

Secretariat of the Commission for Environmental Cooperation
Secretariat determination in accordance with Articles 24.27(2) and (3) 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 determination: 8 February 2021

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

I. INTRODUCTION

1. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA or “the Agreement”) and the Environmental Cooperation Agreement (ECA) took effect. As from that date, the mechanism for submissions on the enforcement of environmental law (the “SEM mechanism”), 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 implementation of the SEM mechanism continues to be the work of the Commission for Environmental Cooperation (CEC or “the Commission”), whose terms of reference are now 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 and criteria set out in USMCA Article 24.27(1) and (2). Where the Secretariat finds that a submission meets these requirements and criteria, it then determines, in accordance with the criteria of Article 24.27(3), whether the submission merits a response from the Party in question. In light of the Party’s response, the Secretariat then determines whether the matter warrants the preparation of a factual record and, if so, it so informs the CEC Council and the

¹ The Commission for Environmental Cooperation was created in 1994 under the North American Agreement on Environmental Cooperation (NAAEC), signed by Canada, the United States, and Mexico (the “Parties”). Pursuant to Article 2(3) of the *Agreement on Environmental Cooperation among the Governments of the United States of America, the United Mexican States, and Canada* (ECA), the Commission for Environmental Cooperation (CEC) “will continue to operate under the modalities in place as of entry into force of [the ECA].” The constitutive bodies of the CEC are the Council, the Secretariat, and the Joint Public Advisory Committee (JPAC).

Environment Committee,² providing its reasons as prescribed by USMCA Article 24.28(1); otherwise, it terminates the review of the submission.³

3. On 17 December 2020, Centro Mexicano de Derecho Ambiental (Cemda) and the Center for Biological Diversity (the “Submitters”) filed an Article 24.27(1) submission with the Secretariat.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*), an endangered species whose conservation is a 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 Equilibrium and Environmental Protection Act (*Ley General del 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**); Articles 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**”); as well as 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**”); Mexican Official Standard NOM-059-SEMARNAT-2010, *Protección ambiental-Especies nativas de México de flora y fauna silvestres-Categorías de riesgo y especificaciones para su inclusión, exclusión o cambio-Lista de especies en riesgo (NOM-059)*; the Species at Risk Conservation Plan (*Programa de Conservación de Especies en Riesgo*); the National Sea Turtle Conservation Plan (*Programa Nacional de Conservación de Tortugas Marinas*); the Marine Ecological and North Pacific

² The Environment Committee is established by USMCA Article 24.26(2) and its role is to supervise the implementation of Chapter 24 of the Agreement.

³ More details on the various stages of the submissions on enforcement matters process, the public registry of submissions, and previous Secretariat determinations and factual records can be found on the CEC website at <<http://www.cec.org/submissions-on-enforcement/>>.

SEM-20-001 (Loggerhead Turtle), USMCA Article 24.27(1) Submission (17 December 2020), [Submission], online at <<http://www.cec.org/submissions-on-enforcement/registry-of-submissions/loggerhead-turtle/>>.

⁵ Submission, “Introduction.”

Regional Zoning Plan (*Programa de Ordenamiento Ecológico Marino y Regional Pacífico Norte*), and the Loggerhead Turtle (*Caretta caretta*) Conservation Action Plan (*Programa de Acción para la Conservación de la Especie Tortuga Caguama*).

5. Having reviewed the submission, the Secretariat finds that it qualifies under USMCA Article 24.27(2) and merits a response from the government of Mexico pursuant to Article 24.27(3), for the reasons set out in section II, “Review.”
6. In addition, the Secretariat finds that while the provisions of the SEM mechanism are contemplated in Chapter 24 of the USMCA, the ECA also establishes some related procedures, namely: the Secretariat’s role in implementing the submission process;⁶ the Council’s role in exchange of information with the Environment Committee;⁷ the preparation and publication of factual records,⁸ and the cooperation activities of the Council arising from factual records.⁹ For this reason, in implementing the SEM mechanism, the Secretariat bears in mind the text of ECA Article 2(3):

The Commission will continue to operate under the modalities in place as of entry into force of this Agreement, including its rules, policies, guidelines, procedures, and resolutions, to the extent these modalities are consistent with this Agreement. The Council shall adjust, as required, these modalities to reflect and implement the provisions of this Agreement. If there is an inconsistency between these modalities and the provisions of this Agreement, the provisions of this Agreement shall prevail.

7. Consequently, and only insofar as this is consistent with the provisions of the Agreement, the Secretariat is guided by the procedures set out in the *Guidelines for Submissions on Enforcement Matters Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”). In addition, in relevant cases, the Secretariat will take into consideration the review criteria set out in previous determinations and notifications issued in accordance with NAAEC Articles 14 and 15 and available in the CEC Registry of Submissions at < <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/>>. Proceeding in this way will help to ensure the uniform implementation of the SEM mechanism.¹⁰

II. REVIEW

8. Under Article 24.27(2), the CEC Secretariat may consider any submissions asserting that a Party is failing to effectively enforce its environmental laws, provided that the eligibility requirements of that provision are met. The Secretariat reiterates, as it has stated previously in determinations issued in accordance with NAAEC Articles 14 and 15, that the requirements of USMCA Articles 24.27(1), (2), and (3) are not intended to be an insurmountable procedural

⁶ Environmental Cooperation Agreement (ECA), Article 5(5).

⁷ *Ibid.*, Article 4(4).

⁸ *Ibid.*, Article 4(1)(l).

⁹ *Ibid.*, Article 4(1)(m).

¹⁰ “At a minimum, references to previous determinations will assist in ensuring that the Secretariat consistently applies the provisions of the NAAEC. Such a contextual approach to a treaty is suggested by general canons of statutory interpretation as well as Articles 31 and 32 of the Vienna Convention on the Law of Treaties.” SEM-97-001 (*BC Hydro*), Article 15(1) Notification (27 April 1998), online at <www.cec.org/wp-content/uploads/wpallimport/files/97-1-adv-e.pdf>.

screening device,¹¹ and they must therefore be given a broad interpretation consonant with Chapter 24 of the Agreement.¹² The Secretariat reviewed the submission with that perspective in mind.

A. Article 24.27(1)

9. USMCA Article 24.27(1) allows any person of a Party to file a submission asserting that a Party is failing to effectively enforce its environmental laws.
10. USMCA Article 1.5¹³ defines the term “person of a Party” as “a national of a Party or an enterprise of a Party”; it defines an “enterprise” as “an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization,” while an “enterprise of a Party” is to be construed as “an enterprise constituted in accordance with the laws of a Party.”
11. The submission SEM-20-001 (*Loggerhead Turtle*) includes the Submitters’ name and address, data identifying its representatives, and sufficient information to establish that they are “persons of a Party” for the purposes of Article 24.27(1). Cemda is a civic association established in Mexico City, while the Center for Biological Diversity is an organization established in the city of Seattle, Washington, United States of America.

B. Environmental laws in question

12. The Secretariat proceeds to state its reasons in regard to the eligibility for review of the legal provisions cited by the Submitters. USMCA Article 24.1 stipulates that:

environmental law means a statute or regulation of a Party, or provision thereof, including any that implements the Party’s obligations under a multilateral environmental agreement, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

- a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;
- b) the control of environmentally hazardous or toxic chemicals, substances, materials, or wastes, and the dissemination of information related thereto; or
- c) the protection or conservation of wild flora or fauna,¹ including endangered species, their habitat, and specially protected natural areas,²

but does not include a statute or regulation, or provision thereof, directly related to worker safety or health, nor any statute or regulation, or provision thereof, the

¹¹ SEM-97-005 (*Biodiversity*), Article 14(1) Determination (26 May 1998) and SEM-98-003 (*Great Lakes*), Article 14(1) and (2) Determination (8 September 1999).

¹² Cf. USMCA Article 24.2.

¹³ The Secretariat has in mind the adoption of the *Protocol of Amendment to the United States-Mexico-Canada Agreement* (the “Protocol”) whereby provisions were added to Chapters 1 and 24. Some articles of the Agreement were reworked and, in the case of the Spanish version, both the USMCA and the Protocol must be consulted.

primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources.¹⁴

¹ The Parties recognize that “protection or conservation” may include the protection or conservation of biological diversity.

² For the purposes of this Chapter, the term “specially protected natural areas” means those areas as defined by the Party in its law.

Article 24.1 also defines a **statute or regulation** as:

b) for Mexico, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the federal level of government.¹⁵

13. Historically, in the context of the NAAEC definition of environmental law, the Secretariat has accepted for review provisions contained in international treaties signed by Mexico, as long as they have been incorporated into the national legal order,¹⁶ and in such cases has reviewed their eligibility for inclusion in the SEM mechanism.¹⁷ However, the text adopted by the Parties to the USMCA establishes in its definition of environmental law that this includes a statute or regulation, or a provision thereof, “that implements the Party’s obligations under a multilateral environmental agreement...”
14. Thus, the Secretariat finds that it is only authorized within the USMCA framework to consider a Party’s obligations under a multilateral environmental agreement where these are made effective by a law of Congress or its regulations and are under the jurisdiction of the federal authorities. Therefore, the multilateral instruments cited by the Submitters — the *Inter-American Convention for the Protection and Conservation of Sea Turtles*, the *Convention on Biological Diversity*, and the Protocol of San Salvador are not considered environmental laws under the USMCA.
15. The Submitters cite **Article 4 of the Constitution**, which recognizes the human right to a healthy environment. On this score, the Mexican Supreme Court (*Suprema Corte de Justicia de la Nación*) has reiterated that “this human right gives rise to an obligation on the part of all state authorities to guarantee the existence of a healthy environment conducive to human development and the well-being of persons.”¹⁸ As the Secretariat has previously found and as Mexico has noted,¹⁹ this constitutional provision may be relied upon where it is complemented by a review of the environmental law in question focused on the article’s fifth paragraph, that being the one that incorporates the human right to a healthy environment.²⁰

¹⁴ USMCA Article 24.1.

¹⁵ *Ibid.*

¹⁶ See, e.g.: SEM-00-006 (*Tarahumara*), Article 14(1) and (2) Determination (6 November 2001), §29; SEM-09-002 (*Wetlands in Manzanillo*), Article 14(1) Determination (9 October 2009), §16; SEM-13-001 (*Tourism Development in the Gulf of California*), Article 14(1) Determination (24 May 2013), §29.

¹⁷ SEM-18-002 (*Metrobús Reforma*), Article 14(1) and (2) Determination (1 May 2018), §30.

¹⁸ “DERECHO A UN MEDIO AMBIENTE SANO: SU CONTENIDO,” tesis 1a. CCXLVIII/2017 (10a.), *Gaceta de la Semanario Judicial de la Federación*, décima época, book 49, v. I, December 2017, at 411.

¹⁹ SEM-09-009 (*Transgenic Maize in Chihuahua*), Article 14(3) Response (3 May 2003) at 11–13, online at <http://www.cec.org/wp-content/uploads/wpallimport/files/09-1-rsp-unofficial_translation_en.pdf>.

²⁰ SEM-18-002 (*Metrobús Reforma*), Article 14(1) and (2) Determination, §12. In addition, the Federal Judicial Branch (*Poder Judicial de la Federación*) has stated that “the need to protect natural resources and for the

16. **LGEEPA Article 5 paragraph XIX** establishes the power of the Federation, within the scope of its jurisdiction, to enforce and promote compliance with the LGEEPA and the provisions deriving from it; **LGEEPA Article 161**, for its part, provides that the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat) “shall conduct acts of inspection and surveillance of compliance with the provisions of this Act and any that ensue from them.” In marine zones, such acts of inspection and surveillance may be carried out by Semarnat or by the Ministry of the Navy (*Secretaría de Marina*). The Secretariat finds that both provisions have environmental protection as their purpose and qualify as environmental law under USMCA Article 24.1.
17. **LGEEPA Article 171** establishes the administrative sanctions applicable to violations of this statute, its regulations, and provisions ensuing from them. The Secretariat finds that this is a provision whose purpose is the protection of the environment and that it qualifies as environmental law in the sense of USMCA Article 24.1.
18. **LGEEPA Article 182** provides that where Semarnat takes cognizance of “acts or omissions that may constitute offenses under the applicable law, it shall file the relevant complaint with the Office of the Federal Public Prosecutor [*Ministerio Público Federal*].” In addition, it recognizes the right of any person to file a criminal complaint; gives Semarnat the power to issue expert opinions, and establishes that Semarnat shall assist the public prosecutor. The Secretariat retains only the first paragraph of this article for review, since it is the one directly related to the Submitters’ assertions and its primary purpose is environmental protection, so it qualifies as environmental law under Article 24.1 of the Agreement.
19. **LGEEPA Article 202** gives the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) the power to “take any applicable action before the competent authorities where it takes cognizance of acts, occurrences, or omissions constituting violations of administrative or penal law,” as well as to take collective action where the interests of a collectivity are in jeopardy. In this regard, the Secretariat finds that only the first paragraph of this article should be retained for review, this being the one that relates to the Submitters’ assertions and because it is a provision aimed at the protection of the environment in the sense of the USMCA.
20. **LGVS Article 5** establishes conservation and optimal levels of sustainable use as the goals of national wildlife policy, so that the restoration of wildlife diversity and integrity is maintained and furthered, while simultaneously increasing the well-being of the country’s inhabitants. In addition, it provides that the principles established in the LGEEPA shall be observed alongside a set of criteria listed in the same article for the formulation and handling of environmental policy. In this regard, the Submitters refer to the conservation of genetic diversity and the protection, restoration, and conservation of natural habitats (**paragraph I**); preventive measures for the maintenance of conditions conducive to the evolution of ecosystems, habitats, and populations in their natural environments (**paragraph II**); the application of scientific, technical, and traditional knowledge (**paragraph III**), and the adoption of criteria so that sanctions not only fulfill a punitive function but also translate into actions contributing to and stimulating the transition to sustainable development (**paragraph IX**). The Secretariat finds

preservation and restoration of ecological equilibrium are fundamental principles that the constituent assembly sought to protect.” See “MEDIO AMBIENTE ADECUADO PARA EL DESARROLLO Y BIENESTAR: CONCEPTO, REGULACIÓN Y CONCRECIÓN DE ESA GARANTÍA,” tesis I.4°.A.44788A, *Gaceta del Semanario Judicial de la Federación*, novena época, v. XXI, January 2005, at 1799.

that all these provisions cited by the Submitters clearly qualify as environmental law under Article 24.1 of the Agreement, since their primary purpose is the protection and conservation of the environment through the protection of wildlife and biodiversity.

21. **LGVS Article 9** empowers the federation to formulate and implement national policy on the sustainable conservation and enjoyment of wildlife (**paragraph I**); to address wildlife-related matters in cases of acts that may affect wildlife (**paragraph VII**); to further the development of projects, studies, and activities aimed at wildlife education, training, and research (**paragraph X**); to address matters relating to the management, control, and remediation of problems associated with wild specimens and populations (**paragraph XV**), and to inspect and monitor compliance with the LGVS (**paragraph XXI**). In this regard, paragraphs I, VII, X, XV, and XXI of this article are retained for review since they bear a relationship to the assertions in the submission concerning the alleged lack of measures for due protection and conservation of the loggerhead turtle, and indeed qualify as environmental law under Article 24.1 of the Agreement.
22. **LGVS Article 60** provides that Semarnat shall further and promote the conservation and protection of species and populations at risk through various measures, including the certification of sustainable use and the signing of coordination agreements. Only the first paragraph of this article — which constitutes a provision aimed at the protection of wildlife in consonance with Article 24.1 of the Agreement — is retained for review, since it bears a relationship to the submission.
23. **LGVS Article 60 bis 1** provides that sea turtle specimens “may not be subjected to extractive use, whether on a subsistence or commercial basis, including their parts and byproducts.” In addition, the second paragraph makes reference to the protection of other species not related to the submission. The Secretariat finds that this provision is environmental law under Article 24.1 of the Agreement.
24. **LGVS Article 61** establishes that Semarnat shall produce lists of species and populations having conservation priority, which must meet at least one of the stipulated criteria. While this is a provision aimed at the protection of wildlife species such as the loggerhead turtle and therefore qualifies as environmental law under the Agreement, the submission does not address any alleged failure to prepare and/or publish the list of conservation priority species or to include the loggerhead turtle on such list(s), and it is therefore not retained for review as part of this process. Nevertheless, the Secretariat may cite this provision in its review of the enforcement of the environmental law in question.
25. **LGVS Article 62** provides that Semarnat shall implement “programs for the conservation, recovery, reproduction, and reintroduction into their habitat of species and populations having conservation priority.” The provision in question qualifies as environmental law under Article 24.1 of the Agreement and is retained for effective enforcement review.
26. **LGVS Article 104** provides that Semarnat shall carry out “such acts of inspection and surveillance as are necessary for the conservation and sustainable use of wildlife, with adherence to the provisions of the [LGVS], the [LGEEPA], and the provisions deriving from them.” This article qualifies as environmental law for the purposes of USMCA Article 24.1 and is retained for the Secretariat’s review.
27. **LFRA Article 2 paragraph III** establishes the concept of *environmental harm* as “adverse and measurable loss, change, deterioration, degradation, impact on, or modification of habitat,

ecosystems, natural elements and resources, their chemical, physical, or biological conditions, interactions among them, and environmental services that they provide.”

28. **LFRA Article 10** provides that:

Any natural or legal person who, by his act or omission, directly or indirectly causes harm to the environment shall be liable and obligated to repair the harm, or, where repair of the harm is not possible, to payment of the applicable environmental compensation...

He shall likewise be obligated to take the steps necessary to prevent the harm caused to the environment from increasing.

29. The cited provisions of the LFRA are environmental law since they establish the concept of environmental harm and the scope of the associated responsibility as well as the obligation to repair or compensate for such harm. However, they are not directly applicable, since they require mechanisms for their implementation; therefore, the Secretariat decides not to retain them for review in this procedure. Nevertheless, both will assist the Secretariat with its review in relation to the alleged environmental harm caused by the failures to conserve and protect the loggerhead turtle asserted by the Submitters.
30. The cited provisions of the **RI-Semarnat** establish the duties and powers of Semarnat (**Article 5**), Profepa (**Article 45**), and the National Protected Natural Areas Commission (*Comisión Nacional de Áreas Naturales Protegidas*—Conanp) (**Article 70**). These provisions qualify as environmental law under Article 24.1 of the Agreement.
31. In this regard, the Secretariat finds that only the paragraphs of those articles relating to the Submitters’ assertions should be retained for review.
32. Concerning Article 45 paragraphs I, II, V(a) and (c), VI, X, XI, XII, and XIX, they qualify as environmental law in that they establish provisions for sea turtle protection and conservation through implementation of acts of inspection and surveillance (**paragraph I**); response to and investigation of citizen complaints filed with the authority (**paragraph II**); applications to the competent authorities to revoke or suspend approvals, permits, licenses, or concessions (**paragraph V(a)**); arranging for enforceable safety measures to be taken by the competent federal, state, or municipal authorities where there exists an imminent risk of ecological disequilibrium (**paragraph V(c)**); determination and issuance of recommendations to the competent authorities for furtherance of environmental compliance (**paragraph VI**); implementation of corrective measures, safety measures, and sanctions (**paragraph X**); investigation and determination of violations of environmental law (**paragraph XI**); filing of complaints with the federal public prosecutor for acts, occurrences, or omissions that imply the probable commission of environmental offences (**paragraph XII**), and verification of the legal origin of individuals, parts, and byproducts of aquatic species at risk (**paragraph XIX**).
33. In relation to Article 70, the Secretariat finds that paragraphs I, III, IV, and XIII, which provide that Conanp shall carry out activities for the conservation of ecosystems and their biodiversity (**paragraph I**), implement conservation programs (**paragraph III**), and administer refuges for the protection of aquatic species (**paragraph XIII**), qualify as environmental law. In addition, Conanp has the duty to formulate, further, implement, and evaluate projects for the conservation of priority species and populations (**paragraph IV**).

34. The **Closed Season Order**, published in the Official Gazette of the Federation (*Diario Oficial de la Federación*—DOF) on 31 May 1990 and issued in accordance with the Federal Public Administration Act (*Ley Orgánica de la Administración Pública Federal*—LOAPF) and the Federal Fisheries Act (*Ley Federal de Pesca*), contains regulatory provisions under the jurisdiction of the federal authorities and pursuant to laws enacted by the Congress of the United Mexican States, and therefore qualifies as environmental law in the sense of USMCA Article 24.1. This instrument acknowledges that “the inevitable effects of the process of industrialization and the increase in human settlements and tourism establishments ... have hindered the recovery [of all sea turtle species and subspecies], and the worldwide decline of their populations has continued,”²¹ and it therefore establishes “a total and perpetual ban” for the sea turtle species found in national waters under federal jurisdiction, including the loggerhead turtle;²² prohibits the removal or catch of this species;²³ stipulates the obligation to return turtle specimens captured accidentally to their natural habitat,²⁴ and puts forward control and surveillance measures that the relevant authorities must implement to guarantee compliance with the Order and the consequent protection and conservation of sea turtles.²⁵
35. The **Turtle Refuge Order**, published in the DOF on 5 June 2018 and issued in accordance with the LOAPF, the LGVS, the LGEEPA, and the *Inter-American Convention for the Protection and Conservation of Sea Turtles*, contains regulatory provisions under the jurisdiction of the federal authorities and pursuant to the laws of the Congress of the United Mexican States, so it qualifies as environmental law in the sense of USMCA Article 24.1. This instrument acknowledges the documentation of deaths of *Caretta caretta* specimens “linked to the use of certain fishing gear in the Gulf of Ulloa” and that the species is classified as endangered.²⁶ The Order establishes a refuge for the protection of the loggerhead turtle in the Gulf of Ulloa in Baja California Sur;²⁷ it provides for Semarnat to devise a protection plan,²⁸ and it notes that Conanp will be responsible for the administration of the protection area.²⁹
36. The **Priority Species Order**, published in the DOF on 5 March 2014 and issued in accordance with the LOAPF, the LGEEPA and the LGVS, contains regulatory provisions under the jurisdiction of the federal authorities. This instrument lists the species whose conservation and recovery are considered priorities, either because they are classified in any risk category or because they are umbrella, charismatic, emblematic, or indicator species; that is, a species which, by virtue of their ecological and even social importance, provides indirect benefits to other species and to the habitat.³⁰ The Secretariat notes that the Submitters do not assert the failure to include the species *Caretta caretta* in the Order, and therefore finds that it should not

²¹ Closed Season Order, DOF, 31 May 1990, preamble, online at www.dof.gob.mx/nota_detalle.php?codigo=4658226&fecha=31/05/1990 (viewed 13 January 2020).

²² *Ibid.*, first article.

²³ *Ibid.*, second article.

²⁴ *Ibid.*, third article.

²⁵ *Ibid.*, fourth article (plan to assess the magnitude and effects of bycatch), fifth and sixth articles (refuge zones), and ninth article (establishment of turtle camps).

²⁶ Turtle Refuge Order, preamble, online at www.dof.gob.mx/nota_detalle.php?codigo=5525056&fecha=05/06/2018 (viewed 13 January 2020).

²⁷ *Ibid.*, first article.

²⁸ *Ibid.*, second article.

²⁹ *Ibid.*, third article.

³⁰ Priority Species Order, DOF, 5 March 2014, preamble, online at www.dof.gob.mx/nota_detalle.php?codigo=5334865&fecha=05/03/2014 (viewed 13 January 2020).

include the Order in its review. Nevertheless, the Secretariat finds that the Priority Species Order constitutes a relevant legal instrument and it will be referred to as applicable in the enforcement review.

37. The **Fish Refuge Order**, published in the DOF on 23 June 2016³¹ and issued pursuant to various federal laws, including the LOAPF, the Planning Act (*Ley de Planeación*), the LFPA, and the General Sustainable Fisheries and Aquaculture Act (*Ley General de Pesca y Acuacultura Sustentables*), contains regulatory provisions under the jurisdiction of the federal authorities and pursuant to laws enacted by the Congress of the United Mexican States, so it qualifies as environmental law in the sense of USMCA Article 24.1. For the purpose of reducing interactions between fishing activities and sea turtles in waters under federal jurisdiction on the West Coast of Baja California Sur, specifically in the area known as the “Gulf of Ulloa,”³² this instrument establishes the coordinates of a *temporary partial fish refuge*³³ as well as restrictions on the use of nets and a suspension of certain fishing activities.³⁴ In particular, it stipulates a mortality limit for the loggerhead turtle of 90 specimens per year for commercial fishing operations in the refuge zone.³⁵ The original time period of two years established for the provisions of the order in question was extended by five additional years by means of a new order issued in June 2018.³⁶
38. NOM-059, published in the DOF on 30 December 2010³⁷ and issued in accordance with the LOAPF, the Federal Measurement and Standards Act (*Ley Federal sobre Metrología y Normalización*), the LGEEPA, and the LGVS, contains regulatory provisions under the jurisdiction of the federal authorities and pursuant to laws enacted by the Congress of the United Mexican States. The purpose of this instrument is to identify wildlife species or populations at risk through the drafting of the corresponding lists, and also through the establishment of risk categories and specifications for their inclusion or exclusion from the list of species at risk.³⁸ The Secretariat has previously found that NOM-059 qualifies as environmental law,³⁹ since its primary purpose is the protection of native wildlife species of Mexico, which fully coincides with the sense of USMCA Article 24.1. However, the Secretariat notes that the Submitters do not assert the failure to include the species *Caretta caretta* in NOM-059, and therefore finds that it should not retain this standard for review. Nevertheless, the Secretariat finds that NOM-059 constitutes a relevant legal instrument and it will be referred to in the enforcement review as applicable.
39. The Species at Risk Conservation Plan is not considered environmental law since it has no regulatory content. However, the Secretariat identifies it as an instrument for ensuring the

³¹ Fish Refuge Order, DOF, 23 June 2016, online at www.dof.gob.mx/nota_detalle.php?codigo=5442227&fecha=23/06/2016 (viewed 13 January 2020).

³² *Ibid.*, first article.

³³ *Ibid.*, second article.

³⁴ *Ibid.*, third, fourth, and fifth articles.

³⁵ *Ibid.*, seventh article, paragraph VI.

³⁶ “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 13 January 2020).

³⁷ NOM-059, published in the DOF on 30 December 2010.

³⁸ *Ibid.*

³⁹ See SEM-98-006 (*Aquanova*), Article 15(1) Notification (4 August 2000) at 5–6, and SEM-09-002 (*Wetlands in Manzanillo*), Article 14(1) and (2) Determination (13 October 2010), §23.

effective enforcement of environmental law and it will be referred to in the enforcement review as applicable.

40. The National Sea Turtle Conservation Plan is not considered environmental law since it has no regulatory content. However, the Secretariat classifies it as an instrument for ensuring the effective enforcement of environmental law and it will be referred to in the enforcement review as applicable.
41. While the Marine Ecological and North Pacific Regional Zoning Plan is an administrative act that the authorities and individuals must observe, the Secretariat does not consider it environmental law and is not retaining it for further review.⁴⁰
42. The Loggerhead Turtle (*Caretta caretta*) Conservation Action Plan is not considered environmental law because its content lacks regulatory character. However, the Secretariat considers it an instrument contributing to the effective enforcement of environmental law, and this plan will therefore be referred to in the enforcement review as applicable.

C. USMCA Article 24.27(2) review

43. Further to its USMCA Article 24.27(2) review of submission SEM-20-001 (*Loggerhead Turtle*), the Secretariat finds that the submission meets the requirements of that article, as discussed below.

The CEC Secretariat may consider a submission under this Article if it finds that the submission:

a) is in writing in English, French, or Spanish

44. The submission in question is written in Spanish, so the Secretariat finds that the submission fulfills the eligibility requirement of USMCA Article 24.27(2)(a).

b) clearly identifies the person making the submission

45. The submission includes the names, addresses, email addresses, and telephone numbers of the organizations filing it. This information is sufficient to identify and communicate with the Submitters. Therefore, the submission meets the requirement of USMCA Article 24.27(2)(b).

c) provides sufficient information to allow for the review of the submission including any documentary evidence on which the submission may be based and identification of the environmental law of which the failure to enforce is asserted

46. The submission contains sufficient information to allow the Secretariat to review it, since it includes documentation supporting the Submitters' assertions and identifies the laws, regulations, or provisions that it addresses.

⁴⁰ See SEM-09-002 (*Wetlands in Manzanillo*), Article 14(1) Determination (9 October 2009), §9.

47. The Submitters include an appendix containing information that describes the setting for the *Caretta caretta* habitat.⁴¹ They append a map indicating the geographical boundaries of the fish refuge,⁴² and they include links for downloading some of the legal instruments cited in the submission, the requests for information submitted to the government Mexico, its responses thereto, and a citizen complaint.⁴³
48. The information made available for downloading by the Submitters includes a record of the number of loggerhead turtle specimens taken as bycatch in the Gulf of Ulloa between January 2017 and December 2019;⁴⁴ confirmation as to whether Profepa filed a complaint with the federal public prosecutor for the alleged commission of environmental offences between 2010 and July 2020 in relation to the loggerhead turtle;⁴⁵ confirmation as to whether the revocation of permits or authorizations or the implementation of any measure in relation to loggerhead turtle catch between 2010 and August 2020 has been requested;⁴⁶ number of inspection visits made between 2010 and August 2020 in relation to the loggerhead turtle;⁴⁷ number of sanctions applied by Profepa between 2010 and August 2020 in relation to the loggerhead turtle,⁴⁸ and citizen complaints filed between 2010 and July 2020.⁴⁹ The submission also includes a download link to a citizen complaint filed 23 February 2018 with the Profepa office in the state of Baja California Sur.⁵⁰
49. The appendix to the submission indicates that due to their high migratory capacity, sea turtles are vulnerable to a large number of threats, both anthropogenic and environmental, which have caused a global decline in their populations.⁵¹ It notes that the seven sea turtle species all enjoy protected status;⁵² contends that both Mexico and the United States have been “aware of loggerhead turtle mortality for a long time and, as [P]arties to the *Inter-American Convention for the Protection and Conservation of Sea Turtles* (Convention), have committed to reducing sea turtle bycatch”;⁵³ asserts that Mexico “has continued to violate the Convention by allowing

⁴¹ Submission, “Apéndice: Contexto del hábitat de la especie y antecedentes México-Estados Unidos sobre la tortuga caguama (*Caretta caretta*),” online at <www.cec.org/wp-content/uploads/wpallimport/files/20-1-annex_02_apendix.pdf>.

⁴² Submission, “Mapa de delimitación geográfica de la zona de refugio pesquero,” online at <www.cec.org/wp-content/uploads/wpallimport/files/20-1-annex_01-%20map.pdf>.

⁴³ Submission, “Anexos de las solicitudes de información,” list of documents and download links, online at <www.cec.org/wp-content/uploads/wpallimport/files/20-1-annex_03-list.pdf>.

⁴⁴ Submission, Appendix III, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0273/2020 (18 February 2020).

⁴⁵ Submission, Appendix IV, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0719/2020 (10 August 2020).

⁴⁶ Submission, Appendix V, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0722/2020 (14 August 2020).

⁴⁷ Submission, Appendix VI, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0723/2020 (14 August 2020).

⁴⁸ Submission, Appendix VII, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0724/2020 (14 August 2020).

⁴⁹ Submission, Appendix VIII, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0722/2020 (14 August 2020).

⁵⁰ Submission, Appendix VIII, citizen complaint (23 February 2018).

⁵¹ Submission, “Apéndice: Contexto del hábitat de la especie y antecedentes México-Estados Unidos sobre la tortuga caguama (*Caretta caretta*),” at 2.

⁵² *Ibid.*

⁵³ *Ibid.* at 3.

its fisheries to kill thousands of endangered loggerhead turtles every year in Baja California Sur,”⁵⁴ and contends that while Mexico published an executive order to establish a fish reserve in which a mortality limit of 90 specimens is established,⁵⁵ in reality, uncertainty persists around the “effectiveness of the implementation of this mortality limit.”⁵⁶

50. The Submitter cites provisions of the Constitution, the LGEEPA, the LGVS, the LFRA, the RI-Semarnat, the Closed Season Order, the Turtle Refuge Order, the Priority Species Order, the Fish Refuge Order, and NOM-059, among other instruments. The Secretariat’s corresponding review is contained in section II(B) of this determination.

51. For the foregoing reasons, and as stated earlier in paragraph 42 of this determination, the Secretariat finds that the submission fulfills the requirement of USMCA Article 24.27(2)(c).

d) appears to be aimed at promoting enforcement rather than at harassing industry

52. The Secretariat finds that the submission fulfills USMCA Article 24.27(2)(d), since it is evident from the information and documentation included in the submission and its appendices that it is not aimed at harassing industry but at seeking the effective enforcement of the environmental law applicable to the protection and conservation of the loggerhead turtle in Mexico.

e) indicates whether the matter has been communicated in writing to the relevant authorities of the Party and the Party’s response, if any

53. The submission makes reference to the filing of three citizen complaints in relation to loggerhead turtle bycatch in the Gulf of Ulloa, filed with the Environmental Complaints and Social Participation Division (*Dirección General de Denuncias Ambientales, Quejas y Participación Social*) of the Legal Affairs Branch (*Subprocuraduría Jurídica*) of Profepa on 11 January, 26 February, and 2 March 2016.⁵⁷ It further refers to a total of 33 citizen complaints filed between 2010 and July 2020 with the Profepa office in the state of Baja California Sur.⁵⁸ This substantiates the fact that the relevant authorities have been notified of the matter and that the concern for the protection and conservation of the loggerhead turtle has been formally expressed to them.

54. In addition, the submission includes the responses of the authorities to correspondence requesting information on law enforcement measures concerning the loggerhead turtle, including the recording of bycatch of loggerhead turtle individuals; measures taken by the authority in relation to the commission of environmental offences; the revocation of permits, and the number of inspection visits, sanctions, and citizen complaints.⁵⁹

55. The Secretariat finds that the submission fulfills the requirement of USMCA Article 24.27(2)(e), since it includes information substantiating that the matter has been communicated

⁵⁴ *Ibid.*

⁵⁵ *Ibid.* at 4–5. Cf. Fish Refuge Order, *DOF*, 10 April 2015, online at <www.dof.gob.mx/nota_detalle.php?codigo=5388487&fecha=10/04/2015> (viewed 13 January 2021). It should be noted that this 2015 order was repealed by the similar order of 2016, which established additional measures to reduce interaction between fishing and the loggerhead turtle. See note 31 *supra*.

⁵⁶ Submission, “Apéndice,” at 5.

⁵⁷ Submission, Appendix VIII, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0722/2020 (14 August 2020).

⁵⁸ *Ibid.*

⁵⁹ Submission, “Anexos de las solicitudes de información,” list of documents and download link.

in writing to the relevant authorities of the Party — in this case, the Profepa office in the state of Baja California Sur and the Legal Affairs Branch of Profepa — on at least 36 occasions.

D. USMCA Article 24.27(3) review

56. Having confirmed that the submission fulfills all the requirements of Article 24.27(2) of the Agreement, the Secretariat will ascertain whether the submission merits a response from the Party in accordance with Article 24.27(3). To this end, it was guided by the following considerations:

a) whether the submission alleges harm to the person making the submission

57. The submission documents the catch of 889 loggerhead turtle (*Caretta caretta*) specimens in the Gulf of Ulloa, Baja California Sur, between 2017 and 2019⁶⁰ and contends that between January and June 2020, 351 specimens of the species *Caretta caretta* were recorded.⁶¹ According to the Submitters, a study published in 2017 found the 28% of the specimens died due to bycatch, while 22% were consumed. The Submitters state that the government of Mexico has acknowledged that the loggerhead turtle population has undergone a significant decline in recent years and that even though the loggerhead turtle mortality limit for the purposes of fishing operations is 90 specimens per year,⁶² “recent deaths amply exceed that number” according to the information that they have compiled.⁶³ In addition, they contend that the authorities’ failure to ensure the effective enforcement of the environmental law is “causing harm that is impossible to repair.”⁶⁴
58. The Secretariat has found that, when considering the question of harm, it must be determined whether the harm asserted is due to the alleged failure to effectively enforce the environmental law and whether the harm is related to environmental protection.⁶⁵ In this regard, the Secretariat finds that the submission fulfills the criterion of USMCA Article 24.27(3)(a).

b) whether the submission, alone or in combination with other submissions, raises matters about which further study would advance the goals of this Chapter

59. USMCA Article 24.2(2) establishes that the objectives of Chapter 24 are “to promote mutually supportive trade and environmental policies and practices; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the

⁶⁰ Submission, Appendix III, Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0273/2020 (18 February 2020). While page 1 of the submission mentions 789 specimens of *Caretta caretta*, the introduction and pages 7, 8, 11, and 13 thereof refer to 889 specimens, which coincides with the official figure recorded in the Profepa archives (Appendix III of the submission).

⁶¹ Submission at 1 and footnote 4: Transparency Unit, Profepa, file no. PFPA/1.7/12C.6/0686/2020 (23 July 2020).

⁶² Fish Refuge Order, seventh article, paragraph VI.

⁶³ Submission at 2.

⁶⁴ *Ibid.*

⁶⁵ SEM-19-004 (*Barred Owl*), Article 14(1) and (2) Determination (21 November 2019), §28; SEM-11-002 (*Sumidero Canyon II*), Article 14(1) and (2) Determination (6 September 2012), §36; SEM-13-001 (*Tourism Development in the Gulf of California*), Article 14(1) and (2) Determination (23 November 2013), §62. Cf. Guidelines, paragraph 7.4.

capacities of the Parties to address trade-related environmental issues, including through cooperation, in the furtherance of sustainable development.”

60. The Secretariat finds that the study of the submission in question would help achieve high levels of environmental protection and further the effective enforcement of environmental law. The Secretariat finds that the submission fulfills of USMCA Article 24.27(3)(b).

c) whether private remedies available under the Party's law have been pursued

61. The submission documents attempts to obtain action by the federal authorities by filing citizen complaints. Three such complaints, filed 11 January, 26 February, and 2 March 2016 are found in the archives of the Legal Affairs Branch of Profepa, all relating to loggerhead turtle bycatch in the Gulf of Ulloa. In addition, the Submitters assert that as a result of the filing of citizen complaints with the Profepa office in the state of Baja California Sur, 14 inspection visits were made.⁶⁶
62. Also attached to the submission is a citizen complaint filed with the Profepa office in Baja California Sur on 23 February 2018 based on LFPA Articles 15 and 19 and LGEEPA Article 190, which provide for implementation of the citizen complaint mechanism in Mexico. The complainant contends that fishing is causing “mass bycatch mortality of *Caretta caretta*” and that “in the absence of urgent measures” prescribed by environmental law in regard to fishing in the Gulf of Ulloa, Mexico could face trade sanctions.⁶⁷ The complainant further contends that where a species is endangered, the environmental law provides that protective measures must be implemented.⁶⁸ The complaint cites a report by the International Union for the Conservation of Nature (IUCN) documenting a 600% increase in loggerhead turtle mortality in 2012 with respect to the levels recorded in prior years.⁶⁹
63. The Secretariat finds that the submission meets the criterion of USMCA Article 24.27(3)(c), since the Submitter has shared documentation and information substantiating that it has pursued private remedies available under the law of Mexico.

d) whether the submission is not drawn exclusively from mass media reports

64. As regards USMCA Article 24.27(3)(d), the Secretariat finds that the submission *is not* based on mass media reports but on documentation and information gathered by the Submitters, in good part from official sources, technical documentation, and reports on the protection and conservation status of the loggerhead turtle in Mexico. This is clear from the perusal of the technical and legal information contained in the appendices to the submission.
65. Therefore, the Secretariat finds that the submission fulfills the criterion of this subparagraph.

⁶⁶ Submission at 8.

⁶⁷ Submission, Appendix VIII, citizen complaint (23 February 2018), at 2–3.

⁶⁸ *Ibid.* at 4.

⁶⁹ *Ibid.* at 11–12, quoting the IUCN report:

“In 2011, we conducted the fullest review to assess the worldwide status of all sea turtle species, and the Northern Pacific loggerhead turtle was identified as one of the world's most threatened sea turtle populations, a status significantly exacerbated by the high accidental mortality caused by small-scale fishing in the Gulf of Ulloa. The bycatch mortality rate in this area is among the highest in the world. This has been documented in the scientific literature and confirmed by Mexican government entities. Particularly, during 2012, over 2000 turtles died, representing a 600% increase over the already high levels recorded in the area in recent years.”

III. DETERMINATION

66. For the foregoing reasons, the Secretariat finds that submission SEM-20-001 (*Loggerhead Turtle*) meets the eligibility requirements of USMCA Article 24.27(2) and merits a response from the government of Mexico pursuant to USMCA Article 24.27(3) as regards the effective enforcement of the following environmental laws:

- a. Article 4, fifth paragraph, of the Constitution;
- b. LGEEPA Articles 5 paragraph XIX, 161, 171, 182, and 202;
- c. LGVS Articles 5 paragraphs I, II, III, and IX, 9 paragraphs I, VII, X, XV and XXI, 60, 60 *bis* 1, 62, and 104;
- d. RI-Semarnat Articles 5 paragraphs I and IX, 45 paragraphs I, II, V(a) and (c), VI, X, XI, XII, and XIX, and 70 paragraphs I, III, IV, and XIII;
- e. Closed Season Order;
- f. Turtle Refuge Order, and
- g. Fish Refuge Order.

67. Pursuant to USMCA Article 24.27(4), the Party may provide a response to the submission within the sixty days following the receipt of this determination.

Respectfully submitted for your consideration.

Secretariat of the Commission for Environmental Cooperation

(original signed)

Per: Paolo Solano
Director of Legal Affairs and Submissions on Enforcement Matters

cc: Iván Rico, Mexico Alternate Representative
Catherine Stewart, Canada Alternate Representative
Mark Kasman, United States Acting Alternate Representative
Environment Committee and Contact Points
Richard A. Morgan, CEC Executive Director
Submitters