

5 June 2014

COUNCIL RESOLUTION 14-04

**Instruction to the Secretariat of the Commission for Environmental Cooperation regarding the Secretariat's Article 15(1) Notification that a Factual Record is warranted with regard to SEM-11-003 (*Protection of Polar Bears*) in connection with assertions that Canada is failing to effectively enforce provisions of the *Species at Risk Act* (SARA)**

THE COUNCIL:

SUPPORTIVE of the process provided for in Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC or the "Agreement"), as an important mechanism to "bring facts to light" on environmental enforcement matters by promoting transparency and public participation;

ACKNOWLEDGING the important role of the Secretariat, as the administrator of the Submissions on Enforcement Matters (SEM) process, in facilitating information-sharing among members of the public and their governments on matters concerning the effective enforcement of environmental law;

HAVING REVIEWED the submission filed by Center for Biological Diversity (the "Submitter"), on 5 December 2011 and the Response provided by Canada for receipt by the Secretariat on 24 January 2013;

HAVING CONSIDERED the Secretariat's Notification to the Council, dated 7 November 2013, recommending the development of a factual record on the issues raised by the Submitter;

AFFIRMING that one of the objectives of the NAAEC, as indicated in Article 1, is the promotion of transparency;

RECALLING Council's responsibility, under NAAEC Article 10(5)(a), to promote public access to information concerning the environment that is held by public authorities of each Party;

MINDFUL that NAAEC Article 39(1)(b) states that nothing in the Agreement shall be construed to require a Party to make available or allow access to information that is protected from disclosure by the confidentiality of governmental decision making;

ALSO MINDFUL that under Article 45 of the Agreement, a Party has not failed to "effectively enforce its environmental law" in a particular case where an action by officials of that Party reflects a reasonable exercise of discretion in respect with regulatory matters, including measures taken for administrative efficiency; and

AWARE that, on 22 January 2013, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) provided to the Secretariat information in the public domain concerning issues which were raised by the Submitter regarding the “best available information” gathered and utilized by the COSEWIC to develop its assessment of the polar bear as a species of special concern;

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 Council members’ reasons for their votes in the SEM public registry.

APPROVED BY THE COUNCIL:

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

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

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