Park as well as the Mexican Protected Areas.²²⁴

Additionally, because of the new border crossing, the National Park Service is expecting an increase in visitors to Big Bend National Park; further, those visitors are expected to increase the length of their stay.²²⁵ These visitors will have a positive impact on the local economy through the use of facilities in the park, as well as those in neighboring communities.²²⁶

The reestablishment of the Boquillas crossing could be a major step towards creating a trans-border park as it will allow convenient entry between the two countries to employees and visitors alike. In making its final ruling, the U.S. government addressed the concerns of those opposed to the reopening of the crossing.²²⁷ The answers to those concerns can in turn be extrapolated to address issues brought forth by opponents of an international park.

E. Precedent in Waterton-Glacier International Park

Precedent already exists for the creation of an international park across an American border.²²⁸ On July 4, 1931, Rotary Clubs from Alberta, Canada, and Montana formally proposed an international peace park between the two nations and then lobbied their respective governments for legislation to create such a park.²²⁹ The two governments acted quickly, and in 1932, Glacier National Park, in northwestern Montana, and Waterton Lakes National Park, in Alberta, Canada, combined to establish the Waterton-Glacier International Peace Park.²³⁰

223. *Id.* at 76,350.

224. *Id.*

225. *Id.*

226. *Id.*

227. *See* Opening of Boquillas Border Crossing, 77 Fed. Reg. at 76,347–51.

228. Gable, *supra* note 79.

229. CONSERVATION ACROSS BORDERS, *supra* note 33, at 21.

230. RANDY TANNER ET AL., *The Waterton-Glacier International Peace Park:*

Designating a protected area as a peace park does not impact national sovereignty, fiscal autonomy, or even necessarily management responsibility of either park.²³¹ The designation does allow, however, for effective management of the shared natural resources, a task which requires coordination and collaboration on the part of both parks.²³² In Waterton-Glacier, this approach has led to “improved research regarding both natural and cultural resources, more expedient search and rescues, enhanced visitor services, and partnerships that extend beyond the peace park.”²³³

Although the two parks have harbored a long history of peace, their approach to border security and trans-boundary conservation was challenged following the events of 9/11.²³⁴ The response to those challenges could serve as a model for any proposed peace park on the U.S.-Mexico border.²³⁵

Prior to 9/11, the border between Waterton Lakes and Glacier “was the epitome of a conservation border.”²³⁶ This approach attempted to minimize the presence of the border “to the extent that conservation initiatives could be effectively implemented at an international level while simultaneously allowing liberal access to trans-boundary visitors.”²³⁷ There were two designated border crossings within the park: one, a “front-country” crossing with vehicle access and technological infrastructure such as computers, satellite equipment, and metal detectors, and a second, primitive “backcountry” crossing that was generally unmanned.²³⁸ Visitors using the backcountry crossing were neither required to pass through any kind of

Conservation amid Border Security, in PEACE PARKS—CONSERVATION AND CONFLICT RESOLUTION 183, 183 (Saleem H. Ali ed., 2007).

231. *Id.* at 185.

232. *Id.* at 185–86.

233. *Id.* at 186.

234. *Id.* at 183.

235. See Gable, *supra* note 79 (highlighting Waterton-Glacier as precedent for the idea of an international park on the U.S.-Mexico border).

236. TANNER ET AL., *supra* note 230, at 193.

237. *Id.*

238. *Id.*

security checkpoint nor register with customs from either country; in essence, they were free to travel between the U.S. and Canada at will, provided that they exited through the same country from which they entered.²³⁹ This approach to border security at the backcountry crossing was deemed appropriate because of its rugged location and because the majority of users were either U.S. or Canadian citizens.²⁴⁰

Following 9/11, the U.S. government proposed closing the backcountry crossing in the absence of added infrastructure that would better secure the border.²⁴¹ This proposal presented the park with a dilemma: adding infrastructure to the backcountry would have been inconsistent with conservation goals; closing the border would have affected thousands of annual visitors and led to substantial financial losses for both sides of the park.²⁴²

In response to this dilemma, the two parks “and Canadian and U.S. security agencies including U.S. Customs and Immigrations, U.S. Border Patrol, and the Royal Canadian Mounted Police [all] collaborated in an effort to permit trans-boundary visitor access without investing in additional infrastructure.”²⁴³ This collaboration resulted in an operational agreement that respected the statutory obligations of the agencies and allowed continued access for Canadian and U.S. citizens across the border into the parks.²⁴⁴ Citizens of other countries, however, would no longer be able to utilize the backcountry crossing without first going through a more secure crossing.²⁴⁵

The presence of border security would also be increased on the U.S. side, both immediately outside the boundary of Glacier National Park and overhead.²⁴⁶ This increased presence included intermittent walks along the border within the park,

239. *Id.* at 194.

240. *Id.*

241. *Id.*

242. *Id.* at 194–95.

243. *Id.* at 195.

244. *Id.*

245. *Id.*

246. *Id.*

and a substantial increase in the use of sensor and surveillance equipment and monitoring flights.²⁴⁷ In general, while park rangers report that visitors have noticed the increased security, the rangers aren't concerned that it affects the visitor experience.²⁴⁸ In fact, as their presence is felt to be a deterrent to illegal crossings, there is a likelihood of increased presence in the future.²⁴⁹

Despite the increased presence of United States border security agencies, the peace park continues to effectively function in much the same way as it always has, and while the U.S.-Canadian border has never presented the same degree of security concern as the U.S.-Mexican border, the park's response to the border proposal is directly applicable to border security concerns between the U.S. and Mexico,²⁵⁰ and can serve as a model for peace park efficacy in the face of border security concerns anywhere.

F. Implementing a Park on the U.S.-Mexico Border

The best approach to structuring a U.S.-Mexico peace park would be to follow the lead of Waterton-Glacier. This route would allow both countries to independently manage their side of the park. Aside from the ingress and egress of visitors and employees, the Big Bend side would be run by the National Park Service as it always has; Mexico and SEMARNAP would do the same with its Flora and Fauna Protected Areas. The benefit of this approach would be the lack of an added level of bureaucracy that would come with needing to create an entirely new governing entity. A large degree of autonomy would remain as each side could manage the day-to-day operations in the manner they see fit, cooperating on conservation goals and any other projects identified. This approach would probably be the most palatable to citizens of both countries too as it would avoid ceding any power over national territory to an independent

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

governing body.

As a way of addressing opponents' most vocal concern, that of border security, Waterton-Glacier's response to 9/11 provides a model as well. In this regard, Big Bend now has the infrastructure in place for monitoring the remote border crossing and patrolling the surrounding terrain. If desired, entry into the U.S. could be limited to individuals possessing U.S. or Mexican passports. Admittedly, the U.S.-Mexico border is not the same situation as the U.S.-Canada border, but with both countries showing a commitment to working together in the name of conservation, security concerns can be adequately addressed.

IV. CONCLUSION

The protection of biodiversity is important both to the survival of individual species and to humanity as a whole.²⁵¹ Strict conservation justifications aside, the benefits that a healthy ecosystem bestows upon our planet are innumerable from both a biological and economic standpoint.²⁵² Presently, biodiversity faces threats on many fronts, not the least of which is mankind itself. Anthropogenic factors like population encroachment and resource depletion threaten biodiversity at nearly unprecedented levels.²⁵³ Here in our own backyard exists a habitat as diverse and threatened as any in the world. Yet in spite of the threats, there is hope for the Chihuahuan Desert. From early in the twentieth century, both the United States and Mexico have recognized this treasure along our common border and have taken gradual steps to protect it through laws and land. While these steps have helped, they will ultimately fall short in the absence of a unified protection regime. Though efforts have been made to create such a regime, in the form of an international "peace park," they have ultimately failed for

251. See Black, *supra* note 1 (discussing the impact of decreasing biodiversity on nonhuman human species as well as on human beings).

252. See *id.* (noting the non-quantifiable benefits of a planet with flourishing biodiversity).

253. *Id.*; *Biodiversity Declining at 'Unprecedented Rate'*, LIVESCIENCE (Nov. 17, 2004 2:40 AM), <http://www.livescience.com/96-biodiversity-declining-unprecedented-rate.html>.

reasons both geopolitical and practical. However, renewed talks and actions on both sides of the border have begun to give the effort traction anew, providing hope that the future will bring long-needed bi-national protection to the desert.

Ultimately, the move to create an international park is the path that should be taken. Precedent on the U.S.-Canadian border, and along borders throughout the world show that it can be accomplished. In spite of opponents' cries to the contrary, security concerns that allegedly make this border project unlike any other actually provide support for the creation of a park. As discussed above, one of the most relevant indicators of success in cross-border management is the degree of communication that exists between neighboring countries.²⁵⁴ The reopening of the Boquillas crossing will vastly increase the communication in the region and should be viewed as an important first step.

Peace parks are more than just a place to protect wildlife; they are also a place to connect people and cultures through an act of profound cooperation. In the Desert, it's time to stop viewing the border as a dividing line and start to see it as a seam connecting two great cultures and re-uniting the habitat as one.

254. CONSERVATION ACROSS BORDERS, *supra* note 33, at 17.