

RESPONSE OF THE GOVERNMENT OF CANADA
TO A SUBMISSION ON ENFORCEMENT MATTERS
UNDER ARTICLES 14 AND 15 OF THE
NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION
SUBMISSION NO. SEM-00-004 OF MARCH 15, 2000
BY THE DAVID SUZUKI FOUNDATION, GREENPEACE CANADA, SIERRA CLUB OF
BRITISH COLUMBIA, NORTHWEST ECOSYSTEM ALLIANCE AND NATURAL
RESOURCES DEFENCE COUNCIL

July 6, 2000

Introduction

On March 15, 2000, the Sierra Legal Defense Fund representing the David Suzuki Foundation and other non-governmental organizations (the submitters) filed a submission before the Secretariat of the Commission for Environmental Cooperation pursuant to Article 14 of the *North American Agreement on Environmental Cooperation* (NAAEC) asserting that Canada is failing to effectively enforce sections 35 and 36 of the *Fisheries Act* in the context of logging in British Columbia.

While the submission contains a number of general allegations, Canada has found in the submission only three documented assertions of alleged failures to effectively enforce the *Fisheries Act*. These are the only assertions that provide sufficient information to enable Canada to provide a meaningful response to the submission. Those assertions relate to TimberWest's logging operations on privately managed forest lands at three sites in the Sooke watershed: Sooke River, Martins Gulch (tributary to the Leech River), and De Mamiel Creek* (noted on the map in Annex 1 of this response, and referred to at pages 8-9 and Exhibit 6 of the submission). Canada assumes that the reference in the submission to "TimberWest" is a reference to TimberWest Cowichan Woodlands (hereinafter referred to as "TimberWest"). Canada's response to these assertions is as follows:

Sooke River

In early March 1999, Fisheries and Oceans Canada received concerns from residents in the Sooke River area of British Columbia regarding harvesting of timber on the upper portion of the Sooke River by TimberWest on their privately managed forest land. As a result of these concerns, onsite investigations were undertaken from March to late June 1999 (specifically, March 6, March 17, April 8, and June 22, 1999) to determine the extent of the potential impact of the forestry operations on fish and fish habitat at that location in the Sooke River. The specific details of the investigation are included in a Warning Letter issued to TimberWest on June 27, 2000 (Annex 2).

As noted on page 4 (paragraph 6) of the Warning Letter, Fisheries and Oceans Canada staff concluded that the riparian zone had been compromised in this area of the Sooke River, but that there was not enough observable evidence of harm to fish habitat to proceed with a charge under section 35 or 36 of the *Fisheries Act*. Further, it was concluded that, given the potential for blowdown of the narrow fringe of trees along the river as a result of a windstorm, the site would require monitoring in future years, as the site appeared to be quite unstable. Should these trees be unable to withstand a high wind event, harm to fish habitat would likely occur and Fisheries and Oceans Canada would then proceed with a further investigation.

* Referred to as "Demanuelle Creek" in the submission

Over the past year, Fisheries and Oceans Canada staff have been in contact with TimberWest regarding forest harvesting practices and specific concerns at this site. The Warning Letter, sent to TimberWest on June 27, 2000, notified the company of the concerns of Fisheries and Oceans Canada regarding its logging practices at the site. The letter also warned TimberWest that should follow-up inspections show harmful habitat impacts at the site, a further investigation under the *Fisheries Act* would likely result.

Fisheries and Oceans Canada staff undertook a follow-up inspection on July 4, 2000 and observed that no blowdown had occurred during the 1999/2000 winter season and there has been no harmful impact on fish habitat at the site.

Martins Gulch (tributary to the Leech River)

During the March 17, 1999 field inspection in the Sooke River area referenced above, logging operations on TimberWest's privately managed forest lands in the Martins Gulch area were observed. Trees were harvested throughout the gulch. The area of the gulch that was logged had a steep gradient and was a significant distance from the Leech River. Fisheries and Oceans Canada staff therefore assumed that there would be little or no impacts on fisheries values in the Leech River.

The site was re-inspected on July 4, 2000. Fisheries and Oceans Canada staff confirmed that the TimberWest cut block on Martins Gulch does not appear to have damaged fish habitat and that the site is considered a low risk for future impacts. Therefore, no further site inspection is required. Details of the field inspection are included in Annex 3.

De Mamiel Creek^{*}

The logging that took place at Otter Point Road is being investigated as a potential offence under the *Fisheries Act*. Canada cannot comment due to the ongoing investigation. Pursuant to Article 14(3)(a), as defined by Article 45(3)(a), of the *North American Agreement on Environmental Cooperation*, it would be inappropriate for the Secretariat to proceed any further with this matter.

^{*} Referred to as "Demanuelle Creek" in the submission

ANNEX 1: Map of the Sooke Watershed

[Annex not available electronically]

ANNEX 2: Warning Letter to TimberWest

[Note that the dates referred to on page 4, paragraph 4 of the Warning Letter, should be 1999, not 2000.]

[Annex not available electronically]

ANNEX 3: Field Inspection Notes Regarding Martins Gulch

July 4, 2000 Field Inspection Notes of Martins Gulch

Observations:

One of the main tributaries of the upper Sooke River is the Leech River, which flows southeast into the upper Sooke River downstream of the Sooke Reservoir. Martin's Gulch is a steep tributary to the Leech River. The Leech River is upstream of anadromous fish migration but likely contains resident freshwater fish species including cutthroat trout.

Both sides of a short reach of Martin's Gulch were logged in the winter/spring of 1999 by Timberwest (several hundred meters of stream reach). The logged portion of Martin's Gulch is approximately 2.5 kilometres upstream from the confluence with the Leech River. Previous steep slope logging in this stream was evident downstream of the inspected cut block but immediately upstream of the confluence of the Leech River and Martin's Gulch. In addition, there has been forest harvesting in the upper portions of the Martin's Gulch drainage.

The stream reach logged was steep (>5%) and the stream channel was largely bedrock controlled. The stream channel was mainly dry with isolated pools of water. There was no evidence of excess logging debris in the stream channel adjacent to the logging or downstream in Martin's Gulch, the Leech River or the mainstem of the Sooke River for several kilometres. The logged slopes appeared stable and there was no evidence of any sediment input or mass wasting into Martin's Gulch.

The cut block inspected appeared to have been adequately deactivated with all erosion areas stabilised and logging debris cleaned from stream channels.

There did not appear to have been any previous slope stability problems or debris accumulation in the stream channel adjacent a similar cut block downstream of the inspected cut block. The cut block had been logged several years previously.

Conclusions:

DFO staff concluded that the Timberwest cut block on Martin's Gulch does not appear to have damaged fish habitat and no further site inspection is required. The site should be considered a low risk for future impacts.

**Prepared by: Bruce MacDonald; Area Chief, Habitat & Enhancement Branch
July 5, 2000**