

Secretariat of the Commission for Environmental Cooperation

REQUEST FOR INFORMATION for preparation of a factual record concerning submission SEM-21-002 (*Vaquita Porpoise*)

I. The factual record process

The Commission for Environmental Cooperation of North America (CEC) is an international organization created under the North American Agreement on Environmental Cooperation (NAAEC), signed by Canada, Mexico and the United States in 1994. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA or “the Agreement”) and the Environmental Cooperation Agreement (ECA) entered into force. As of that date, the Submissions on Enforcement Matters process (“SEM process”), originally established in Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC), is governed by Articles 24.27 and 24.28 of the USMCA. The CEC Secretariat remains responsible for implementation of the SEM process, as stipulated in the ECA.

USMCA/CUSMA Articles 24.27 y 24.28 provide for a process allowing any person of a Party or an entity constituted in accordance with the domestic laws of a Party, to file a submission asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. The Secretariat of the CEC (the “Secretariat”) initially considers submissions to determine whether they meet the criteria and requirements contained in USMCA/CUSMA Article 24.27(1)(2). When the Secretariat finds that a submission meets these criteria, it then determines, pursuant to the provisions of USMCA/CUSMA Article 24.27(3), whether the submission merits a response from the concerned Party. In light of any response from the concerned Party, and in accordance with the NAAEC, the Secretariat may notify the Council of the CEC (the “Council”) that the matter warrants the development of a factual record, and in that case, informs so to the CEC Council and the Environment Committee, providing its reasons for such recommendation in accordance with USMCA/CUSMA Article 24.28(1). Where the Secretariat decides to the contrary, or where certain circumstances obtain, it then proceeds no further with the submission.

The purpose of a factual record is to provide an objective presentation of the facts relevant to the assertion set forth in a submission and to allow the readers to draw their own conclusions regarding a Party’s environmental law enforcement. A factual record is expected to generally outline the history of the environmental enforcement issue raised in the submission, the relevant legal obligations of the Party, and the actions of the Party in fulfilling those obligations; as such, it is another valuable outcome of this information sharing-process regarding the effective enforcement of environmental law in the Party’s territory.

On 26 June 2024, the Council members adopted Council Resolution 24-02 which instructs the Secretariat to prepare a factual record for submission SEM-21-002 (*Vaquita Porpoise*). The Secretariat is therefore requesting relevant information relating to the matters to be addressed in the factual record.

USMCA/CUSMA Article 24.28(4) establishes that the Secretariat will consider any relevant technical, scientific or other information that is publicly available or that is submitted by a Party, by the Joint Public Advisory Committee (JPAC), or by interested non-governmental organizations or persons, or developed under the ECA or by independent experts.

II. Examples of relevant factual information

Examples of information of a technical, scientific or other nature that are necessary for the preparation of the factual record are given below. You are kindly requested to send this information in electronic format to facilitate its management and integration. Information sent to the CEC Secretariat is understood to be subject to no limitations as regards confidentiality.

- i. Information on enforcement actions implemented by the relevant authorities during the period from 2005 to 2023 for events in the Upper Gulf of California related to the protection of the vaquita porpoise (*Phocoena sinus*) and the totoaba (*Totoaba macdonaldi*), implemented by the following authorities:
 - Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*, “Semarnat”);
 - Mexican Navy (*Secretaría de Marina*, “Semar”);
 - Federal Attorney General (*Fiscalía General de la República*, FGR);
 - 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 Acuacultura y Pesca*, “Conapesca”);
 - Mexican Institute of Research on Fisheries and Sustainable Aquaculture (*Instituto Mexicano de Investigación en Pesca y Acuacultura Sustentable*, IMIPAS);Together, the “relevant authorities”.
- ii. Documentary and statistical information regarding programs, short and medium-term objectives, actions implemented by the relevant authorities for the protection of the vaquita and totoaba during the period from 2005 to 2023.
- iii. Information on the training of fishermen in the Upper Gulf of California. Also, information on training for representatives of the relevant authorities in cases of sightings or interactions with vaquita porpoises.
- iv. Information on alternative fishing gear as well as the efforts implemented by the different stakeholders and local organizations to test different technologies to carry out fishing activities.
- v. Documents on the acoustic monitoring programs of the vaquita in the Upper Gulf of California during the period from 2005 to 2023, as well as the methodology used, the equipment used, location of the equipment, the results obtained and actions implemented by the relevant authorities as a result of the monitoring results.
- vi. Information on enforcement actions implemented by the relevant authorities that reflect the results obtained by the implementation of the 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”).

- vii. Information on enforcement actions implemented by the relevant authorities that reflect the results obtained by the implementation of the 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*).
- viii. Photographs and images related to the implementation of actions or measures for the protection of the vaquita porpoise and totoaba;
- ix. Photographic record and logbooks of vaquita and totoaba specimens found dead or confiscated;
- x. Any other technical, scientific, or other information that may be considered relevant for inclusion in the factual record.

III. Additional background information

The submission, Mexico’s response, the Secretariat’s determinations, Council Resolution 24-02, and other information related to submission SEM-21-002 (*Vaquita porpoise*) is available in the registry of submissions, at <http://www.cec.org/submissions/registry-of-submissions/vaquita-porpoise/>. These documents may also be requested from the Secretariat at sem@cec.org.

IV. Deadline for the delivery of information

Although the USMCA/CUSMA or the ECA do not establish a deadline for the delivery of information to the Secretariat for the preparation of a factual record, in order to comply with the deadlines established in USMCA/CUSMA Article 24.28(5) and with the Overall Plan for the Preparation of a Factual Record, it is requested that the information be provided to the Secretariat no later than 60 calendar days following the publication of this request in the CEC's public registry of petitions.

V. Where to send the information

Relevant information for the preparation of the factual record should preferably be sent by e-mail to sem@cec.org. It may also be sent via cloud storage platforms such as SkyDrive, Google Drive, or Dropbox.

Please mention the submission SEM-21-002 (*Vaquita porpoise*) in all relevant communications.