

SESSION 04-01 OF ALTERNATE REPRESENTATIVES

SUMMARY RECORD

The Commission for Environmental Cooperation (CEC) Council, represented by its Alternate Representatives, met in Oaxaca, Mexico, on 11 and 12 March 2004. Ms. Maria Teresa Bandala and Mr. José Manuel Bulás (Mexico) chaired the meeting. Ms. Norine Smith and Mr. Jerry Clifford represented Canada and the United States, respectively. Ms. Donna Tingley, represented the Joint Public Advisory Committee (JPAC) and Mr. William Kennedy, CEC Executive Director, represented the Secretariat. Ms. Julie-Anne Bellefleur, Council Secretary, acted as secretary for the session. Other officials of the Parties and the Secretariat were also in attendance (Annex A).

Item 1 Adoption of the Agenda

The Alternate Representatives adopted the agenda based on the provisional agenda (Annex B).

Item 2 Report by the Executive Director

The Executive Director presented highlights of his report on program activities of the CEC (Annex C). He also distributed a copy of a report commissioned by the Secretariat in early 2003 on the operation of CEC working groups and committees. Noting the differences in the mandate and structure of the various groups, he invited the Parties to consider the possibility of reviewing this in order to identify changes that could yield improved accountability, better guidance, higher visibility and greater effectiveness. To that end, he offered to provide the Parties with some options for their consideration in the Fall of 2004, as to a possible approach for undertaking such a review. Reflecting on the need for Council to respond to the ten-year review in June, he put forward—for the Parties' consideration—the idea of a declaration or statement that would demonstrate the Parties' renewed commitment to strengthening environmental cooperation among the three countries.

The Alternate Representatives agreed that in light of the CEC's budget and the ten-year review, it would be an appropriate time to undertake an analysis of the operation of working groups, and expressed hope that the Parties could reach agreement on this issue prior to the Council Session. They welcomed the Executive Director's suggestion relating to the development of a declaration for the Council Session and agreed to discuss this in more detail under the relevant agenda item.

The JPAC Chair underlined the importance of the relationship between JPAC and CEC working groups as mentioned in the report, as well as the need to include stakeholders from outside the governments. Referring to the proposal relating to the development of a declaration on the future of the CEC, she stressed the importance of taking into account the results of the ten-year review in the development of such a statement.

In response to questions from the Canadian representative as to whether the Secretariat was getting the necessary support from the Parties to deliver the biennial review of the Cooperative Agenda for Children's Health and the Environment (CHE) at the June 2004 Council Session, the Secretariat expressed some concerns about the feasibility of having the review completed in time for the Council Session, in light of Mexico's restricted ability to participate fully in CHE activities.

Item 3 Report by JPAC Chair

The JPAC Chair reported on her meeting with the Secretariat earlier in the year where they discussed ways of maximizing JPAC's input in the operations of the CEC. She indicated that JPAC would continue to provide information to the Secretariat on its own initiatives and when directly requested on specific topics. She also indicated that JPAC's intention is to work with the Secretariat at the "front end" of the operational planning process and that members of the relevant JPAC working group would be meeting with the Secretariat sometime in the summer of 2004 to provide strategic advice on priorities. She also indicated that, during their regular session the next day, JPAC would be reviewing the Secretariat's proposal on the new capacity building initiative, which contemplates a specific emphasis on indigenous peoples. She expressed JPAC's interest in expanding communication efforts, both for their own activities and to assist the Secretariat in promoting the CEC as a whole, and indicated that JPAC would be finalizing its communications strategy during its regular session the next day. In closing, she informed the Alternate Representatives of JPAC's interest to discuss the following issues during their joint meeting with the Alternate Representatives the next day: i) perceived conflict of interest in the context of the citizen submissions process; ii) effectiveness of the joint Council and JPAC in-camera session and of the public session; iii) strengthening communications between Council and JPAC.

The Alternate Representatives took the opportunity to welcome the JPAC Chair to her first meeting in this capacity. They recognized the need to improve their performance in responding to JPAC's correspondence and expressed hope that a substantive face to face discussion could help alleviate potential tensions and improve communications. They also expressed their interest in getting the benefit of JPAC's input on the TRAC report as well as their thoughts as to how the report on CEC working groups and committees may be addressed.

Recalling that the initial phase of development of the new CEC Operational Plan—which consisted of articulating broader goals and objectives—was part of a longer-term process toward a more transparent, consistent and strategic approach, the Secretariat indicated that the next phase, as the CEC moves toward the development of next year's Operational Plan, would aim at refining the monitoring, evaluation and reporting approach. To this end, the Secretariat suggested to initiate discussions with JPAC and the Parties earlier on in the process in order to get their views on the type of information that would be useful for the Parties and JPAC.

Item 4 Adoption of Summary Records

The Alternate Representatives approved the summary record of their last sessions held on 20-21 November and 19 December 2003.

Item 5 Submissions on Enforcement Matters under Articles 14 and 15**Item 5.1 Submission SEM-02-001: Ontario Logging**

The Alternate Representatives adopted Council resolution 04-03 (Annex D) instructing the Secretariat to prepare a factual record 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), 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.

Noting the on-going process for the review of Council Resolution 00-09 and the fact that JPAC was awaiting a response from Council to its advice on limiting the scope of factual records, the JPAC Chair refrained from commenting on the substance of the resolution.

The Secretariat expressed some concerns about the Parties' tendency to exclude the Secretariat in their deliberations leading to votes on factual records and their reluctance to share a copy of draft resolutions with the Secretariat and JPAC. The Secretariat expressed the view that it would be important for the Parties to have its perspective before them during their deliberations and asked the Alternate Representatives to consider ways to involve the Secretariat earlier in the process.

The Alternate Representatives acknowledged that, in some instances, the Parties may have found it useful to consult with the Secretariat to clarify certain issues. They noted, however, that it was the Council's prerogative to have deliberations amongst the Parties and stressed the importance of respecting the independence of the Secretariat in developing recommendations, and the independence of the Parties in responding to the recommendations.

Item 5.2 Limiting the scope of factual records and review of Council Resolution 00-09

The Alternate Representatives agreed on the importance of moving expeditiously on the review of Council Resolution 00-09 in order to have a report available by June 2004 that would reflect the Parties' assessment and conclusions of the operation of the resolution. They also agreed on the importance of getting the views of the Secretariat and JPAC and invited them to provide their perspective in whatever format they may deem appropriate, should they wish to contribute anything beyond the information submitted to date.

Item 6 2004 Council Session

As host of the 11th Regular Session of the Council, Mexico confirmed that the Session will be

held on 22 and 23 June 2004 in the city of Puebla and indicated that details relating to logistics would be communicated shortly, including the exact location of the meeting.

Referring to an earlier suggestion from the Executive Director relating to the development of a “Puebla declaration”, the Alternate Representatives agreed that a statement outlining basic principles of the Council’s vision for the CEC over the next decade would be useful. They welcomed the Executive Director’s offer to provide a preliminary draft, based on initial findings of the draft report from TRAC, for discussion at their retreat to be held on 4-5 May.

The Alternate Representatives reviewed and finalized the preliminary agenda and general program for the session based on JPAC’s suggestion that the public meeting be held at the beginning of the Session on 22 June. Considering that the public meeting will focus on the future of NAAEC, they agreed with JPAC’s suggestion since it will give Council the benefit of public input before their deliberations on this subject. They also agreed that the results of the Council’s deliberations should be reported back to the public during the press conference on 23 June. Other items, including strategic directions for specific areas of the CEC work program currently underway, will be addressed during the session of Alternate Representatives on 21 June. The Alternate Representatives noted that it would be useful to receive a report on the CEC’s success stories as part the Executive Director’s report to be delivered during the welcoming reception on 21 June.

Item 7 Ten-year review initiative and retreat

The Alternate Representatives confirmed arrangements for their retreat to be held on 4 and 5 May 2004 in Playa del Carmen, Mexico. The retreat will start on 4 May in the afternoon with a discussion among the Alternate Representative and their Trade counterparts on the CEC’s Strategic Plan for Trade, Economy and the Environment. The Alternate Representatives will also review strategic directions for other areas of the CEC’s work such as the new direction for the Sound Management of Chemicals project, the biennial review of the Cooperative Agenda for Children’s Health and the Environment in North America; the North American Air Working Group long-term strategic framework and; the review of Council Resolution 00-09. The second day will be devoted to a review of findings from the draft report of the Ten-Year Review and Assessment Committee (TRAC) and the development of a declaration outlining basic principles of the Council’s vision for charting a path for the CEC over the next decade. The retreat will be preceded by a meeting of the Article 10(6) at the staff level on 3 May, to continue in the morning of 4 May, if necessary.

The Alternate Representatives agreed that—in the interest of allowing a free dialogue among the Parties, and considering that JPAC is having its own discussion about the TRAC report—participation at the retreat should be limited to 2-3 representatives from each Party and from the Secretariat, whose participation would be limited to administrative support and expertise on specific items as may be required. They agreed to inform JPAC of the results of their discussion following their retreat.

Before moving to the joint meeting with JPAC, the Executive Director took the opportunity to

report on concerns expressed by JPAC earlier in the day in relation to his statement about strengthening partnership with the private sector. He indicated that JPAC would be creating a new working group to advise the Secretariat on how to go about making contacts with the private sector.

Item 8 Joint meeting with JPAC

The Alternate Representative from the United States briefed JPAC on the Article 10(6) Environment and Trade Officials meeting held on 10 March. He indicated that the Parties had a meaningful discussion of eight items for consideration as priority areas for the development of the CEC strategic plan on Trade, Economy and the Environment. Considering that Mexico's Trade representatives were unable to attend the 10(6) meeting, he indicated that Mexico's Environment representatives needed to consult with their Trade counterparts before the Parties could share a copy of the list of potential items with JPAC. He conveyed the Parties' intention to reconvene through a conference call, at the working level, following Mexico's internal consultation in the next few weeks, after which time the Parties would share a copy with JPAC.

Donna Tingley spoke about the program of public events for the 2004 Council Session. She indicated that JPAC would be organizing a public workshop on 21 June in order to engage the public on the future of the CEC, the results of which will be communicated to Council at the beginning of the public meeting on 22 June. Given the special nature of this year's Council session, she invited Council to consider expanding the public meeting. Finally, she conveyed JPAC's intention to invite Secretary Cardenas to attend the JPAC workshop as a key note speaker to possibly deliver remarks on public access to Mexican legislation.

Referring to the Alternate Representatives' invitation for JPAC to submit additional information on the review of the operation of Council Resolution 00-09 should they wish to do so, Gustavo Alanís-Ortega observed that—following a call for public comments and a public meeting—JPAC submitted an Advice to Council on this subject in December 2003 (03-05), for which a response from Council has yet to be provided.

Adding to Mr. Alanís-Ortega's comment, Carlos Sandoval underscored that a fundamental part of JPAC's work in providing advice to Council was its contact with the public. He conveyed the public's disappointment vis-à-vis the slow pace of the Council's responses to JPAC advice and their perception of these delays as a lack of interest from Council to what the public has to say.

Jane Gardner echoed Mr. Sandoval's point and expressed hope that Council and JPAC could have a more direct and candid dialogue and find ways of better communicating among each other. She invited the Parties to consider ways of tightening their deadline for other agencies to provide comments as a possible way of speeding up the process.

The Alternate Representatives explained some of the inherent constraints on the government's ability to respond promptly, but recognized that it was incumbent upon the Parties to be more timely and to expedite the process. They expressed regret that this issue had not yet been resolved and reiterated the Parties' appreciation of the fact that JPAC as volunteers are putting a

large amount of time and personal effort into their work. Referring to JPAC Advice 03-05, they noted that this was a particularly challenging topic for all and apologized for not being in a position of getting into a substantive discussion during this meeting.

Merrill-Ann Phare reported on JPAC's general consensus on the application of the capacity building initiative being developed as an alternative to the North American Fund for Environmental Cooperation (NAFEC) and stressed the need for a strategic approach and for focusing on the role of indigenous people. She suggested that following-up on the CEC study on Participation of Indigenous Peoples in the CEC, which was carried out in 2003, could be a logical starting point. She conveyed the views of the public that the amount of \$73,000 should not be seen as the solution to the concerted effort that are required for involving indigenous peoples in the work of the CEC, but that this was a good start for getting some thoughts into the initiative. In closing, she took the opportunity to congratulate the Parties for progress made on the Article 10(6) working group.

The Alternate Representative from the United States referred to the *American Indian Environmental Office* (AIEO) and the *Tribal Operations Committee* (TOC) that were established to identify ways of involving indigenous peoples in the delivery and implementation of EPA's program. He invited JPAC to contact AIEO should they be interested in learning more about their process.

In closing, Gustavo Alanís-Ortega stressed the need for the CEC to take into account the experience gained from the Symposium on Maize and Biodiversity and to identify related topics for the development of the next Operational Plan. He also invited Canada to provide an update on the selection of their new JPAC member. The Canadian Alternate Representative indicated that progress was being made and that Canada would always endeavor to have all members nominated in time for a Council Session. In response to a question on the revitalization of Mexico's National Advisory Committee (NAC), the Mexican Alternate Representative indicated that Mexico was in the process of reviewing its participation in all committees and undertook to provide a response within the next few weeks.

Chantal Line Carpentier of the Secretariat briefed the Alternate Representatives and JPAC on the work of the Article 13 Advisory Group. By way of introduction, she outlined the process that was followed for the selection of members on the Advisory Group and of the authors of the Chapters. She indicated that the nine chapters had been posted on the CEC website for a public comment period that will end on 12 April 2004. She also indicated that the executive summary of findings and recommendations of the Advisory Group would be available by mid-May and that the Advisory Group would endeavor to provide the Council with a draft of the executive summary in late March or early April. In closing, she noted that any areas of disagreement would be included as part of an Annex to the report.

JPAC commended Ms. Carpentier and the Secretariat for their excellent work in facilitating this initiative. Considering the high level of interest and sensitivities expressed by the public during the Symposium, as well as the fact that the public will be presented in great numbers and with high expectations in Puebla, JPAC stressed the importance that Council authorize the release of

the report to the public in advance of the Council Session. They cautioned that not doing so would jeopardize the CEC's credibility.

Item 9 Closure of the Session

In closing the session, the Chair thanked all participants for a very productive meeting and assured JPAC that a response to their advice was forthcoming.

SESSION 04-01 OF ALTERNATE REPRESENTATIVES

Oaxaca, Mexico, 11—12 March 2004

Delegations List

(as of 2/03/2004)

CANADA

Alternate Representative

Norine Smith, Environment Canada
Rita Cerutti, Environment Canada
Kathy Graham, Environment Canada
Timothy Gallagher, Environment Canada
Martin Roy, DFAIT
Patrice Laquerre, DFAIT

MEXICO

Alternate Representative

José Manuel Bulás, UCAI, Semarnat
José Manuel Medina Aguilar, UCAI, Semarnat
María Teresa Bandala, UCAI, Semarnat
Erika López, UCAI, Semarnat
Roger Peniche Sala, UCAI, Semarnat
Maria Elena Porrás Calderon, UCAI, Semarnat
Mariana Bellot, UCAI, Semarnat
José Lugo Rodríguez, UCAI, Semarnat

UNITED STATES

Alternate Representative

Jerry Clifford, Office of International Affairs, EPA
David Redlin, Office of International Affairs, EPA
Janiece Gilbreath, Office of International Affairs, EPA
Heidi Bell, Office of International Affairs, EPA
Nadtya Ruíz, Office of International Affairs, EPA
David Gravalles, Office of General Counsel, EPA
Joseph Ferrante, Office of International Affairs, EPA
Sylvia Correa, Office of International Affairs, EPA
Robert Wing, Office of General Counsel, EPA
Mathew Witosky, Office of International Affairs, EPA
Mark Linscott, United States Trade Representative
Linda Allen, Western Hemisphere Affairs, US Department of State

JOINT MEETING WITH JPAC

JPAC Chair

Donna Tingley

Members

Gustavo Alanís-Ortega

Mindahi Crescencio Bastida

Dan Christmas

Patricia Clarey

Adriana Nelly Correa

Dinkerrai Desai

Arturo Duran

Jane Gardner

Patricia McDonald

Merrell-Ann Phare

Carlos Sandoval

Laura Silvan

SECRETARIAT

Executive Director

William Kennedy

Julie-Anne Bellefleur, Council Secretary

Chantal Line Carpentier, Head, Environment, Economy and Trade

Geoffrey Garver, Director, Submissions on Enforcement Matters Unit

Hernando Guerrero, Director of Mexico Liaison Office

Evan Lloyd, Director of Communications

Doug Wright, Director of Programs

Nathalie Daoust, Executive Assistant

Yamirka Gómez, Administrative Support

**SESSION 04-01 OF ALTERNATE REPRESENTATIVES
DRAFT AGENDA**

To be held on Thursday, 11 March 2004 from 12:00 a.m. to 8:30 p.m.
and continuing on Friday, 12 March from 9:00 a.m. to 3:30 p.m.

Hotel Victoria, Salón Yagul
Lomas del Fortin 1, Oaxaca, Mexico
Tel: 011.52.951.515.2633
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Chair: Mexico

Thursday, March 11

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|---------------|--|
| 10:00 — 12:00 | Alt. Reps' private breakfast meeting with TRAC |
| 12:00 — 12:10 | Item 1 Adoption of the agenda |
| 12:10 — 12:50 | Item 2 Report by the Executive Director and question period |
| 12:50 — 13:30 | Item 3 Report by JPAC Chair and question period |
| 13:30 — 14:45 | Lunch |
| 14:45 — 15:15 | Item 4 Adoption of summary records |
| 15:15 — 16:15 | Item 5 Submissions on Enforcement Matters under Articles 14 and 15 |
| 16:15 — 17:00 | Break |
| 17:00 — 19:00 | Item 6 2004 Council Session |
- a) Exchange views on the preliminary draft agenda for the Council Session
 - b) Discuss and come to agreement on a draft Council agenda
 - broad themes proposed by the Parties
 - specific topics to be discussed
 - vision/thoughts on ministerial communiqué
 - c) Discuss logistics/draft general program of events, including timing for the ministers' private meeting)

- d) Discuss and agree to the format of the public portion of the Council session (see Programme of public events, 9:15-11:15 on 22 June)

19:00 — 20:30 Item 7 Ten-year review initiative and retreat
 20:30 Alternate Representatives private dinner

Friday, March 12

7:30 — 9:00 Private breakfast for Alternate Representatives, JPAC Chair and Executive Director
 9:00 — 12:30 Item 6 2004 Council Session (cont'd)
 12:30 — 13:00 Break
 13:00 — 15:00 Item 8 Joint meeting with JPAC
 15:00 — 15:30 Debriefing by the Secretariat on results of the Symposium and by the Chair of the Advisory Group on draft recommendations
 15:30 Item 9 Next meeting and closure of the session

Note: Dress code for the Alternate Representatives' meeting is casual (no tie, no jacket)

**SESSION 04-01 OF ALTERNATE REPRESENTATIVES
ANNOTATIONS TO THE AGENDA**

Item 1 Adoption of the agenda

The Council shall adopt the agenda.

DOCUMENTS:

- a) Draft annotated agenda (distributed 2/03/2004) C/C.01/04-01/AGEN/01/Rev.4

Item 2 Report of the Executive Director

The Executive Director will report on Secretariat activities and any matter requiring the attention of the Alternate Representatives. One such issue relates to the large number of CEC working groups presently in existence and the need, in the opinion of the Executive Director, to review their mandates and structure in order to identify changes that will yield better policy guidance, higher visibility and greater influence for the work program.

DOCUMENTS:

- a) Report of the Executive Director (distributed 1/03/2004)

Item 3 Report by JPAC Chair

Under this item the JPAC Chair will provide an update on JPAC's activities.

DOCUMENTS:

- a) Provisional Agenda of the JPAC regular session 04-01 (distributed 21/01/2004)
- b) Letter dated on 23 October 2003 from the JPAC Chair to Council re: the North American Fund for Environmental Cooperation (NAFEC) (distributed 23/10/2003)
- c) JPAC Advice 03-03 dated 12 November 2003: Proposed Operational Plan for the Commission for Environmental Cooperation (CEC) of North America for 2004–2006 (distributed 14/11/2003)
- d) JPAC Advice 03-04 dated 18 November 2003: The Environmentally Sound Management and Tracking of Hazardous Wastes and Hazardous Recyclable Materials (distributed 24/11/2003)
- e) JPAC Advice 03-05 dated 17 December 2003: Limiting the scope of factual records and review of the operation of CEC Council Resolution 00-09 related to Articles 14 and 15 of the North American Agreement on Environmental Cooperation (distributed 18/12/2003)
- f) JPAC Advice 03-06 dated 9 January 2004: Preventing and Controlling Invasive Species in North America (distributed 13/01/2004)

Item 4 Adoption of Summary Records

In accordance with Council Rules of Procedure (R.11), the Alternate Representatives are expected to approve the summary record of their last session(s) held on 20-21 November and 19 December 2003.

DOCUMENTS:

- a) Summary record of Session 03-06 (distributed by Canada 23/02/2003)
- b) Summary record of Session 03-07 (distributed by Canada 23/02/2003)

Item 5 Submissions on Enforcement Matters under Articles 14 and 15**Item 5.1 Submission SEM-02-001: Ontario Logging**

Pursuant to Council Resolution 03-05, on 17 December 2003 the Secretariat supplemented its recommendation to Council that a factual record be prepared for submission 02-001. As provided by Article 15(2) of the NAAEC, Council may, by a two-thirds vote, instruct the Secretariat to prepare a factual record on the matter.

DOCUMENTS:

- a) Draft Council resolution (to be distributed by Canada)
- b) Secretariat's notification to Council pursuant to Council Resolution 03-05 (distributed 17-12-2003)
- c) Council Resolution 03-05 (available at http://www.cec.org/pubs_docs/documents/index.cfm?ID=1151&varlan=english)

Item 5.2 Limiting the scope of factual records and review of Council Resolution 00-09

The Alternate Representatives may wish to exchange views on the review of Council Resolution 00-09 and JPAC Advice 03-05 (Limiting the scope of factual records).

DOCUMENTS:

- a) Council Resolution 00-09 (available at http://www.cec.org/who_we_are/council/resolutions/index.cfm?varlan=english&year=2000)
- b) JPAC Advice 03-05 (distributed 17/12/2003)

Item 6 2004 Council Session

The Alternate Representatives are invited to exchange views and come to agreement on the preliminary draft agenda for the 11th Regular Session of the Council to be held in June 2004 in Puebla, Mexico. They may also wish to review the draft general program of events and discuss logistics, including timing for the ministers' private meeting.

In preparation for their joint meeting with JPAC on 12 March, the Alternate Representatives may also wish to discuss JPAC's proposal relating to the timing and format of the public portion of the Council Session, which is to be conveyed to the public on 19 March 2004 with the release of the program of events opened to the public. They may also wish to exchange views on how communications between the Council and JPAC may be strengthened.

DOCUMENTS:

- a) Preliminary draft agenda for Council Session (distributed 26/02/2004) C/04-00/AGEN/01
- b) Draft preliminary general program (distributed 26/02/2004) C/04-00/PROG/01
- c) Draft program of events opened to the public (distributed 26/02/2004)
- d) Timeline for the preparation of the 2004 Council Session
(distributed 2/3/2004) C/04-00/PLAN/02/Rev.1

Item 7 Ten-year review initiative and retreat

Following their private meeting with members of the Ten-year Review and Assessment Committee (TRAC) earlier in the day, the Alternate Representatives may wish to exchange views on how the ten-year review initiative may be addressed at the Council Session and discuss arrangements for their retreat tentatively scheduled for 4 or 5 May 2004.

DOCUMENTS:

- a) TRAC's schedule (distributed 6/02/2004)

Item 8 Joint meeting with JPAC

On Friday, March 12, the Alternate Representatives will hold their first meeting of 2004 with JPAC. Items for discussion include an update on the outcome of the Article 10(6) Environment and Trade Officials meeting; the format of the public portion of the 2004 Council Session, the substance and effectiveness of the Council's joint meeting with JPAC in June and the review of Council Resolution 00-09. The Alternate Representatives and JPAC members may also wish to discuss how communications between the Council and JPAC may be strengthened.

The joint meeting with JPAC will conclude with a briefing session by the Secretariat on the results of the Symposium on Maize and Biodiversity and by Dr. Jose Sarukhan, Chair of the Advisory Group, on the draft recommendations of the Advisory Group.

DOCUMENTS:

- a) JPAC proposal re: Draft program of public events at 2004 Regular Session of Council (distributed 10/02/2004)
- b) Letter dated 12 December 2003 from JPAC Chair to Council relating to the substance and effectiveness of the Council/JPAC joint meetings and communications issues (distributed 20/01/2004)
- c) JPAC Advice 03-05 dated 17 December 2003: Limiting the scope of factual records and review of the operation of CEC Council Resolution 00-09 related to Articles 14 and 15 of the North American Agreement on Environmental Cooperation (distributed 18/12/2003)
- d) Agenda for the Symposium on Maize and Biodiversity: the Effects of Transgenic Maize in Mexico (distributed 10/02/2004 and available at http://www.cec.org/pubs_docs/documents/index.cfm?varlan=english&ID=1409)
- e) List of members on the Maize and Biodiversity Article 13 Advisory Group (available at <http://www.cec.org/maize/board/index.cfm?varlan=english>)

Item 9 Next meeting and closure of the session

The Chairperson is expected to close the session.

DOCUMENTS:

- a) Schedule of sessions of Alternate Representatives for 2004, as of 2 March 2004 (distributed 2/03/2004) C/C.01/03-06/PLAN/01/Rev.4

Report of the Executive Director on the Activities of the Commission for Environmental Cooperation

Oaxaca, Mexico, 11–12 March 2004

1 Highlights

As profiled in the recently concluded Operational Plan for 2004–2006, the strategic approach initiated this year brings a new focus to the CEC. The highlights from the preceding year's accomplishments are:

Strengthening partnerships

The past few months have seen continued work with partners in pursuit of CEC objectives. The Secretariat is collaborating with the North American Pollution Prevention Partnership (NAPPP) in an initiative to hold the electronic manufacturing and importing industry to the highest standards concerning the use of hazardous substances by 2006 or 2007. This initiative—the Electronics Toxics Reduction Challenge—will be presented to Council in June. Other partnership developments include the negotiation of World Bank funding for the capacity-building stage of the bio-monitoring project under the environmental monitoring and assessment North American Regional Action Plan (NARAP).

Progress on hazardous waste management

The Secretariat is making steady progress in the execution of Council's directive regarding management of hazardous waste. The draft report on opportunities to improve the tracking of transboundary hazardous waste shipments in North America was completed in January, with a final report to be published in the months ahead. Moreover, a priority wastestream of common concern has been identified, and an outline of steps to address the environmentally sound management of spent lead acid batteries has been developed for the review of the Parties.

Conserving biodiversity

The CEC has been taking steps toward implementation of the new strategic plan for North American cooperation in biodiversity conservation. For example, the collaboration of governments, NGOs, marine conservation scientists and others has just resulted in the identification of the first three Marine Species of Common Conservation Concern, for the purposes of conservation and monitoring across our three countries. This subset of 16 such species of common conservation concern will now be the subject of the North American Conservation Action Plan (NACAP).

Addressing the impacts of pollution on the environment and human health

As directed by Council, the working group on the Sound Management of Chemicals has completed a draft paper on new directions for this important initiative, and we look forward to its review and consideration at our next Council session in June. We are pleased to report the completion of the chlordane NARAP and the ongoing development of the lindane NARAP. Public workshops for the latter, it should be noted, have been completed in Mexico and, most recently, Alaska, where they were held in conjunction with a major tribal conference. This tribal conference facilitated the engagement of an important northern indigenous population for whom lindane and other HCH pollution is, of course, an important issue.

Maize and biodiversity

Finally, we note the progress towards completion of the Secretariat's Article 13 report, *Maize and Biodiversity: the Effects of Transgenic Maize in Mexico*. We are here in Oaxaca in conjunction with a public symposium and review of the draft report. The obvious public interest in this subject, and the contribution of renowned and international scientists in its preparation and review are a testament to its importance. We really look forward to the deliberations of the symposium and the considered recommendations that will flow from the ongoing work of the international advisory group guiding this project and report. The public and the Parties have improved their understanding of the state of, and outlook for, the North American environment and its relation to human and ecosystem health.

2 Achieving CEC goals

Goal 1: To foster understanding of the state of our environment, and its relation to the economy and trade in North America

Objective A: *The public and the Parties have improved understanding of the state of and outlook for the North American environment, and its relation to human and ecosystem health*

Facilitating data harmonization and information sharing across North America to foster a better understanding of the current status of the North American environment

PRTR: The Secretariat will soon publish a special feature report in the *Taking Stock* series on toxic chemicals and children's health. Work is also underway among the national pollution release and transfer register (PRTR) officials to update and fulfill the Action Plan to Enhance the Comparability of PRTRs in North America, and to continue supporting Mexico's efforts to implement mandatory PRTR reporting.

Information management: Initial core datasets have been established using the CEC-adopted map reference and documentation standards for data management and visualization. Datasets from program areas have been integrated to support pilot projects in Freshwater, Priority Conservation Areas in B2B, Air Quality and Renewable Energy.

Program support and collaborative projects: An overall assessment of program requirements is now complete. Initial GIS functionality has been established to meet the projects' requirements. Documentation of information resources will provide access to CEC expertise within each program.

North American partnerships for environmental information: Opportunities for collaboration with the major mapping programs in North America have strengthened the common use of standards and protocols to facilitate harmonization of information. These standards include the identification of alternative data and information sources to support CEC initiatives—such as the Inter-American Water Resources Network, the North America Atlas Framework and the Inter-American Biodiversity Information Network. We initiated a review of institutional agreements and technical requirements to implement CEC Forums in order to encourage the exchange of information and to support partner interaction for each program area.

Assessing and informing the public and decision makers on the impacts of environmental degradation on human and ecosystem health in North America

Children's Health and Environment: Work has begun on the development of the first North American report on indicators of children's health, as called for in Council Resolution 03-10. A

consultant has been selected, country-reporting templates developed, and a meeting of the Expert Review Panel and Steering Group for this project scheduled to review the country reports and draft chapters, 12–14 March 2004.

Objective B: Trade officials and the public understand the environmental effects of liberalized trade, and use that understanding to inform new Agreements

Assessing and disseminating findings on environment/trade relationship in a transparent manner

A report on environmental impacts of the food-processing sector has been drafted. It will be ready for review in March 2004.

An annotated bibliography of the trade and environment literature has been produced. It will be posted on the web site in March 2004.

Communicating NAFTA lessons learned to trade negotiators and world experts

Two environmental first meetings were conducted: one was on hazardous waste with law and policies; the other was a joint meeting with SMOC on mercury in the Great Lakes.

The CEC hosted a meeting in Ottawa with Environment Canada and the Department of Foreign Affairs and International Trade to exchange our respective results and to start identifying areas of improvement.

Goal 2: To act as a catalyst to improve domestic law and policy, and enhance environmental enforcement and compliance across North America

Objective A: Stronger cooperation in the development, improvement and dissemination of information concerning environmental laws, policies, standards and technical requirements

Facilitate and promote the sharing of case studies that demonstrate national and local experiences and best practices in priority sectors

The head of the Law and Policy program has met with Environment Canada, Agriculture Canada, the *Comisión Nacional del Agua*, the US EPA and the (US) Army Corps of Engineers to begin assessing its collection of case studies regarding optimal North American water quality practices.

Update and improve the Summary of Environmental Law in North America database on a continuing basis

The head of the Law and Policy program has met with members of the Enforcement and Compliance Working Group to discuss options for enhancing the import and export compliance support materials developed by the CEC, the governments and nongovernmental sectors. It has been agreed to explore the idea of working with the National Center for Manufacturing Sciences (NCMS) in the US and private sector partners in Canada and Mexico, in order to expand a web-based NCMS-operated border center that will offer trinational compliance assistance information.

Identify priority hazardous wastestreams and recyclables in 2004 and 2005 and, in subsequent years, implement a common approach for the environmentally sound management of these priority wastestreams and recyclables

The Parties have identified their first priority wastestream of common concern: spent lead acid

batteries. The Secretariat has interviewed the Parties about the issues they would like to see addressed regarding the environmentally sound management of spent lead batteries, and prepared an outline for their review.

In January, the Secretariat posted on its web site and mailed to stakeholders a report, *Crossing the Border: Opportunities to Improve the Tracking of Transboundary Hazardous Waste Shipments in North America*. The draft report was the result of extensive discussions with the Parties about how transboundary shipments could be improved.

Objective B: The Parties enhance compliance with, and enforcement of, their environmental laws and regulations

Providing a forum for Parties and stakeholders to confer on issues of common concern

In January, the Enforcement Working Group (EWG) met and approved final changes to carry out the strategic plan. The EWG also agreed to implement the current 2004 program plan by holding a workshop on vessel pollution in Washington, DC, in May, and undertook better ways of identifying, prioritizing and communicating the environmental issues behind future projects. In February, the North American Wildlife Enforcement Group (NAWEG) held an intelligence training seminar with wildlife enforcement officials from Canada, Mexico and the United States.

Goal 3: To mobilize international cooperation to resolve critical North American environmental issues

Objective A: Conserve North America's biodiversity and use it sustainably

Contributing to the safeguarding of ecologically significant regions

The Marine Ecoregions and the Baja California to Bering Sea Priority Conservation reports are nearing completion. Review is underway, to be followed by editing and translation. The B2B information has been integrated into the CEC Geographical Information System (GIS), linking the Marine Priority Conservation Areas to the 2004 World Database of Protected Areas and Marine Ecoregions.

Starting at the meeting held in Ensenada on 23 January 2004, participants from the three countries have been reviewing the progress thus far on the B2B Priority Conservation Areas (PCA) project, the Marine Ecoregions project, and the Marine Protected Areas (MPA) management effectiveness project. They have also reviewed and provided feedback on the vision for the North American MPA Network. They have also advised how to identify pilot sites and develop the North American MPA Network. They are organizing a workshop to define action plans for the piloting of the North American MPA Network in the B2B region.

In collaboration with The Nature Conservancy, a trinational advisory group has been established to build the grasslands framework. They are currently discussing the terms of reference to guide collaborative work.

Contributing to the conservation and recovery of migratory and transboundary species

The Species report is in its final stages of editing and translation. The distribution maps for all the Species of Common Conservation Concern (SCCC) have been linked to the terrestrial and marine ecoregions maps.

Beginning at the meeting held in Ensenada 21–22 January 2004, key participants from the three

countries have been reviewing progress made on the Marine Species of Common Conservation Concern (MSCCC) and Terrestrial Species of Common Conservation Concern (TSCCC) project. They have suggested ways of developing a common NACAP framework, and defined criteria and processes for selecting the first three species for which NACAPs will be developed. The link between MSCCC and the North American Marine Protected Areas Network (NAMPAN) was also highlighted during this meeting.

The partnership to monitor the ferruginous hawk, a SCCC, was increased to 14. The results were posted at <<http://www.ferruginoushawk.com>>.

Contributing to the reduction or elimination of common threats to North American biodiversity

Three country leads, in coordination with the CEC, are developing a framework for a MSCCC threat analysis report. The initial CEC report has been submitted. It includes the identification of possible impacts of contaminants (pesticides, POPs and heavy metals) on bird populations, as well as recommendations for trilateral collaboration.

A trinational assessment of the ecological and economic impacts of invasive algae in the B2B region is underway. North American priorities to deal with invasive species from the perspective of decision-makers, senators and parliamentarians were identified during the Miami Roundtable on Invasive Species.

Objective B: Ensure North American environmental, economic and trade policies are mutually supportive

Promoting increased trade in environmentally preferable goods and services

The CEC released a study of the trade in environmental goods and services among North American countries and with the rest of the world. A report has been drafted on the economic and environmental impacts of various definitions of environmental goods and services, with a focus on Mexico.

The CEC has pursued ongoing work with the technical working group on the estimation of environmental benefits from renewable energy and energy efficiency. A database has been set up with an interactive map of each province or state's capacity for producing renewable energy, already installed or in the planning stages.

Under review is the North American Market Study (NAMS) for grassland-fed and organic bison and cattle, highlighting awareness of the link between these animals and prairie biodiversity, and studying the public's willingness to pay for meat from these animals.

We have published findings from the September meetings of palm producers, importers, church groups who buy the palms, and certifiers. We also initiated a pilot project involving direct trade between producers and church groups.

The draft report describing presently available Mexican eco-labels, lists, and other means that could be used to support procurement policies is ready, as are the draft reports on the best examples of green procurement policies supportive of development of NAGPI recommendations to the Parties.

The CEC released the joint CEC and Environment Canada report, *Linking Environmental*

Performance to Business Value: a North American Perspective. The memorandum of understanding with Environment Canada that leads the network of financial practitioners in North America, and the MOU with UNEP on the North American Task Force of the UNEP financial initiative have been signed. One of the products of the memorandum signed with Environment Canada is a draft report on disclosure of environmental information in the mining sector.

Encouraging the Parties to make greater use of policy instruments that support “greener” trade

The CEC published a paper on the market-based mechanisms on renewable energy, energy efficiency and carbon sequestration in the three NAFTA languages.

Objective C: Prevent or reduce pollution impacts on human and ecosystem health of mutual concern in North America

Facilitating the development and implementation of North American strategies and actions to protect human health and the environment

A draft background paper, *New Directions under the Commission for Environmental Cooperation Sound Management of Chemicals Initiative*, was prepared. It was discussed with selected participants on 24 February 2004. It will be offered on the CEC web site for public comment, then finalized and presented to Council in June 2004.

The chlordane and the DDT NARAPs have been completed, the latter now being managed as part of the Mexico/Central America DDT Global Environment Facility (GEF) project. The draft NARAP on dioxins, furans and hexachlorobenzene has undergone public comment. Changes are being made to reflect the public’s input, and an implementation plan is being prepared in anticipation of formal adoption.

The Environment Monitoring and Assessment work plan is being finalized, based on 15–16 January 2004 discussions. The biomonitoring project was wrapped up at the Cuernavaca workshop of 19–20 February 2004. We are awaiting transfer of World Bank funds (US\$100,000) before launching the capacity-building part of that project.

The PCB NARAP final report is being sent to the SMOC Working Group for approval. Close-out of the NARAP is anticipated in 2004. Work on the mercury NARAP is ongoing, with emphasis on assistance to Mexico regarding remediation options for the Zacatecas area. The CEC-sponsored two-year mercury-monitoring pilot project for Mexico has started, and results are coming in.

The lindane NARAP development process is ongoing, with public workshops completed in Guadalajara, and Anchorage, Alaska. The lead decision document, having undergone public review, is now ready for the approval of the SMOC Working Group and for presentation to Council in June 2004.

Mexico and Canada have presented new members in the SMOC Working Group.

Children’s Health and Environment: Council has identified several priorities for work, including testing (shared with Goal 1 above) for lead exposure to children, a follow-up on asthma and other respiratory illness, assistance to healthcare providers, a biennial review of the Cooperative Agenda for Children’s Health and the Environment, and support to the Expert Advisory Board.

The biennial review is underway and will be available for Council's consideration at the June 2004 meeting. The Trilateral Children's Health Team is forming the necessary work groups for follow-up actions on asthma and other respiratory illness as set out in the results of the Experts' Workshop on Childhood Asthma Surveillance held in November 2003. As for setting priorities for further work on lead, we are awaiting confirmation from Mexico.

Air Strategy: The North American Air Working Group (NAAWG) will meet with the Joint Public Advisory Committee (JPAC) on 10 March in Oaxaca to review and discuss the NAAWG draft strategic framework. The NAAWG plans to complete the framework prior to the June 2004 Council Session.

Fostering private sector actions to adopt sound approaches to environmental protection

At a meeting in January, the Secretariat submitted to the Parties a proposed outline of the review of optimal environmental management systems. The Secretariat led a panel discussion on the CEC EMS project with Environmental Health and Safety Managers, also that month.

The North American Pollution Prevention Partnership has prepared an initiative (Electronics Toxics Reduction Challenge) that will be discussed with key players from the North American electronics industry at the (US) National Pollution Prevention Roundtable in Baltimore next April. The project would challenge all companies, whether they manufacture or import electronic equipment into North America, to make voluntary commitments to the highest standards regarding restriction of the use of hazardous substances in electronic equipment by 2006 or 2007. Once it has been discussed with the electronics industry, the initiative will be presented to the Council in June.

Goal 4: To provide a forum for public dialogue and participation concerning environmental issues in North America

Objective A: The North American public and NAAEC Parties view the citizen submission process as a useful and valuable mechanism for enhancing enforcement of and compliance with environmental law in North America

Article 14 Submissions

Pursuant to Council Resolution 03-15, the Secretariat released the **Rio Magdalena/SEM-97-002** factual record to the public on 11 December 2003. This was the sixth factual record released in 2003. Pursuant to Council Resolution 03-16, the Secretariat began development of a factual record for the **Pulp and Paper/SEM-02-003** submission. The Secretariat received one new submission, **Hazardous Waste in Arteaga/SEM-04-001** (27 January 2004).

The status of the eleven submissions under review as of 11 February 2004 is as follows:

Draft factual records in development

The following three draft factual records are being developed as instructed by Council:

- 1) **Molymex II/SEM-00-005** (concerning Mexico's enforcement in relation to air quality and environmental impacts of a molybdenum processing plant).
- 2) **Tarahumara/SEM-00-006** (concerning Mexico's enforcement in relation to access to environmental justice by indigenous communities).

- 3) **Pulp and Paper/SEM-02-003** (concerning Canada's enforcement of s. 36(3) of the Fisheries Act and provisions of the Pulp and Paper Effluent Regulations in regard to ten mills in Ontario, Quebec, New Brunswick, Nova Scotia and Newfoundland).

Council vote pending, following notification that a factual record is warranted:

Ontario Logging/SEM-02-001 (concerning Canada's enforcement of section 6(a) of the Migratory Bird Regulations against the logging industry in Ontario). On 17 December 2003, the Secretariat informed the Council that the Secretariat considers that the submission warrants the development of a factual record. The Council, by a two-thirds vote, may instruct the Secretariat to proceed with the preparation of a factual record.

Determination pending whether a factual record is warranted under Article 15(1):

- 1) **El Boludo Project/SEM-02-004** (concerning Mexico's enforcement of its environmental laws with respect to the El Boludo mining project). This submission is being reviewed by the Secretariat in light of Mexico's response to determine whether it warrants development of a factual record.
- 2) **Ontario Power Generation/SEM-03-001** (concerning Canada's enforcement of its environmental laws with respect to Ontario Power Generation's coal-fired power plants).
- 3) **ALCA-Iztapalapa II/SEM-03-004** (concerning Mexico's enforcement of its environmental laws with respect to a citizen complaint filed with the Office of the Federal Attorney General for Environmental Protection—Profepa).
- 4) **Montreal Technoparc/SEM-03-005** (concerning Canada's enforcement of its federal Fisheries Act against the City of Montreal in regard to the discharge into the St. Lawrence River of toxic pollutants from the city's Technoparc site).
- 5) **Cytrar III/SEM-03-006** (concerning Mexico's enforcement of its environmental laws with respect to a hazardous waste landfill owned by Cytrar, S.A. de C.V. in Sonora, Mexico).

Awaiting receipt of a response from the concerned Party under Article 14(3)

Lake Chapala II/SEM-03-003 (concerning Mexico's enforcement of its environmental law with respect to the Lerma-Chapala-Santiago-Pacífico basin). On 19 December 2003, the Secretariat requested a response to the submission from Mexico under Article 14(2). Mexico has up to 60 business days to provide its response, in accordance with Article 14(3).

Reviewing a new submission under Article 14

Hazardous Waste in Arteaga/SEM-04-001 (concerning Mexico's enforcement of the LGEEPA and hazardous waste regulations in connection with three companies in Arteaga). The Secretariat is reviewing this submission to determine whether it meets the criteria of Article 14(1) and, if so, whether it merits requesting a response from the concerned Party under Article 14(2).

Historical Background of Submissions

- The 32 submissions no longer pending were addressed as follows:

Thirteen submissions have been dismissed on the grounds that they did not warrant further consideration based on Article 14(1) or (2):

Spotted Owl/SEM-95-001
Logging Rider/SEM-95-002
Aage Tottrup/SEM-96-002
CEDF/SEM-97-004
Biodiversity/SEM-97-005
Guadalajara/SEM-98-001
Ortiz Martínez/SEM-98-002
Molymex I/SEM-00-001
Jamaica Bay/SEM-00-003
AAA Packaging/SEM-01-002
Dermet/SEM-01-003
Alca-Iztapalapa/SEM-02-005
Home Port Xcaret/SEM-03-002

- **Two submissions have been terminated under Article 14(3)(a):**

Methanex/SEM-99-001
Neste Canada/SEM- 00-002

- **Five submissions have been terminated under Article 15(1):**

Oldman River I/SEM-96-003
Lake Chapala/SEM-97-007
Cytrar/SEM-98-005
Great Lakes/SEM-98-003
Mexico City Airport/SEM-02-002

- **One submission has been withdrawn by the Submitters:**

Fort Huachuca/SEM-96-004

Nine factual records have been prepared and made public:

Cozumel/SEM-96-001
BC Hydro/SEM-97-001
Metales y Derivados/SEM-98-007
Migratory Birds/SEM-99-002
Aquanova/SEM-98-006
Oldman River II/SEM-97-006
BC Mining/SEM-98-004
BC Logging/SEM-00-004
Rio Magdalena/SEM-97-002

The Council has dismissed two submissions under Article 15(2) following notification from the Secretariat that preparation of a factual record was warranted:

Quebec Hog Farms/SEM-97-003

Cytrar II/SEM-01-001

3 Administration and Financial Resources

The Secretariat has received the final 2003 contribution from Canada for 2003. We also received P\$1,338,670 from Mexico in January 2004 towards its 2003 contribution. The amount receivable at this point is P\$370,730.

The third quarterly report for 2003 was sent to the Parties in November 2003. The fourth one was sent at the end of February.

At the moment, the US dollar versus the Canadian dollar has been fluctuating in the 1.30–1.31 range, staying quite close to the level at which we established the 2004 budget.

Human Resources

The recruitment for the French editor replacing Diane Colucci is ongoing.

The recruitment process for program manager Sound Management of Chemicals position has been completed and Mr. Luke Trip has been contracted.

The recruitment process for the position of program manager for Pollutants and Health has been completed.

Office Lease

The renewal of the CEC's lease has been signed.

4 The North American Fund for Environmental Cooperation (NAFEC)

The North American Fund for Environmental Cooperation (NAFEC) is concluding its activities. Projects approved in 2002 and 2003 will continue to receive CEC administrative support until the completion of their activities. From 1995 until 2003, NAFEC awarded 196 grants for a total of C\$9.36 million.

5 Council Session

Canada and the United States have confirmed the availability of their ministers to attend the Eleventh Regular Session of the Council on 22-23 June as proposed by Mexico. As host of the Session, Mexico is expected to confirm the venue as soon as possible. Further to the guidance provided by the Alternate Representatives at their November 2003 session, the Secretariat submitted, for the Parties' consideration, a draft outline of the agenda for Council's in-camera session. The Alternate Representatives are expected to firm up the list of agenda items and deliverables at their next meeting, to be held on 11–12 March 2004, in Oaxaca, Mexico. They will also be invited to consider a proposal submitted by JPAC relating to the timing and format of the public portion of the Council Session. On 19 March 2004, the Secretariat plans to announce to the public the date, venue and format of the public session.

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:

José Manuel Bulás
Government of the United Mexican States

Judith E. Ayres
Government of the United States of America

Norine Smith
Government of Canada