

**Secretariat of the Commission for Environmental Cooperation
Overall Plan to Develop a Factual Record**

Submitter: Oceana
Party: United States of America
Date: 24 January 2025
Submission No.: SEM-21-003 (*North Atlantic right whale*)

On 17 January 2025, the CEC Council members adopted Council Resolution 25-01 which instructs the Secretariat to prepare a factual record pursuant to Article 24.28(2) of the United States-Mexico-Canada Agreement (USMCA/CUSMA) regarding Submission SEM-21-003 as follows:

- A. The effective enforcement of the Vessel Speed Rule, regarding the manner in which the United States enforces the Vessel Speed Rule and the number of actions taken and sanctions sought, among other factors;
- B. The effective enforcement of NEPA’s requirements relating to the consideration of reasonable alternatives and analysis of cumulative effects when producing the EIS for the Risk Reduction Rule;
- C. The effective enforcement of the MMPA and ESA, with respect to reducing incidental mortality and serious injury of NARW from commercial fishing.

The Council members also directed 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 promptly communicate with the Council in connection with any clarification required with respect to the scope of the factual record.

In accordance with Council Resolution 25-01, the Secretariat submits its work plan for the development of the factual record for Submission SEM-21-003 (*North Atlantic right whale*).

Overall Work Plan

The estimated time to prepare a draft factual record is set forth in the following sections:

Obtaining information and preparing the factual record

1. The Secretariat, with the support of independent experts, will search publicly available scientific publications and government reports, publications, and websites for relevant technical, scientific, or other information, in accordance with USMCA/CUSMA Article 24.28(4).

Timeline: Within 60 days following the Council members’ instructions.

2. Pursuant to USMCA/CUSMA Article 24.28(4), the Secretariat shall consider any information provided by a Party. Article 14 of the Environmental Cooperation Agreement (ECA) states that “Each Party shall cooperate with the Secretariat to provide information relevant to the preparation of a factual record.” Accordingly, the Secretariat will submit a request for information to the United States Government to obtain relevant factual

information for preparing the factual record, and will ask the United States Environmental Protection Agency (EPA) to facilitate the request for information from the following agencies/entities:

- i. The National Oceanic and Atmospheric Administration (NOAA);
- ii. The United States Coast Guard (USCG);
- iii. The Marine Mammal Commission;

Timeline: Within 30 days following the submission of the Secretariat’s information request.

3. The Secretariat will request relevant technical, scientific or other information for the preparation of the factual record from interested persons, national advisory or consultative committees, non-governmental organizations, the Joint Public Advisory Committee or independent experts, in accordance with subparagraphs (b) through (e) of USMCA/CUSMA Article 24.28(4).

Timeline: Within 60 days following the publication of the public information request on the CEC's public registry of submissions.

Site visit and meetings

4. The Secretariat plans to conduct at least one site visit to the state of Massachusetts in March or early April, within 90 days after the Council members issue their instructions. The Secretariat will meet with relevant authorities, including NOAA and USCG. The Secretariat will also consider meetings with regulated industry groups, other 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 the Party’s designated official language.

Timeline: Within 120 days of the Council’s instruction (19 May 2025).

Translation into the CEC’s other official languages

7. The Secretariat will be responsible for translation of the draft factual record into the CEC’s other two official languages.

Timeline: Within 60 days of 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.

Timeline: To be determined based on 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 Council, unless at least two members of the Council instruct it not to do so, in accordance with USMCA/CUSMA Article 24.28(6).

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

Additional information

The submissions, the United States' response, the Secretariat's determinations and notification, the Council members' instructions, and a summary of all of these documents are available online, in the registry of submissions on the CEC website: <<http://www.cec.org/submissions/registry-of-submissions/north-atlantic-right-whale>>. 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