

Secretariat of the Commission for Environmental Cooperation

Overall Plan to Develop a Factual Record

Submission I.D.: SEM-98-006

Submitter(s): Grupo Ecológico “Manglar”, A.C.

Party: United Mexican States

Date of this plan: 14 December 2001

Background

On 20 October, 1998, Grupo Ecológico “Manglar”, A.C. presented to the Secretariat of the Commission for Environmental Cooperation (CEC) a submission in accordance with Article 14 of the North American Agreement on Environmental Cooperation (NAAEC). The submission asserts that Mexico is failing to effectively enforce its environmental law with respect to a shrimp farm operated by Granjas Aquanova, S.A. de C.V. (hereinafter, “Granjas Aquanova”) in the state of Nayarit, Mexico, that allegedly has caused severe damage to wetlands, water quality, fisheries and to the habitat of a number of protected species.

On 16 November 2001, the Council decided unanimously to instruct the Secretariat to develop 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 NAAEC (Guidelines)*, with respect to the assertions Mexico is failing to effectively enforce provisions of its General Law on Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente-General Environmental Law*), the Forestry Law (*Ley Forestal*), Mexican Official Standards NOM-062-ECOL-1994¹ (NOM-062) and NOM-059-ECOL-1994² (NOM-059), the Law of National Waters (*Ley de Aguas Nacionales*) and its Regulations, the Fisheries Law (*Ley de Pesca*) and its Regulations, and the Federal Criminal Code (*Código Penal Federal*), in connection with the activities of Granjas Aquanova. The Council directed the Secretariat, in developing the factual record, to consider 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.

¹ *Establishing specifications to mitigate the adverse effects on biodiversity of land use changes from forestry to agriculture.*

² *Determining endangered, threatened and rare species and subspecies of terrestrial and aquatic wildlife and those subject to special protection, and establishing specifications for their protection.*

Under Article 15(4) of the NAAEC, in developing a factual record, “the Secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific or other information: (a) that is publicly available; (b) submitted by interested non-governmental organizations or persons; (c) submitted by the Joint Public Advisory Committee; or (d) developed by the Secretariat or by independent experts.”

Overall Scope of the Fact Finding:

Granjas Aquanova, S.A. de C.V. has engaged in shrimp aquaculture operations in Isla del Conde, San Blas, Nayarit, since approximately 1995. The submission filed by Grupo Ecológico “Manglar”, A.C. asserts, and Mexico’s response also indicates, that Granjas Aquanova has committed violations of environmental law and of the environmental impact authorizations granted by the National Institute of Ecology (INE).

The General Environmental Law, the Forestry Law, Mexican Official Standard NOM-062 and particularly the three environmental impact authorizations granted to Granjas Aquanova, establish various environmental impact requirements. To prevent and control water contamination and protect aquatic ecosystems, the Law of National Waters and its Regulations establish the obligation to monitor and treat wastewater discharges and provisions for sustainable water use. The Fisheries Law and its Regulations regulate the introduction of new species to protect fisheries. Lastly, certain acts, like drying up wetlands without prior authorization or discharging wastewater without treatment or control, are considered environmental crimes under the Federal Criminal Code.

The alleged violations as to which the Submitters assert Mexico has failed to effectively enforce its environmental law include: non-compliance with conditions established in the environmental impact authorizations; non-compliance with orders issued by INE; unauthorized draining and filling of lagoons; unauthorized felling, clearing and burning of vegetation in the habitat of protected species; unauthorized land use changes and removal of forest cover; unauthorized discharges of contaminated wastewater and failure to monitor discharges; unauthorized diversion of natural watercourses; and obstruction of fishing activities. The principal environmental damages purportedly caused are mangrove mortality, the accelerated destruction of habitat of protected species and the degradation of water quality.

To prepare the factual record, the Secretariat will gather and develop information relevant to the facts concerning:

- (i) the alleged violations by Granjas Aquanova of the provisions cited in the submission of the General Law, NOM-062, the Forestry Law, the Law of National Waters and its Regulations, the Fisheries Law and its Regulations and the Federal Criminal Code;
- (ii) Mexico’s enforcement of those provisions with respect to Granjas Aquanova; and

- (iii) the effectiveness of Mexico's enforcement of those provisions with respect to Granjas Aquanova.

Overall Plan:

Consistent with Council Resolution 01-09, execution of the overall work plan will begin no sooner than 14 January 2002. All other dates are best estimates. The overall plan is as follows:

- Through public notices or direct requests for information, the Secretariat will invite the Submitters; JPAC; community members; the regulated community; and local, provincial and federal government officials to submit information relevant to the scope of fact-finding outlined above. The Secretariat will explain the scope of the fact finding, providing sufficient information to enable interested non-governmental organizations or persons or the JPAC to provide relevant information to the Secretariat (section 15.2 of the *Guidelines*). **[January 2002]**
- The Secretariat will request information relevant to the factual record from federal, state and local government authorities of Mexico, as appropriate, and will consider any information provided by a Party (Articles 15(4) and 21(1)(a) of the NAAEC). Information will be requested relevant to the facts regarding:
 - (i) the violations by Granjas Aquanova of the provisions cited in the submission of the General Law, NOM-062, the Forestry Law, the Law of National Waters and its Regulations, the Fisheries Law and its Regulations and the Federal Criminal Code;
 - (ii) Mexico's enforcement of those provisions with respect to Granjas Aquanova; and
 - (iii) the effectiveness of Mexico's enforcement of those provisions with respect to Granjas Aquanova. **[January 2002]**
- The Secretariat will gather relevant technical, scientific or other information that is publicly available, including from existing databases, public files, information centers, libraries, research centers and academic institutions. **[January through April 2002]**
- The Secretariat, as appropriate, will develop, through independent experts, technical, scientific or other information relevant to the factual record. **[January through June 2002]**
- The Secretariat, as appropriate, will collect relevant technical, scientific or other information for the preparation of the factual record, from interested non-governmental organizations or persons, the JPAC or independent experts. **[January through June 2002]**
- In accordance with Article 15(4), the Secretariat will prepare the draft factual record based on the information gathered and developed. **[June through September 2002]**

- The Secretariat will submit a draft factual record to Council, and any Party may provide comments on the accuracy of the draft within 45 days thereafter, in accordance with Article 15(5). **[end of September 2002]**
- As provided by Article 15(6), the Secretariat will incorporate, as appropriate, any such comments in the final factual record and submit it to Council. **[November 2002]**
- The Council may, by a two-thirds vote, make the final factual record publicly available, normally within 60 days following its submission, according to Article 15(7).

Additional information

The submission, Mexico's response, the Secretariat determinations, the Council Resolution, and a summary of these are available in the Registry on Citizen Submissions in the CEC home page www.cec.org or upon request to the Secretariat at the following address:

Secretariat of the CEC
Submissions on Enforcement Matters Unit
(SEM Unit)
393 St-Jacques St. West, Suite 200
Montreal QC H2Y 1N9
Canada