

Secretariat of the Commission for Environmental Cooperation

Request for Information for Preparation of a Factual Record Submission SEM-02-001 (Ontario Logging) 30 June 2004

Contents

- 1. The factual record process**
- 2. The Ontario Logging submission and Council's instructions**
- 3. Request for information**
- 4. Examples of relevant information**
- 5. Additional background information**
- 6. Where to send information**

1. The factual record process

The Commission for Environmental Cooperation (CEC) of North America is an international organization created in 1994 under the North American Agreement on Environmental Cooperation (NAAEC) by Canada, Mexico and the United States. The CEC operates through three organs: a Council, made up of the highest-level environmental official in each member country; a Joint Public Advisory Committee (JPAC), composed of five citizens from each country; and a Secretariat located in Montreal.

Article 14 of NAAEC allows persons or nongovernmental organizations in North America to inform the Secretariat by a written submission that any member country (hereinafter a "Party") is failing to effectively enforce its environmental law. This initiates a process of review of the submission, after which the Council may instruct the Secretariat to prepare a factual record in connection with the submission. A factual record seeks to provide detailed information to allow interested persons to assess whether a Party has effectively enforced its environmental law with respect to the matter raised in the submission.

Under Articles 15(4) and 21(1)(a) of NAAEC, in developing a factual record the Secretariat shall consider any information furnished by a Party and may ask a Party to provide information. The Secretariat also may consider any relevant technical, scientific or other information that is publicly available, submitted by JPAC or by interested nongovernmental organizations or persons, or developed by the Secretariat or independent experts.

On 12 March 2004, in Council Resolution 04-03, the Council decided unanimously to instruct the Secretariat to develop a factual record in connection with submission SEM-02-001 (Ontario Logging), in accordance with Article 15 of NAAEC and the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (Guidelines). The Secretariat is now requesting information relevant to matters to be addressed in the factual record. The following sections provide background on the submission and describe the kind of information requested.

2. The Ontario Logging submission and Council's instructions

On 6 February 2002, on behalf of Canadian Nature Federation, Canadian Parks and Wilderness Society, Earthroots, Federation of Ontario Naturalists, Great Lakes United, Sierra Club (United States), Sierra Club of Canada and Wildlands League (hereinafter the "Submitters"), the Sierra Legal Defence Fund filed with the CEC Secretariat a submission alleging "the failure of the Canadian Government to effectively enforce subsection 6(a) of the *Migratory Birds Regulations* (MBR) [adopted under the *Migratory Birds Convention Act, 1994*] against the logging industry in Ontario." Subsection 6(a) of the MBR makes it an offence to disturb, destroy or take a nest or egg of a migratory bird without a permit. By correlating projected harvest figures for 59 forest management units (FMUs) with available bird census data, the Submitters estimated that clear cutting activity in 2001 destroyed over 85,000 migratory bird nests in central and northern Ontario forests. They alleged that Environment Canada (EC), through its Canadian Wildlife Service (CWS), had taken virtually no action to enforce Subsection 6(a) of the MBR in regard to this logging activity. Canada responded to the submission on 25 April 2002, and on 12 November 2002, the CEC Secretariat recommended to the CEC Council preparation of a factual record. On 22 April 2003, in Council Resolution 03-05, the Council deferred its consideration of the Secretariat's recommendation pending receipt of additional information from the Submitters in support of their allegations. The Submitters provided additional information—including harvest data—to the Secretariat on 20 August 2003. Canada responded to the additional information on 17 October 2003. On 17 December 2003, the Secretariat again recommended that a factual record be developed.

On 12 March 2004, in Council Resolution 04-03, the Council voted unanimously to instruct the Secretariat to develop a factual record, in accordance with Article 15 of NAAEC and the Guidelines, for the assertions in submission SEM-02-001 concerning clearcut logging activities carried out from 1 January to 31 December 2001, particularly with respect to the migratory bird nesting season, in 49 of the 59 FMUs identified in the original submission, including five of the remaining ten FMUs that through amalgamation are now part of the 49 FMUs. The FMUs included within the scope of the factual record are listed in Annex A. Excluded from the scope of the factual record is an FMU whose logging license was revoked (Kiashke River) and four FMUs (Cochrane, Shiningtree, Superior and Temagami Forests) for which the Submitters were unable to obtain harvest data from either the Ontario Ministry of Natural Resources (OMNR) or the logging company. Council Resolution 04-03 notes 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.” To date, the Secretariat has not received a new submission regarding those four FMUs.

The Council directed the Secretariat to consider, in developing the factual record, whether the Party concerned “is failing to effectively enforce its environmental law” since the entry into force of NAAEC on 1 January 1994. In considering such an alleged failure to effectively enforce, the factual record may include relevant facts that existed prior to 1 January 1994. The Council also directed the Secretariat to provide the Parties with its overall work plan for gathering the relevant facts and with the opportunity to comment on that plan. The Secretariat published its overall work plan on 24 March 2004.

3. Request for information

The Secretariat seeks information relevant to the facts concerning:

- (i) Migratory bird populations in the FMUs listed in Annex A;
- (ii) Compliance with subsection 6(a) of the MBR in connection with clearcut logging in 2001 in the FMUs listed in Annex A;
- (iii) Canada’s compliance promotion and enforcement of subsection 6(a) of the MBR in connection with clearcut logging activities carried out in 2001 in the FMUs listed in Annex A;
- (iv) Whether Canada is failing to effectively enforce subsection 6(a) of the MBR in connection with clearcut logging activities carried out in 2001 in the FMUs listed in Annex A.

4. Examples of relevant information

This section provides examples of the kind of information that the Secretariat is seeking in connection with the factual record. Information that the Secretariat receives will be considered for inclusion in the factual record. The following examples of potentially relevant information refer to the FMUs listed in Annex A (hereinafter the “FMUs”) and employ the term “clearcut logging” to describe the harvest of all or nearly all merchantable timber:

- (i) Information regarding all species of migratory birds that nest in the FMUs, including information on their populations and their nesting seasons and habits;

- (ii) Information on clearcut logging activities carried out in 2001 in the FMUs. For example, precise information on:
- The data relied upon by foresters or EC to anticipate species and numbers of migratory bird nests to be encountered during logging;
 - The extent of logging activities by acreage and amount of timber harvested;
 - The timing of logging activities;
 - Reconnaissance procedures implemented by foresters or EC to identify migratory bird nests prior to logging;
 - Measures taken to protect migratory bird nests during logging;
 - Effectiveness of those measures in preventing migratory bird nest disruption and/or destruction.
- (iii) Information on the provincial laws and regulations pertaining to forest management and planning, including management and planning of logging, that applied to those areas in 2001.
- (iv) Information on the provincial forest management plans (FMPs) that applied to logging in those areas in 2001, including:
- The role and outcomes of any consultations with federal officials during the development of those FMPs, as regards compliance with subsection 6(a) of the MBR;
 - Whether the federal guidelines and/or any other federal conditions related to protection of migratory birds and/or their nests are referenced in the FMPs;
 - If so, whether the FMPs require compliance with such conditions;
 - Whether any provincial conditions under those FMPs require compliance with subsection 6(a) of the MBR or equivalent provincial statutory provisions.
- (v) Information on efforts by federal officials to monitor compliance with subsection 6(a) of the MBR in connection with clearcut logging activities carried out in 2001 in the FMUs.
- (vi) Information on EC's policies and practices for ensuring compliance with and enforcing subsection 6(a) of the MBR.
- (vii) Information on the effectiveness of federal enforcement and compliance promotion actions in connection with clearcut logging activities in the FMUs, including:
- How EC established and balanced priorities for wildlife enforcement and MBR compliance promotion in the FMUs;

- How EC allocated financial and human resources with regard to ensuring compliance with the MBR during logging activities in the FMUs;
 - Information on the current initiatives and programs related to enforcing and promoting compliance with subsection 6(a) in Ontario's forestry sector, specifically with regard to how these initiatives address any compliance issues noted in the FMUs.
- (viii) Information regarding the obstacles or challenges to compliance with subsection 6(a) of the MBR that face logging companies, logging contractors and others involved in the logging of the FMUs.
- (ix) Information on measures adopted by logging companies, logging contractors and others involved in the logging industry to achieve or increase compliance with subsection 6(a) of the MBR, including:
- Information on the nature, extent and timing of measures adopted;
 - Information used to design and evaluate those measures;
 - Overall success of those measures.
- (x) Information regarding the joint effort by CWS, industry and nongovernmental organizations to “develop solutions to improve the regulatory framework as it applies to the conservation of birds affected by industrial activity,” as referenced in the Response to Supplemental Information.¹ For example, precise information on:
- Any compliance promotion activities carried out by CWS that would apply to logging in the FMUs;
 - The three workshops on migratory bird conservation held between October 2001 and March 2003. Helpful information would include meeting agendas, meeting minutes, related correspondence and a copy of the draft (and any final) framework to deal with migratory bird conservation in the forestry context.
- (xi) Information regarding any special consideration given to threatened or endangered species in enforcing subsection 6(a) of the MBR, and the legal and/or policy basis for focusing on species of conservation priority in Canada's enforcement of subsection 6(a) of the MBR.
- (xii) Information regarding the role of complaints from the public in the enforcement of subsection 6(a) of the MBR. For example, information on:

¹ Government of Canada, “Response to supplemental information submitted to the Secretariat of the Commission for Environmental Cooperation” (16 October 2003) at 4.

- Resources expended by EC to respond to complaints, compared to resources expended in carrying out routine inspections;
- The role of CWS consultation with the OMNR in the enforcement of subsection 6(a) of the MBR;
- The timing of CWS follow-up to complaints from the public and any effects thereof on the ability of the CWS to gather evidence of violations of subsection 6(a) of the MBR;
- The type of information required for a complaint from the public to lead to enforcement action by the CWS;
- Whether and how the CWS has followed up on the Submitters' allegation that an estimated 43,700 nests were destroyed by clearcut logging.

(xiii) Any other technical, scientific or other information that could be relevant.

5. Additional background information

The submissions, Canada's responses, the Secretariat's determinations, the Council Resolutions, the overall plan to develop the factual record and other information are available in the Citizen Submissions on Enforcement Matters page of the CEC web site: <<http://www.cec.org/citizen>>. These documents may also be requested from the Secretariat.

6. Where to Send Information

Relevant information for the development of the factual record may be sent to the Secretariat until 30 September 2004, by e-mail to info@ccemtl.org or by regular mail to the following address:

Secretariat of the CEC
 Submissions on Enforcement Matters Unit (SEM Unit)
 393, rue St-Jacques ouest,
 bureau 200
 Montreal QC H2Y 1N9
 Canada
 Tel. (514) 350-4300

Please reference SEM-02-001 (Ontario Logging) in all correspondence.

For any questions, please call (514) 350-4300 or send an e-mail to the attention of Doris Millan, at info@ccemtl.org.

Annex A

List of Forest Management Units within the scope of the factual record:

Algoma Forest	Armstrong Forest
Bancroft and Minden Forest	Big Pic Forest
Black River Forest	Black Sturgeon Forest
Brightsand Forest	Caribou Forest
Dog River – Matawin Forest	Driftwood Forest
Dryden Forest	English River Forest
Flanders Fort Frances Forest	French-Severn Forest
Gordon Cosens Forest	Hearst Forest
Highrock Forest	Iroquois Falls Forest
Kenogami Forest	Kenora
Lac Seul Forest	Lake Nipigon Forest
Lakehead Forest	Mazinaw-Lanark Forest
Magpie Forest	Moose River
Nagagami Forest	Nakina North Forest
Nipissing Forest	Northshore Forest
Ogoki Forest	Ottawa Valley Forest
Pic River Ojibway Forest	Pineland-Martel Forest
Red Lake Forest	Romeo Malette Forest
Sapawe Forest	Smooth Rock Falls
Spanish	Spruce River Forest
Sudbury Forest	Superior Forest
Temiskaming	Timmins
Timmins Forest	Trout Lake Forest
Wabigoon Forest	Whiskey Jack Forest
White River Forest	

The following 5 FMUs were listed in the original submission. Through amalgamation, they are now included in the listed 49 FMUs:

- Auden Forest (*amalgamated into the Lake Nipigon Forest*)
- Elk Lake (*amalgamated into the Temiskaming Forest*)
- Kapuskasing (*amalgamated into the Gordon Cosens Forest*)
- Upper Spanish Forest (*amalgamated into the Spanish Forest*)
- Watabeag (*amalgamated into the Temiskaming Forest*)