

Secretariat of the Commission for Environmental Cooperation
Notification of the Secretariat in accordance with Article 24.28 of the United States-
Mexico-Canada Agreement

Submitters: Centro Mexicano de Derecho Ambiental
Center for Biological Diversity

Party: United Mexican States

Date of the submission: 17 December 2020

Date of the notification: 27 July 2021

Submission no.: SEM-20-001 (*Loggerhead turtle*)

I. INTRODUCTION

1. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA) and the Environmental Cooperation Agreement (ECA) entered into force. After this date, the Submissions on Enforcement Matters (SEM) process originally established by Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) is governed by USMCA Articles 24.27 and 24.28. The Secretariat of Commission for Environmental Cooperation (“CEC Secretariat”) remains responsible for implementing the SEM process, as stipulated in the ECA.¹
2. The SEM mechanism allows any person or entity established in Canada, the United States or Mexico to file a submission asserting that a Party to the ECA is failing to effectively enforce its environmental laws. The CEC Secretariat initially reviews submissions based on the requirements specified in USMCA Article 24.27(1) and (2). Where the Secretariat finds that a submission meets these requirements and criteria, it then determines whether the submission merits a response from the Party in question in accordance with the criteria of USMCA Article 24.27(3). In light of the Party’s response, the Secretariat determines whether the matter warrants the preparation of a factual record. If so, it shall so inform the

¹ The Commission for Environmental Cooperation was established in 1994 under the North American Agreement on Environmental Cooperation (NAAEC), an instrument signed by Canada, Mexico and the United States (the “Parties”). Under Article 2(3) of the Environmental Cooperation Agreement between the governments of the United Mexican States, the United States of America and Canada (ECA), the Commission for Environmental Cooperation (CEC) “will continue to operate under the modalities in place as of entry into force of this Agreement [the ECA].” The constituent bodies of the CEC are its Council, Secretariat and Joint Public Advisory Committee (JPAC).

- CEC Council and the Environment Committee² and provide its reasons in accordance with USMCA Article 24.28(1); otherwise, it shall terminate its review of the submission.³
3. On 17 December 2020, the Mexican Environmental Law Center (*Centro Mexicano de Derecho Ambiental*—Cemda) and the US-based Center for Biological Diversity (“the Submitters”) filed a submission with the Secretariat pursuant to USMCA Article 24.27(1).⁴ The Submitters assert that Mexico is failing to effectively enforce various provisions of its environmental laws in relation to the protection and conservation of the loggerhead turtle (*Caretta caretta*), a threatened species with conservation priority.⁵
 4. According to the Submitters, Mexico is failing to effectively enforce Article 4 of the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*—the “**Constitution**”); Articles 5 paragraph XIX, 161, 171, 182 and 202 of the General Ecological Balance and Environmental Protection Act (*Ley General de Equilibrio Ecológico y la Protección al Ambiente*—**LGEEPA**); Articles 5 paragraphs I, II, III and IX, 9 paragraphs I, VII, X, XV and XXI, 60, 60 bis 1, 61, 62 and 104 of the General Wildlife Act (*Ley General de Vida Silvestre*—**LGVS**); Article 2 paragraph III and 10 of the Federal Environmental Responsibility Act (*Ley Federal de Responsabilidad Ambiental*—**LFRA**); Articles 5, 45 and 70 of the Internal Regulation of the Ministry of the Environment and Natural Resources (*Reglamento Interior de la Secretaría de Medio Ambiente y Recursos Naturales*—**RI-Semarnat**); Articles II and IV of the *Inter-American Convention for the Protection and Conservation of Sea Turtles*; Articles 7, 8 and 14 of the *Convention on Biological Diversity*; Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“**Protocol of San Salvador**”); the Order establishing a Closed Season on Sea Turtles (*Acuerdo por el que se establece veda para las especies y subespecies de tortuga marina en aguas de jurisdicción federal del golfo de México y mar Caribe, así como en las del océano Pacífico, incluyendo el golfo de California*—“**Closed Season Order**”); the Order establishing a Loggerhead Turtle Refuge (*Acuerdo por el que se establece el área de refugio para la tortuga amarilla (Caretta caretta) en el golfo de Ulloa, Baja California Sur*—“**Turtle Refuge Order**”); the Order establishing the List of Species and Populations with Conservation Priority (*Acuerdo por el que se da a conocer la lista de especies y poblaciones prioritarias para la conservación*—“**Priority Species Order**”); the Order establishing a Fish Refuge (*Acuerdo por el que se establece la zona de refugio pesquero y nuevas medidas para reducir la posible interacción de la pesca con tortugas marinas en la costa occidental de Baja California Sur*—“**Fish Refuge Order**”); Official Mexican Standard NOM-059-SEMARNAT-2010, *Native wildlife species of Mexico - Risk categories and specifications for the inclusion, exclusion or change in category of species – List of threatened species* (“**NOM-059**”); the

² The Environment Committee was established under Article 24.26(2) of the United States-Mexico-Canada Agreement (USMCA) to oversee the implementation of Chapter 24.

³ For detailed information on the various stages of the submissions on enforcement matters process, as well as on the public register of submissions and the Secretariat’s determinations and factual records, please consult the CEC website <<http://www.cec.org/submissions-on-enforcement/>>.

⁴ SEM-20-001 (*Loggerhead turtle*), Article 24.27(1) Submission (17 December 2020), [Submission] <www.cec.org/es/peticiones-sobre-aplicacion-de-la-legislacion-ambiental/registro-publico-de-peticiones/tortuga-caguama/>.

⁵ Submission: “Introduction.”

Endangered Species Conservation Program (*Programa de Conservación de Especies en Riesgo*); the National Sea Turtles Conservation Program (*Programa Nacional de Conservación de Tortugas Marinas*); the Marine Ecological and North Pacific Management Program (*Programa de Ordenamiento Ecológico Marino y Regional Pacífico Norte—POEMR-PN*); and the Action Program for the Conservation of the Loggerhead Turtle Species (*Programa de Acción para la Conservación de la Especie Tortuga Caguama*).

5. On 8 February 2021, the Secretariat determined that the submission was admissible, in accordance with the requirements of subparagraph (2) of USMCA Article 24.27 and merited a response from the Government of Mexico, under subparagraph (3) of the same Article, in relation to the effective enforcement of the following environmental laws:⁶
 - a. Article 4 paragraph five of the Constitution;
 - b. LGEEPA Articles 5 paragraph XIX, 161, 171, 182 (first paragraph) and 202 (first paragraph);
 - c. LGVS Articles 5 paragraphs I, II, III and IX, 9 paragraphs I, VII, X, XV and XXI, 60 (first paragraph), 60 *bis* 1 (first paragraph), 62 and 104;
 - d. RI-Semarnat Articles 5 paragraphs I and IX, 45 paragraphs I, II, V subparagraphs a) and c), VI, X, XI, XII and XIX, and 70 paragraphs I, III, IV and XIII;
 - e. The Closed Season Order;
 - f. The Turtle Refuge Order; and
 - g. The Fish Refuge Order.
6. On 28 May 2021, the Secretariat received the Government of Mexico's response.⁷ Mexico declared that the Secretariat should not have accepted the submission as it lacked sufficient information to be admissible for the SEM process.⁸ In addition, Mexico provided information on enforcement activities in relation to loggerhead turtle protection and discussed instances where it considered the Submitters' assertions inadmissible.
7. After examining the submission, in light of the Party's response and in accordance with USMCA Article 24.28(1), the Secretariat finds that submission SEM-20-001 (*Loggerhead turtle*) merits the preparation of a factual record on the implementation of the actions for loggerhead turtle protection provided under Article 4 (paragraph five) of the Constitution; LGEEPA Articles 5 paragraph XIX, 161, 171, 182 (first paragraph) and 202 (first paragraph); LGVS Articles 5 paragraph III, 9 paragraph X, XXI, 60 (first paragraph), 60 *bis* 1 (first paragraph) 62, and 104; RI-Semarnat Articles 45 paragraphs I, II, V, subparagraphs a) and c), VI, X, XI and XII, 70 paragraphs I, III, IV and XIII; the Closed Season Order; the Refuge Order; and the Fish Refuge Order. The Secretariat finds that the Response does not address central questions in the Submission: the alleged lack of measures to counter the number of loggerhead turtle deaths; investigatory activities to determine the most probable cause of death; effectiveness of measures so far implemented; the development and use of

⁶ SEM-20-01 (*Loggerhead turtle*), Article 24.27 (2) and (3) Determination (8 February 2021), §66 [Determination 24.27 (2) and (3)].

⁷ SEM-20-01 (*Loggerhead turtle*), Article 24.27 (4) Response (28 May 2021) [Response].

⁸ Response at 4-5.

technical and scientific information in establishing and implementing strategies to counter the loggerhead mortality rate in the Gulf of Ulloa, and information on enforcement measures and its effectiveness so far undertaken. The Secretariat's reasoning is set out below.

II. ANALYSIS

8. Pursuant to USMCA Article 24.28(1), the CEC Secretariat considers whether submission SEM-20-001 warrants the preparation of a factual record, in light of the Government of Mexico's response.

A. Preliminary questions

9. Mexico argues that the submission does not provide sufficient information to be admissible according to the terms of USMCA Article 24.27(2) subparagraph (c). According to the Party, "the Submitters do not provide sufficient information to demonstrate that loggerhead turtle strandings and deaths are directly associated with bycatch and fishing for human consumption."⁹ Mexico argues that the submission "does not provide sufficient information regarding the cause of death of the specimens of loggerhead turtle in question."¹⁰ This, in Mexico's view, is adequate grounds to dismiss the submission.
10. The submission contains sufficient information to warrant consideration of the asserted omissions in Mexico's protection and conservation of the loggerhead turtle (*Caretta caretta*). The submission satisfied the requirements of USMCA Article 24.27(2) subparagraph (c) as it included the following elements: information on the habitat of *Caretta caretta*;¹¹ a map indicating the geographic boundaries of the fish refuge;¹² and hyperlinks where one may download the policy and regulatory instruments cited in the submission, information requests filed with the Government of Mexico, including the latter's responses, and a citizen complaint.¹³ In particular, sufficient documentary evidence was enclosed with the submission to enable consideration of the assertions of: the number of *Caretta caretta* deaths;¹⁴ the alleged lack of action by the Federal Public Prosecutor's Office in relation to the deaths of loggerhead turtles;¹⁵ the failure to revoke permits or authorizations or implement any measures in relation to the capture of loggerheads between 2010 and August

⁹ Response at 5.

¹⁰ Idem.

¹¹ Submission: "Apéndice: Contexto del hábitat de la especie y antecedentes México-Estados Unidos sobre la loggerhead turtle (*Caretta caretta*)" <www.cec.org/wp-content/uploads/wpallimport/files/20-1-annex_02_appendix.pdf>.

¹² Submission: "Mapa de delimitación geográfica de la zona de refugio pesquero" <www.cec.org/wp-content/uploads/wpallimport/files/20-1-annex_01-%20map.pdf>.

¹³ Submission: "Anexos de las solicitudes de información", list of documents and download links <www.cec.org/wp-content/uploads/wpallimport/files/20-1-annex_03-list.pdf>.

¹⁴ Submission: Annex III, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0273/2020 (18 February 2020).

¹⁵ Submission: Annex IV, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0719/2020 (10 August 2020).

2020;¹⁶ the number of inspection visits related to the loggerhead turtle carried out between 2010 and August 2020;¹⁷ the number of loggerhead turtle-related penalties or fines imposed by the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) between 2010 and August 2020;¹⁸ and the citizen complaints filed between 2010 and July 2020.¹⁹

11. The submission observes that there may be other explanatory factors for loggerhead turtle mortality.²⁰ However, based on the Secretariat's analysis of the submission and its reading of the relevant environmental laws, it is incumbent on the Government of Mexico to investigate the causes of mortality, and determine where responsibilities lie, in relation to the extraordinary number of reported *Caretta caretta* deaths. Under the submissions process established in the USMCA, the Party had the opportunity to provide information in its response on the cause of death of loggerhead turtle specimens.

B. Concerning the assertions in submission SEM-20-001

12. The Secretariat now considers whether, in light of Mexico's response, the preparation of a factual record is warranted concerning the assertion that Mexican authorities have failed to act in relation to loggerhead turtle (*Caretta caretta*) deaths.
13. The Submitters assert that from 2017 to 2019, 889 dead loggerhead turtles were found in the Gulf of Ulloa, Baja California Sur.²¹ The Secretariat notes that this signifies an average of 296 turtle deaths per year, i.e., triple the annual limit of 90 dead specimens stipulated in the Fish Refuge Order.²² The Submitters point out that, although this number of turtle deaths signifies an increase in the species' risk of extinction, the Mexican authorities have not taken actions conducive to stopping or slowing the loss of this species.

i) The failure to lodge complaints with the Public Prosecutor's Office in relation to loggerhead turtle (*Caretta caretta*) deaths

14. The Submitters assert that in the period from 2010 to July 2020, the Mexican authorities did not lodge a single complaint with the Federal Public Prosecutor's Office.²³ They point out that under Mexican criminal law it is a federal offence, punishable by a prison sentence of 1 to 9 years, to capture, harm or deprive of life any specimen of sea turtle.

¹⁶ Submission: Annex V, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0722/2020 (14 August 2020).

¹⁷ Submission: Annex VI, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0723/2020 (14 August 2020).

¹⁸ Submission: Annex VII, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0724/2020 (14 August 2020).

¹⁹ Submission: Annex VIII, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0739/2020 (18 August 2020).

²⁰ Submission at 1.

²¹ Submission, introduction and at 7.

²² *Acuerdo por el que se establece la zona de refugio pesquero y nuevas medidas para reducir la posible interacción de la pesca con tortugas marinas en la costa occidental de Baja California Sur*, Diario Oficial de la Federación (DOF), 23 June 2016 ["Fish Refuge Order"], online at <www.dof.gob.mx/nota_detalle.php?codigo=5442227&fecha=23/06/2016> (viewed 29 June 2021).

²³ Submission at 13.

15. The provisions cited by the Submitters recognize the human right to a healthy environment (**Article 4 paragraph 5 of the Constitution**); establish that in the event Semarnat becomes aware of “acts and omissions which may constitute crimes in the terms of the applicable legislation, it shall file the applicable complaint with the Federal Prosecutor’s Office” (**LGEEPA Article 182 paragraph 1**); vest in Profepa the authority “to initiate the appropriate actions, with the competent authorities, when it becomes aware of acts, facts or omissions which may constitute violations of administrative or criminal law” (**LGEEPA Article 202 paragraph 1**); address and allow for investigation of popular complaints filed before authorities (**RI-Semarnat Article 45 paragraph II**), and establish provisions for investigating and determining the existence of violations of environmental laws and regulations, as well as for filing complaints with the Federal Prosecutor’s Office concerning acts, facts or omissions which concern the probable commission of crimes against the environment (**RI-Semarnat Article 45 paragraphs XI and XII**).
16. The Party’s response indicates that it was not possible to identify the cause of death of the sea turtles. More specifically, Profepa was unable to verify that the cause of death of the specimens was fishing gear related²⁴ due to the state of their bodies upon discovery. However, the Party does not provide further information on the actions it undertook to establish the cause of death or on the veterinary forensic medicine methodology used to analyze the sea turtle cadavers.
17. The Submitters cite an investigation conducted in 2017 in the Gulf of Ulloa, noteworthy for its use of a particular methodology to analyze sea turtle bodies to obtain greater information on the cause of death. In effect, as this study recognized, it was impossible to perform necropsies due to the state of decomposition of the turtle cadavers. This study attributed the cause of death of 28% of the specimens analyzed to bycatch and 22% to human consumption.²⁵ Mexico’s response provides no information on this matter.
18. The Party contends that there exist various possible causes of sea turtle mortality, including, notably, the presence of predators, accidental collisions with ships, ingestion of anthropogenic waste and toxic contaminants, environmental factors, nutritional conditions, and metabolic and infectious diseases.²⁶ The Party affirms that it has not been possible to verify that the deaths of the loggerhead turtle specimens were fishing gear related.²⁷
19. The Party states in its response that “one must take into consideration the existence or not of sufficient evidence to substantiate the *corpus delicti*, that is to say to demonstrate the existence of a fact with all of its constituent elements.” In addition, it states that “the matter to be substantiated is whether the harm or deprivation of life suffered by any specimen of turtle or marine mammal was caused by one or more responsible parties.”²⁸

²⁴ Idem.

²⁵ Eduardo Reséndiz and María Lara-Uc, “Analysis of post mortem changes in sea turtles from the Pacific Coast of Baja California Sur using forensic techniques,” *Revista Bio Ciencias* 4,4 (2017), ID 04.04.06, online at <http://editorial.uan.edu.mx/BIOCIENCIAS/article/view/267/29310> (viewed 7 July 2021).

²⁶ Response at 7.

²⁷ Response at 8.

²⁸ Response at 7.

20. The Secretariat notes that the documentation provided by the Party does not address the actions taken by Semarnat or Profepa to obtain scientific and technical information which could underlie its investigations and, potentially, a complaint filed with the Federal Public Prosecutor's Office regarding the possible commission of a crime. In sum, the Secretariat notes the lack of analysis and investigation regarding the facts raised by the Submitters: the presence of dead loggerhead turtles discovered in and around the Gulf of Ulloa.
21. Furthermore, in the reports on mass strandings of loggerhead turtles,²⁹ made by personnel from the National Commission for Protected Natural Areas (*Comisión Nacional de Áreas Naturales Protegidas*—Conanp), the Secretariat observes that the Response does not indicate forensic studies on the specimens found, whether macroscopic or whether through any other method of analysis or handling at the time when said specimens were discovered.
22. A factual record could present information on investigation files and administrative proceedings, the initiation of proceedings by the Public Prosecutor's Office, and the actions taken by Semarnat or Profepa in relation to investigations into the causes of death and of mass strandings of loggerhead turtles.
23. The Secretariat therefore recommends the preparation of a factual record on the effective enforcement of Article 4 paragraph 5 of the Constitution; LGEEPA Articles 182 (first paragraph) and 202 (first paragraph); and RI-Semarnat Article 45 paragraphs II, XI and XII, in relation to the Mexican government actions to initiate criminal proceedings instituted in response to the deaths of loggerhead turtle specimens or the investigations undertaken to initiate such a proceeding.

ii) The alleged failure to revoke or suspend authorizations, permits, licenses or concessions in response to high loggerhead turtle (*Caretta caretta*) mortality

24. The Submitters assert that from 2010 to July 2020, 889 specimens of lifeless loggerhead turtles were captured in the Gulf of Ulloa, Baja California Sur. They point out that, although the deaths of these loggerhead turtle specimens were recorded, authorities did not require administrative measures, such as revoking or suspending authorizations, permits, licenses or concessions for activities that may have been responsible for the deaths of the specimens in question.
25. The provisions of LGVS Article 5 cited by the Submitters concern the following matters: the conservation of genetic diversity and the protection, restoration, and conservation of natural habitats (**paragraph I**); preventive measures to maintain propitious conditions for the evolution of ecosystems, habitats, and populations in their natural settings (**paragraph II**); the application of scientific, technical and traditional knowledge (**paragraph III**); and the adoption of criteria to ensure that penalties and fines not only serve a repressive function, but also lead to actions that contribute to and incentivize sustainable development (**paragraph IX**).
26. Under **LGVS Article 9**, the federal government is vested with the power to formulate and implement national policy on the conservation and sustainable wildlife management (**paragraph I**); address wildlife-related issues in cases where actions may have effects on wildlife (**paragraph VII**); promote projects, studies, and activities aimed at wildlife

²⁹ See Response: Annex 8, National Commission for Protected Natural Areas, file no. DGOR/0301/2021 (26 April 2021).

- education, training, and research (**paragraph X**); address issues related to the management, control, and remediation of problems associated with feral specimens and populations (**paragraph XV**); and inspect and monitor compliance with the LGVS (**paragraph XXI**).
27. The provisions of the LGVS establish that Semarnat shall promote and encourage the conservation and protection of endangered species and populations (**Article 60, first paragraph**); shall prohibit harvesting any sea turtle (**Article 60 bis 1, first paragraph**); and that Semarnat shall implement programs for species conservation and populations with conservation priority (**Article 62**).
28. RI-Semarnat Article 45 establishes the authority to request that competent authorities revoke permits and to encourage the appropriate federal, state or municipal authorities to adopt enforceable safety measures when there is an imminent risk of ecological imbalance (**paragraph V, subparagraphs a) and c)**; make and issue recommendations to the competent authorities to promote compliance with environmental law (**paragraph VI**); and implement corrective and/or safety measures, and fines and penalties (**paragraph X**).
29. In its response, the Party mentions that the loggerhead turtle (*Caretta caretta*) is not subject to harvesting and, consequently, it is impossible to issue permits or authorizations for harvesting, which signifies, *ipso facto*, that the Submitters' assertion regarding the failure to revoke or suspend authorizations, permits, licenses or concessions is inadmissible.
30. The Response presents information on the Annual Operating Program, which included the goal of inspecting shrimp trawlers to give effect to Official Mexican Standard NOM-0061-SAG-PESC/SEMARNAT-2016 "Technical specifications of sea turtle excluder devices for use by the shrimp trawler fleet in waters under the federal jurisdiction in the United Mexican States."³⁰ The Party states that at the beginning of each fishing season, Profepa inspects sea turtle excluder devices in the presence of the concession or permit holder before issuing the appropriate certification.³¹
31. Mexico provides information on the environmental impact authorizations of 27 projects that have an impact in the Gulf of Ulloa, 17 of which were authorized on a conditional basis. The Response also provides a link where one may download the relevant database.³²
32. The Secretariat finds that, although Mexico's response addresses some of the Submitters' concerns, it does not present the criteria governing the issuance of permits in the Gulf of Ulloa. For example, the Response does not indicate whether, in light of the deterioration in the loggerhead turtle population, the Party has considered the possibility of suspending or revoking permits, authorizations or licenses to holders of fishing concessions or permits. Nor does it indicate whether consideration has been given to the cumulative environmental impact of 27 projects located in the Gulf of Ulloa or whether an authorization has been denied due to the current status of the species in question. The Party does not address whether such projects located in the Gulf of Ulloa implement prevention programs to avoid harm to the loggerhead turtle; whether there are any training programs in place addressing encountering the species, or whether there are any environmental education programs aimed at the protection of the species associated with the projects in question.

³⁰ Response at 9.

³¹ Idem.

³² Idem.

33. A factual record could present information on the abovementioned issues: the possibility of suspending or revoking permits, authorizations or licenses; consideration of the cumulative environmental impact of 27 projects located in the Gulf of Ulloa, and denial of an authorization due to the status of the loggerhead turtle (*Caretta caretta*).
34. Consequently, the Secretariat recommends the preparation of a factual record on the effective enforcement of LGVS Article 60 (first paragraph) and RI-Semarnat Article 45 paragraph V, subparagraphs a) and c), VI and X, in relation to the alleged failure to revoke or suspend authorizations, permits, licenses or concessions in response to high loggerhead turtle (*Caretta caretta*) mortality.

iii) The alleged failure to carry out monitoring and inspection visits

35. The Submitters assert that between 2010 and mid 2020 there was an average of only two monitoring and inspection visits per year that did not lead to a single penal or administrative sanction. This was despite the fact that 41 complaints were filed in 12 different states, 38 of which have been processed. A total of 33 citizen complaints related to the loggerhead turtle have been filed with the Profepa office in Baja California Sur.
36. The LGEEPA provisions cited by the Submitters establish that Semarnat is vested with the authority to monitor and promote, within the purview of its jurisdiction, compliance with the Act (**Article 5 paragraph XIX**); carry out inspection and monitoring actions on compliance with the provisions contained in the Act [LGEEPA] (**Article 161**); and apply administrative sanctions for violations of the Act's provisions (**Article 171**).
37. Similarly, the LGVS provisions cited in the submission vest authority in the federal government to inspect and monitor compliance with the Act (**Article 9 paragraph XXI**) and establish that Semarnat shall conduct inspection and monitoring actions for wildlife conservation (**Article 104**).
38. The provisions of the RI-Semarnat cited in the submission concern the authority to grant concessions, allotments, permits, authorizations, and licenses (**Article 5 paragraph IX**); protect and conserve sea turtles through the implementation of monitoring and inspection actions (**Article 45 paragraph I**); request that the competent authorities revoke permits and encourage the appropriate federal, state or municipal authorities to adopt enforceable safety measures when an imminent risk of ecological imbalance exists (**Article 45 paragraph V, subparagraphs a) and c)**); implement corrective and/or safety measures and fines and penalties (**Article 45 paragraph X**); and investigate and determine the existence of violations to environmental laws and regulations (**Article 45 paragraph XI**).
39. In its response, the Party presented information on the terrestrial and marine monitoring activities conducted by Profepa, the Ministry of the Navy (Secretaría de Marina—Semar) and the National Aquaculture and Fisheries Commission (*Comisión Nacional de Acuacultura y Pesca*—Conapesca). Although this information is useful in principle for assessing the actions of these authorities, it did not specify results, i.e., whether they led to the identification of loggerhead turtle specimens and of the effectiveness of monitoring and inspection visits to address the mortality rate of the loggerhead turtle.
40. The Secretariat also notes inconsistencies in information regarding the files under the purview of the Profepa office in Baja California Sur. On the one hand, two 2019 proceedings remain “pending, as the rulings to which they are lawfully entitled have yet to be rendered,”

according to the submission.³³ In contrast, the Response states that during the proceedings instituted in 2019 “no vessels were observed to be engaging in extractive activities and/or in possession of wildlife specimens, parts and/or derivatives” and “no vessels engaged in fishing activities were observed.”³⁴ The Secretariat notes that the information obtained by the Submitters via the public information platform does not coincide with the Response.

41. The strandings reports and the monitoring patrols cited in the Party’s response only concern the Baja California Peninsula Pacific Islands Biosphere Reserve (*Reserva de la Biósfera Islas del Pacífico de la Península de Baja California*). These reports do not cover the area established under the Refuge Order,³⁵ as seen in the technical information sheet for Conanp’s System for Conservation Information, Monitoring and Evaluation (*Sistema para la Información, Monitoreo y Evaluación para la Conservación*—SIMEC).³⁶ Conanp explains that it does not have sufficient financial and human resources to attend to the entire area established in the Gulf of Ulloa under Refuge Order.³⁷
42. According to the information provided by the Party, a massive number of turtle strandings occurred from January to December 2020. The loggerhead turtle accounted for the largest number of stranded specimens. Lesser numbers of stranded olive ridley sea turtles (*Lepidochelys olivacea*) and black sea turtles (*Chelonia agassizii*) were also found.³⁸ The Response does not clarify whether these strandings are related to anthropogenic activities. Nor does it explain the variance in the number of strandings from one species to another. No information was provided on the existence of studies such as forensic analysis of the specimens or comparative studies to determine the biological condition of individual specimens and identify the cause of death.
43. The Response does not address the factors contributing to high loggerhead turtle mortality, including the possible effects of bycatch due to the use of very long nets (longlines, trawl nets and gillnets); nor does it discuss the effects of other human activities in the Gulf of Ulloa, such as the impact of lighting, pollution from ships, and the effect of plastics and similar waste materials on the digestive systems of loggerhead turtles. The Response does not elaborate on whether poaching has been identified in the Gulf of Ulloa, the effects of climate change in the region, or whether the impacts of disease on the species have been identified as a cause. Taking into consideration these issues would contribute to determining the cause of death and be of use in developing the technical and legal measures required to ensure the loggerhead turtle’s conservation.
44. Furthermore, the Response does not share the relevant authority’s analysis of the complainant’s evidence of high loggerhead turtle mortality in relation to the administrative

³³ See Submission: Annex VI, Profepa, file no. PFPA/1.7/12C.6/0723/2020 (14 August 2020).

³⁴ See Response: Annex I, Profepa, file no. PFPA/5.3/2C.28.2/03124 (14 May 2021).

³⁵ Cfr. *Acuerdo por el que se establece el área de refugio para la tortuga amarilla (Caretta caretta) en el golfo de Ulloa, Baja California Sur* [“Turtle Refuge Order”], DOF, 5 June 2018 <www.dof.gob.mx/nota_detalle.php?codigo=5525056&fecha=05/06/2018>.

³⁶ SIMEC, Baja California Peninsula Pacific Islands Biosphere Reserve technical information sheet, Conanp <<https://simec.conanp.gob.mx/>> (viewed 9 July 2021)

³⁷ Response: Annex 8, National Commission for Protected Natural Areas, file no. DGOR/0301/2021 (26 April 2021).

³⁸ Idem.

proceedings instituted in response to cases of sea turtle deaths by the Profepa office in Baja California Sur or by Profepa's Department of Environmental Complaints and Citizen Complaints (*Dirección General de Denuncias Ambientales, Quejas y Participación Social*). There is also no information on the authority's investigation of the alleged offender's actions.³⁹ Furthermore, the Secretariat was unable to identify the reasons why proceedings did not continue beyond their investigatory phase in the documentation enclosed with the Response. Information was not provided on the status of an administrative proceeding of the Department of Environmental Complaints, which dates back to 2016, or on the results delivered by two active proceedings arising from complaints filed in 2019 with the Profepa office in Baja California Sur.

45. The Secretariat concludes that the Response does not clearly indicate the scope of the inspection activities undertaken and whether these were conducted to determine responsibility for loggerhead turtle bycatch. There was no information presented on the guidelines or protocols that inspectors must follow to make determinations on the probable violation of provisions for proper protection of the loggerhead turtle.
46. A factual record may present relevant factual information on the content and scope of the measures taken in the Gulf of Ulloa to prevent and prosecute loggerhead turtle bycatch and mortality, as well as present information that may shed light on the scope of the inspections undertaken by Mexican authorities and the content of technical reports generated by monitoring and inspection patrols.
47. Consequently, the Secretariat recommends the preparation of a factual record on the effective enforcement of LGEEPA Articles 5 paragraph XIX, 161 and 171; LGVS Articles 9 paragraph XXI and 104; and RI-Semarnat Article 45 paragraph I and V subparagraphs a) and c), in relation to the alleged failure to carry out monitoring and inspection visits.

iv) The alleged lack of the scientific and technical information required to design protection and conservation strategies and instruments

48. The Submitters assert that Mexican authorities are not ensuring the loggerhead turtle's survival. In effect, they are allegedly undermining biological diversity due to deficiencies in the following areas: technical and scientific information; mechanisms for reviewing the effectiveness of the measures applied; and an efficient inspection and monitoring system, which would ensure the levying of fines or penalties.⁴⁰ The Submitters assert that the Mexican government has acknowledged that in the north Pacific the *Caretta caretta* population "is experiencing a significant reduction in its numbers in recent years."⁴¹
49. The provisions of **LGVS Article 5** cited by the Submitters cover: the conservation of genetic diversity and the protection, restoration, and conservation of natural habitats (**paragraph I**); preventive measures to maintain propitious conditions for the evolution of ecosystems, habitats, and populations in their natural settings (**paragraph II**); the application of scientific, technical, and traditional knowledge (**paragraph III**); and the adoption of criteria to ensure that penalties and fines not only serve a repressive function, but also lead to actions

³⁹ Submission: Annex VIII, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0739/2020 (18 August 2020).

⁴⁰ Submission at 13.

⁴¹ Submission at 2.

that contribute to and incentivize the transition towards sustainable development (**paragraph IX**).

50. Under **LGVS Article 9**, the federal government is vested with the power to formulate and implement national policy on conservation and sustainable wildlife management (**paragraph I**); address wildlife-related issues in cases where actions may have effects on wildlife (**paragraph VII**); promote projects, studies, and activities aimed at wildlife education, training, and research (**paragraph X**); address issues related to the management, control, and remediation of problems associated with feral specimens and populations (**paragraph XV**); and inspect and monitor compliance with the LGVS (**paragraph XXI**).
51. **LGVS Article 60 first paragraph** establishes that Semarnat shall promote and encourage the conservation and protection of endangered species and populations. **LGVS Article 62** stipulates that Semarnat shall implement “programs for the conservation, recovery, reproduction and reintroduction into their habitat of species and populations with conservation priority.”
52. RI-Semarnat Article 70 establishes that Conanp shall develop ecosystems and biodiversity conservation activities (**paragraph I**), as well as execute conservation programs (**paragraph III**).
53. In its response, Mexico presented information from the National Commission for the Knowledge and Use of Biodiversity (*Comisión Nacional para el Conocimiento y Uso de la Biodiversidad*—Conabio), in which it explains that it does not have the authority to carry out conservation and protection actions and, moreover, does not have recent information on such actions or scientific and technical information and/or studies.⁴²
54. Semarnat’s Wildlife Department (*Dirección General de Vida Silvestre*—DGVS) produced a supporting technical study (*Estudio Técnico Justificativo*—ETJ), dated 14 May 2018, for the declaration of the Gulf of Ulloa as a loggerhead turtle refuge.⁴³ This study included general information on the study area, an assessment of the loggerhead turtle’s status, a description of the area’s characteristics, the grounds for the declaration and background socioeconomic data.
55. Regarding the strandings and deaths of loggerhead turtles on San Lázaro beach in Baja California Sur, the ETJ noted that the months with the highest numbers of strandings matched the volume of fishing activities.⁴⁴ Furthermore, according to the information gathered by the study, the main causes of sea turtle mortality related to fishing gear around the world are: a) trawl nets; b) deep pelagic longlines; c) gillnets and trap nets; d) entanglement in the rigging for buoys or traps; e) commercial and sport fishing lines and

⁴² Response: Annex 5, Comisión Nacional para el Conocimiento y Uso de la Biodiversidad, file no. CN/037/2021 (19 May 2021).

⁴³ Response: Annex 13, General Wildlife Department, Subsecretariat of Management for Environmental Protection, Ministry of the Environment and Natural Resources, “Estudio justificativo para declarar el golfo de Ulloa en Baja California Sur como área de refugio para la tortuga caguama (*Caretta caretta*)” (14 May 2018).

⁴⁴ Idem.

hooks.⁴⁵ Finally, the ETJ concluded that it was fundamental to establish a refuge for the loggerhead turtle in the Gulf of Ulloa, where it feeds.⁴⁶

56. To prevent impacts on the loggerhead turtle population caused by fishing activities, Semarnat decreed restricted areas and depths, and specified permissible fishing gear and mortality thresholds, based on fishing gear-related incidents in the Gulf of Ulloa.⁴⁷ These measures led to the development and implementation of the Marine Ecological and North Pacific Management Program (*Programa de Ordenamiento Ecológico Marino y Regional del Pacífico Norte*—POEMR-PN), published in the *DOF* on 9 August 2018. Furthermore, the Response indicated that to integrate actions for effective loggerhead turtle conservation it was necessary to amend the ecological criteria that underlie the bycatch mortality thresholds. These changes await official publication.⁴⁸
57. According to Conanp, it is in the process of developing the Mexico-United States-Japan Tri-national Plan⁴⁹ and the Refuge Protection Program (*Programa de Protección para el Área de Refugio*).⁵⁰ The latter should have been published 180 calendar days following the publication of the Refuge Order,⁵¹ but work on this program was suspended due to budget cuts, among other factors.⁵²
58. As part of the conservation program for sustainable development of the region, which includes the Baja California Peninsula Pacific Islands Biosphere Reserve, Conanp shared documentation certifying the execution of conservation and restoration projects from 2017 to 2019.⁵³ The Biosphere Reserve partially overlaps with the Turtle Refuge in the Gulf of Ulloa.
59. The Secretariat notes that the abovementioned instruments do not include protection and conservation strategies for avoiding loggerhead turtle mortality. The POEMR-PN is currently being updated and its publication is pending. Furthermore, information was not provided on how these instruments are updated to ensure that they utilize recent information on loggerhead turtle specimens and their characteristics. In summary, the Response does not highlight Mexico's efforts in identifying and quantifying the threats to loggerhead sea turtles so that conservation actions can be prioritized relative to their impact on the population.
60. A factual record would present information on the existence of the different loggerhead turtle conservation programs, their scope, status, and review and update mechanisms. It could also present information on quantified threats analysis that supports the development of

⁴⁵ Idem.

⁴⁶ Turtle Refuge Order, preamble.

⁴⁷ Response at 13.

⁴⁸ Idem.

⁴⁹ Response: Annex 10, Legal Affairs Directorate, National Commission for Protected Natural Areas, file no. DAJ/176/2021 (14 May 2021).

⁵⁰ Response: Annex 8, National Commission for Protected Natural Areas, file no. DGOR/0301/2021 (26 April 2021).

⁵¹ Turtle Refuge Order, Transitory Article 2.

⁵² Idem.

⁵³ See Response: Annex 8, National Commission for Protected Natural Areas, file no. DGOR/0301/2021 (26 April 2021).

conservation and protection strategies, including enforcement actions. Moreover, a factual record would enable a comparative analysis with other endangered species in the Gulf of Ulloa, including the strategies and instruments developed for their conservation and protection.

61. The Secretariat finds that the preparation of a factual record is warranted concerning the effective enforcement of LGVS Articles 5 paragraph III, 9 paragraph X, 60 (first paragraph), 62 as well as RI-Semarnat Article 70 paragraph III, in relation to the alleged lack of scientific and technical information required to design strategies and instruments for protection and conservation concerning the loggerhead turtle in the Gulf of Ulloa.

v) The alleged absence of a program to ensure the monitoring of and effective compliance with measures to protect and conserve the loggerhead turtle

62. The Submitters assert that the high number of specimens captured as bycatch between 2017 and 2019 reflects the critical lack of effective measures to protect and conserve the species, particularly in the form of a program to ensure the monitoring of and effective compliance with conservation and protection measures.⁵⁴
63. The LGEEPA provisions cited by the Submitters vest in Semarnat the authority to monitor and promote compliance with the Act (**Article 5 paragraph XIX**); conduct monitoring and inspection actions (**Article 161**); and levy administrative sanctions (**Article 171**).
64. The LGVS provisions cited in the submission vest in the federal government the power to inspect and monitor compliance with the Act (**Article 9 paragraph XXI**); and establish that Semarnat shall conduct the monitoring and inspection actions necessary for wildlife conservation, in accordance with the provisions of the LGVS, the LGEEPA, and other related provisions (**Article 104**).
65. RI-Semarnat Article 45, cited in the submission, establishes the authority to protect and conserve sea turtles through monitoring and inspection actions (**paragraph I**); to request revocation of permits and to encourage the federal, state or municipal authorities to implement safety measures when an imminent risk of ecological imbalance exists (**paragraph V, subparagraphs a) and c)**; and to verify the legal provenance of specimens, parts, and derivatives of threatened aquatic species (**paragraph XIX**).
66. RI-Semarnat Article 70, cited in the submission, establishes that Conanp shall develop ecosystems and biodiversity conservation activities (**paragraph I**), execute conservation programs (**paragraph III**) and administer (**paragraph XIII**) refuges for the protection of aquatic species. In addition, Conanp is charged with formulating, promoting, executing, and evaluating conservation projects targeting species and populations with conservation priority (**paragraph IV**).
67. Mexico's response indicates that from 2014 to 2018 Conapesca carried out actions in coordination with fishers as part of the Comprehensive Program for Fisheries Management in the Gulf of Ulloa, B.C.S. (*Programa Integral de Ordenamiento Pesquero en el golfo de Ulloa B.C.S.*).⁵⁵ And in accordance with the Fish Refuge Order, prohibitions were instituted on the use of nets, boats, and restricted waters.

⁵⁴ Submission at 13.

⁵⁵ Response at 14.

68. According to Conapesca, after three years of activities under the Comprehensive Program for Fisheries Management, the maximum figure of 90 turtle deaths due to fishing activities has never been reached.⁵⁶
69. According to the Response, Profepa produces publications and bulletins on the results of sea turtle related monitoring and inspection actions. Moreover, in coordination with Semarnat's Department of Development and Environmental Regulation (*Subsecretaría de Fomento y Normatividad Ambiental*) and the Ministry of Agriculture and Rural Development (*Secretaría de Agricultura y Desarrollo Rural*—Sader), Profepa participates in determining which fishing gear, methods, and equipment are prohibited, as well as in monitoring compliance with these restrictions.
70. Regarding Conanp's activities, the Response mentions its participation in drafting a Tri-national Plan between Mexico, the United States and Japan⁵⁷ that was supposed include the commitments adopted following the Seventh Conference of Parties of the Inter-American Convention for the Protection and Conservation of Sea Turtles (COP 7 - CIT) held in June 2015 in Mexico City.⁵⁸
71. Mexico's response indicates that the National Fisheries and Aquaculture Institute (*Instituto Nacional de Pesca y Acuacultura*—Inapesca) is in the process of developing the management plan specified in the Fish Refuge Order.
72. The Secretariat notes that the documentation provided by Conapesca does not provide the results generated by the Onboard Technical Assistants and Videotaping System programs or whether it informed further monitoring actions by Mexico. Nor does it clarify whether these videotaping system programs ended in 2018 or are still in operation. It is also unclear whether these programs were improved over time for effectiveness. The Response does not state when it expects implementation of the Tri-National Plan between Mexico, the United States and Japan or completion of the management plan specified in the Fish Refuge Order. The Response does not explain how turtle death determinations were conducted during implementation of the Comprehensive Program for Fisheries Management activities and whether there are additional efforts to investigate turtle deaths beyond the 90 turtle deaths allowed by the Fishing Refuge Order.
73. A factual record could provide information on the implementation process for loggerhead turtle protection and conservation measures; the frequency of said actions; assessments of their execution and effectiveness; and how enforcement and cooperative programs guide inspection and monitoring activities in the Gulf of Ulloa. Essentially, to what extent the overall implementation of these measures, actions, assessments, and programs serve to protect and conserve the loggerhead turtle.

⁵⁶ Activities carried out through the Onboard Technical Assistants and Videotaping Systems programs on the west coast of Baja California Sur. Response, Annex 9: General Directorate of Fish and Aquaculture Management, Ministry of Agriculture and Rural Development, file no. DGOPA.- 09512/170521 (18 May 2021).

⁵⁷ Response at 16.

⁵⁸ See Inter-American Convention for the Protection and Conservation of Sea Turtles, Seventh Conference of Parties, Resolution on the Conservation of the Loggerhead Turtle (*Caretta caretta*), online at www.iacseaturtle.org/docs/resolucionesCOP7CIT/CIT-COP7-2015-R3_Cabezona_%20%20Resolucion_ESP_7.15.15_ADOPTADA.pdf.

74. The Secretariat recommends the preparation of a factual record on the alleged failure to effectively enforce LGEEPA Articles 5 paragraph XIX, 161 and 171; LGVS Articles 9 paragraph XXI and 104; RI-Semarnat Articles 45 paragraphs I, V subparagraphs a) and b), and XIX and 70 paragraphs I, III, IV and XIII, in relation to the alleged absence of a program to ensure monitoring of and effective compliance with measures to protect and conserve the loggerhead turtle.

vi) The alleged lack of recent population size studies to serve as a basis for determining catch quotas

75. The Submitters assert that no recent studies exist on the size of the loggerhead turtle population.⁵⁹ They also point out that there is no assessment by the Mexican authorities of the effectiveness of their measures for reducing bycatch mortality.⁶⁰

76. The LGVS establishes that Semarnat shall promote the development of projects, studies, and activities aimed at wildlife-related education, training, and research (**Article 9 paragraph X**) and the prohibition of harvesting any sea turtle (**Article 60 bis 1, first paragraph**).

77. In its response, Mexico indicates that Conabio has received no requests for advice or for information on the estimated volumes of extractive activities or trade in relation to the loggerhead turtle.⁶¹ The Response also shares two databases: the National Biodiversity Information System (*Sistema Nacional de Información sobre la Biodiversidad*—SNIB) and EncicloVida, which contains information on loggerhead turtle specimens, as well as on the species' characteristics.

78. Mexico's response shares the technical supporting study of 14 May 2018, conducted to support the declaration of the Gulf of Ulloa, in Baja California Sur, as a loggerhead turtle refuge. This study does not, however, provide information on the size of the population, the number of specimens that reach the Gulf of Ulloa or the predominant types of specimens. Furthermore, this study includes no mechanism for updating information to facilitate ongoing consultations. Mexico does not refer to a specific population size study in the Response.

79. The Secretariat notes the lack of information in the Response on the population size and that available information has not been analyzed in order to conduct conservation and enforcement actions. Population monitoring is vital to determine population threats and evaluate conservation management and enforcement strategies. Determination of the size of the loggerhead turtle population requires technical studies that consider the spatial population structure of this highly migratory species. The information shared in the Response does not indicate whether a species sampling study has been carried out or is in development. Nor does it specify the method used to discover specimens. The Response does not indicate if the data in the SNIB has been analyzed to establish conservation and enforcement strategies. It does not indicate whether specimens are juveniles or adults, females or males. Nor does this data establish the conditions in which they were found. In

⁵⁹ Response: Annex 5, National Commission for the Knowledge and Use of Biodiversity, file no. CN/037/2021 (19 May 2021).

⁶⁰ Idem.

⁶¹ Response at 18.

the case of certain specimens, the marine region where they were identified or the coast where they were visually located is not specified.

80. A factual record would present relevant factual information on the matters raised above, including ongoing efforts to identify and analyze threats to population size, such as: (1) fisheries bycatch (incidental capture of turtles in fisheries targeting other species); (2) resource use (non-fisheries), including illegal harvest and numerous other human activities that cause turtle mortality, such as vessel strikes; (3) construction and development, including shoreline stabilization projects and coastal construction; (4) ecosystem alterations, including trophic changes caused by fishing and habitat alteration; (5) pollution, including artificial lighting, debris, and ship contamination; (6) species interactions, including diseases from and predation by both native and exotic species; and (7) other factors, including climate change and natural chronic or episodic events (e.g. hurricanes). This would also bring greater clarity to the actions carried out by Mexico to determine the number of loggerhead turtles.
81. The Secretariat recommends the preparation of a factual record on the alleged failure to effectively enforce LGVS Articles 9 paragraph X and 60 *bis* 1 first paragraph, in relation to the alleged lack of recent population size studies to serve as a basis for determining catch quotas.

vii) The alleged failure of the Mexican authorities to assess the effectiveness of their policy instruments for reducing bycatch and the alleged lack of review mechanisms for the measures applied

82. The Submitters assert that in the north Pacific loggerhead turtles emerge from nesting beaches in Japan and travel to juvenile habitats in the waters of the north central Pacific. An unknown proportion then travels to the eastern Pacific, where there is a feeding “hotspot” off the Pacific coast of the Baja California Peninsula.⁶² This area is characterized by an abundance of marine species that are harvested using different fishing methods and equipment, which, consequently, sometimes affect the loggerhead turtle (*Caretta caretta*) population. The Submitters assert that the recorded cases of thousands of stranded or dead loggerhead turtle specimens are a phenomenon associated with bycatch and fishing for human consumption.⁶³
83. The Submitters cite provisions that establish Semarnat’s authority over environmental policies (RI-Semarnat Article 5 paragraph I); the Closed Season Order, which establishes “a total and indefinite closed season” for the species of sea turtles present in waters under federal jurisdiction, including the loggerhead turtle;⁶⁴ the Refuge Order, which determines that the loggerhead turtle is classified as endangered⁶⁵ and decreed a refuge zone for the protection of the loggerhead turtle in the Gulf of Ulloa, in Baja California Sur;⁶⁶ and, finally, the Fish Refuge Order, which stipulates restrictions on the use of nets and the suspension of

⁶² Submission at 1.

⁶³ *Idem*.

⁶⁴ *Acuerdo por el que se establece veda para las especies y subespecies de tortuga marina en aguas de jurisdicción federal del golfo de México y mar Caribe, así como en las del océano Pacífico, incluyendo el golfo de California*, DOF, 31 May 1990 [“Closed Season Order”], Article 1, online at <www.dof.gob.mx/nota_detalle.php?codigo=4658226&fecha=31/05/1990> (viewed 5 July 2021).

⁶⁵ Turtle Refuge Order, preamble.

⁶⁶ *Ibid*, Article 1.

certain fishing activities.⁶⁷ In particular, the Fish Refuge Order stipulates that the number of loggerhead turtle deaths per year arising from commercial fishing operations in the refuge may not exceed 90 specimens.⁶⁸ The original two-year period established by this Order was extended to five years via a new order issued in June 2018.⁶⁹

84. In its response, Mexico stated that Conapesca is the authority responsible for monitoring compliance with the research, evaluation, and monitoring activities specified as part of the Fisheries Management Plan (*Plan de Manejo Pesquero*).⁷⁰ Furthermore, Mexico affirms that after three years of implementing fish management in the region through the Onboard Technical Assistants (*Asistentes técnicos a bordo*) and Videotaping Systems (*Sistemas de videograbación*) programs, it has been documented and proven that fishing is not the principal cause of the sea turtle deaths recorded on the west coast of Baja California Sur based on the fact that there have been no more than 90 proven fishing-relating deaths.⁷¹ Reported results from the above cited programs were not shared with the Secretariat. The Response does not include, for instance, information on the estimated annual mortality of the loggerhead turtle for each type of fisheries bycatch. In the literature included in the Submission and publicly available, bycatch is considered a major threat to the species.⁷²
85. The Response states that sea turtle conservation and protection actions were carried out in Mexico in April 2019. Information resulting from these actions was shared with the United States to determine the compatibility of Mexican fishing activities with provisions of US regulations on fish product imports.⁷³ In this regard, the Response does not provide information on the actions in the Gulf of Ulloa, nor does it explain how these actions are related to the loggerhead turtle. Reported results were not appended to the Response.
86. The Response mentions the government support provided to 36 projects for the conservation, monitoring, and management of various species, such as sea turtles, in the framework of the Protection and Restoration of Ecosystems and Priority Species Program (*Programa para la Protección y Restauración de Ecosistemas y Especies Prioritarias*). However, this information does not specify whether the loggerhead turtle is included in said projects and, if so, which ones were carried out in the Gulf of Ulloa. Nor does it mention the implementation methodology or how project results were measured.⁷⁴
87. The Party states that in February and July 2020 “Reports on Sea Turtle conservation and protection actions” were filed with the Inter-American Convention for the Protection and Conservation of Sea Turtles in order to ensure compliance with the legislation passed to

⁶⁷ Fish Refuge Order, Articles 3, 4 and 5.

⁶⁸ *Ibid.*, Article 7 paragraph VI.

⁶⁹ *Acuerdo por el que se amplía la vigencia del similar por el que se establece la zona de refugio pesquero y nuevas medidas para reducir la posible interacción de la pesca con tortugas marinas en la costa occidental de Baja California Sur*, publicado el 23 de junio de 2016, DOF, 25 June 2018, online at <www.dof.gob.mx/nota_detalle.php?codigo=5528971&fecha=25/06/2018> (viewed 7 July 2021).

⁷⁰ Response at 19.

⁷¹ *Idem.*

⁷² A. Bolten, et al. *Quantifying multiple threats to endangered species: an example from loggerhead sea turtles*, *Front Ecol Environ* 2011; 9(5): 295–301, doi:10.1890/090126 (published online 28 May 2010).

⁷³ Response at 19.

⁷⁴ Response at 20.

protect sea turtles, both offshore and in their nesting sites, from disturbances arising from human activities. The Secretariat notes that the loggerhead turtle does not nest in the Gulf of Ulloa.

88. The Party mentions in its response that as part of the 2020-2024 Environment and Natural Resources Sectoral Program, Conanp implemented 28 conservation, monitoring, and management projects for various species, among them the loggerhead turtle, between July and December 2020.
89. The Secretariat notes that it is not specified whether any of these projects were carried out in the Gulf of Ulloa. The implementation methodology was left unspecified as were the methods to measure the effectiveness of the results.
90. The Secretariat notes that the Response does not mention studies or possible visual inspections of stranded specimens of loggerhead turtles to determine the cause of death. Nor does it reference photographic evidence of the sites where stranded specimens were found.
91. The Secretariat notes that in 2012 and 2013 the United States Government recorded mass strandings of loggerhead turtles in this area and determined that bycatch was the cause of death.⁷⁵
92. A factual record may clarify how the instruments utilized to reduce loggerhead turtle bycatch are evaluated. It could also shed light on information at the disposal of various authorities regarding mass sea turtle strandings, the effectiveness of the fishing bans in the Gulf of Ulloa, the results obtained by the conservation and protection projects mentioned by the Party, and the question of the evaluation of their results.
93. The Secretariat recommends the preparation of a factual record on the implementation of the Closed Season Order, the Turtle Refuge Order, and the Fish Refuge Order in relation to the assessment of the effectiveness of the policy instruments for reducing bycatch and the alleged lack of review mechanisms for the measures applied.

III. NOTIFICATION

94. The Secretariat has examined, in light of the United Mexican States' response, submission SEM-20-001 (*Loggerhead turtle*).
95. Having considered the submission in light of Mexico's response, the Secretariat finds that central issues exist that remain open questions in relation to the effective protection and conservation of the loggerhead turtle in the Gulf of Ulloa in Mexico. It therefore recommends the preparation of a factual record concerning the effective enforcement of Article 4 paragraph five of the Constitution; LGEEPA Articles 5 paragraph XIX, 161, 171, 182 (first paragraph) and 202 (first paragraph); LGVS Articles 5 paragraph III, 9 paragraph X, XXI, 60 (first paragraph), 60 *bis* 1 (first paragraph) 62, and 104; RI-Semarnat Articles 45 paragraphs I, II, V, subparagraphs a) and c), VI, X, XI and XII, and 70 paragraphs I, III, IV and XIII; the Closed Season Order; the Turtle Refuge Order; and the Fish Refuge Order.
96. For the reasons set out herein and in accordance with USMCA Article 24.28(1), the Secretariat hereby notifies the CEC Council and the Environment Committee established

⁷⁵ See Response: Annex 9, Conapesca, Ministry of Agriculture and Rural Development, file no. DGOPA-09512/170521 (18 May 2021).

under Chapter 24 of its decision to recommend, pursuant to the USMCA's objectives, the preparation of a factual record in relation to submission SEM-20-001. Pursuant to section 19.4 of the *Guidelines for Submissions on Enforcement Matters*, "[t]he Council should vote on whether to instruct the Secretariat to prepare the factual record normally within 60 working days of receiving the Secretariat's recommendation"; that is, no later than **25 October 2021**.⁷⁶

97. In accordance with the provisions of USMCA Article 24.28(2), the Secretariat "shall prepare a factual record if at least two members of the Council instruct it to do so."

Respectfully submitted for your consideration,

Secretariat of the Commission for Environmental Cooperation

Per: (original signed)
Richard Morgan
Executive Director

cc:
Iván Rico, Alternate Representative of Mexico
Catherine Stewart, Alternate Representative of Canada
Jane Nishida, Alternate Representative of the United States
Environment Committee contact points
Paolo Solano, Director of Legal Affairs and Submissions on Enforcement Matters
Submitters

⁷⁶ As long as this is consistent with the provisions of the USMCA, the Secretariat is guided by the procedures set out in the *Guidelines for Submissions on Enforcement Matters*.