



Advice to Council No: 17-05

JPAC Expert Forum on the North American Agreement on Environmental Cooperation (NAAEC): Assessing the Past, Looking Towards the Future

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 an expert forum to discuss trade and the environment within the context of the role of the North American Agreement on Environmental Cooperation (NAAEC), in Chicago, Illinois, United States, on 9 November 2017;

RECOGNIZING that under Article 1 of the NAAEC, the current objectives of the North American Agreement on Environmental Cooperation (NAAEC) are stated as:

- a) foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;*
- b) promote sustainable development based on cooperation and mutually supportive environmental and economic policies;*
- c) increase cooperation between the Parties to better conserve, protect, and enhance the environment, including wild flora and fauna;*
- d) support the environmental goals and objectives of the NAFTA;*
- e) avoid creating trade distortions or new trade barriers;*
- f) strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;*
- g) enhance compliance with, and enforcement of, environmental laws and regulations;*
- h) promote transparency and public participation in the development of environmental laws, regulations and policies;*
- i) promote economically efficient and effective environmental measures; and*
- j) promote pollution prevention policies and practices;*

RECOGNIZING that the “environmental goals and objectives of the NAFTA” referred to in Article 1(d) above of the NAAEC include the following sections of the North American Free Trade Agreement (NAFTA):

- o Preamble: The Parties agree to undertake their commitments “in a manner consistent with environmental protection and conservation”; to “promote sustainable development”; and to “strengthen the development and enforcement of environmental laws and regulations”;
- o Chapter One: Objectives, Article 104 – Relation to Environmental and Conservation Agreements; and
- o Chapter Eleven: Investment, Article 1114 – Environmental Measures (maintaining current environmental standards)

REAFFIRMING that the recommendations in Advice to Council 13-04, stemming from the JPAC-led public consultation on the 20-year assessment of NAFTA and the NAAEC, remain highly relevant;

REAFFIRMING that the success of the CEC is based on a cooperative and cost-effective, non-adversarial approach to address trilateral environmental issues and opportunities;

SUBMITS the following for Council’s consideration:

The CEC’s mandate should be modernized so that it continues to fulfill its unique and extensive role in promoting cooperation on sustainable development in North America.

In establishing the CEC, the NAAEC created an institution that provides an ongoing, permanent trilateral forum for environmental cooperation, an essential aspect of regional sustainable development. Over the last 23 years, despite limited resources, the CEC has successfully fulfilled its cooperative role in protecting and promoting the conservation of North American ecosystems, as highlighted in numerous publications.

By focusing on environmental cooperation instead of punitive actions, the CEC has emerged as a unique and very successful model in North America, focused on protecting and enhancing our shared ecosystems, especially by:

1. Taking the convening role of facilitating cooperation on shared environmental issues;
2. Leveraging resources from all Parties through a trinational Secretariat to accomplish initiatives under a Council-directed trinational work plan;
3. Expanding public participation, stakeholder engagement and transparency in CEC activities;
4. Generating and sharing knowledge of North American shared ecosystems; and
5. Implementing opportunities for the public to raise concerns about enforcement of environmental laws, including a mechanism to ensure that issues and concerns are addressed by the Parties, as appropriate.

In order to ensure that North Americans understand and better appreciate the scope of CEC activities and projects, each of these functions should be properly supported, improved and modernized, as discussed below.

1. Convening Role

- **The Parties should recognize and enhance the successful convening role of the CEC as it relates to environmental cooperation in North America.**

The CEC has the unique role of convening government representatives, experts and researchers to facilitate cooperation and promote best practices in North America on shared environmental issues. This should be acknowledged and strengthened. A wide number of government agencies in the three countries could benefit even more from the convening role that the CEC is playing in North America.

The CEC should also be mandated to work on regulatory cooperation in North America on new emerging environmental issues and opportunities. Through harmonization of methodologies to collect, analyze and publish environmental data on a cooperative basis across the North American continent, the CEC can help develop common approaches for tackling shared environmental issues and for facilitating a consensus on environmental standards and/or labeling requirements related to cross-border trade.

2. Leveraging Resources

- **The Parties should reaffirm their commitment to the existing trilateral Secretariat.**

It is crucial to recognize the importance of a permanent regional Secretariat that combines and enhances the efforts and resources of each country, and thus provides a cooperative implementation mechanism to support the Parties' sustainable development objectives under the NAFTA and the NAAEC. It is also important to recognize and allow an appropriate level of independence for the Secretariat in order to maximize its potential so it can proactively, comprehensively and impartially address contemporary environmental issues affecting North American communities and ecosystems.

By pooling resources as originally committed through the CEC, the Parties can cost-effectively carry out the environmental provisions of the NAAEC providing benefits at all levels of government and geographic scales. The results of this shared investment yield significant benefits to each country and their shared ecosystems, while achieving the Council's priorities at lower cost to each government.

The North American Environmental Atlas, the North American Land Change Monitoring System, and the North American Pollutant Release and Transfer Register (PRTR) are examples of highly-valued work products that were produced through shared funding and collaboration.

3. Stakeholder Engagement

- **The CEC should continue efforts to expand stakeholder engagement and public participation, outreach and education through CEC activities, especially with the private sector and with indigenous peoples.**

Public participation in CEC activities has grown significantly over the last few years, primarily due to increased use of communication tools such as social media platforms. For example, participation included over 5,000 viewers at the JPAC meeting in Tuxtla Gutiérrez in Chiapas (Mexico), over 6,000 viewers at the Council Meeting in Charlottetown (PEI, Canada), and nearly 3,000 viewers at the most recent JPAC Expert Forum in Chicago (IL, USA). This strategic effort has enabled the Council, JPAC, and CEC to dramatically increase public education and participation across North America, while fostering cooperation and collaboration in a highly cost-effective approach.

While these improvements are commendable, additional work is needed to more fully engage some underrepresented stakeholders such as the business community. Closer collaboration with business representatives should be a priority, including looking into potential partnerships to leverage resources and ensure their active participation in the work of the CEC.

The Council deserves praise for its leadership role in engaging indigenous peoples in CEC activities over the last few years. The creation of a TEK Expert Group and the development of projects with a TEK component have demonstrated the commitment of our three countries in collaborating on environmental protection. While much has been accomplished, we feel there are opportunities to further expand our cooperation with indigenous communities. In order to achieve this objective, the Council should seek new opportunities for greater engagement of indigenous communities. This engagement should strengthen the linkages between indigenous communities and the objectives of the NAAEC, and should strive to include topics such as: water and watershed management, biodiversity conservation, environmental assessments, and species at risk.

The NAPECA community grant program and the cooperative work program are some of the most successful initiatives for expanding this stakeholder engagement.

4. Knowledge Generation and Sharing

- **The Council should recognize, maintain and promote the strategic importance of key contributions of the CEC Secretariat related to research on trade and the environment.**

One of the strengths of the CEC is that the Secretariat is well positioned to collect, analyze and publish data relating to issues of trilateral and/or cross-border environmental concern.

Over the years, the Secretariat has tracked transboundary pollution and developed tools to understand how to mitigate the negative environmental impacts of cross-border trade. This includes, for example, the North American Environmental Atlas that helps experts and the

public identify North American shared ecosystems, threats and opportunities. With the ongoing development and use of these tools, the Council should recognize and maintain the role of the Secretariat in generating and sharing knowledge that informs the public on transboundary environmental issues in North America.

By conducting research, compiling and updating data and preparing reports on these issues, the organization and its secretariat are more relevant than ever, as our nations face the challenges ahead.

JPAC urges the Council to recognize the strategic importance of the Secretariat, and strengthen its efforts to further communicate to our governments and the North American public the organization's activities and projects, so they can better appreciate the scope of activities, accomplishments and value that it provides to them. In order to achieve this objective, each Party should assist JPAC and the CEC to broaden the involvement of stakeholders, other agencies and the public.

5. Public Mechanism related to Environmental Laws

- **The CEC should continue to provide opportunities for the public to raise concerns about enforcement of environmental laws while providing a mechanism to ensure that issues and concerns are addressed by federal, state or provincial governments, as appropriate.**

It is important to increase transparency and accountability on issues of public concern while leaving the enforcement aspect to the respective governmental institutions in each country.

It is important to note that JPAC has considered the input, advice and criticism from many experts, stakeholders and the public about the CEC and its operations. This has included many critical assessment reports and recommendations over the years (e.g., four-year review of the NAAEC, report of the Ten-year Review and Assessment Committee, JPAC-led public outreach on 20 years of NAFTA and the NAAEC) as well as our expert panels in Chicago and public comments received during all our public meetings and work sessions. This vast amount of input unanimously confirms the importance of the CEC as an institution. While the need and pathways for modernization are clear, it is widely recognized that the CEC should continue to fulfill its unique role in promoting cooperation on sustainable development in North America.

JPAC is confident that the recommendations contained herein are relevant to the CEC Council's strategic priorities and is unanimous in supporting this Advice to Council.

**Approved by the JPAC members
21 November 2017**