

ENVIRONMENT
MINISTRY OF THE ENVIRONMENT AND NATURAL RESOURCES

Legal Affairs Coordinating Unit
Coordination of Legislation and Public Consultations
Area Directorate

Communication No. 112/02103

Mexico City, 16 November 2021

Paolo Solano Tovar
Director, Legal Affairs and Submissions on Enforcement Matters

Dear Sir,

By means of the present document we acknowledge receipt of the Submitter' communication on Mexico's deadline extension request to the Secretariat regarding delivery of its Party response to submission SEM-21-002 (*Vaquita Porpoise*). In this regard, may I state that we understand and share the concerns expressed by the Submitters concerning the protection of the vaquita porpoise. In effect, we reaffirm our commitment to comply with the obligations established in Articles 24.27, 24.28 and 34.1 (l) of the United States-Mexico-Canada (USMCA), in relation to submissions on enforcement matters and the transition from the North American Free Trade Agreement (NAFTA) to the USMCAMEC.

Nevertheless, although it is true that provisions of Article 24.27 (4) establish a deadline of 60 days for the delivery of a Party's response, it is also true that, in accordance with the provisions of Article 2(3) of the Agreement on Environmental Cooperation (ECA), the Commission will continue to operate under the modalities in place, including its existing rules, policies, guidelines, procedures, and resolutions, until such time as new modalities are issued. That being the case, this deadline extension request is not inconsistent with the USMCA's provisions. Moreover, it does not signify an indefinite postponement, as it was made in compliance with guideline 19.9 of the *Guidelines for Submissions on Enforcement Matters*, which establishes that when the Council or a Party is unable to meet any applicable deadline, it should provide a written explanation of the reason(s) for such and identify the date by which it plans to complete the relevant action.

Moreover, in addition to the arguments made in communication no. 112/2014 of 4 November 2021, wherein Mexico made its request for a Party response deadline extension, may I cite the decree published in Mexico's Official Gazette, *Diario Oficial de la Federación* (DOF), on 23 March 2020, via which the Public Health Council (*Consejo de Salubridad General*) declared the SARS-CoV2 (Covid-19) pandemic a health emergency in Mexico. As a result, the federal government issued a number of decrees to order the implementation of various strategies for averting the spread of Covid-19.

Among these strategies were the ones included in the decree issued by the Ministry of the Civil Service (*Secretaría de la Función Pública*), which established the guidelines to be followed by the Federal Public Service in order to reduce the risk of SARS-CoV2 infection and propagation. Published in *DOF* on 30 July 2021, Article 1 paragraph 1 of said decree was subsequently amended by a decree published in *DOF* on 17 August 2021, which established various measures pertaining to the provision of public services, teleworking, staggered onsite work scheduling, etc.

Due to the strategies which Semarnat has been obliged to implement, because of the highly contagious nature of the SARS-CoV2 virus, institutions have been affected in their operational capacities and, withal, in the performance of their functions. Said situation has hindered the timely management of files.

In this regard, we would be grateful if the Secretariat immediately communicated the abovementioned explanation to the Submitters, along with the fact that, as a legal affairs interface, the Legal Affairs Coordinating Unit does not constitute a technical operating unit as such. Consequently, to prepare specific Party responses it is necessary to obtain information from the relevant administrative units and decentralized bodies, including ones answering to other agencies of the federal government, in their respective areas of responsibility. Further complicating this task are the delays in compiling of said information owing to the aforementioned pandemic-related reasons, which of course also delay the provision of Mexico's response. That said, we endeavor to deliver Mexico's response, including the corresponding documentary evidence, as quickly as possible. To that end, on 12 November, a meeting was held with administrative units, decentralized bodies and agencies of the federal executive to facilitate more timely delivery of the remaining information.

Furthermore, with respect to the issues raised by the Submitters regarding the next fishing season, the Council's recommendation and, should it eventually support the preparation of a factual record by the Secretariat, we believe it's important to point out that, although the submissions on enforcement matters process constitutes a complementary instrument to the full enforcement of environmental laws, it is nevertheless the obligation of Mexican authorities to protect the vaquita porpoise, independently of said process.

Kind regards,

Dr. Guadalupe Espinoza Saucedo
Director, Legal Affairs Coordinating Unit

cc: Miguel Ángel Zerón Cid, Director of the International Affairs Coordinating Unit. For your information.