

9 December 2014

COUNCIL RESOLUTION 14-09

Instruction to the Secretariat of the Commission for Environmental Cooperation with regard to submission SEM-12-001 (*British Columbia (BC) Salmon Farms*) asserting that Canada is failing to effectively enforce the *Fisheries Act*

THE COUNCIL:

AFFIRMING that the process provided for in Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* (NAAEC or the “Agreement”) was established by the Parties of the NAAEC to provide an opportunity for residents of Canada, Mexico, and the United States to present their concerns regarding the effective enforcement of environmental law and to “bring facts to light” regarding those concerns;

ACKNOWLEDGING the role of the Secretariat, as the administrator of the Submissions on Enforcement Matters (SEM) process, to facilitate information-sharing between members of the public and the governments on matters concerning the effective enforcement of environmental law;

HAVING REVIEWED the submission filed by the Center for Biological Diversity, the Pacific Coast Wild Salmon Society, the Kwikwasu’tinuxw Haxwa’mis First Nation, and the Pacific Coast Federation of Fishermen’s Associations, on 10 February 2012;

NOTING that Article 14(2) states that “in deciding whether to request a response, the Secretariat shall be guided by whether [...] (c) private remedies available under the Party’s law have been pursued [...]”;

ALSO NOTING that Article 14(3) states that the Party named in the submission “shall advise the Secretariat within 30 days or, in exceptional circumstances and on notification to the Secretariat, within 60 days of delivery of the request: (a) whether the matter is the subject of a pending judicial or administrative proceeding, in which case the Secretariat shall proceed no further [...]”;

NOTING FURTHER that NAAEC Article 45(3) states that “[f]or purposes of Article 14(3), ‘judicial or administrative proceeding’ means: (a) a domestic judicial, quasi-judicial or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such actions comprise: mediation; arbitration; the process of issuing a license, permit, or

authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order; and (b) an international dispute resolution proceeding to which the Party is party.”;

RECALLING that Guideline 9.6 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* states that “[i]f, in its response under Article 14(3), the Party informs the Secretariat and explains in writing that the matter raised in the submission is the subject of a pending judicial or administrative proceeding, as defined in Article 45(3) of the Agreement, the Secretariat will proceed no further with the submission and will promptly notify the Submitter and the Council, in writing, that the submission process is terminated without prejudice to the Submitter’s ability to file a new submission [...]”;

NOTING FINALLY that Party positions presented in the majority and minority explanations for the following instructions should not be understood as views held by the entire Council.

HEREBY DECIDES BY A TWO-THIRDS VOTE:

TO INSTRUCT the Secretariat not to prepare a factual record with respect to this submission;
and

UNANIMOUSLY DECIDES:

TO DIRECT the Secretariat to post the reasoning of the members of the Council for their votes in the SEM public registry.

ON BEHALF OF THE COUNCIL:

Dan McDougall
Government of Canada
In support of the Instruction Not to Prepare a Factual Record

Enrique Lendo Fuentes
Government of the United Mexican States
In support of the Instruction Not to Prepare a Factual Record

Jane Nishida
Government of the United States of America
In opposition to the Instruction Not to Prepare a Factual Record