

20 December 2010

COUNCIL RESOLUTION: 10-05

**Instruction to the Secretariat of the Commission for Environmental Cooperation regarding the assertion that Canada is failing to effectively enforce sections 41, 42 and 80 of the *Species at Risk Act* (SEM-06-005).**

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 10 October 2006 by Nature Canada, the Sierra Club (US and Canada), Conservation Northwest, the David Suzuki Foundation, Environmental Defence, Forest Ethics, Ontario Nature, the Western Canada Wilderness Committee, BC Nature, the Federation of Alberta Naturalists, the Natural History Society of Newfoundland and Labrador, Nature Nova Scotia and Nature Quebec;

HAVING REVIEWED the 10 September 2007 notification submitted to Council by the Secretariat, recommending the development of a factual record with respect to assertions that Canada is failing to effectively enforce sections 41, 42 and 80 of the *Species at Risk Act*;

NOTING that section 80 of the *Species at Risk Act* involves an exercise of ministerial discretion which was previously the subject of a judicial proceeding concerning the Northern Spotted Owl, and is currently the subject of a judicial proceeding concerning the Alberta Woodland Caribou and, as such, is not the proper subject of a factual record in this case;

REAFFIRMING that the focus of the final factual record process is to examine facts pertinent to assertions that a Party is failing to effectively enforce its environmental law, and not the effectiveness of the law in question;

HEREBY UNANIMOUSLY:

INSTRUCTS 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 NAAEC with regard to alleged failures by Canada to effectively enforce sections 41(1)(c) and 42 of the *Species at Risk Act*, limiting the factual record to the federal legislation except to the extent necessary to provide facts in respect of consultations with provinces and only in respect of provinces which are bound by the *Canadian Intergovernmental Agreement Regarding the NAAEC* and limited to the species included in the attached Annex I to this Resolution;

FURTHER INSTRUCTS the Secretariat not to include in the factual record, considerations of the assertions pertaining to section 80 of the *Species at Risk Act*;

DIRECTS 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 1 January 1994. In considering such an alleged failure to effectively enforce, relevant facts that existed prior to 1 January 1994, may be included in the factual record; and

FURTHER DIRECTS the Secretariat to provide the Parties with its overall work plan for gathering the relevant facts and the opportunity to comment on that plan.

APPROVED BY THE COUNCIL:

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David McGovern  
Government of Canada

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Enrique Lendo Fuentes  
Government of the United Mexican States

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Michelle DePass  
Government of the United States of America

Annex 1 to Council Resolution 10-XX

**Commission for Environmental Cooperation**  
**Instruction to the Secretariat of the Commission for Environmental Cooperation**  
**regarding the assertion that Canada is failing to effectively enforce sections 41, 42**  
**and 80 of the *Species at Risk Act* (SEM-06-005).**

Section 41(1)(c) List of species

- Piping Plover (*circumcinctus* subspecies) (*Charadrius melodus circumcinctus*)
- Kirtland's Warbler (*Dendroica kirtlandii*)
- Blue whale (Pacific population) (*Balaenoptera musculus*)
- Fin whale (Pacific population) (*Balaenoptera physalus*)
- Sei whale (Pacific population) (*Balaenoptera borealis*)

Section 42 List of species

- Atlantic whitefish (*Coregonus huntsmani*)
- Coastal Scouler's catchfly (*Silene scouleri* spp. *grandis*)
- Forked three-awned grass (*Aristida basiramea*)
- Margined streamside moss (*Scouleria marginata*)
- Piping Plover (*melodus* subspecies) (*Charadrius melodus melodus*)
- Red Crossbill (*percna* subspecies) (*Loxia curvirostra percna*)