

Secretariat of the Commission for Environmental Cooperation

Amended Overall Plan to Develop a Factual Record

Submission I.D.: SEM-02-001 (Ontario Logging) &
SEM-04-006 (Ontario Logging II)

Submitters: Canadian Nature Federation
Canadian Parks and Wilderness Society
Earthroots
Federation of Ontario Naturalists
Great Lakes United
Sierra Club (United States and Canada)
Wildlands League

Represented by: Sierra Legal Defence Fund

Party: Canada

Date of this plan: 4 April 2005

Background

On 6 February 2002, the Submitters listed above filed with the Secretariat of the Commission for Environmental Cooperation (CEC) a submission alleging “the failure of the Canadian Government to effectively enforce s. 6(a) of the *Migratory Birds Regulations* against the logging industry in Ontario.” On 25 February 2002, the Secretariat determined that the submission, SEM-02-001 (Ontario Logging) (“Ontario Logging”), met the requirements of Article 14(1) of the *North American Agreement on Environmental Cooperation* (NAAEC) and merited requesting a response from the Party in accordance with Article 14(2). The Party submitted its response on 25 April 2002. On 12 November 2002, the Secretariat notified the CEC Council that the submission, in light of the Party’s response, warranted development of a factual record. On 22 April 2003, in Council Resolution 03-05, the Council voted unanimously:

TO DEFER consideration of the Secretariat’s notification of 12 November 2002, pending the following:

- a) the submitters being provided a period of 120 calendar days from the date of this resolution to submit the requisite sufficient information in support of the allegations set forth in SEM-02-001;

- b) the termination of the submission process for SEM-02-001 if the submitters elect not to provide further information within the 120 calendar day time frame;
- c) in the event such further information is provided, the Secretariat determining whether that information warrants a response from Canada or whether the submission process should be terminated;
- d) in the event such a response is requested and provided by Canada, the Secretariat, after considering both the new information provided by the submitters and the response of Canada to that information, notifying Council whether it recommends the preparation of a factual record.

On 20 August 2003, within the 120 calendar day time frame provided in Council Resolution 03-05, the Submitters provided the Secretariat with further information. On 21 August 2003, pursuant to Council Resolution 03-05, the Secretariat determined that the further information provided by the Submitters merited requesting a response from Canada and requested a response. On 16 October 2003, Canada submitted its response. On 17 December 2003, pursuant to Council Resolution 03-05, the Secretariat recommended preparation of a factual record.

On 12 March 2004, pursuant to Council Resolution 04-03, the Council voted 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; [...]

Regarding four forest management units (“FMUs”) for which the Submitters were unsuccessful in obtaining further information within the 120 calendar day time frame provided in Council Resolution 03-05, in Council Resolution 04-03, the Council stated:

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.

On 12 October 2004, the Submitters filed with the Secretariat submission SEM-04-006 (Ontario Logging II) (“Ontario Logging II”), containing additional information regarding

the four FMUs that were excluded from the scope of the factual record for Ontario Logging by Council Resolution 04-03 (Cochrane, Shiningtree, Temagami and Wawa, hereinafter “the four FMUs”). On 14 October 2004, the Secretariat asked Canada for a response to Ontario Logging II. Canada provided its response on 8 December 2004. On 17 December 2004, the Secretariat recommended preparation of a factual record for Ontario Logging II, and that the submission be combined with Ontario Logging for the purpose of developing one, consolidated factual record.

On 1 April 2005, in Council Resolution 05-04, the Council voted unanimously to:

INSTRUCT the Secretariat to consolidate this submission (SEM-04-006) with the Ontario Logging submission (SEM-02-001) for the purpose of developing one consolidated factual record for both submissions,

FURTHER INSTRUCT, for greater clarity, the Secretariat to include in the consolidated factual record the four (4) forest management units identified by the submitters in SEM-04-006, with respect to the alleged failure by Canada to effectively enforce Section 6(a) of the MBR in regard to clearcut logging activities carried out from 1 January to 31 December 2001 in those units;

DIRECT the Secretariat to provide the Parties with an amended overall work plan to address the four forest management units identified by the submitters in SEM-04-006 and with the opportunity to comment on the amendments; and

REMIND the Secretariat to otherwise prepare the consolidated factual record in accordance with Council Resolution 04-03.

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 nongovernmental 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:

To prepare the factual record, the Secretariat will gather and develop information relevant to the facts concerning Canada’s actions regarding alleged failures to effectively enforce s. 6(a) of the MBR in connection with clearcut logging activities carried out in 2001 in the FMUs referenced in Council Resolutions 04-03 and 05-04.

Amended Overall Plan:

Consistent with Council Resolution 04-03, execution of an overall plan to develop a factual record has been ongoing for Ontario Logging since 5 April 2004. The dates provided below are best estimates. The Amended Overall Plan is as follows:

- Through public notices or direct requests for information, the Secretariat will invite the Submitters; JPAC; nongovernmental organizations; forestry companies that operate in

the four FMUs; industry associations; and the public to submit information relevant to the scope of fact-finding outlined above as regards the four FMUs. The Secretariat will explain the scope of the fact finding, providing sufficient information to enable interested nongovernmental organizations or persons or the JPAC to provide relevant information to the Secretariat (section 15.2 of the *Guidelines*). **[April 2005]**

- The Secretariat will request information relevant to the factual record regarding the four FMUs from federal, provincial and local government authorities of Canada, as appropriate, and shall consider any information furnished by a Party (Articles 15(4) and 21(1)(a) of the NAAEC). **[April 2005]**
- The Secretariat will gather relevant technical, scientific or other information regarding the four FMUs that is publicly available, including from existing databases, public files, information centers, libraries, research centers and academic institutions. **[through April 2005]**
- The Secretariat, as appropriate, will develop, through independent experts, technical, scientific or other information relevant to the factual record regarding the four FMUs. **[through April 2005]**
- The Secretariat, as appropriate, will collect relevant technical, scientific or other information regarding the four FMUs for the preparation of the factual record, from interested nongovernmental organizations or persons, the JPAC or independent experts. **[through April 2005]**
- In accordance with Article 15(4), the Secretariat will prepare the draft factual record based on the information gathered and developed. **[through May 2005]**
- 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). **[July 2005]**
- 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. **[September 2005]**
- 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 submissions, the Party's responses, additional information provided by the Submitters, the Secretariat's determinations, the Council Resolutions, and a summary of these are

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