



ADVICE TO COUNCIL NO: 02-11

Re: Commission for Environmental Cooperation Proposed Program Plan and Budget for 2003–2005

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) of North America:

IN ACCORDANCE with Article 16(4) of the North American Agreement on Environmental Cooperation (NAAEC) which states that JPAC "may provide advice to Council on any matter within the scope of this agreement (...) and on the implementation and further elaboration of this agreement, and may perform such other functions as the Council may direct";

HAVING discussed the proposed Program Plan and Budget for 2003–2005 with the public and Secretariat staff in a plenary session held during JPAC Regular Session 02-03 on 4 October 2002 in Albuquerque, New Mexico;

JPAC submits the following:

General Recommendations:

- JPAC feels that more attention and detail is required to better articulate and integrate public participation efforts within each project. This issue was identified in JPAC Advice to Council 01-06, and JPAC still sees the need of improvement.
- All CEC working groups established within the program plan should have representation from the public. Specifically, at this time, the Enforcement Working Group and the Air Quality Working Group should open space for public participation. It should not be the role of the CEC to finance and support government-only meetings, particularly when funds for deserving projects are limited.
- Repeatedly, the need for efforts to engage indigenous peoples in the programs and projects of the CEC was raised. This is an issue that has preoccupied JPAC for some years and despite specific recommendations to Council, which they adopted in their own statement, we see few concrete improvements. JPAC strongly urges Council to direct the Secretariat to improve this situation.
- JPAC encourages the Secretariat to continue its work in developing and applying the evaluation process as a basis for providing more focus and strategic direction.

- There is a clear need for the CEC to develop strategies for improving dissemination of information to the public, particularly those who do not have access to the Internet. While the CEC web site is very informative and well designed, it cannot be the sole vehicle for providing information. JPAC has raised this topic in the past. There is, however, no obvious attention to developing such strategies in the proposed program plan. Possible approaches would be the establishment of priorities and having a communication strategy embedded in each project.
- JPAC has repeatedly advised the Council that schedules for completing projects should be clearly identified. Too often, projects are scheduled to end and then re-appear in the program plan.
- As the CEC's program matures and develops more focus, the Secretariat is better positioned to be proactive in seeking partnerships both from the perspective of leveraging funds and, very importantly, to ensure that the work of the CEC is value-added.
- The presentation format of program plans needs to be changed. It is much too cumbersome a document for the public to review.

Specific Recommendations:

Environment, Trade and Economy Program Area

The Final Communiqué from the 9th Regular Session of the CEC Council promised continuing work on energy and environment stemming from the Article 13 report on the opportunities and challenges associated with North America's evolving electricity market. JPAC does not see this addressed coherently and comprehensively in the program plan. For example, activity 2 of action 4 in project 1.2.1 (Environmentally-Preferable Goods and Services), concerning the holding of a technical meeting of experts, would appear redundant in a comprehensive program plan in 2003 given the 2001 Article 13 symposium on the North American Electricity Market.

Conservation of Biodiversity Program Area

- Nowhere in the program area is there mention of either the importance or the need to work with indigenous knowledge, despite its integration into many United Nations processes and the explicit reference to it in the Convention on Biological Diversity. All projects in this program area should be assessed for how and where they could benefit from working with indigenous knowledge and adjusted accordingly.
- More information should be added before deciding if a second roundtable on biodiversity conservation, planned in 2004, is necessary.

2.3.1 North American Biodiversity Information Network

- As recommended in JPAC Advice to Council 01-06, JPAC considers that the North American Biodiversity Information Network (NABIN) has matured and, given its cost,

that the Secretariat should explore the possibility of passing it on to another organization or group to maintain and manage. A basic part can become part of the operating system of the Secretariat for all mapping and information overlap but with outside contracts. It is too resource-intensive and its financial demands will increase, not decrease, as the network expands.

Pollutants and Health Program Area

3.2.1 Sound Management of Chemicals

- JPAC notes that lead is not part of the Sound Management of Chemicals (SMOC) program, however, reiterates its strong recommendation that a North American Regional Action Plan (NARAP) for lead be developed.
- There will be a need over time to look at how to implement the update of the NARAPs through the monitoring and assessment NARAP.

3.3.1 North American Pollutant Release and Transfer Register

- The Secretariat should investigate opportunities for partnerships with other institutions or organizations to take over the printing costs of the annual *Taking Stock* reports as a cost-saving measure.

Law and Policy Program Area

4.2.1 Enforcement and Compliance Cooperation

- JPAC recommends that a public meeting with the Enforcement Working Group (EWG) be held in conjunction with the June 2003 Regular Session of Council to seek input on a long-term strategic vision.

4.3.1 Sustainable Use and Conservation of Freshwater in North America

- Following the public workshop on freshwater issues, held on 3 October in Albuquerque, please refer to the JPAC Advice 02-10 to Council on this issue.

4.3.2 Environmental Management Systems to Promote Compliance and Environmental Performance

- In JPAC Advice to Council 01-05, it is recommended that work on environmental management systems (EMS) was successfully concluded and that no further resources be put toward this effort. While Council directed that the CEC sponsor a workshop in 2003 on the implementation of environmental management systems in small and medium-size enterprises, JPAC still believes that any continuing efforts in this area should be supported by governments themselves, along with the private sector, and not by the CEC.

Other Initiatives of the CEC

North American Fund for Environment Cooperation (NAFEC)

- JPAC continues to consider the North American Fund for Environment Cooperation (NAFEC) as one of the CEC's most important initiatives. It provides a vehicle for local, community-based projects to complement and inform the CEC's program. At the same time, it provides an opportunity for outreach and public education around issues considered important by the CEC. For this reason, JPAC continues to support the decision taken three years ago, to create an annual unique theme for NAFEC grants. As detailed in JPAC Advice to Council 02-10, JPAC recommends that the theme for 2004 be freshwater management and conservation.

Tenth Year Anniversary of NAFTA

- JPAC has indicated its willingness to actively participate in the 10-year review of the CEC's achievement and is eager to receive clarification on the nature and scope of the review and plans for public participation.

Specific Obligations

Article 10(6) of NAAEC

- JPAC remains very concerned that the meeting of the trade and environment minister is still not scheduled. Council is urged to make every effort to have an agenda established and a date set in the very near future.

Article 10(7) of NAAEC

- Indicators of the need for Article 10(7) of NAAEC on transboundary environmental impact assessment to be concluded continue to arise, including some relative to transboundary freshwater concerns.

Articles 14 and 15 of NAAEC

- Council continues to consider JPAC's various advice on Articles 14 and 15. Among matters under consideration are the scope of factual records and factual record follow-up. Both these matters have consequences for the program of work developed by the Secretariat and therefore need to be clarified as soon as possible.

Note: Please find attached an extract of the Summary Record of the JPAC Regular Session of 4 October for further comments made by JPAC members and the public on the CEC's proposed Program Plan and Budget for 2003–2005.

APPROVED ON 21 OCTOBER 2002

**Extract of the Summary Record of the JPAC Regular Session of 4 October
on comments made by JPAC members and the public on the CEC's proposed Program
Plan and Budget for 2003–2005**

Plenary Discussion on the Proposed Program Plan

The Chair asked the Director of Programs to make introductory remarks. He indicated that the objective of this program plan was to be succinct and results-oriented. He expressed his enthusiasm for JPAC's input and participation. He further noted that the evaluation framework must be developed hand in hand with the strategic planning process. He described the commitment to do another state of the environment report (SOE)—this time linked to reporting on initiatives of the CEC and how they have affected the environment. As such, it is anticipated that water will be one of the chapters. He concluded by saying that all comments will be taken back to the program managers.

Environment, Economy and Trade Program Area

The Director of Programs reviewed the draft program. The Chair noted that the December 2002 meeting of JPAC would be focusing on the participation of the private sector in sustainable development and that the second Symposium on Assessing the Environmental Effects of Trade would be held in March 2003 in Mexico City.

Comments from the public and JPAC included:

Project 1.1.1 Assessing the Environmental Effects of Trade

- It was noted that in the call for papers for the second Symposium on Assessing the Environmental Effects of Trade, the Advisory Group was discouraged that there was not a single application from an indigenous group. A decision has been made to have a special session at the symposium and the organizers have asked for help in looking for people to participate. It was also noted that there are financial institutions and banks owned by indigenous peoples (First Nations) in Canada and they should be approached to participate in discussions on private sector involvement in sustainable development. (The indigenous representative on JPAC noted his interest in presenting a paper at the second symposium on biodiversity and traditional knowledge within the framework of the Free Trade Area of the Americas. The Secretariat accepted.)
- There should be more emphasis on solar energy as a sustainable alternative. Also, when “valuing” the environment, all externalities should be included. When decisions are based only on market values, the resulting development decisions are not sustainable.
- The NAAEC Article 13 study on the Evolving North American Electricity Market concludes that no matter what scenario is adopted, there will be increases in emissions. At the same time, we are seeing an increase in power plant construction on the Mexican border designed to export power into the United States. In a deregulated market where price is determinative, why is building south of the border attractive? Is it because there is a more relaxed regulatory regime? This should be explored.
- There is nothing in the program about follow-up on Chapter 11 matters.
- Activity 2 in the descriptions of project actions: Use the same terminology as in the NAAEC.

Project 1.2.1 Trade in Environmentally-preferable Goods and Services

- During the WSSD a Mexican NGO received an award for their work in organizing the production and marketing of coffee. They should be invited to the JPAC meeting in December.

Project 1.2.2 Financing in Support of Environmental Protection and Conservation

- The government of Canada has launched an initiative regarding private sector financing in support of environmental protection and conservation with very similar goals and initiatives. There should be immediate coordination with that initiative.
- The United Nation Conference on Trade and Development has a task force on the topic of working with the private sector. Efforts should be coordinated. It is also very important to include bioethics in the discussions.
- States that work on electricity and environment will be integrated. How does this coordinate with the NAAEC Article 13 report re: clean technology? Thermoelectric plants are not going to close overnight!
- Action 4. Why is another meeting of experts required now that we have the Article 13 report?

Conservation of Biodiversity

The Director of Programs reviewed this program area. Comments from the public and JPAC included:

General Comments

- There is no clear role for indigenous peoples despite obligations in the United Nation Convention on Biodiversity. There is also no mention of indigenous ecological knowledge in the CEC dialogue. The CEC should work with existing indigenous networks—much expertise exists there. It is very important to work with indigenous knowledge if we are serious about an integrated approach.
- A significant omission in the program is the failure to consider the impacts of climate change. Rationale is based on an old paradigm. Climate change has to be considered.

Project 2.2.1 North American Bird Conservation Initiative

- An attendee commented on the need to better define details. In what ways, for example, "does the NABCI structure need to be strengthened"?
- It is time to determine if NABCI is self-sustaining. For a number of years now, we have been told that was the goal, yet there are no mechanisms in the 2003 work plan in that direction.

Project 2.2.2 Terrestrial Species of Common Conservation Concern

- This project should build on what is already underway in our countries.

Project 2.2.3 Marine Species of Common Conservation Concern

- Several species go south beyond Mexico. How will the CEC work integrate with other regions? Leverage money to look at more global system. Are Action 2, Activity 1 and the symposium planned in Project 2.2.4 redundant? All Bering-to-Baja work should be carefully integrated and coordinated.
- How do we access information and experience from other organizations? Work already done, for example, by the World Wildlife Fund in ecoregional planning, portfolios of priorities, databases, GIS, etc. Synergy is a very important point.
- How can the impacts of studies be measured at a local level—for people affected by environmental problems? The CEC should develop procedures for reporting and measuring impacts at the local level. More public participation is needed in the projects.
- Invasive or alien species of concern should be first identified, then work on pathways, then intervention measures. It is important to involve the departments of transport who regulate marine shipping.
- While it is important to research the impacts of GMOs on maize, it is also important to recognize that many other native plant species are being lost.
- Consider exit strategies for projects and “telegraph” these up front to the partners.
- There should be a way to “piggyback” surveillance at borders for alien species with the significant resources now dedicated to border surveillance in the War Against Terrorism. The common issue is the defence of North America.

Project 2.2.4 North American Marine Protected Areas Network

- Is this just a disguised version of the old land-based sources project? Is this one of the projects that should have been phased out?

Project 2.3.1 North American Biodiversity Information Network

On this project, various attendees said, “I am never quite sure how to put my arms around NABIN. It represents a very large financial outlay.” “There are fundamental questions. Is NABIN the best vehicle to integrate this information and develop a portal?” “Should NABIN be part of the Secretariat's operations or a project as it is now? Is it too resource intensive for the CEC to support and is it time to spin it off to another organization?” “Sorry – but this does not make any sense. The idea is already covered.”

Others commented:

- The project is too ambitious. It needs much more focus.
- Social and citizen participation is token. There is too much dependency on the Internet as a means to communicate information.
- The possibility of having another organization take over NABIN should be investigated. For example, NABIN is precisely the kind of thing that nature museums are usually in charge of.

At this point the Chair asked the JPAC Liaison Officer to collect all information on past CEC and JPAC initiatives in the area of working with indigenous peoples and prepare a report for the new Director of Programs.

Pollutants and Health Program Area

The Acting Executive Director reviewed the program. The Chair reminded the participants of the numerous Advice to Council that JPAC has developed related to this program area.

Comments from the public and JPAC included:

Project 3.2.1 Sound Management of Chemicals

- JPAC has repeatedly called for the development of a NARAP on lead and it is never addressed. What is the rationale for omitting the substance from the program plan?
- Recent reports point to an increasing concern about lead and mercury release during recycling of computers. How do NARAPs accommodate new information?
- The Secretariat is aware of the continuing call to “get the lead out” and the substance selection task force is working on it. It is time to come to terms with lead and a decision will be made in a few weeks. Lead is a mature issue in all three countries and this presents challenges. There are obvious links with the CEC’s work on children’s environmental health and lead emissions in PRTR. The environmental monitoring and assessment NARAP may have a useful role to play as a watchdog and for tracking levels and trends in the environment. .
- How were the two mercury monitoring sites in Mexico selected? The Secretariat explained that the advisory committee developed criteria to be complementary to sites in the United States and Canada. Canada has donated two mobile mercury monitoring instruments to Mexico to help identify ambient levels of mercury in air and to find hot spots.

Project 3.3.1 North American Pollutant Release and Transfer Register Project (NARAP)

- Mexico is taking concrete steps to implement the mandatory PRTR. An advisory committee has been created by the private sector and NGOs working with the Mexican governmental entities to accelerate the registration process for industry. There is a strong commitment to participate in the CEC process.
- Printing costs associated with the annual *Taking Stock* reports are huge. The Secretariat should look for a partner who could absorb these types of costs.

Law and Policy Program Area

The program manager gave an overview of the program.

Comments from the public and JPAC included:

Project 4.1.1 Comparative Report on Environmental Standards

- The comparative report on environmental standards was supposed to be a pilot project on intensive livestock operations and then evaluate and propose additional topics. Its not clear where this project stands.

Project 4.1.2 Environmentally Sound Management and Tracking of Hazardous Waste

- A workshop is being organized by the EPA, the Mexican Environmental Law Centre and Profepa to discuss illegal trafficking in hazardous waste and wildlife in El Paso. The CEC should coordinate with this effort.

Project 4.2.1 Enforcement and Compliance Cooperation

- There is an important role to play in developing enforcement strategies.
- The Enforcement Working Group would benefit from public involvement to assist in identifying priorities. There is tremendous institutional resistance to JPAC and public participation in enforcement matters. It will be important at the public workshop held in conjunction with the tenth Regular Session of the Council in June 2003, probably organized in cooperation with the Enforcement Working Group and JPAC, to set ground rules about transparency.

Project 4.3.1 The Sustainable Use and Conservation of Freshwater in North America

- This project should be updated in response to yesterday's workshop.

Project 4.3.2 Environmental Management Systems to Promote Compliance and Environmental Performance

- JPAC spent a lot of time participating in the Environmental Management Systems (EMS) program and concluded that the job had been done and there was nothing more the CEC could contribute. This was communicated to Council in an advice and directly to the Enforcement Working Group. The private sector is producing its own models. It is the government agencies themselves advocating continuing work. Given the budget limitations, it would not be useful to support a conference where government representatives can get together to "swap stories." Government and the private sector should do this themselves—there is no justification for the CEC to support this conference.
- It is not worth putting more effort into EMS. In Canada, the door is closed. Small and medium-size businesses have developed their own processes.

Other Initiatives, including Specific Obligations under the NAAEC

The Acting Executive Director reported that the 2003 theme for NAFEC would be community monitoring and linking with SMOC's Environmental Monitoring and Assessment Task Force. The NAAEC Article 13 report on traditional maize varieties and transgenic corn will be organized essentially the same way as the electricity report—an advisory group of experts, discussion papers, background documents, call for public comments and a symposium, to produce a Secretariat report to Council, including recommendations made by the advisory group of experts. It is hoped to formally announce the composition of the advisory group on Monday, 7 October.

Mr. Shantora continued that the Article 10(6) Working Group would have a conference call later this fall to again discuss the possibility of a trade and environment ministers meeting. Work on transboundary environmental impact assessment is stalled; however, the Secretariat will reflect on possibilities that the freshwater issue may provide. The Secretariat is beginning to develop a framework for the state of the environment report. Finally there is an expanded budget for the Submissions on Enforcement Matters unit complete factual records and work on the new submissions. This is a very high priority area for the Secretariat.

Comments from the public and JPAC included:

General Comments

- It is time for the CEC to look at developing communication strategies to target audiences. For example, *Trio* articles could be sent to larger newspapers.

North American Fund for Environmental Cooperation

- The General Standing Committee (GSC) continues to discuss the proposed modified NAFEC guidelines. The overall budget remains the same.
- A major shift was to make grants focus on themes drawn from the CEC work program. These grants can have a huge impact and tremendous return.
- NAFEC has helped to create a North American constituency.
- Groups working on energy could be targeted and recognized as part of a North American movement.
- NAFEC is the “human face of the CEC.”

NAAEC Article 12(3)—State of the Environmental Report

- Experience with the first state of the environment report (SOE) was very difficult and painful. It was outdated when it was finally released. What mechanisms exist this time to make sure information is up-to-date and focused on CEC priorities? What is needed is a strategy for a format that can be regularly updated—not start from scratch each time.
- If the SOE report will contain a chapter on freshwater, how will this relate to the emerging work by the Secretariat on options, in preparation for further instructions from Council?

Article 10(6) of the NAAEC—Cooperation with the NAFTA Free Trade Commission

- Small amounts of money attached to transboundary environmental impact assessment and Article 10(6) reflect the importance attached to these issues.
- “Gook luck trying to get Transboundary Environmental Impact Assessment (TEIA) up and running.” A “heads up”—the International Joint Commission does get involved in transboundary environmental assessment and will need to be involved.

The Director of Programs thanked everyone for the strategic and specific input. He noted that this is not a 'black box' and that advice would be taken into account.