

12 March 2004

COUNCIL RESOLUTION 04-03

**Instruction to the Secretariat of the Commission for Environmental Cooperation  
Regarding the Assertion that Canada is failing to effectively enforce Section 6(a) of  
the Migratory Bird Regulations (MBR) adopted under the Migratory Birds  
Convention Act, 1994 (MBCA) (SEM-02-001).**

THE COUNCIL:

SUPPORTIVE of the process provided for in Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* (NAAEC) regarding submissions on enforcement matters and the preparation of factual records;

CONSIDERING the above noted submission filed on 6 February 2002, by the Canadian Nature Federation, Canadian Parks and Wilderness Society, Earthroots, Federation of Ontario Naturalists, Great Lakes United, Sierra Club (United States), Sierra Club of Canada and Wildlands League, all represented by Sierra Legal Defence Fund (SLDF), and the 11 April 2002, response provided by the Government of Canada;

FURTHER CONSIDERING the notification to Council of 12 November 2002, Council Resolution 03-05, the supplemental information provided by the submitters on 20 August 2003, and the response provided by the Government of Canada on 16 October 2003;

HAVING REVIEWED the Secretariat's notification to Council of 17 December 2003, recommending the development of a factual record with respect to the submission;

NOTING that both the supplemental information and Canada's response to that information address clearcutting activities carried out during 2001 in forty-nine (49) forest management units in the Province of Ontario, particularly with respect to the migratory bird nesting season;

RECOGNIZING that five forest management units have been amalgamated and are now part of the forty-nine (49) forest management units under consideration, and that no logging activities took place on one additional forest management unit;

FURTHER RECOGNIZING that information for four forest management units was not available in time to meet the deadline that was established in Council Resolution 03-05 for submitting additional information and therefore was not provided by the submitters;

NOTING that when submitters provide information, the Party is afforded the opportunity to respond to that information; and

FURTHER NOTING that the submitters may, if they wish, submit a new submission with the requisite sufficient information with respect to the four (4) forest management units for which information was not available.

HEREBY UNANIMOUSLY DECIDES TO:

INSTRUCT the Secretariat to prepare a factual record in accordance with Article 15 of the NAAEC and the *Guidelines for Submissions on Enforcement Matters* under Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* for the assertions set forth in Submission SEM-02-001 with regard to alleged failures by Canada to effectively enforce Section 6(a) of the Migratory Bird Regulations (MBR) adopted under the Migratory Birds Convention Act, 1994 (MBCA), in regard to clearcut logging activities carried out from 1 January to 31 December 2001, particularly with respect to the migratory bird nesting season, in the forty-nine (49) forest management units located in the Province of Ontario identified by the submitters, which include the five that were amalgamated;

DIRECT the Secretariat to provide the Parties with its overall work plan for gathering the relevant facts and with the opportunity to comment on that plan; and

FURTHER DIRECT the Secretariat to consider, in developing the factual record, whether the Party concerned “is failing to effectively enforce its environmental law” since the entry into force of the NAAEC on 1 January 1994. In considering such an alleged failure to effectively enforce, relevant facts that existed prior to 1 January 1994, may be included in the factual record.

APPROVED BY THE COUNCIL:

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José Manuel Bulás  
Government of the United Mexican States

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Judith E. Ayres  
Government of the United States of America

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Norine Smith  
Government of Canada