

[UNOFFICIAL TRANSLATION]

Preamble and summary R-37 of submission R-28 dated 18 July 2012

1. In accordance with Article 14 of the North American Agreement on Environmental Cooperation (NAAEC), we the undersigned, Gaston Hervieux and Gérard Michaud, hereby file a submission with the Secretariat of the Commission for Environmental Cooperation (CEC) alleging, *inter alia*, that **Canada, a party to the NAAEC, is failing to effectively enforce its environmental law** by going as far as to approve the installation of industrial wind parks along migratory corridors, when the government has full knowledge, through the Canadian Wildlife Service, a branch of Environment Canada, that thousands of bird deaths will likely result (see “NABCI”).
2. In support of our submission, we invoke, *inter alia*, several laws and regulations related to the *Migratory Birds Convention Act, 1994*, an agreement between Canada and the United States, which latter is implicated because of the failure to effectively enforce **section 703 of the Migratory Bird Treaty Act (19 November 1999), which prohibits anyone from killing migratory birds “by any means or in any manner,”** except where a valid permit has been issued for this purpose by the U.S. Fish and Wildlife Service.
3. **The Submitters denounce the environmental impact assessment criteria as being without scientific basis and lacking legal validity.** We affirm that the relative absence of criteria or standards as a basis for Canadian and Québec regulations do not make it possible to determine scientifically at what point flora, fauna, and public health are affected. In a context of deregulation, this assessment methodology constitutes, according to the Submitters, **“the willful abandonment by Canada, the United States, and Mexico of their obligations to enforce their respective laws.”**
N.B. Canada sells wind-generated electricity to the United States.
4. The Submitters emphasize that Canada, Québec, and the United States are failing to ensure that their laws are enforced by other levels of government and complied with by wind park developers, yet they are fully informed that the latter are violating the law while putting public health and wildlife at risk, or even in danger, when the deaths of thousands of migratory birds through impact with these industrial wind structures, located right along migration corridors, have been publicly predicted.
5. The methodology used by the Submitters in producing their submission consists of situating in time several steps taken by them or by official bodies, such as the Québec Public Hearings Bureau (*Bureau d’audiences publiques du Québec*—BAPE) and the Canadian Wildlife Service of Environment Canada, to secure protection for migratory birds. The Submitters emphasize that in addition to systematically failing to enforce Canadian and Québec law, certain official decision-making bodies are amending laws and regulations to

include legal loopholes whose consequences go against the rules of natural justice and procedural equity, going as far as to create antidemocratic processes that infringe human rights and allow for the environment and public health to be harmed in all legality (tantamount to deceit, prejudice, injustice), thus creating a legally based conflict of interest that goes against the public interest; all while claiming to observe the principles of sustainable development.

6. If Canada, the United States, and Mexico have not so far managed to intervene so as to protect migration corridors, and if they have to the contrary favored means of getting around the law by their inaction and by granting subsidies after amending their legislation to the detriment of the environment and public health, all while claiming to observe the principles of sustainable development, the Submitters request to be dispensed from taking legal action they cannot monetarily afford, it being specified that currently in Canada, decision-making bodies are amending their legislation to cut off all possible remedies at the source. The Submitters believe that it is quite straightforward to disabuse people of their illusions by bogging them down in a dead-end legal process. **The Government of Canada and the Government of Québec are providing funding, and they are directly and systematically granting approvals without taking account of human rights, including democratic and health rights as well as environmental rights.**
7. In this Submission, including the attachments attesting to compliance with the criteria of NAAEC Articles 14 and 15, the Submitters raise matters whose further study by the CEC would contribute to achieving the goals of the Agreement.
8. It appears to be an abuse of power favoring interests contrary to democracy (without consultation), contrary to the public interest in favor of private interests (and we refer here to the goals of the 1963 electricity nationalization), which hinders economic development by hemming in coastal villages and by homogenizing the landscape in tourist regions (e.g., the Gaspé Peninsula), which goes against public health by building wind parks in inhabited areas, which goes against bird fauna by building industrial wind parks along migration corridors and in breeding, nesting, and feeding areas, and which goes against agriculture what with the windmills being situated in agricultural zones (**R-36**).
9. **The Submitters request that the Secretariat of the CEC study matters of law enforcement and the granting of approvals, so that this submission is not dealt with in a laughable manner, thus allowing the construction of industrial wind parks in inhabited areas and on migration corridors to be perpetuated systematically through deregulation and legislative amendment, such that it will become nearly impossible to invoke an allegation that a party to the NAAEC is failing to effectively enforce its environmental law.**

10. Any harm to health, safety, and life must be included in the environmental law as a criterion for the enforcement of said law on the basis of the following new definition of sustainable development:

■ The current definition of sustainable development is:

“Development that meets the needs of the present without compromising the capacity of future generations to meet their own needs.”

■ The new definition of sustainable development, to be adopted by the Council of the CEC, would be:

“Development that takes account, as a priority, of safeguarding and protecting ecosystems to satisfy the needs of the present without compromising the survival of species, and that allows future generations to enjoy the same right.”

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R-28

By registered mail: #RW 731 611 576 CA (18-07-2012)

By registered mail: #RW 750 936 941 CA (30-11-2012)

Submission on enforcement matters pursuant to Articles 14 and 15 of the North American Agreement on Environmental Cooperation

18 July 2012

Amended:

30 November 2012

Submitted to the
Commission for Environmental Cooperation (Secretariat)
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[Stamped:] CEC Secretariat, Received, 14/12/2012

1. Whereas the Commission for Environmental Cooperation created a program and an annual budget for 1997 [97.01.01] to promote cooperation on North American bird conservation; this project was designed to implement Council Resolution no. 96-02.
2. In view of Project 97.01.01, which centered around the development of a North American strategy and plan of action for bird conservation, as well as **the promotion of a network of Important Bird Conservation Areas**.
3. Whereas the development of Project 97.01.01 was based on the fact that:

“Approximately 250 species of migratory birds travel through North America, following migratory routes. They are part of more than 1000 species that inhabit this region. Many birds, both migratory and resident, are threatened by the reduction, disturbance or disappearance of their habitats.”

4. Whereas the governments of Canada, Mexico, and the United States, when they signed the North American Agreement on Environmental Cooperation (NAAEC), agreed to take a set of measures, including:

- **Improvement and strict enforcement of environmental laws and regulations.**

5. Whereas **its mission statement states that:**

“**The Commission for Environmental Cooperation facilitates cooperation and public participation** to foster conservation, protection and enhancement of the North American environment for the benefit of present and future generations, in the context of increasing economic, trade, and social links among Canada, Mexico, and the United States.”

6. In consideration of an excerpt from the report of the Joint Public Advisory Committee of the Commission for Environmental Cooperation on the public hearings of 1996 (1 October 1996), p. 27:

“4.4.4 Articles 14-15

A presenter from a Mexican environmental NGO, one of the groups that made a submission on Article 14 pertaining to construction of a pier on Cozumel Island, said the CEC’s acceptance of the submission will provide a useful test of the articles. The presenter noted that the project provided an example of an **intervention on a large project based on concerns pertaining to its social, economic, and political merits** and, as such, was typical of interventions taking place in the United States and Canada as well.”

7. In view of the concept of environment adopted by the **Québec Public Hearings Bureau (*Bureau d’audiences publiques sur l’environnement*—BAPE)**, derived from a presentation by William J. Cosgrove, President of the BAPE, in 2006:

Unisfera Conference— Business and sustainable development

22 November 2006

The concept of environment adopted by the BAPE does not apply restrictively to matters of a biophysical nature but also encompasses social, economic, and cultural concerns.... The terms of the Environment Quality Act in fact provide support for such an approach. Thus, section 1(4) defines the environment as, inter alia, “the ambient milieu with which living species have dynamic relations.” Section 31.9(b) allows the parameters of an environmental impact statement to be determined with regard not only to the impact of a project on nature and the biophysical milieu but also to its impact on human communities, archaeological and historical sites and cultural property. In addition, section 20 of Division IV, titled PROTECTION OF THE ENVIRONMENT, prohibits the emission, deposit, issuing, or discharge of a contaminant whose presence in the environment “is likely to affect the life, health, safety, welfare or comfort of human beings, or to cause damage to or otherwise impair the quality of the soil, vegetation, wildlife or property.” That is, the law adopts an overarching conception of the environment as a living space, and the BAPE, in the exercise of its responsibilities, cannot restrict the scope of the hearing and inquiry to the biophysical environment alone, excluding human beings and their activities from its concerns.

http://www.bape.gouv.qc.ca/sections/rapports/conferences/22-11-06_Unisfera_Cos.pdf

8. Whereas the Minister of Sustainable Development, Environment and Parks of Québec may mandate the BAPE, or one or more persons, to hold a public consultation before permanent protection status for an area put in reserve is proposed to the government. [Natural Heritage Conservation Act, passed 18 December 2002 by the Assemblée nationale du Québec, whose object includes:

“1. ...safeguarding the character, diversity and integrity of Québec’s natural heritage... More specifically... facilitat[ing] the establishment of a network of protected areas representative of [Québec’s] biodiversity....”

Protection measures...

9. Whereas the following recommendations appear in JPAC Report to Council no. 99-01, written 25 March 1999 and approved by the JPAC members on 28 April 1999:

- **“The CEC should concern itself with environmental events it knows are coming and prepare environmental contingency plans for them**—for example, future forest fires, **future bird deaths**, future volcanic eruptions. How can this be contemplated in the CEC’s program?”
- “The central vision of the CEC needs to be inverted. The human being should not be the center. Nature should be the center of the vision. Ancient cultures understood this. **Nature has to be protected because it has rights**. It is not there just to improve the lives of human beings.”

10. Whereas it is important to ensure the conservation, protection, and

improvement of the environment on their territories and it is essential to cooperate on these matters so as to achieve sustainable development that can ensure the well-being of present and future generations.

11. **Whereas the CEC, by means of grants, has supported the installation of windmills in Canada** and it continues to:

“increase public awareness and document the environmental impacts of new low-impact, renewable energy technology.” CEC, **GREEN** information sheet, March 2003.

12. **Whereas, pursuant to Articles 14-15 of the NAAEC, the Submitters hereby file a submission alleging, *inter alia*, that Canada (Canada-Québec), an NAAEC party, is failing to effectively enforce its environmental law in respect of wind park development.**

13. **In view of the federal-provincial agreements** for the enforcement of Canadian federal, Québec, and municipal law.

14. In view of the lack of interest on the part of Canada, Québec, and the municipalities in acting in accordance with the provisions of the *Convention on Biological Diversity* (1992), (AGREEMENT) the memorandum of understanding establishing the Canada/Mexico/United States Trilateral Committee for Wildlife and Ecosystem Conservation and Management (April 1996) (AGREEMENT), and the Parksville Protocol between Canada and the United States to amend the 1916 Migratory Birds Convention between the United Kingdom and the United States (1996) (AGREEMENT), it being specified that Canada's economic interests do not allow the United States to effectively enforce section 703 of the Migratory Bird Treaty Act (MBTA) 16 U.S.C., paragr. 703–12, under which it is prohibited to kill migratory birds without the possession of a valid permit.

15. **Whereas the Submitters allege that Canada, Québec, the MRC (Regional County Municipality) of Rivière-du-Loup, the municipality of L'Isle-Verte, etc., are failing to effectively enforce the discriminatory Species at Risk Act, with respect to that which violates the law, keeping in mind: to prevent the disappearance of wildlife species**, which brings one back to the precautionary principle.

16. In consideration of Submission SEM-99-002 (Migratory Birds) to the Commission for Environmental Cooperation.

17. **In view of the article** by Yves Corriveau, Attorney and Director of the Québec Environmental Law Centre, titled “Dossier Environnement, Déreglementation environnementale: **L'État abandonne l'environnement aux entreprises**” (Environmental Deregulation: Government Letting Companies Have Their Way with the Environment), *Le Taon dans la cité*, March-April 1999, Volume 3, Nos. 7–8, p. 14 (**R-19**).

18. In view of the request for public hearing and letter of demand (R-1) dated 13 July 2012, faxed to the Minister of Sustainable Development, Environment, and Parks of Québec at 1-418-643-4143 by Gaston Hervieux:

Request for public hearing

Industrial wind park

Viger-Denonville (Saint-Paul-de-la-Croix and Saint-Épiphanie)

attached as exhibit (R-1) with attached SCHEDULE 1, an integral part of this submission as if herein recited at length.

19. In view of the article “**Les vents de la discorde**” published in *Infodimanche.com* (Rivière-du-Loup, Quebec, Canada), 22 July 2012 (R-2), and of the explanations given therein by Junior Tremblay, a biologist working for the Terrestrial and Bird Fauna Branch (Direction de la faune terrestre et de l’avifaune), as well as the expertise on wildlife and its habitats possessed by the Ministry of Natural Resources and Wildlife (Ministère des Ressources naturelles et de la faune) of Québec; which article was published after the filing of a request for a public hearing on 13 July 2012. (R-1).
20. Whereas the “Participation of municipalities in wind or hydroelectricity projects” component of Québec Bill 21 of 15 June 2006 (L.Q. 2006, c. 31) must be taken note of in the context of this submission in order to analyze its repercussions for the democratic rights of the population and for the enforcement of other laws with which it interferes.
21. In view of the Report of inquiry and public hearing #232 of the BAPE on the “**Projet d’aménagement d’un parc éolien dans la MRC de Rivière-du-Loup**” (Wind park project in the MRC of Rivière-du-Loup) and more particularly one of its conclusions (page 97, 2nd paragraph):

Conclusion

The Commission wishes to stress that the project was modified several times during its mandate, and the gaps in the information provided do not allow for a full public review. In its report, the Commission raised various issues and suggested how a wind park project in the MRC of Rivière-du-Loup could be adapted to meet public expectations, preserve the landscape, and allow for the conservation of wildlife and existing economic activities, which give the region its specific character. **The Commission is of the view that the study area for the current project does not make it possible to receive a modified project that would meet these requirements, since the movement of noncompliant windmills would create new constraints in this inhabited area.**

www.bape.gouv.qc.ca/sections/rapports/publications/bape232.pdf

22. Whereas pursuant to Articles 14 and 15 of the NAAEC, the Secretariat of the CEC

may consider a submission from any non-governmental organization or person asserting that a Party to the NAAEC, in this instance Canada-Québec, **is failing to effectively enforce its environmental law.**

23. In view of the right to ask the competent authorities to take the measures necessary to enforce the laws and regulations of the Party (Canada-Québec) so as to protect the environment or to prevent it from being harmed.

Reference: Article 6(c) [sic], Part II, Obligations, North American Agreement on Environmental Cooperation between the Government of Canada, the Government of the United Mexican States, and the Government of the United States of America.

24. In view of the conclusion of Report of Inquiry and Public Hearing #190, March 2004, of the BAPE, “Projet d’aménagement des parcs d’éoliennes des monts Copper et Miller à Murdochville” (Mount Copper and Mount Miller Wind Park Project) (page 70, 1st paragraph):

From a more general perspective, the Commission is of the view that appropriate observations and studies should be undertaken without delay in order to delimit the bird migration corridors. Since such studies cover large land areas and their results would be essential in order to properly define the other wind park projects, the Commission finds that it is incumbent on the government bodies to carry them out, though the costs could be shared with the developers subsequently.

25. In view of the responses of the **Canadian Wildlife Service of Environment Canada** to the additional questions concerning bird fauna, the siting of windmills with respect to the migratory corridors identified in the study area, **incidents of mass mortality**, and comparable data from elsewhere in the world, in BAPE inquiry #232, Exhibit 232-DQ5.1, dated 2 June 2006 (**R-3**).

26. In view of the press release of 1 November 2006, “**Un Rapport (#232) du BAPE utile et pertinent** pour l’analyse du projet Terravent dans sa plus récente version” (A BAPE Report (#232) that is Useful and Relevant for the Analysis of the Most Recent Version of the Terravent Project), by **Michel Lagacé, Prefect, MRC of Rivière-du-Loup (R-4)**.

27. Whereas the BAPE emphasizes that **the area frequented by waterfowl extends more than 20 kilometres inland** (BAPE Report #232, p. 68), which brings one back to MRC of Rivière-du-Loup Exhibit **R-4, with the specification that this area, in addition to being a migratory route, is used by several species for breeding, feeding, and resting as a daily round-trip north-south flight path from the south shore of the St. Lawrence River.**

28. Whereas **the preamble** to the “relatif à la construction d’éoliennes sur le territoire de la MRC de Rivière-du-Loup” (Interim Control Regulation on the Construction of Windmills on the Territory of the MRC of Rivière-du-Loup; RCI) specifies that the **RCI is intended to provide guidelines on the installation of windmills on its**

territory with the following goals, among others:

- to protect residents' quality of life...
- **to protect migratory bird corridors,**
- ...
- and adds that **“The preamble forms an integral part of this bylaw.”**

Moreover, the **MRC of Rivière-du-Loup states** in its **Exhibit R-5**, dated 10 July 2007, **that the preamble “carries no legal weight.”** There is nothing in the RCI to ensure or guide the protection of “migratory bird corridors” (**R-32**).

29. In view of the two Québec wind potential maps (**R-6** and **R-7**).

30. In view of the draft showing migratory corridors within the territory of the MRC of Rivière-du-Loup, filed at the last minute in BAPE case #232 by SNC-Lavalin Inc. as consultant for the SkyPower group. **R-8**.

31. In view of the Terrawinds Ressources **windmill locator map** by the SkyPower Group Inc. (**R-9**) **as compared with the two maps R-10 and R-11** of the Innergex Group, which present the locations of the 12 windmills in the Viger-Denonville public/private wind park [St-Paul-de-la-Croix and St-Épiphanie].

32. Whereas, having acted as an expert recognized as such by the BAPE, and in addition **having lived since 1998 along the migratory corridor for Snow Goose and Canada Goose** and, by virtue of the location of his home, having a view stretching for kilometres all around, the Submitter Gaston Hervieux is in a position to certify that **this spring 2012, thousands of these birds flew by at a height of about 150-250 feet, i.e., directly within the reach of the projected wind structures, it being noted that the altitude of his home is at 800 feet above the level of the St. Lawrence River.**

33. In view of the environmental affairs column, **“Les éoliennes: poudre aux yeux verte et catastrophe écologique! Les écologistes assez discrets sur le sujet...”** (Windmills: green smokescreen and ecocatastrophe! Environmentalists quiet on the subject) **R-12**, published in *CPNT-Infos*, November 2005, p. 216, whose sources include articles in the general and hunting media as well as European and administrative documents.

34. In view of the article **“Une quarantaine de médecins pressent le gouvernement du Québec de cesser l’implantation d’éoliennes industrielles en milieu habité”** (Forty physicians call on the Government of Québec to halt industrial wind development in inhabited areas), *Terre citoyenne* (Victoriaville, Québec, Canada), 9 February 2011 (<http://terrecitoyenne.qc.ca/?p=325>) (**R-13**).

35. Whereas **Québec’s official policy aims at “concentrating people in cities for optimum use of services”**; reference: Michel Rivard, former president of the Communauté urbaine de Québec (CUQ), and Pierre-Elliott Trudeau, former prime

minister of Canada.

36. Whereas **the hemming in of coastal villages by industrial wind parks, the homogenization of the landscape in places where tourism is an important economic sector by the strategic addition of industrial windmills**, thus killing the local economy and harming development, **the construction of these windmills in inhabited areas**, psychologically and physically demoralizing the residents and inducing them to leave, all done deliberately (e.g., **Saint-Ulric in the Gaspé Peninsula**), closely resembles measures taken by the provincial and federal governments, such as the **ARDA and BAEQ projects**, to shut down three regions of Québec: Gaspésie, Bas-Saint-Laurent, and Abitibi.

N.B.: The greatest wind potential in Québec is situated to the north of the St. Lawrence River in an uninhabited region.

37. Whereas on 6 March 2006, Gaston Hervieux filed with the municipality of L'Isle-Verte **a request for a moratorium on industrial wind parks within the municipality of L'Isle-Verte** (see pp. 36/37 of 42, par. 51) (**R-14**).
38. Whereas the municipality of L'Isle-Verte adopted by Resolution #06.03.8.6.1 a request for a moratorium [in the SkyPower Inc. wind power case] within its boundaries until the Canadian Wildlife Service of Environment Canada produces relevant scientific studies on the migratory corridor crossing the municipality of L'Isle-Verte (**R-15**); in fact, there is more than one corridor!
39. Whereas the Canadian Wildlife Service of Environment Canada **replied** to the letter of 15 March 2006 concerning Resolution #06.03.8.6.1, **stating that Environment Canada does not have the authority to respond to the request for a moratorium from the municipality of L'Isle-Verte** (**R-16**).
40. Whereas on 16 June 2006, by registered letter #LT095 903 462 CA, Gaston Hervieux sent a request for a moratorium (**R-14**) to the Minister of the Environment of Canada, Rona Ambrose, calling for her to issue, based on information received by the Privy Council Office, **an emergency order enacting a moratorium on the construction of industrial windmills within migratory bird corridors and bird resting, breeding, and feeding areas:**

“until such time as the Minister of the Environment of Canada, acting by the Canadian Wildlife Service, produces the relevant scientific studies on the migratory corridor crossing the municipality of L'Isle-Verte...”

Important: Nearly two years later, Mr. Hervieux was informed that the said request for such an order, dated 14 June 2006, had not reached the minister and that it was going to be destroyed now that a new minister had been appointed. Finally, Mr. Hervieux was informed that this request was nonetheless going to be relayed to the new minister, John Baird. Mr. Hervieux never received any response and acted strategically to obtain evidence (4 pages) of the sending of the document and its receipt by Environment Canada (**R-17**).

41. **Whereas the migratory corridor studies were apparently carried out under the supervision of or in collaboration with the Canadian Wildlife Service and made available in 2007**, and here we are in 2012 with a new industrial wind park project (Viger-Denonville) situated in Saint-Paul-de-la-Croix and Saint-Épiphanie on the territory of the MRC of Rivière-du-Loup, Québec, Canada, which was already the subject of a public hearing, BAPE Report #232. When one further notes the article (**R-2**) published after the filing of the request for a public hearing (**R-1**) in the context of the above-mentioned project, it becomes clear that the **Governments of Canada and Québec, the MRC, and the municipalities have no intention of ceasing to site industrial wind parks within migratory corridors (R-18)**. In a notice dated 27 August 2012, the Minister of Sustainable Development, Environment, and Parks of Québec announced that there will be no public hearing (R-38). The directive by the Environmental Assessment Service of the Ministry of the Environment of Québec permitting the Viger-Denonville project to be carried out within a migratory corridor and in an inhabited area, further justifies the filing of this submission (R-28), with additional justification provided by **R-1, R-2, R-29, R-30**, and their adjacent exhibits. The CEC, by virtue of its mandate, should review this submission urgently, **since the precautionary principle contemplated in the Sustainable Development Act of Québec [Bill 118 (2006, c. 3)] and other laws of Canada and the United States is being circumvented by this project.**

42. **Whereas several industrial wind park projects are going to be, or are already, sited along migratory corridors**, the Commission for Environmental Cooperation must act quickly to put an end to the non-enforcement of and non-compliance with the laws, regulations, and agreements, and additionally must secure the dismantling of windmills sited along migratory corridors in violation of the law; and, in the case of the Viger-Denonville project, must request that the Minister of Sustainable Development suspend (moratorium) the approvals and hearing process in anticipation of the outcome of the NAAEC Article 14–15 process triggered by this submission. We further note that **the money deriving from borrowing bylaws, which we consider illegal because no one consulted the owners of the property given as security, nor obtained their consent to economic projects going beyond the normal administration of a municipality within its borders, should be frozen until the repeal, or otherwise, of section 1060.1 et seq. of the Municipal Code of Québec.**

43. **Whereas Canada-Quebec, the MRC of Rivière-du-Loup, and the municipalities participating in the Viger-Denonville industrial wind park project located in the**

municipality of Saint-Paul-de-la Croix and Saint-Épiphanie **are failing to enforce several laws and regulations, including:**

43.1. Migratory Birds Convention Act, 1994, S.C. 1994, c. 22, referring to the spirit and the letter of said law.

43.1.1 “Application,” par. 4, section 5.1, “Obligations,” section 5.4, sections 8(2)(a)(b) and (3); “Regulations,” section 12(1)(h); “Offences and Punishment,” section 13(1)(1.7); “Disclosure of Information,” section 19.1(b).

43.2 Migratory Birds Regulations, C.R.C., c. 1035.

43.2.1 Powers of the Minister, section 35(1), section 36(1):

“The Minister may vary or suspend the application of these Regulations where urgent action is needed and where the Minister considers it necessary for the conservation of migratory birds.”

43.2.2 Remark: The spirit and the letter of the **Migratory Birds Convention (laws and regulations) specifically dictate that migratory birds not be killed without reasonable justification**. Killed by contact with windmills sited along a migratory corridor or by contact with hazardous substances: What’s the difference?
Source: Decision document #9, NAELP, Submissions on Enforcement Matters, CEC, Submission SEM-99-002.

43.2.3 Remark: **The letter to the Minister of the Environment of Canada requesting an urgent order was prevented by said department from reaching the minister; in addition, the minister did not fulfil his responsibilities** (see paragraph 40 of this submission **R-28**).

43.3 Act respecting elections and referendums in municipalities (R.S.Q., c. E-2.2).

43.4 Sustainable Development Act, (Quebec), Ch. II, section 6 (**R-20**):

43.4.1 “Precaution” (Québec)

“When there are threats of serious or irreversible damage, lack of full scientific certainty must not be used as a reason for postponing the adoption of effective measures to prevent environmental degradation.”

See L’initiative de conservation des oiseaux de l’Amérique du Nord (ICOAN) (**R-31**).

In the case at hand, the governments are financing and knowingly issuing approvals for the construction of industrial wind parks along migratory corridors.

44. In view of the Canada Wildlife Act and the UN Convention on Biological Diversity, **we denounce the manner in which the environmental assessment of the impact of various projects is conducted as not resting on sound science and having no legal basis.**

Such environmental assessment is never performed in an ecosystem context in Québec.

Reference:

Construction of a wind
park in MRC of Rivière-du-
Loup

SNC-Lavalin inc.

**Terrawinds Resources
Corp.**

Main report (final version) File no. 501941

Impact concerns activities whose local importance was deemed of high value. The duration of impact is long, its extent is limited to the immediate site, while its intensity is weak. The overall impact is therefore moderate. While some may regard this impact as negative, it may also be found that the creation of new access points, as well as the attraction of the windmills, will allow for new areas to be opened up and also possibly to modify certain recreational routes, which would result in a positive impact for these same activities.

Table 8.54 Assessment of impact on recreation/tourism — Operating phase

Environmental value	Low	Moderate	High
Intensity of disturbance	Weak	Moderate	Strong
Extent of impact	Immediate site	Local	Regional
Duration of impact	Short	Moderate	Long

Importance of impact	Low	Moderate (±)	High
Specific mitigation measures	In order to ensure that hunting can be carried on safely in the region during the operating year, appropriate signage will be posted at strategic locations to remind hunters of the human presence connected with maintenance of the wind park.		
Importance of residual impact	Low	Moderate (±)	High

Source: http://www.bape.gouv.qc.ca/sections/mandats/eole_riv-loup/documents/PR3-1.pdf

Another example: Exhibit R-21

Reference: Excerpt from submission by Gérard Michaud to the joint federal/provincial public hearing on the Cacouna methane port project, June 2006.

REMARKS

Reference:

DNV Consulting (DIFFERENT), consulting firm retained by Énergie Cacouna

It is stated that:

“We help our clients understand, incorporate, and take control of the new fact of risk”

“Effectively taking charge of risk always yields returns in the process-based production industry”

Preamble

In view of these pointed statements on the ways to resolve the residual harmful impacts in an environmental assessment, in this case the high-risk implementation of a methane port at Gros-Cacouna, I am very concerned by the developer's assessment methods, which contemplate the safety and environmental protection risks into a non-meaningful virtual style using words such as *mitigate, minimize, reduce, diminish, negligible, tiny, nil and inconsequential*. The purpose of this methodology is to garner the public's trust and reassure governments, even if the impacts are cumulative, residual, and harmful.

Conclusion

The BAPE and the Canadian Environmental Assessment Agency must, pursuant to the laws and regulations, determine whether the significant negative impacts will lead to direct changes, and must enforce the applicable law concerning

- **natural and cultural heritage and the use of traditional aboriginal resources;**
- **marine mammals and bird fauna in the five protected ecosystems;**
- **major impact on the future and the respectful development of the St. Lawrence;**
- **the justification for the creation of active marine protection zones in the St. Lawrence estuary so as to protect endangered species;**
- **the negative impacts on human health, well-being, and quality of life, including the transformation of the natural landscape of Cacouna.**

Mr. Chairman, commissioners, thank you for your attention. Do not hesitate to contact me for any clarification or further information on any aspect addressed in this submission. With your approval, I reserve the right to submit to you new facts or relevant questions that may be brought to my attention before the end of these hearings.

Gérard Michaud

45. **Whereas the municipality of L'Isle-Verte began by addressing a request for a moratorium to Environment Canada in order to obtain a scientific study on the migratory corridors crossing its territory (R-15); whereas it stated in its Resolution #12.04.4.5.2 (R-22):**

“[ensuring ...] compliance with the regulations governing wind energy generation”

so as to become, ultimately, the municipality with the largest share [28,39] in the Viger-Denonville industrial wind park project located in Saint-Paul-de-la-Croix and Saint-Épiphanie in the MRC of Rivière-du-Loup. [See Resolutions #10.05.8.5. and #09.12.8.2. of the municipality of L'Isle-Verte] and document **R-23**, dated 14 March 2010, by the Réseau d'information sur les municipalités, MRC of Rivière-du-Loup, Actualités section: **“Projet éolien: le règlement d'emprunt devrait être sur Internet”** (Wind Project: the Borrowing Bylaw Should Be on the Internet).

46. **Whereas the directives of the Environmental Assessment Service of the Ministry of Sustainable Development of Québec are based on **philosophical principles**, and the **developers are not bound to observe** or at least to take account of the **sustainable development principles R-20** not specified in these directives.**

47. **In view of the importance of mentioning the **leeway allowed to a developer** [including SkyPower Inc.] in the case of the industrial wind park in the MRC of Rivière-du-Loup, we refer to the document “Précision” (**R-24**) which references **R-9** and **R-25**.**

48. **Whereas the BAPE press release of 29 May 2012 R-26 on the Viger-Denonville industrial wind park **does not mention the migratory bird corridor and the local****

bird flight paths, nor was any question asked during question period on this important point. The impact study is highly deficient on this issue!

49. Whereas **the municipal council of L'Isle-Verte refused to receive exhibit R-27 whose purpose is to protect migratory bird corridors.**
50. In view of the object set out in paragraph 1, chapter 1 of the Act Respecting Natural Heritage Conservation, R.S.Q. c. C-61.01, sections 1, 8, 13, 16, 19, 22, 25, 27, etc.
51. **In view of CEC project 97.01.01, whose aim is the creation of a network of important bird conservation areas (R-33).**
52. Whereas the federal, provincial, and municipal governments are neglecting and failing to enforce Bill C-5 [Species at Risk Act (45-438F)], particularly sections 32–6, “General Prohibitions”; sections 56–64, “Protection of Critical Habitat,” and sections 80–2, “Emergency Orders.”
53. In view of the Ecological Reserves Act (Quebec, 1974) and the Act respecting Threatened or Vulnerable Species (Quebec, 1989), **(we specify that in Québec, the management of most biological resources is under provincial or territorial jurisdiction, with the exception of migratory birds and marine organisms, which are under federal jurisdiction) (R-16, R-34, R-35).**
54. In view of the Canada Wildlife Act, the Sustainable Development Act (Bill 118) (2006, c. 3), the Environment Quality Act (R.S.Q., c. Q-2), and the Canadian Environmental Protection Act (1999, c. 33), in which the Government of Canada commits to “**implementing the precautionary principle that, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures (R-17) to prevent environmental degradation,**” the Act Respecting the Conservation and Development of Wildlife (C-61.1), and the Act respecting Threatened or Vulnerable Species (E-12.01).
55. **Consequently,**
- A. The Submitters hereby assert that the Governments of Canada, the United States, and Mexico are not assigning great importance to the delimitation of migratory corridors and breeding, feeding, and resting areas with safety zones, prohibiting all industrial windmills or industrial wind parks and all polluting facilities that may constitute a threat to the survival of the birds using said migration corridors.**
 - B. The Submitters assert that the governments of Canada and Québec and the municipal governments are failing to effectively enforce, or deliberately deciding not to effectively enforce laws, conventions, or other intergovernmental agreements; the Submitters therefore request that the**

Secretariat of the CEC, pursuant to NAAEC Articles 14 and 15, receive this submission and prepare a factual record reaching, among other conclusions, the conclusion in paragraph A) above with reference to the above recitals of this submission (**R-28**), to which is attached a list (**R-29**) of bound exhibits (**R-1** to **R-38**), reiterated in full for the factual response.

- C. The Submitters assert that, regardless of the extent of the failure to enforce, *inter alia*, the legislation included here or inferred, they are hereby submitting to the Secretariat of the CEC a specific case that typifies **the general failure to effectively enforce the environmental law** at issue in the case of the Viger-Denonville industrial wind park situated in the municipalities of Saint-Paul-de-la-Croix and Saint-Épiphanie, located within the Regional County Municipality (MRC) of Rivière-du-Loup, Province of Quebec, Canada; that all other aspects raised by this submission must be taken into account by the CEC, since in several aspects, it is a matter of **shedding light on the mechanisms by which the law is circumvented while giving the impression that it is being upheld** (e.g., the application of environmental impact assessment methodologies that are themselves questionable).
- D. Without delay, given the urgency, the Submitters assert that the migratory corridors and the areas already protected or to be protected should be the subject of, and **justify the preparation of, a CEC factual record whose purpose is the creation of a network of important migratory bird conservation areas**; more specifically, for the case at issue, the factual record should conclude that there cannot be commercial or industrial windmills along migratory bird corridors, **and this by virtue of the precautionary principle recognized by Canada and Québec in the context of sustainable development**.
- E. The Submitters assert that:

“The CEC Council has itself stated that migratory birds constitute a particularly important element of North American biodiversity” (SEM-99-002, page 145);

and that, for this reason, CEC studies must be characterized by an ecosystem-centered approach, since the habitat in question is situated within an ecological complex extending over a vast area in which biodiversity is already concerning, threatened, or endangered; that the diversity of the corresponding ecosystems become the driver of development, with strong recreation/tourism potential, involving the Charlevoix Biosphere Reserve, which must be extended to the south shore of the St. Lawrence River, as should the Saguenay/Saint-Laurent Marine Park, which has richer biodiversity and is a beluga breeding area; that the upper estuary of the St. Lawrence River be a protected area; that the Baie de L'Île-Verte National Wildlife Area be extended up to the port of Gros-Cacouna, including the marshes and the

Ramsar site.

[signature] Gérard Michaud Former official Ministère de l'Environnement du Québec	[signature] Gaston Hervieux Environmental research/intervention
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