

SECRETARIAT OF THE COMMISSION FOR ENVIRONMENTAL COOPERATION

SEM-O5-002 (Coronado Islands)

**SUPPLEMENTAL INFORMATION SUBMITTED IN RESPONSE TO
SECRETARIAT DETERMINATION IN ACCORDANCE WITH ARTICLE 14(1) OF
THE NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION**

Submitted by:

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INTRODUCTION

On June 2, 2005, the Secretariat issued a Determination in accordance with Article 14(1) of the North American Agreement on Environmental Cooperation (the "Determination"). In its Determination the Secretariat determined that Petitioners' Submission (SEM-05-002) did not meet all the requirements of NAAEC Article 14(1). Determination at 1. However, the Secretariat afforded the Submitters an opportunity to provide the Secretariat with additional information in order to satisfy the requirements of Article 14(1) within 30 days of receipt of the Determination. Determination at 8. In a subsequent telephone conversation with Mr. Rolando Ibarra, Legal Officer, Submissions on Enforcement Matters Unit, Mr. Ibarra informed undersigned counsel that the 30 day period provided meant 30 working days. Accordingly, Mr. Ibarra informed undersigned counsel that the Submitters had until July 15, 2005 to provide the necessary information to the Secretariat. The Submitters hereby provide the necessary, previously absent, information. For organizational purposes, Submitters' presentation of this supplemental information follows the order in which items were identified in the Determination.

SUPPLEMENTAL INFORMATION

I. Supplemental Factual Information

The Determination begins by summarizing the Submission. Determination at 2-4. This summary includes the Submitters' description of the ecological importance of the Coronado Islands, their fragile environmental resources and in particular the importance of the Coronado Islands to the endangered Xantus's Murrelet. The summary also details the Submitters' allegations of the potential harm to the Coronado Islands, and the flora and fauna the Islands support, posed by planned construction of a Liquefied Natural Gas (LNG) Re-gasification Terminal (the "Terminal") immediately adjacent to the Islands.

Subsequent to the filing of their Submission, the Submitters learned that on May 11, 2005, the United States Fish and Wildlife Service published a document entitled: Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates or Proposed for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions; Proposed Rule. 70 Fed. Reg. 24870 (May 11, 2005). A copy of this document was provided to the Secretariat by letter dated May 24, 2006. The Secretariat acknowledged receipt of this document on May 26, 2005 by a return letter dated May 31, 2005. This document is incorporated herein by reference. The Submitters directed the Secretariat to pages 24876-77 of this document, 70 Fed. Reg. 24870, 24876-77 (May 11, 2005). Here the U.S. Fish and Wildlife Service discussed the dire threats to the Xantus's murrelet posed by the Terminal. This U.S. government document endorses and supports many of the factual assertions made in the Submission. The Submitters asked the Secretariat to consider this supplemental factual information in its review of the Submission.¹ The Submitters reiterate that request here.

¹ The Submitters also asked the Secretariat to consider the document in its review of their related Article 13 Petition.

Additionally, subsequent to the filing of their Submission, the Submitters learned that the CEC itself recently published a book Marine Priority Conservation Areas Baja California to the Bering Sea.² In this book, the CEC identifies the Lower Bight of the Californias/Islas Coronados as one of 28 aquatic environments that marine experts consider essential to safeguarding the biological diversity of the West coast of North America. The Coronado Islands are included as Priority Conservation Area (PCA) 18. In its description of the Coronado Islands the CEC confirms many of the Submitters contentions about the important and imperiled wildlife of the Islands, as well as the particular importance of the Coronado Islands as a breeding area for the Xantus's Murrelet. Submitters believe this book helps substantiate the factual assertions made in the Submission and incorporate it herein by reference.³

II. Provisions of Mexican Environmental Law

A. The Submission Does Identify Provisions of Mexican Law

In its summary of the Submission, the Secretariat acknowledges the Submission asserts the government of Mexico has failed to effectively enforce LGEEPA Articles 78-83 and the principles listed in LVS Article 5 which the authorities must observe in making and implementing national wildlife policy. Determination at 3. The Secretariat's summary further recognizes the Submission asserts that the government of Mexico has failed to effectively enforce its law by authorizing an insufficient EIA for the Terminal, but faults the Submitters for not identifying the provisions of Mexican environmental law to which this assertion relates. Determination at 3. Later the Determination explains that although the submission asserts that the government of Mexico has failed to effectively enforce its environmental law by authorizing an insufficient EIA, the Submission only refers to LGEEPA Articles 78-83 and LVS Article 5 and not to any provision of Mexican environmental law related to environmental impact assessment. Determination at 5.

The Submitters will discuss the provisions of Mexican environmental law related to environmental impact assessments specifically below in Section II. C. However, at the outset the Submitters are confused as to why the Secretariat does not believe the identification of LGEEPA Articles 78-83 and LVS Article 5 are an insufficient identification of Mexican environmental laws which they claim are being violated to allow the Secretariat to review the Submission under Article 14(1). The Submitters believe the Mexican environmental laws related to environmental impact assessments are a further identification of the Mexican laws they claim are not being effectively enforced but not the sole such allegation.

² This book is available on the CEC web site at http://www.cec.org/files/PDF/BIODIVERSITY/B2B_PCAs_en.pdf

³ The Submitters also believe the information in this book is relevant to their Article 13 Petition and ask the Secretariat to consider it in that regard as well. The Secretariat should investigate and report on threats to areas it has determined are Priority Conservation Areas to give meaning to this designation.

B. The Designation of the Coronado Islands as a Protected Natural Area is an Environmental Law within the meaning of the NAAEC

Additionally, the Submitters are confused by and disagree with the Secretariat's conclusion that

The assertion that Mexico is failing to effectively enforce its environmental law by approving the Terminal project inside a specially protected natural area is not grounded in environmental law within the meaning of NAAEC Article 45(2). Neither Conabio's recognition of the Coronado Islands as an "Important Area for the Conservation of Birds" and a "Priority Maritime Region" nor the Congressional resolution calling for the Coronado Islands to be designated a protected natural area meet the definition of environmental law.

Determination at 6.

Article 5(1) of the NAAEC provides that "each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action...." The applicable definition of an "environmental law" specifically includes "any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, ... through... the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas." NAAEC, Article 45(2) (emphasis added). Under this definition the Submitters do not understand and disagree with the Secretariat's conclusion that "Neither Conabio's recognition of the Coronado Islands as an "Important Area for the Conservation of Birds" and a "Priority Maritime Region" nor the Congressional resolution calling for the Coronado Islands to be designated a protected natural area meet the definition of environmental law." Both would seem to qualify as statutes or regulations of a Party the primary purpose of which is protection of the environment through the protection of wild flora and fauna, including endangered species, their habitat, and specially protected natural areas. For the Secretariat's further consideration of this issue, a copy of a recent June 5, 2005 announcement of a specially protected natural area that includes the Coronado Islands is attached as Exhibit 1. Additionally, copies of documents documenting the July 23, 2003 call by the Mexican Congress to create the protected area are attached as Exhibits 2 and 3.⁴

C. Provisions of Mexican Environmental Law Related to Environmental Impact Assessments

As mentioned above, the Determination faults the Submitters for not specifically identifying provisions of Mexican environmental law related to environmental impact assessments which the Submitters contend the EIA for the Terminal violated. Determination at 5. The Submitters now remedy this omission. Attached as Exhibit 4 is a document sent to

⁴ An official link to Exhibit 2 is found at http://www.senado.gob.mx/gaceta.php?tipo=1&lk=48/8_proposiciones/PACu_Cobo_Islas_Pacifico_California.html and an official link to Exhibit 3 is found at http://www.senado.gob.mx/gaceta.php?tipo=1&lk=49/7_dictamenes_discusion/dictamen_3_%20B_C_ISLAS.html

SEMARNAT by Alfonso Aguirre Munoz and the Grupo de Ecologia y Conservacion de Islas (GECI). It details the violations of Mexican environmental law related to environmental impact assessments as requested by the Secretariat. Attached as Exhibit 5 is the same document, with attachments, as formally filed in Mexico. Attached as Exhibit 6 is a document also prepared by Alfonso Aguirre Munoz and the Grupo de Ecologia y Conservacion de Islas (GECI) and sent to SEMARNAT. This document also details the violations of Mexican environmental law related to environmental impact assessments as requested by the Secretariat. Attached as Exhibit 7 is the same document as filed in Mexico. Finally, attached as Exhibit 8 is a document prepared by a Mexican lawyer, Mr. Marco Antonio Lazcano Sahagun, for Alfonso Aguirre Munoz and the Grupo de Ecologia y Conservacion de Islas (GECI), requesting an injunction from a Mexican court. Again this document details the violations of Mexican environmental law related to environmental impact assessments upon which the Submitters rely. There is no need to restate these arguments here as they are fully set forth in these Exhibits. The Submitters believe that these documents exhaustively detail the specific provisions of Mexican environmental law related to environmental impact assessments which they complain are not being effectively enforced.

III. Article 14(1)(c)

In its Determination the Secretariat found the Submitters did not satisfy the requirements of Article 14(1)(c). Determination at 6. Specifically, the Secretariat first faulted the Submitters for not including a copy of the EIA or a copy of the decision whereby the government of Mexico approved the EIA and issued a permit to Chevron-Texaco for the Terminal. The Submitters now remedy these omissions. A copy of the EIA accompanies this filing as Exhibit 9. A copy of the permitting decision by SEMARNAT approving the EIA accompanies this filing as Exhibit 10.

Additionally, concerning Article 14(1)(c), the Secretariat indicated that it was “unable to review the submission without copies of the correspondence and other documentation which [the Submitters] claim they filed with Semarnat and certain judicial authorities in connection with the arguments in the submission.” Determination at 7. The Submitters have now provided much of this information as Exhibits 4, 5, 6, 7, and 8. As additional supplementation, the Submitters further provide additional legal and correspondence files maintain by their Mexican attorney, Mr. Marco Antonio Lazcano Sahagun. These documents are attached in chronological order as Exhibits 11, 12, 13, 14, and 15. As to the status of these Mexican legal proceedings (see Determination at 7, requesting information on the status of Mexican legal proceedings) as indicated in the original Submission and accompanying sworn declarations, those proceedings have either been dismissed by various judicial authorities or the Submitters have been unable to proceed due to a demand for an exorbitant bond of \$65,950,000 pesos (\$6 million U.S.) which they could not post. See Exhibits 4-8 and 11-15 (Exhibit 14 discusses the bond). Undersigned counsel cannot read Spanish and has no understanding of Mexican legal procedure. Accordingly, a more elaborate presentation is not possible. However, the Submitters believe the accompanying Exhibits substantiate the claims made in their Submission and in the accompanying declarations of Alfonso Aguirre Munoz and others. The Submitters believe these documents should be sufficient to allow the Secretariat to review their Submission.

IV. Article 14(1)(e)

Finally, in its Determination the Secretariat indicated the Submitters had failed to provide sufficient information under Article 14(1)(e). Determination at 7-8. Specifically, the Secretariat sought additional information and documents supporting the sworn declarations filed with the original Submission detailing the pursuit of certain legal remedies in Mexico. As noted by the Secretariat, the Submitters' omissions in this regard overlapped with their omissions under Article 14(1)(c). Determination at 8. The Submitters have now remedied this situation by supplementing their Submission with Exhibits 4-8 and 11-15 documenting the legal filings, results, and the demand for an exorbitant bond which they could not post. Again, undersigned counsel's inability to read Spanish and lack of knowledge of Mexican legal procedure prevents a more detailed explanation. The Submitters believe; however, that all the information requested by the Secretariat is provided in the accompanying Exhibits.

CONCLUSION

For all of the reasons set forth above, the Submitters respectfully request the Secretariat to determine that their Submission as presently supplemented with the additional information contained in this filing satisfies the requirements of Article 14(1) of the NAAEC and to determine under Article 14(2) that this submission merits requesting a response from Mexico under Article 14(3). As before, the Submitters would be happy to provide any additional argument, evidence, or documentation requested by the Secretariat to assist the Secretariat in evaluating this Submission.

Dated: July 6, 2005

Respectfully submitted,

S/

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