

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

Submitters: Centro Mexicano de Derecho Ambiental,
Center for Biological Diversity
Party: United Mexican States
Date: 26 September 2023
Submission No.: SEM-20-001 (*Loggerhead Turtle*)

On 29 March and 4 April, the Council members from US and Canada, respectively, issued their decision pursuant to Article 24.28(2) of the United States-Mexico-Canada Agreement (USMCA/CUSMA), in which they instructed the CEC Secretariat to prepare a factual record regarding Mexico’s alleged failure to effectively enforce the following provisions:

- A. Article 4 paragraph five of the Political Constitution of the United Mexican States (the “**Constitution**”), Articles 182 paragraph one, and 202 paragraph one of the General Ecological Balance and the Environmental Protection Act (**LGEEPA**), and Article 45 sections II, XI and XII of the Internal Regulation of the Ministry of the Environment and Natural Resources (**RI-Semarnat**), with respect to the alleged failure to file complaints with the Federal Public Prosecutor (*Fiscalía General de la República*) concerning the death of specimens of the loggerhead turtle (*Caretta caretta*) in the Gulf of Ulloa, Baja California Sur, during the period from 2010 to July 2020;
- B. LGEEPA Articles 5 section XIX, 161 and 171; Articles 9 section XXI and 104 of the General Wildlife Act (**LGVS**); and RI-Semarnat Article 45 sections I, V subparagraphs a) and c), VI and X, with regard to the carrying out of an average of 2 inspection and monitoring visits per year and the failure to impose administrative sanctions related to the loggerhead turtle in the Gulf of Ulloa, Baja California Sur, during the period from 2010 to July 2020;
- C. LGVS Articles 60 section I and 62; Article RI-Semarnat 70 sections I, III, IV and XIII, regarding the promotion and execution of conservation activities, as well as updating and evaluating those activities, in the Gulf of Ulloa, Baja California Sur, during the 2017-2019 period;
- D. The Order establishing a closed season on Sea Turtles (the “**Closed Season Order**”); the Order establishing a Loggerhead Turtle Refuge (the “**Turtle Refuge Order**”); and the Order establishing a Fish Refuge (the “**Fish Refuge Order**”); with respect to the effectiveness of instruments to reduce bycatch and the alleged lack of mechanisms for reviewing the measures implemented.

On 1 August 2023, the Secretariat asked the Council to grant an extension of 120 calendar days for the preparation of the factual record, citing the delays in obtaining public government information. On 11 September 2023, the Council asked the Secretariat to provide the Parties with the overall work plan that it will follow to gather information related to the pertinent facts, taking into consideration a 120-day extension for the preparation of the factual record. The Secretariat describes below its overall work plan for the preparation of the draft factual record.

Overall Work Plan

In order to observe the 120-day deadline extension requested by the Secretariat and to ensure that the latter has sufficient time to gather information and incorporate it into the factual record in a timely manner, the Parties are asked to provide relevant information within 30 calendar days of receiving a request, as detailed below:

Obtaining of information and preparation of the factual record

1. The Secretariat will conduct an information search in databases and public records — as required and with the support of independent experts— for relevant technical, scientific, or other information, in accordance with subparagraph e) of USMCA Article 24.28(4).

Timeline: April-July 2023.

2. In accordance with USMCA Article 24.28(4) and Article 14 of the Environmental Cooperation Agreement (ECA), the Secretariat shall take into account any information provided by a Party. In effect, Article 14 of the ECA states that “Each Party shall cooperate with the Secretariat to provide information relevant to the preparation of a factual record.” To this end, the Secretariat has made submitted requests to the following authorities to obtain relevant factual information with the aim of preparing the factual record:
 - i. Office of the Attorney General of the Republic (FGR);
 - ii. Federal Delegate of the Ministry of the Environment and Natural Resources in Baja California Sur (“Semarnat-BCS”);
 - iii. Office of the Representative of the Federal Attorney for Environmental Protection in Baja California Sur (“Profepa-BCS”);
 - iv. Baja California Sur Branch of the National Fisheries Institute (Inapesca-BCS)
 - v. Fisheries Office of the National Aquaculture and Fisheries Commission in Baja California Sur (“Conapesca-BCS”); and
 - vi. Regional Director of the National Commission for Protected Natural Areas for the Baja California Peninsula and Northern Pacific (“Conanp-BCS”).

As of the date of the drafting of this document, the following information requests have been made:

- i. Between 21 June and 28 June 2023, the Secretariat requested information from the following agencies: Semarnat-BCS, Profepa-BCS, Conanp-BCS, Inapesca-BCS and Conapesca-BCS. Status: no response.
- ii. On 11 August 2023, the Secretariat requested information from Mexico's Alternate Representative. Status: The Alternate Representative requested the suspension of work on the factual record until a decision has been taken by the Council; to date, the response to this information request is still pending.
- iii. On 14 August, acting through a consultant, the Secretariat filed various information requests via the National Transparency Platform (*Plataforma Nacional de Transparencia*). Status: partial response to the information requests.

To date, the Secretariat has conducted the following field activities:

- i. Field visit to Puerto Adolfo López Mateos on 5-6 June 2023;
- ii. Field visit to San Lázaro Beach on Magdalena Island, BCS, on 19 July 2023;
- iii. Meetings with representatives of Profepa-BCS, Conapesca-BCS and the National Fisheries Institute in Baja California Sur;
- iv. The Secretariat did not succeed in obtaining meetings with representatives of Semarnat-BCS and Conanp-BCS.

Timeline: June-July 2023.

- 3. The Secretariat will request—as appropriate—information of a technical or scientific nature or any other information pertinent to the preparation of the factual record from interested persons or non-governmental organizations, JPAC or independent experts, in accordance with subparagraphs b), c) and d) of USMC Article 24.28(4).

Timeline: April-July 2023

Missing information and pending meetings

- 4. The following information has yet to be obtained and analyzed, as necessary:
 - i. Information (including statistics) on the complaints filed with the FGR and/or Profepa-BCS concerning the death of loggerhead turtle (*Caretta caretta*) specimens or other related facts during the period from 2010 to July 2020;
 - ii. Information on the actions taken by the FGR and/or Profepa-BCS, following the filing of complaints, including in relation to:
 - a. Investigations aimed at obtaining technical and scientific data which would serve as a basis for determining the cause of death of *Caretta caretta* specimens;
 - b. Reports on the discovery of dead *Caretta caretta* specimens detected during inspection tours by Profepa-BCS and/or the FGR in the Gulf of Ulloa during the period from 2010 to July 2020 and the respective follow-up actions; and

- c. Information on and diagnostic conclusions of the *post mortem* studies done by the competent authorities in relation to *Caretta caretta* specimens and description of the methods of analysis or handling when dead specimens of said species are found.
- iii. Information on the status of the drafting process of the Trilateral Mexico-United States-Japan Plan, as well as on the activities executed to date to finalize and implement it;
- iv. Information on the implementation of the Conservation Program for Sustainable Development for the region that includes the Pacific Islands of the Baja California Peninsula Biosphere Reserve, during the 2017-2019 period;
- v. Information on the implementation and outcomes or follow-up of the Regulatory Program for the Gulf of Ulloa, during the 2017-2019 period;
- vi. Information on the status of the updates to the Regional and Marine Environmental Management Program for the Northern Pacific (POEMR-PN), as well as the activities completed to date to finalize and implement it, during the 2017-2019 period;
- vii. Outcomes and follow-up in relation to the commitments undertaken after the 7th Conference of the Parties of the Inter-American Convention for the Protection and Conservation of Sea Turtles (COP7-CIT), held in Mexico City, in June 2015;
- viii. Information on the actions or mechanisms implemented to ensure coordination between authorities from the three levels of government to promote and execute conservation activities, as well as on updating and evaluating those activities, in the Gulf of Ulloa, Baja California Sur, during the 2017-2019 period;
- ix. In relation to the implementation of the Program for the Recovery and Repopulation of Endangered Species (“Procer”), information on actions related to the protection of the loggerhead turtle in the following projects and initiatives:
 - a. Evaluation of loggerhead turtle mortality due to fishing activities in the Gulf of Ulloa in 2013.
 - b. The 2015 Program to Monitor Sea Turtle Feeding Grounds in Mexico’s Northwestern Pacific region.
 - c. The 2016 project on the distribution and condition of sea turtles in the Gulf of Ulloa and San Lázaro Beach, Baja California Sur.
 - d. The 2016 Program to Monitor Sea Turtle Feeding Grounds in Mexico’s Northwestern Pacific region.
- x. Reports on the implementation of the Action Program for the Conservation of the Loggerhead Turtle Species and the coordinated actions of Profepa with the Sea Turtle Conservation Group of the Californias (*Grupo Tortuguero de las Californias*) in the Gulf of Ulloa.
- xi. Meeting minutes and agreements from the meetings held between 2017 and 2019 with fishers, fishing cooperatives and fishing permit holders in the communities of Puerto Mateos, Puerto San Carlos and Puerto Magdalena in Isla Magdalena, in the context of implementing the Action Program for the Conservation of the Loggerhead Turtle Species (*Caretta caretta*).

- xii. Number of seaworthy Profepa-BCS vessels available to carry out inspection and monitoring actions in the period from 2010 to July 2020.
- xiii. In connection with Profepa-BCS inspections conducted on the beaches of Puerto Adolfo López Mateos and, more generally, in the area known as the Gulf of Ulloa, which led to the identification of dead loggerhead turtle specimens, copies of the following documents:

File	File no.	Date
PFPA/10.3/2C.27.3/0064-12	092-12	12-06-27
PFPA/10.3/2C.27.3/0090-12	120-12	12-11-30
PFPA/10.3/2C.27.3/0029-13	019-13	13-04-05
PFPA/10.3/2C.27.3/0032-13	057-13	13-04-17
PFPA/10.3/2C.27.3/0033-13	068-13	13-04-24
PFPA/10.3/2C.27.3/0034-13	030-13	27/04/13
PFPA/10.3/2C.27.3/0010-14	014-14	14-02-18
PFPA/10.3/2C.27.3/0011-14	013-14	14-02-18
PFPA/10.3/2C.27.3/0024-14	087-14	14-04-03
PFPA/10.3/2C.27.3/0075-14	073-14	14-10-16
PFPA/10.3/2C.27.3/0099-14	031-14	14-12-12
PFPA/10.3/2C.27.3/0061-15	076-15	15-07-31

- xiv. The number of beached specimens of loggerhead turtles per month/year during the period from January 2010 to July 2020, including a comparison with the specimens of other sea turtle species found during the same period. Information provided may contain data such as: the relationship between turtle beachings and anthropogenic activities, as well as the results of the forensic analysis of individual specimens to determine their state of health and the possible causes of death;
- xv. With respect to the implementation of the Closed Season Order, Turtle Refuge Order, and the Fish Refuge Order, the following information is requested:
 - a. Information gathered during the implementation of the On Board Observers and Fishing Operations Videotaping System Program, specifically a copy of the program, the fishing trip log book, catch reports, reports of loggerhead turtle (*Caretta caretta*) carcasses found, reports of live loggerhead turtle (*Caretta caretta*) specimens found in trawl nets or any other related document or communication, as well as video evidence of fishing trips, loggerhead turtle (*Caretta caretta*) specimens found and loggerhead turtle (*Caretta caretta*) carcasses found, from the program's date of implementation to July 2020;

- b. Information on the implementation of the Comprehensive Fisheries Management Program in the Gulf of Ulloa, BCS (mandated in the Fish Refuge Order), from 2017 to 2019; said information must specify the actions implemented, outcomes and effectiveness indicators;
 - c. Information on the implementation of the Fisheries Management Plan in the Gulf of Ulloa, BCS (mandated in the Turtle Refuge Order); said information must cover the period from 2017 to 2019 and specify the actions implemented, outcomes and effectiveness indicators;
 - d. Information on the effectiveness of the mechanisms utilized to reduce loggerhead turtle (*Caretta caretta*) bycatch in the Gulf of Ulloa;
 - e. Information on how the relevant authorities share data collected on turtle beachings, in relation to species of interest, and on how coordinated inter-agency actions are determined.
 - f. Information on the coordination mechanisms or actions between the authorities of the three levels of government to reduce loggerhead turtle (*Caretta caretta*) bycatch in the Gulf of Ulloa, as well as on the mechanisms designed to evaluate the measures implemented;
 - g. Information on the factors and processes that contribute to loggerhead turtle mortality, the possible effects of bycatch due to the use of longline nets, trawl nets and gillnets; the effects of other human activities in the Gulf of Ulloa, such as nighttime illumination, pollution from vessels, the effects of plastics and similar debris on the digestive systems of loggerhead turtles;
 - h. Any information on the measures and actions implemented with artisanal and industrial fishers regarding the use of technologies and fishing gear that would reduce or eliminate sea turtle bycatch.
- xvi. Statistical information, tracking reports, communications or any other documents with information on loggerhead turtle (*Caretta caretta*) specimens injured by the propellers of vessels navigating the Gulf of Ulloa.

Missing information will be incorporated into the factual record, as applicable.

5. Although the Secretariat obtained information through a consultant who used Mexico's government transparency mechanisms, it has not received responses to the following information requests pursuant to ECA Article 14:
- i. Information request to Semarnat-BCS and email from the SEM Unit (21 June 2023).
 - ii. Information request to Profepa-BCS and email from the SEM Unit (21 June 2023).
 - iii. Information request to Conanp-BCS and email from the SEM Unit (21 June 2023).
 - iv. Information request to Conapesca-BCS and email from the SEM Unit (27 June 2023).

- v. Information request to Inapesca-BCS and email from the SEM Unit (21 June 2023).
- vi. Information request to Mexico's Alternate Representative, via communication no. A24.27/SEM/20-001/85/REQ (11 August 2023).

Timeline: September-October 2023

Editing and translation into the CEC's official languages

- 6. Pursuant to Article 24.28(2), the draft factual record will be prepared on the basis of the information compiled and generated. The Secretariat will be responsible for final editing of the factual record in one of the CEC's official languages and —where appropriate— its translation into the other two.

Timeline: November 2023

Submission of the draft factual record to the Council, the Parties' comments, incorporation of said comments and final version of the factual record

- 7. Pursuant to USMCA Article 24.28(5), the Secretariat shall submit a draft factual record to the Council in at least one of the Parties' designated official languages.

Scheduled date: 1 December 2023

- 8. Once the draft factual record has been submitted, any Party may provide comments on its accuracy, in accordance with USMCA Article 24.28(5).

Scheduled date: 2 January 2024

- 9. In accordance with the provisions of USMCA Article 24.28(5), the Secretariat shall incorporate the observations received from the Parties, where appropriate, and submit the final version of the factual record to the Council.

Scheduled date: 2 February 2024

- 10. The Secretariat shall make the final factual record publicly available within 30 days of its submission to the Parties, unless at least two members of the Council instruct it not to do so, in accordance with USMCA Article 24.28 (6).

Scheduled date: 2 March 2024

Additional information

The submission, Mexico's response, the Secretariat's determinations, the Council member's instructions and a summary of all of these documents are available online, in the registry of submissions and public archive, on the CEC website: <www.cec.org/submissions>. Similarly, one may request additional information by contacting the Secretariat by email <sem@cec.org> or in writing, at the following address:

Secretariat of the CEC
Legal Affairs and Submissions on Enforcement Matters
700, rue de la Gauchetière Ouest, bureau 1620
Montreal, QC, H3B 5M2
Canada