

Montreal, November 16, 2001

COUNCIL RESOLUTION 01-12

**Instruction to the Secretariat of the Commission for Environmental Cooperation Regarding the Assertion that Canada is Failing to Effectively Enforce sections 35(1) and 36(3) of the *Fisheries Act* (SEM-00-004).**

THE COUNCIL:

SUPPORTIVE of the process provided for in Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* (NAAEC) regarding submissions on enforcement matters and the preparation of factual records;

CONSIDERING the submission filed on the above-mentioned matter by David Suzuki Foundation, Greenpeace Canada, Sierra Club of British Columbia, Northwest Ecosystem Alliance and Natural Resources Defense Council, and the response provided by the Government of Canada on July 4, 2001;

HAVING REVIEWED the notification by the Secretariat of July 27, 2001 that the development of a factual record is warranted in relation to the submission (SEM-00-004);

NOTING that the only specific case for which the Secretariat's notification recommends a factual record is that Canada is failing to effectively enforce sections 35(1) and 36(3) of the *Fisheries Act* with regard to the Sooke River;

FURTHER NOTING that the Secretariat's determination suggests that a factual record might be prepared for the documented assertion that Canada is failing to effectively enforce sections 35(1) and 36(3) of the *Fisheries Act* with regard to De Mamiel Creek;

RECOGNIZING that Canada in its response indicated that the submission did not include sufficient information to enable Canada to provide a meaningful response to other matters raised in the submission for which the Secretariat's notification recommends a factual record; and

HAVING BEEN INFORMED by the Government of Canada that no judicial and administrative proceedings regarding De Mamiel Creek are pending;

HEREBY UNANIMOUSLY DECIDES:

TO INSTRUCT the Secretariat to prepare a factual record in accordance with Article 15 of the NAAEC and the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* for the assertions set forth in submission SEM-00-004 that Canada is failing to effectively enforce sections 35(1) and 36(3) of the *Fisheries Act* at the Sooke River and at the De Mamiel Creek;

TO DIRECT the Secretariat to provide the Parties with its overall work plan for gathering the relevant facts and to provide the Parties with the opportunity to comment on that plan; and

TO DIRECT the Secretariat to consider, in developing the factual record, whether the Party concerned "is failing to effectively enforce its environmental law" since the entry into force of the NAAEC on January 1, 1994. In considering such an alleged failure to effectively enforce, relevant facts that existed prior to January 1, 1994, may be included in the factual record.

APPROVED BY THE COUNCIL:

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Government of the United States of America  
by Judith E. Ayres

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Government of the United Mexican States  
by Olga Ojeda Cárdenas

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Government of Canada  
by Norine Smith

