

17 January 2025

COUNCIL RESOLUTION: 25-01

Instructions to the Secretariat of the Commission for Environmental Cooperation (CEC) regarding submission SEM 21-003 (North Atlantic right whale), which asserts that the United States environmental authorities are failing to effectively enforce (1) the Marine Mammal Protection Act (MMPA); (2) the Endangered Species Act (ESA); (3) the National Environmental Policy Act (NEPA), and 4) associated regulations, to protect the North Atlantic right whale (*Eubalaena glacialis*) (NARW).

THE COUNCIL:

CONSIDERING that the Submissions on Enforcement Matters (SEM) process and the preparation of factual records is governed by Articles 24.27 and 24.28 of the Agreement between the United States of America, the United Mexican States, and Canada (USMCA) and the Agreement on Environmental Cooperation (ECA);

AFFIRMING that the SEM process, which may include the preparation of factual records, is designed to increase public participation and promote transparency and openness on issues related to the effective enforcement of environmental law in the United States of America (United States), the United Mexican States (Mexico), and Canada;

RECOGNIZING that the purpose of a factual record is to provide an objective presentation of the facts relevant to assertion(s) set forth in a submission, and that a factual record will generally outline the history of the environmental enforcement issue raised in the submission, the relevant national environmental laws, and the actions of the relevant Party to effectively enforce those environmental laws;

HAVING CONSIDERED the revised submission SEM-21-003 dated 4 January 2022, filed by the submitters, and the United States' response dated 4 April 2022;

HAVING REVIEWED the Secretariat's Notification, dated 3 June 2022, presenting its reasons to recommend the preparation of a factual record on the effective enforcement of: the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), specifically: "a) whether the United States is effectively enforcing the Vessel Speed Rule in light of the number of civil and criminal enforcement actions for violations of the rule and the penalties sought in such cases; b) whether the United States effectively enforced NEPA's requirement to consider reasonable alternatives and analyze cumulative effects when producing the EIS [Environmental Impact Statement] for the Risk Reduction Rule; c) whether the United States is effectively enforcing the MMPA and ESA given that it has not issued emergency regulations to protect the NARW despite the potential for findings to support the such regulations; d) whether the United States is effectively enforcing the MMPA and ESA in light of

the number of civil enforcement actions to reduce incidental mortality and serious injury of NARWs from commercial fishing over the last 11 years;”

PURSUANT TO Article 2.3 of the ECA and taking into account the Council’s policy of providing its reason(s) for the instructions to prepare a factual record and the publication of the reasoning on the SEM public registry.

HEREBY DECIDES, UNANIMOUSLY:

TO INSTRUCT the Secretariat to prepare a factual record 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

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.

APPROVED BY THE COUNCIL:

Michael Bonser
Government of Canada

Camila Isabel Zepeda Lizama
Government of the United Mexican States

Mark Kasman
Government of the United States of America