

Montreal, November 16, 2001

COUNCIL RESOLUTION 01-11

**Instruction to the Secretariat of the Commission for Environmental Cooperation  
Regarding the Assertion that Canada is Failing to Effectively Enforce section 36(3) of the  
*Fisheries Act* (SEM-98-004).**

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;

MINDFUL that Article 14(3) of the NAAEC states that where a Party has advised the Secretariat within 60 days of delivery to the Party of a request for a response from the Party, that a matter is the subject of a pending judicial or administrative proceeding, the Secretariat shall proceed no further;

CONSIDERING the submission filed on the above-mentioned matter by the Sierra Club of British Columbia, Environmental Mining Council of British Columbia and Taku Wilderness Association, the Secretariat's request of June 25, 1999 to the Government of Canada for a response, and the response provided by the Government of Canada on September 8, 1999;

NOTING that it would be inappropriate with respect to the submission to direct the preparation of a factual record on matters in the submission that are subject to pending judicial or administrative proceedings;

HAVING REVIEWED the notification by the Secretariat of May 11, 2001 that the development of a factual record is warranted in relation to the submission (SEM-98-004); and

HAVING BEEN INFORMED by Canada that at this time there are no pending judicial or administrative proceedings regarding the Britannia Mine and that proceedings relating to the Tulsequah Chief and Mt. Washington Mines are still 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 assertion that Canada is

failing to effectively enforce section 36(3) of the *Fisheries Act* with respect to the Britannia Mine;

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;

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; and

TO TERMINATE this submission process with respect to the assertions concerning the Tulsequah Chief and Mt. Washington Mines.

APPROVED BY THE COUNCIL:

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Government of the United States of America  
by Judith 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