

# 20 Years of NAFTA and the NAAEC

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## JPAC-led Public Outreach

2013



Commission for Environmental Cooperation



## **20 Years of NAFTA and the NAAEC JPAC-led Public Outreach 2013**

January 2014 will mark 20 years since the North American Free Trade Agreement (NAFTA) and its environmental side agreement, the North American Agreement on Environmental Cooperation (NAAEC), entered into force. To mark this important milestone, and with a view to providing constructive input for future Commission for Environmental Cooperation (CEC) plans, the Joint Public Advisory Committee (JPAC) of the CEC conducted a public review of the first 20 years of NAFTA and the NAAEC.

The NAAEC came into force in 1994, at the same time as the North American Free Trade Agreement (NAFTA), marking a commitment of the three countries to accompany trade liberalization and economic growth in North America by effective cooperation for and continuous improvement in the environmental protection at the national and regional level. The three countries had already been engaged in bilateral environmental cooperation; the NAAEC provided a first and unique platform to expand this cooperation to the trilateral level.

The NAAEC established the Commission for Environmental Cooperation (CEC), an intergovernmental organization which supports cooperation among the NAFTA partners to address environmental issues of common concern, including the environmental challenges and opportunities presented by continent-wide free trade. The CEC budget is US\$9 million a year, based on equal contributions from the three Parties. This sum is complemented with staff time and expertise contributed by each of the Parties and other partners and stakeholders in the completion of specific projects. The CEC comprises a Council, a Joint Public Advisory Committee (JPAC) and a Secretariat.

Our process began with a call for information and comments aimed at reaching out to stakeholders in North America, to gather information about their experiences, insights, opinions and perspectives. The call provided a list of non-exclusive possible general topics, and centered on the following questions:

- What are the environmental successes of the NAAEC and NAFTA? Where have the provisions of those agreements fallen short? And where they have, is the problem in the agreements themselves or in their implementation?
- Is the CEC achieving the goals for which it was created? Are those goals adequate in face of ongoing environmental challenges in North America?
- Have the NAAEC and the environmental provisions of NAFTA adequately addressed environmental concerns related to free trade in North America?
- How could implementation of the NAAEC and the environmental provisions of the NAFTA be improved?
- Are there important topics the CEC has failed to tackle over the past 20 years?

- In light of the past 20 years, on what priorities should the CEC focus in the next 10 years and beyond?

As a result of the consultation, JPAC received a total of 66 written submissions from a wide array of stakeholders, which can be accessed on the CEC homepage at:

<http://www.cec.org/Page.asp?PageID=924&ContentID=25632>.

JPAC also commissioned a series of backgrounders, aimed at detailing the most significant work of the CEC over the last 20 years:

<http://www.cec.org/Page.asp?PageID=924&ContentID=25640>. The CEC has made important contributions to environmental cooperation in North America. It is an innovative model that has fostered regional understanding and cooperation on environmental issues, in addition to promoting transparency, and openness, as well as public participation. Over the last 20 years the CEC has launched many initiatives that have had an impact. The CEC has produced high quality information on the North American environment and on a wide range of environmental protection issues. Some of the most notable projects include the Pollutant Release and Transfer Registry (PRTR) and *Taking Stock*, which have contributed to greater access to information and awareness about pollutants, while its chemicals management program, Sound Management of Chemicals (SMOC), has led to important victories such as the elimination of DDT. The CEC's North American Bird Conservation Initiative (NABCI) also created a strong network of tri-national cooperation for the conservation of birds. In a similar vein, the Submissions on Enforcement Matters (SEM) process has contributed to a better understanding of a Party's enforcement of environmental laws and regulations, and enhanced accountability and transparency. The CEC has also helped to achieve a number of valuable improvements in capacity building, most notably in Mexico.

The information gathered from both of these initiatives, was crucial in the development of the Agenda for the JPAC meeting in Washington, DC. Our public session brought together high level speakers, who shared a breath of knowledge and experience on the CEC. The event was webcast live from the George Washington University Law School, and it included two keynote presentations from former Executive Directors of the CEC, three expert panels and a facilitated Round Table Discussion. The proceedings can be accessed on the CEC homepage at:

<http://www.cec.org/Page.asp?PageID=924&ContentID=25633>

Based on all of the previous efforts, JPAC provided an Advice to Council in early December 2013. Over the past 20 years, JPAC has provided 106 Advices to the CEC Council and the most recent Advice includes a number of specific recommendations, aimed at strengthening the organization and supporting the development of the 2015–2020 CEC Strategic Plan. JPAC members will also seize this opportunity to strengthen public outreach in 2014, to ensure there is a strong public voice in support of the development of the next Strategic Plan.

Much was learned through this process, and there is solid consensus that the work of the CEC continues to be relevant and important to our three countries. JPAC recognizes the importance of learning from past CEC achievements, to inform our work as we move forward. JPAC also felt a strong endorsement, not only for the continuation of the work, but to also strengthen the

organization so it can reach its full potential. In our view, the unique trilateral status of the CEC will continue to be an important vehicle for collaboration among our three nations.

#### **JPAC Advice to Council No. 13-04**

#### **Re: Reflections and Recommendations Regarding the 20<sup>th</sup> Anniversary of NAFTA and the NAAEC**

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 functions as the Council may direct;”

**HAVING** conducted a public review of the first 20 years of NAFTA and the NAAEC, consisting of a call for information and comments from the North American public, background research, and JPAC Regular Session 13-03: “20 Years of NAFTA and the NAAEC,” held in at the George Washington University (GWU) Law School in Washington, DC, United States, on 17–18 October 2013;

**HAVING** reviewed the information and comments in 66 written submissions sent by indigenous groups, conservationists, anti-pollution activists, researchers, industry and others, in response to the call for public input;

**HAVING** heard, during the JPAC Regular Session 13-03, the opinions and recommendations of three expert panels and two keynote speakers with in-depth experience and knowledge of the CEC, the NAFTA and the NAAEC, as well as the recommendations of participants, regarding the challenges and opportunities confronting the CEC at its 20<sup>th</sup> anniversary;

**SEEKING** to provide constructive input regarding the future of the CEC and the challenges and opportunities it faces at this landmark moment;

**RECALLING AND REAFFIRMING** the continued commitment of the members of JPAC to public participation, transparency, sustainable development, increased levels of environmental protection, and the other goals and objectives of the NAAEC;

**CALLS ON COUNCIL** to reaffirm its political will and show its commitment to the CEC and to the environment and natural resources of the region by reinstating the CEC’s budget to a minimum level of US\$9 million for 2014, with subsequent increases to be noted below; and

**SUBMITS** the following observations, advice and attached report on the “JPAC Public Review of 20 Years of NAFTA and the NAAEC,” which provides more detailed accounts and recommendations:

To mark the 20th anniversary of the North American Free Trade Agreement (NAFTA) and its environmental side agreement, the North American Agreement on Environmental Cooperation (NAAEC), the Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) conducted a public review. The review involved preparing background information, inviting the public to provide input in writing and holding a public meeting, all with the view to providing constructive input for future CEC plans.

The CEC has made important contributions to environmental cooperation in North America. It is an innovative model that has fostered regional understanding and cooperation on environmental issues, in addition to promoting transparency and openness to public participation. In the past 20 years, JPAC has provided 106 Advices to the CEC Council, which reflects the public participation of citizens of Canada, Mexico and the United States.

The CEC has produced high quality information on the North American environment and on a range of environmental protection issues. Its flagship initiatives, such as the Pollutant Release and Transfer Registry (PRTR) and *Taking Stock*, have contributed to access to information and greater awareness about pollutants, while its chemicals management program, SMOC, has led to important victories like eliminating the use of DDT.

The North American Bird Conservation Initiative (NABCI) has created a strong network of trilateral cooperation for the conservation of birds. The Submissions on Enforcement Matters (SEM) process retains potential as a key tool to ensure the better enforcement of environmental laws and regulations and for accountability and information. And, lastly, the CEC has helped to achieve a number of valuable improvements in capacity building, specifically to Mexico.

## **Recommendations**

During our public review, JPAC heard honest assessments and constructive suggestions about the CEC. In brief, the CEC has made unique and important contributions to environmental protection in North America, but it now needs to renew its relevance by:

- Reframing its purpose;
- Reinventing its niche;
- Reengaging and broadening its constituency; and
- Reaching a strong and stable financial position.

After 20 years, the CEC still has enormous potential to play an important role internationally. Yet, the value it brings as a vehicle for informed discussion and collaboration should be enhanced. The CEC is uniquely placed to play an important and fundamental role in convening and galvanizing regional environmental cooperation to face the critical challenges ahead for North America. In order to achieve its full potential, the CEC Council should promptly address the following:

1. **Political will** – There is a need for renewed engagement by the Council members, but also, critically, across government sectors, including trade and environment officials. Because environmental issues are crosscutting, government agencies other than those represented by CEC Council members need to be involved in North American environmental policy and cooperation, using a sectoral approach.

The CEC has to align its work with the needs at the political level and leverage its assets as a convener. For example, the CEC can help inform and strengthen other trade agreements, for example with Europe or in the context of the Trans Pacific Partnership (TPP).

2. ***Greater awareness and visibility of the CEC*** – The work of the CEC is generally of very high quality and relevance to environmental protection, but it remains known only to a small group of people and organizations. Creative ways should be found to effectively convey the value of the information the CEC has generated to date and of its future work, for a wide range of actors, including businesses, academia, indigenous peoples, and local governments and communities.
3. ***Meaningful engagement with stakeholders*** – Closely linked to the point above is the limited involvement of the business community, academia, indigenous peoples and local communities (including low-income communities impacted by pollution) in the work of the CEC. The cooperative activities carried out by working groups should be enriched and made more relevant by ensuring strong participation by members of these stakeholder communities, along with government officials. The CEC should also deepen its relationships with provinces, states and municipalities, which are often motors of innovation and are at the frontlines of most environmental issues.

Public participation in the internal operations of the CEC should be broadened. There needs to be much more dialogue between the JPAC members and the Council, and the Council needs to give serious consideration and weight to JPAC Advice.

4. ***A new mission*** – The trade-focused goals of the CEC are no longer resonating at the political level and with the public because the “race to the bottom” didn’t materialize as feared and because some may consider that the CEC’s mission of building the foundation for North American environmental cooperation has been to some extent accomplished. However, the environmental challenges that face the region have been anything but tackled; they have changed in focus and urgency. Moreover, the three governments have made very little progress in addressing concerns regarding the aggregate scale of environmental footprints and impacts as the North American economy has grown. Thus, as integration of the region deepens, so should the CEC’s mandate. The CEC needs new goals and tasks, targeted to the priorities of the next twenty years. These priorities include, among others, the following:
  - a. ***Climate change*** – The CEC is very well positioned to be the forum to properly address climate change regionally in North America. It could lead a much-needed regional climate change action plan, taking advantage of existing cooperation institutions to reduce emissions, enable adaptation and enhance resilience. More specifically, it could lead strategic, high-impact initiatives, like the development of regional carbon pricing.
  - b. ***Transportation and energy*** – As the CEC’s work in these areas has already shown, the transport and energy sectors have very significant impacts on pollution, human health, a greener economy and climate change. The CEC could play a critical role in developing and helping in the implementation of regional strategies to transition these sectors towards sustainability. The JPAC refers to its Advices to Council 13-02 and 10-02 for specific recent advice in this area.

- c. *Water* – The CEC could play a more important role to foster regional cooperation on water quality and availability, particularly as climate change exacerbates the serious pollution, depletion and unsustainable management issues facing many shared freshwater bodies in North America.
  - d. *Biodiversity* – The valuable work on grasslands conservation and on cooperation to conserve shared marine and terrestrial species and ecosystems should be strengthened. The CEC could also contribute to addressing specific conservation issues, for example, by convening stakeholders (industry, the conservation community, government agencies, the academic community, etc.) to develop policy guidance and best practices for avoiding bird and bat collisions with wind turbines, strategically promoting innovation and reducing biodiversity loss.
  - e. *Investment and subsidies* – The CEC should consider a close examination of environmental issues related to Chapter 11 of NAFTA. The CEC is also very well positioned to lead an effort to identify, analyze and address subsidies with negative environmental effects, as is the case with gasoline.
  - f. *Cumulative and transboundary environmental impacts* – The “scale effects” on the environment of liberalized trade under NAFTA have not been sufficiently considered. The framework for transboundary environmental assessment is still outstanding and it is a commitment under the NAAEC that has not been complied with.
  - g. *Focused trade and environment issues* – The CEC could engage more directly on issues involving invasive species, feed-in tariffs and other trade restrictions on environmental standards. There are ways for trade agreements to make a difference for the environment: for example, trade agreements that are currently obstacles to energy integration could instead facilitate this integration by welcoming feed-in tariffs.
  - h. *North America’s ecological footprint* – The CEC could contribute to understanding and tackling the challenges of ecological carrying capacity facing North America and the world, in particular, by reducing the region’s ecological footprint.
5. ***Indigenous engagement*** – The CEC should ensure the meaningful and permanent involvement and consideration of indigenous peoples. They are the first peoples of our continent and in many ways are disproportionately affected by the issues the CEC handles. At the same time, their perspective, knowledge and experience will strengthen, improve and enrich the work of the CEC.
  6. ***Performance measurement*** – There needs to be a focus on measuring results and outcomes, which is increasingly important for governments, the public and many stakeholders. JPAC would be pleased to contribute to determining how to accomplish this.
  7. ***Reestablished financial robustness*** – In order for the organization to accomplish its mandate, the CEC’s budget should urgently be increased to at least US\$14–15 million yearly, bringing it to its original level in real terms.

JPAC is unanimous in supporting this Advice to Council and we look forward with enthusiasm to the opportunity of revitalizing the CEC.

**Approved by the JPAC members  
6 December 2013**