

Secretariat of the Commission for Environmental Cooperation

Overall Plan to prepare a Factual Record

Submitters: Center for Biological Diversity
Animal Welfare Institute
Natural Resources Defense Council
Environmental Investigation Agency

Party: United Mexican States

Date: 5 July 2024

Submission No.: SEM-21-002 (*Vaquita Porpoise*)

On 26 June 2024, the Council members of the Commission for Environmental Cooperation (CEC), issued their decision pursuant to Article 24.28(2) of the United States-Mexico-Canada Agreement (USMCA/CUSMA), in which they instructed the CEC Secretariat to prepare a factual record regarding Mexico’s alleged failure to effectively enforce the following provisions:

- A. Article 55 of the General Wildlife Act (*Ley General de Vida Silvestre*, LGVS);
- B. Article 56 of the General Wildlife Act Regulation (*Reglamento de la Ley General de Vida Silvestre*, LGVS Regulation);
- C. Order which establishes a fishing ban on the Totoaba (*Cynoscion macdonaldi*), in the waters of the Gulf of California, from the mouth of the Colorado River to Río Fuerte, Sinaloa, on the east coast, and from the Colorado River to Bahía Concepción, Baja California, on the west coast (*Acuerdo que establece veda para la especie Totoaba, Cynoscion MacDonaldi, en aguas del Golfo de California, desde la desembocadura del Río Colorado hasta el Río Fuerte, Sinaloa en la costa oriental, y del Río Colorado a Bahía Concepción, Baja California, en la costa occidental*) (“1975 Totoaba Fishing Ban”), and
- D. Order which regulates fishing gear, systems, methods and techniques, as well as restricts permissible hours, for small and large vessels in Mexican marine areas in the Northern Gulf of California, and which establishes landing sites and mandates the use of monitoring systems for such vessels (*Acuerdo por el que se regulan artes, sistemas, métodos, técnicas y horarios para la realización de actividades de pesca con embarcaciones menores y mayores en Zonas Marinas Mexicanas en el Norte del Golfo de California y se establecen sitios de desembarque, así como el uso de sistemas de monitoreo para tales embarcaciones*) (“2020 Gillnets Order”).

The Council members also instructed:

TO FURTHER DIRECT the Secretariat to provide the Council with its overall work plan for gathering the relevant facts; to keep the Council informed of any future changes or adjustments to such plan; and to promptly communicate with the Council in connection with any clarification required with respect to the scope of the factual record hereby authorized.

In accordance with Council Resolution 24-02, the Secretariat submits its workplan for the development of the SEM-21-002 (*Vaquita Porpoise*) factual record.

Overall Work Plan

The estimated time to prepare a draft factual record is in line with the timelines set out in the following sections:

Obtaining of information and preparation of the factual record

1. The Secretariat will conduct an information search in databases and public records — as required and with the support of independent experts— for relevant technical, scientific, or other information, in accordance with subparagraph e) of USMCA/CUSMA Article 24.28(4).

Timeline: Within 60 days following the Council members' instructions

2. In accordance with USMCA/CUSMA Article 24.28(4) and Article 14 of the Environmental Cooperation Agreement (ECA), the Secretariat shall take into account any information provided by a Party. In effect, Article 14 of the ECA states that “Each Party shall cooperate with the Secretariat to provide information relevant to the preparation of a factual record.” To this end, the Secretariat may coordinate through the Coordinating Unit for International Affairs (*Unidad Coordinadora de Asuntos Internacionales—UCAI*) of the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales—Semarnat*) requests to obtain relevant factual information with the aim of preparing the factual record.

Timeline: Within 60 days following the Council members' instructions

3. The Secretariat will request —as appropriate— information of a technical or scientific nature or any other information pertinent to the preparation of the factual record from interested persons or non-governmental organizations, JPAC or independent experts, in accordance with subparagraphs b), c) and d) of USMCA/CUSMA Article 24.28(4).

Timeline: Within 60 days following the Council members' instructions

Site visits and meetings

4. The Secretariat plans to conduct a at least one site visit to Ensenada and San Felipe, Baja California between within 90 days after the Council members issue their instructions. To this end, it will arrange, with the support of Environment Canada, the corresponding diplomatic note to be delivered through the Canadian Embassy to the Mexican Ministry of Foreign Affairs and will timely inform UCAI. The Secretariat will meet with relevant authorities, including Semarnat; Secretariat of the Navy (*Secretaría de Marina "Semar"*), Attorney General of the Republic (*Fiscalía General de la República FGR*), Federal Attorney General for Environmental Protection (*Procuraduría Federal de Protección al Ambiente, "Profepa"*), National Commission of Natural Protected Areas (*Comisión Nacional de Áreas Naturales Protegidas "Conanp"*), National Commission of Aquaculture and Fisheries (*Comisión Nacional de Pesca "Conapesca"*), and the Mexican Institute for Research in Fisheries and Sustainable Aquaculture (*Instituto Mexicano de Investigación en Pesca y Acuicultura Sustentable, IMIPAS*). The Secretariat will also consider meetings with organizations, experts and academics.

Additional information and follow-up to meetings

5. The Secretariat shall request—as it deems appropriate—information in addition to that provided by a Party pursuant to USMCA/CUSMA Article 24.28(4) and ECA Article 14, which shall be incorporated into the draft factual record, as appropriate.

In order to clarify questions about the information received, the Secretariat will—as it deems appropriate—schedule meetings with authorities, organizations, experts and academics.

Timeline: Within 90 days after the Council members issue their instructions

Submission of the draft factual record to the Council, the Parties' comments, incorporation of said comments and final version of the factual record

6. Pursuant to USMCA Article 24.28(5), the Secretariat shall submit a draft factual record to the Council in at least one of the concerned Party's designated official languages.

Scheduled date: No later than 120 days after the Council members issue their instructions (25 October 2024).

Translation into the CEC's official languages

7. The Secretariat will be responsible for translation of the factual record the CEC's official languages.

Timeline: 60 days after delivery of the Draft Factual Record to the Council.

Comments to the Draft Factual Record, incorporation of comments and submission of the Final Factual Record to the Council.

8. Once the draft factual record has been submitted, any Party may provide comments on its accuracy, in accordance with USMCA Article 24.28(5).

Timeline: Within 30 days of receipt of the draft factual record in the official language(s) of the Party.

9. In accordance with the provisions of USMCA Article 24.28(5), the Secretariat shall incorporate the comments from the Parties and submit the final version of the factual record to the Council.

Scheduled date: Within 60 days of receipt of the Parties' comments.

Publication of the factual record

10. The Secretariat shall make the final factual record publicly available within 30 days of its submission to the Parties, unless at least two members of the Council instruct it not to do so, in accordance with USMCA Article 24.28 (6).

Scheduled date: Within 30 days of submitting the final factual record to the Council.

Additional information

The submission, Mexico's response, the Secretariat's determinations, the Council members instructions, and a summary of all of these documents are available online, in the registry of submissions and public archive, on the CEC website: <www.cec.org/submissions>. Similarly, one may request additional information by contacting the Secretariat by email <sem@cec.org> or in writing, at the following address:

Commission for Environmental Cooperation
Legal Affairs and Submissions on Enforcement Matters
1001 Blvd Robert Bourrassa, bureau 1620
Montreal, QC, H3B 4L4
Canada