

Secretariat of the Commission for Environmental Cooperation

Determination in accordance with Article 14(1) of the North American Agreement on Environmental Cooperation

Submitters: *Centro Mexicano de Derecho Ambiental, A.C.*
Conservación de Mamíferos, A.C.
Humane Society International

Party: Canada

Revised submission: 23 August 2007

Original submission: 26 June 2007

Date of determination: 6 September 2007

Submission I.D.: **SEM-07-003 (Seal Hunting)**

I. INTRODUCTION

On 26 June 2007, *Centro Mexicano de Derecho Ambiental, A.C.* (CEMDA) and *Conservación de Mamíferos, A.C.* (COMARINO) filed a citizen submission with the Secretariat (the “Secretariat”) of the Commission for Environmental Cooperation pursuant to Article 14 of the North American Agreement on Environmental Cooperation (NAAEC or “Agreement”). They asserted that Canada is failing to effectively enforce provisions of law with respect to the harp seal hunt that takes place every year off the East Coast of Canada.

On 13 July 2007, the Secretariat determined that submission SEM-07-003 (Seal Hunting) did not meet all the requirements of NAAEC Article 14(1). Pursuant to Guideline 6.2 of the CEC Council’s “Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation” (the “Guidelines”), the Secretariat notified CEMDA and COMARINO that they had 30 days in which to provide the Secretariat with a submission that meets the criteria for admissibility contained in NAAEC Article 14(1). On 23 August 2007, the Submitters listed above provided the Secretariat with a revised submission. The Secretariat has determined that the revised submission does not meet all the criteria for admissibility contained in NAAEC Article 14(1), for the reasons set out below. Pursuant to Guideline 6.3, the process is now terminated with respect to the submission.

II. SUMMARY OF THE REVISED SUBMISSION

In the revised submission, the Submitters assert that Canada, in particular the Department of Fisheries and Oceans,¹ is failing to effectively enforce Sections 8, 28 and 29 of the

¹ Revised submission, p. 1.

Marine Mammal Regulations (MMR) adopted under the federal *Fisheries Act*.² These provisions prescribe instruments and methods for killing seals during the commercial seal hunt.³

According to the Submitters, the commercial seal hunt is inherently cruel because of the environment in which it operates: Over 1,000 fishing vessels operating in an area of hundreds of thousands of square miles of ocean, with more than 100,000 seals being killed over two or three day periods.⁴ According to the Submitters,

Based on these facts, it has been the position of the Submitters that the Canadian commercial seal hunt be permanently stopped. It is our strong belief that the seal hunt cannot be carried out in an acceptably humane manner based on current law regardless of the level of enforcement. That being said, it is also the position of Submitters that by engaging in the CEC Submission in [*sic*] Enforcement Matters process, and it if [*sic*] results in the Canadian government actually attempting to enforce the provisions of the Canadian Marine Mammal Regulations (MMRs) discussed herein, the hunt could be carried out in a *slightly less inhumane* manner resulting in fewer seals suffering from cruel treatment at the hands of hunters.⁵

The revised submission contains a series of arguments in favour of considering Sections 8, 28 and 29 of the MMR as falling within the definition of environmental law found at NAAEC Article 45(2).⁶ It also presents conclusions from veterinary reports expressing concerns regarding compliance with, and enforcement of, Sections 8, 28 and 29 of the MMR, along with video evidence.⁷

III. ANALYSIS

Article 14 of the NAAEC directs the Secretariat to consider a submission from any nongovernmental organization or person asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. When the Secretariat determines that a submission meets the Article 14(1) requirements, it then considers whether the submission merits requesting a response from the Party named in the submission based upon the factors contained in Article 14(2). As noted by the Secretariat in previous determinations, Article 14(1) is not intended to be an insurmountable procedural screening device.⁸ The Secretariat considered the submission with this perspective in mind.

² Revised submission, p. 3.

³ *Ibid.*

⁴ Revised submission, p. 2.

⁵ *Ibid.*

⁶ Revised submission, pp. 4-9.

⁷ Revised submission, pp. 10-11.

⁸ In this regard see SEM-97-005 (Biodiversity), Determination in accordance with Article 14(1) (26 May 1998) and SEM-98-003 (Great Lakes), Determination in accordance with Articles 14(1) and (2) (8 September 1999).

A. Opening Phrase of Article 14(1)

The opening phrase of Article 14(1) authorizes the Secretariat to consider a submission “from any nongovernmental organization or person asserting that a Party is failing to effectively enforce its environmental law [...]”⁹ The Submitters are nongovernmental, civil associations.¹⁰ The allegations also comply with the temporal requirement that the submission assert an ongoing failure to effectively enforce an environmental law.¹¹ However, the provisions identified in the revised submission are not “environmental law” for the purposes of the NAAEC.¹²

Under the NAAEC, “environmental law” means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through, *inter alia*, the protection of wild flora or fauna, including endangered species, their habitat and specially protected natural areas.¹³

Sections 28 and 29 of the MMR prescribe instruments and methods for killing seals, and Section 8 provides: “No person shall attempt to kill a marine mammal except in a manner that is designed to kill it quickly.” The primary purpose of these three provisions is preventing cruelty to animals. As explained by the Secretariat previously, while the purpose of these provisions is to protect wild fauna (seals), their primary purpose is the prevention of cruelty to animals and not the protection of the environment or the prevention of a danger to human life or health, as required by Article 45(2) of the NAAEC.¹⁴

IV. DETERMINATION

For the foregoing reasons, the Secretariat determines that it cannot examine the revised submission pursuant to NAAEC Article 14(1) because it does not assert a failure to effectively enforce environmental law. Pursuant to Guideline 6.3, the Secretariat hereby informs the Submitters that the process is terminated with respect to the submission, SEM-07-003 (Seal Hunting).

⁹ The Secretariat has already determined the parameters in the first sentence of Article 14(1) of the Agreement. See SEM-99-002 (Migratory Birds), Determination in accordance with Article 14 (1) and (2) (23 December 1999).

¹⁰ Revised submission at 1.

¹¹ *Ibid.*

¹² See Article 45(2) of the NAAEC.

¹³ Article 45(2)(a)(iii) of the NAAEC.

¹⁴ SEM-07-003 (Seal Hunting), Determination in accordance with Article 14(1) (13 July 2007).

Secretariat of the Commission for Environmental Cooperation

(original signed)
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Submitters