

North Coast Steelhead Alliance - SEM-09-005 (Skeena River Fishery)

Questions:

	Yes	No	I don't know
Did the Citizen Submission procedure seem to be useful?			Not in the end
Were you satisfied with the CEC's handling of your petition?		No	
Did the CEC's resolution of your petition seem technically and legally appropriate?		No	
Did the CEC's resolution seem just?		No	
Did the CEC's response time seem appropriate?		No	
How much time did the procedure take (in months)?	22		
How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)?	C\$ 10,191.00		
Did the Citizen Submission procedure seem to be useful?			

1. When and how did you learn about the citizen submission process?

The Submitter learned of the CEC process in March, 2009, through a member of the Submitter's legal team who was a former intern with the CEC Secretariat.

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

Given the Submitter's advisor's familiarity with CEC processes, sufficient information was available on the CEC website to proceed with a submission.

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

Given the Secretariat's use of its previous decisions as precedents, it would be useful to annotate the various sections of the Guidelines with references to relevant previous decisions.

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

No.

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

At the time, the Submitter thought that bringing an international spotlight on the matters raised would prompt the national government to reform its policy and procedures. This turned out not to be the case.

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

The Submitter expected that its submission would result in a factual record, which, although lacking in legal clout, would help pressure the government to make reforms.

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

The situation addressed by the Submitter was apparently not affected by its CEC submission. A few days after receiving notice that the Secretariat would not be recommending a factual record, a national newspaper reported that the matter of the submission (non-enforcement of commercial salmon fishers' legal requirement to release by-catch species) was continuing in the area. This media report was not informed or prompted by the Submitter or any of its advisors.

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

The original submission documented a correlation between the non-enforcement of relevant environmental laws and political pressure on the enforcing agency by and on behalf of the non-complying fishers. As noted above, the Submitter's understanding of that correlation has not changed as a result of the CEC process.

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

The laws that were the subject of the submission are regulatory offences. As complaints and information given to the relevant decision-makers and to the media did not produce change, the only domestic legal option remaining was to initiate a private prosecution. As private prosecutions of offences are invariably stayed by the Crown prosecutor's office, this did not seem to be a useful course to pursue.

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

The government response contained too many misrepresentations to be helpful to either the Submitter or to the Secretariat. For example: among other things, the submission raised the issue of the government putting considerable more effort into enforcing fishery regulations in the Pacific North Coast aboriginal and recreational fisheries than in the commercial sector. The government response attempted to deny this bias by presenting data for a four-year period that purported to show that enforcement effort was equally divided among commercial and recreational fisheries. The data set, however, was from only one of four detachments on the North Coast; the one that governed most of the salmon gillnet fishery subject to the submission and relatively little of the recreational fishing activity, which takes place within the two upriver detachments. Similarly, the government response reported that by-catch revival “improved drastically” in 2009, but failed to mention that in that year there was virtually no commercial fishery due to low salmon returns.

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

The Submitter’s contact with government prior to making the submission consisted of letters and e-mails requesting greater enforcement, as well as requests for enforcement information. Details of the enforcement situation were eventually obtained through Freedom of Information requests.

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

The process from submission to the decision not to approve a factual record took 22 months. Given that the main force of the CEC process is to “shame” governments into taking appropriate enforcement action, this is clearly far too long as the issue would likely become stale by that time.

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

As the Submitter only received notice a couple of weeks ago that the CEC process was concluded, it is too soon to respond to this question.

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

The direct costs to the Submitter were C\$10,191.00. This does not include volunteer time and costs, which were not recorded. Given that the process in the end proved to be unsatisfactory, the costs exceeded the benefits.

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

The submission was prepared by a lawyer and legal researcher, which was absolutely necessary given the complexity of the arguments needed to show that the matter being submitted was an environmental one and not a resource management one.

16. Approximately how much time went into the preparation of your submission?

63 hours legal research and preparation time.

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

In the end, the process was not a useful forum for the reasons outlined above.

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

In the Submitter's experience, the overriding deficiency in the process is the inability of the Submitter to reply to the government response to its submission. Such a right of reply to facts and argument presented contrary to a submitted interest is fundamental to many, if not most, legal processes in those jurisdictions under the rule of law. For this submission, excluding a right of reply resulted in misrepresentation in the government response that would not be apparent without detailed knowledge of local institutional arrangements and subsequent enforcement history. Such misrepresentations would not be readily discernable by reviewers from outside of the region.

This procedural deficiency can be cured by changing the CEC governing agreement or if that is beyond redemption, by adopting an informal review of the government responses among CEC staff and the original submitter. Alternatively, the CEC could adopt a very precautionary approach that allows for the government having the last word. Unfortunately, the fact that the Secretariat apparently has not recommended a single submission for preparation of a factual record since 2007 (the awkward example of the Species at Risk submission excepted), does not offer much hope in that direction.

19. Do you have any other comment or recommendations regarding the citizen submission process?