

Secretariat of the Commission for Environmental Cooperation
Determination of the Secretariat in accordance with Articles 24.27(2) and (3) of the
United States-Mexico-Canada Agreement

Submitters: [Names are protected from disclosure in accordance with
ECA Article 16(1)(a)]

Party: United Mexican States

Date filed: 1 June 2022

Date of the determination: 1 July 2022

Submission no.: SEM-22-001 (*Pollution in Playa Hermosa*)

I. INTRODUCTION

1. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA or “the Agreement”) 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 the Commission for Environmental Cooperation (“CEC Secretariat” or “Secretariat”) remains responsible for implementing the SEM process, as stipulated in the ECA.¹
2. The SEM process allows any national of a Party or entity organized under the laws of a Party to file a submission asserting that a Party to the USMCA is failing to effectively enforce its environmental laws. The CEC Secretariat initially reviews submissions based on the requirements set out in USMCA Article 24.27(1) and (2). Where the Secretariat finds that a submission meets these requirements, 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 Environment Committee,² providing its reasons in accordance with USMCA Article 24.28(1); otherwise, it terminates the review of the submission.³

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, the Secretariat and the Joint Public Advisory Committee (JPAC).

² The Environment Committee was established under Article 24.26(2) of the United States-Mexico-Canada Agreement (USMCA or the “Agreement”) 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/>>.

3. On 1 June 2022, a group of six organizations, including environmental groups, youth groups, and skating and surfing associations (“the Submitters”), filed a submission with the Secretariat pursuant to USMCA Article 24.27(1).⁴ The Submitters have requested that their identification data remain confidential, in accordance with ECA Article 16(1)(a).
4. The Submitters affirm that the state and municipal governments started construction of a boardwalk and a beachfront development project in Playa Hermosa without the necessary federal environmental impact authorization. After this project was shut down, no actions were taken to rehabilitate the damage to Playa Hermosa’s system of dunes, which had been impacted by the construction work in 2021. The Submitters assert that, to date, no restoration activities have been undertaken on the site. In addition, the Submitters assert that Playa Hermosa’s water quality has been compromised due to inadequate treatment of wastewater discharges.
5. Located in Bahía de Todos los Santos, Ensenada, Baja California, Playa Hermosa is important due to its coastal ecosystem, which includes a beach and dunes. As noted in the submission, it is subject to a conservation policy under the Ecological Management Program of Baja California (*Programa de Ordenamiento Ecológico de Baja California—POEBC*). It has also been designated an “Important Bird Area” by the Commission for the Knowledge and Use of Biodiversity (*Comisión Nacional para el Conocimiento y Uso de la Biodiversidad—Conabio*) as well as a “Site of Regional Importance” in the Western Hemisphere Shorebird Reserve Network, due to the presence of protected bird species.⁵ Also, the Playa Hermosa Federal Maritime Terrestrial Zone (Zofemat) has been assigned a use for “beautification and ornamentation” purposes,⁶ as per the decree issued by the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales—Semarnat*) on 2 October 2020.⁷
6. The Submitters assert that Mexico is failing to effectively enforce the following legal provisions and regulatory instruments in force in Mexico:
 - a. Article 4 paragraphs 5, 6, 7 and 13 of the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos—“Constitution”*);
 - b. Article 2 sections I and V, 28; sections X and XI, 29, 85, 117, 123, 157, 189, 194, 195 and 202 of the General Ecological Balance and Environmental Protection Act (*Ley General de Equilibrio Ecológico y Protección al Ambiente—LGEEPA*);

⁴ SEM-22-001 (*Pollution in Playa Hermosa*), USMCA Article 24.27(1) Submission paras 7-8 (1 June 2022), [Submission] <www.cec.org/wp-content/uploads/wpallimport/files/22-1-sub_es.pdf>.

⁵ *Cfr.* Submission at 3-4.

⁶ The Federal Maritime Terrestrial Zone (Zofemat) is comprised of a twenty-meter-wide strip of passable mainland that is contiguous with the beach. *See* “¿Qué es la Zofemat?” <<https://bit.ly/3I5E14j>>.

⁷ Semarnat, “Agreement whereby the area of 19,118.623 square meters of federal maritime-terrestrial zone, located at Boulevard Lázaro Cárdenas, Acapulco subdivision, municipality of Ensenada, B.C., is designated to the service of the municipality of Ensenada, State of Baja California,” published in the *Diario Oficial de la Federación* on 15 October 2020; online at: <<https://bit.ly/3N1EveJ>> [Designation Agreement].

- c. Article 7 sections IV and 63 of the General Law on National Assets (*Ley General del Bienes Nacionales*—**LGBN**);
 - d. Articles 47 and 88 *bis* 1: paragraph 3, 95, 96 and 96 *bis* of the National Waters Act (*Ley de Aguas Nacionales*—**LAN**);
 - e. Articles 29 section IV, 30 section XVIII, and 82 section II of the General Climate Change Act (*Ley General de Cambio Climático*—**LGCC**);
 - f. Articles 5 subparagraph (Q), 55, 57, 58, 59 and 65 of the LGEEPA Regulations on Environmental Impact Assessment (*Reglamento de la LGEEPA en materia de Evaluación de Impacto Ambiental*—**REIA**);
 - g. Articles 84 and 149 of the National Waters Act Regulations (*Reglamento de la Ley de Aguas Nacionales*—**RLAN**);
 - h. Articles 7 section III, 47 sections III and V and 52 of the Regulations on the Use and Exploitation of the Territorial Sea, Waterways, Beaches, the Federal Maritime and Terrestrial Zone and Lands Reclaimed from the Sea (*Reglamento para el Uso y Aprovechamiento del Mar Territorial, Vías Navegables, Playas, Zona Federal Marítimo Terrestre y Terrenos Ganados al Mar*—“**Zofemat Regulations**”);
 - i. Article 121 of the Ensenada **Environmental Quality Control Regulations** (*Reglamento de Calidad Ambiental de Ensenada*);
 - j. Articles 6, 7, and 8 of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (“**Escazú Agreement**”);
 - k. 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**”);
 - l. The Ecological Management Program of Baja California (*Programa de Ordenamiento Ecológico de Baja California*—**POEBC**);
 - m. the *Order which grants a concession to the City of Ensenada, Baja California, for a site covering 19,118.623 square meters of Federal Maritime Terrestrial Zone (Zofemat), located on Boulevard Lázaro Cárdenas, Acapulco subdivision, Ensenada, B.C.* (“**Acuerdo de Destino**”); and
 - n. Official Mexican Standard NOM-001-SEMARNAT-2021, *which establishes the permissible limits for pollutants in discharges of wastewater into national water bodies (NOM-001)*.
7. Having examined the submission, the Secretariat finds that it is admissible, in accordance with the requirements of paragraphs (1) and (2) of USMCA Article 24.27. The Secretariat determines that under paragraph (3) of the same Article, the submission merits a response from the Government of Mexico. The Secretariat’s reasoning is set out below in section III: “Analysis.”

II. SUMMARY OF THE SUBMISSION

a. The alleged lack of sufficient action to protect and conserve the Playa Hermosa coastal ecosystem

8. The Submitters assert that Semarnat authorized the Playa Hermosa infrastructure and improvement project according to the environmental impact authorization issued on 8 November 2011 (AIA-2011).⁸ Construction work on the project was completed in accordance with Semarnat’s authorization, which provided for a section dedicated exclusively for beach conservation and dune vegetation restoration.⁹
9. Almost 10 years later, on 2 March 2021, the City of Ensenada announced the launch of a new boardwalk and services construction project on Playa Hermosa. The Submitters assert that on 20 May 2021 they documented construction activities, which the City of Ensenada was presumably undertaking without an Environmental Impact Authorization.¹⁰ As a result, the Submitters filed various citizen complaints with the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente—Profepa*) against the City of Ensenada.¹¹
10. The Submitters note that, on 27 May 2021, the Environmental Impact Statement for the “Playa Hermosa Boardwalk and Services Area Construction Project” (MIA-2021) was published in Ecological Gazette of Semarnat (*Gaceta Ecológica*).¹² A few days later, on 10 June, the Semarnat office in Baja California denied the City of Ensenada an Environmental Impact Authorization since it had overlooked the preventive nature and purposes of the environmental impact process by beginning construction work without previously receiving the appropriate authorization.¹³ The Submitters maintain that although Profepa supposedly shut down this construction project—as it announced on social media on 31 May—the mayor of Ensenada stated on 10 June—also on social media—that the construction work at Playa Hermosa would in fact continue.¹⁴
11. The Submitters affirm that both municipal and federal officials have indicated that the construction work at Playa Hermosa fell under the purview of AIA-2011, originally granted to the Ministry of Infrastructure and Urban Development of Baja California (*Secretaría de Infraestructura y Desarrollo Urbano del Estado de Baja California—SIDUE*, now Sidurt). However, according to the Submitters, SIDUE has neither filed compliance reports on the conditions established in AIA-2011 nor reported the damage to the site’s coastal dunes.¹⁵

⁸ Semarnat, Federal Delegation in Baja California, communication no. DFBC/SGPA/UGA/DIRA/2826/11 (8 November 2011) which contains the environmental impact authorization for the project known as “Construcción de equipamiento e infraestructura y restauración de vegetación costera para el mejoramiento de la playa municipal de Ensenada (Playa Hermosa), primera etapa” [AIA-2011]; online at: <<https://bit.ly/3LIQj40>>.

⁹ Submission at paras 4-5.

¹⁰ Id. at paras 12-13.

¹¹ Id. at paras 14 and 29.

¹² Id. at para 15.

¹³ Id. at para 20.

¹⁴ Id. at paras 16-19.

¹⁵ Id. at paras 30 and 33.

12. The Submitters maintain that the damage to the Playa Hermosa coastal ecosystem caused by the construction work done by the City of Ensenada is not irreparable. Restoration would be possible if the heavy machinery on the dunes is removed and a process to restore the dunes is initiated.¹⁶
13. The Submitters also assert that Profepa has not ruled on the restoration of Playa Hermosa's coastal dunes nor sanctioned the alleged offenders. It has also not informed the complainants of ongoing investigative actions, which represents obstruction of expeditious justice.¹⁷
14. In sum, the Submitters assert that now, over a year after the destruction of the system of dunes on Playa Hermosa, construction work is still ongoing, despite the absence of proper environmental authorization.¹⁸

b. The alleged lack of sufficient action to control discharges of untreated wastewater at Playa Hermosa

15. Citing the 2022 report of the Clean Beaches Program (*Programa de Playas Limpias*) of the Federal Commission for Protection against Health Risks (*Comisión Federal para la Protección contra Riesgos Sanitarios—Cofepris*), the Submitters point out that the beach at Playa Hermosa is not fit for recreational use, due to the high level of fecal matter in the water.¹⁹
16. The Submitters argue that one of the causes of the high water pollution levels at Playa Hermosa is the substandard functioning of the “El Gallo” wastewater treatment plant, which is operated by the Ensenada Public Utilities Commission (*Comisión Estatal de Servicios Públicos de Ensenada—CESPE*).²⁰ Due to this problem, the Ensenada municipal government closed the beach in February 2022.²¹ In response to the ongoing water pollution at Playa Hermosa, the Submitters filed a citizen complaint with Profepa against CESPE. Profepa's ruling is still pending.²²

III. ANALYSIS

17. The CEC Secretariat may consider submissions that assert that a Party to the USMCA is failing to effectively enforce its environmental laws. The Secretariat reiterates that the requirements of USMCA Articles 24.27(1), (2), and (3) are not intended to be an insurmountable procedural screening device²³ and must therefore be given a broad

¹⁶ Id. at para 22.

¹⁷ Id. at para 40.

¹⁸ Id. at 2.

¹⁹ Id. at para 24.

²⁰ Id. at para 25.

²¹ Id. at para 26.

²² Id. at para 28.

²³ SEM-97-005 (*Biodiversity*), NAAEC Article 14(1) Determination (26 May 1998); SEM-98-003 (*Great Lakes*), NAAEC Articles 14(1) and (2) Determination (8 September 1999); and SEM-20-001 (*Loggerhead turtle*), USMCA Article 24.27(2) and (3) Determination (8 February 2021).

interpretation consistent with the objectives of Chapter 24 of the Agreement.²⁴ The Secretariat reviewed the present submission with that perspective in mind.

a. Article 24.27(1)

18. Under USMCA Article 24.27(1), any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws.
19. USMCA Article 1.5²⁵ defines the term “person of a Party” as “a national of a Party or an enterprise of a Party.” In turn, an *enterprise* is defined 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* signifies “an enterprise constituted or organized under the law of a Party.”
20. Submission SEM-22-001 (*Pollution in Playa Hermosa*) includes the names and address of the Submitters, the identification data for some of them and for their representatives, as well as sufficient information to establish that the following organizations are “persons of a Party” in the terms of Article 24.27(1):²⁶
 - a. [REDACTED] is registered with the Federal Taxpayers’ Registry (*Registro Federal de Contribuyentes*) and has authorization of use or denomination or corporate name
 - b. [REDACTED] is an organization with a unique registration key (*Clave Única de Inscripción*) before the Federal Registry of Civil Society Organizations (*Registro Federal de Organizaciones de la Sociedad Civil*).
21. Regarding [REDACTED] [REDACTED] are groups that are not a “person of a Party” and are not considered Submitters.

b. Environmental laws in question

22. The Secretariat outlines its reasoning below in relation to the admissibility of the legal provisions cited by the Submitters. USMCA Article 24.1 establishes that:

[E]nvironmental 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:

²⁴ USMCA, Article 24.2.

²⁵ The Secretariat is cognizant of the adoption of The Protocol of Amendment to the Agreement between the United States of America, the United Mexican States and Canada (the “Protocol”), by means of which provisions were added to Chapters 1 and 24. Consequently, the numbering of some of the articles were changed and corrected. Article 1.5, “General Definitions” was originally Article 1.4, but later renumbered in accordance with the Protocol. In the case of the Spanish version, one must therefore consult the T-MEC and its Protocol.

²⁶ Submission: Annex A. Organizational Declaration.

- 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 primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources.²⁷

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.

As for **law or regulation**, these terms mean:

- 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.²⁸

i) The Constitution and federal laws

23. The Submitters cite **Article 4, fifth paragraph of the Constitution**,²⁹ which recognizes the human right to a healthy environment. In this respect, the Supreme Court of Mexico has reiterated that “from this human right emanates the obligation of all public authorities to guarantee the existence of a healthy and propitious environment for human development and the well-being of individuals.”³⁰ As the Secretariat has previously determined and as Mexico has made it known,³¹ this constitutional provision may be considered as long as it complements the analysis of the environmental law in question.³² The Submitters also cite **Article 4, sixth paragraph**,³³ which establishes the human right to potable water and sanitation. It is the Secretariat’s view that this provision qualifies as environmental law

²⁷ USMCA, Article 24.1.

²⁸ *Idem*.

²⁹ On 15 June 2021, the Petitioners sent an email to the Secretariat in which they made a correction to minor errors of form in the citation of the provision.

³⁰ “DERECHO A UN MEDIO AMBIENTE SANO. SU CONTENIDO,” Thesis 1a. CCXLVIII/2017 (10a.), *Gaceta del Semanario Judicial de la Federación*, Tenth Age, Book 49, Tome I, December 2017 at 411.

³¹ SEM-09-009 (*Transgenic Maize in Chihuahua*), Article 14(3) Response (3 May 2010) at 11-13 <<https://bit.ly/39eWiQJ>>.

³² SEM-18-002 (*Metrobús Reforma*), Articles 14(1) and (2) Determination, §12. Likewise, the federal judiciary referred to “the necessity to protect natural resources and the preservation and restoration of ecological balance are fundamental principles which the authors of the Constitution sought to protect.” See: “MEDIO AMBIENTE ADECUADO PARA EL DESARROLLO Y BIENESTAR: CONCEPTO, REGULACIÓN Y CONCRECIÓN DE ESA GARANTÍA” Thesis I.4°.A.44788A, *Gaceta del Semanario Judicial de la Federación*, Ninth Age, Tome XXI, January 2005 at 1799.

³³ Correction of the citation of the provision. See note 29, *supra*.

because its principal purpose is environmental protection through the recognition of the human right to water and sanitation.

24. The Submitters also cite **Article 4, seventh paragraph seven**, which concerns the human right to decent housing, as well as the **final paragraph of Article 4**, which concerns the Mexican State's obligation to promote the full development of young people.³⁴ The Secretariat finds that neither of these provisions have environmental protection or the prevention of a danger to human life or health as their principal purpose, as per USMCA Article 24.1.
25. **LGEEPA Article 2** establishes that ecological management of the national territory (**section I**) is in the public interest, as are climate change mitigation and adaptation measures (**section V**). The Secretariat finds that both provisions qualify as environmental law in the terms of the USMCA, as the protection of the environment and wild flora and fauna is its principal purpose.
26. **LGEEPA Article 28** stipulates that environmental impact assessment is the procedure that establishes the conditions that shall govern the execution of works and activities which may cause ecological imbalance, as well as works and activities which require environmental impact authorization, in particular those carried out in wetlands, coastal ecosystems, lagoons, rivers, lakes, and estuaries, among others (**section X**), and in protected natural areas under federal jurisdiction (**section XI**). The Secretariat therefore finds that both cited provisions of LGEEPA Article 28 qualify as environmental law, as their principal purpose is environmental protection via the environmental impact procedure. Section XI, however, is not relevant to this submission (SEM-22-001) because the site in question is not a protected natural area.
27. **LGEEPA Article 29** establishes that works or activities under federal jurisdiction that are not subject to the environmental impact assessment procedure shall however be subject to the provisions of the LGEEPA and its regulations as well as official environmental standards and statutes on natural resources, as well as the applicable permits, licenses, authorizations, and concessions. The Secretariat finds that this provision qualifies as environmental law, as its principal purpose is environmental protection through the prevention of negative effects on the environment, natural resources, and wild flora and fauna from actions and activities that could cause environmental imbalance.
28. **LGEEPA Article 85** establishes that Semarnat may encourage the Ministry of Economy (*Secretaría de Economía*) to institute measures to regulate or restrict the export or import of native or exotic specimens of wildlife or plants and may impose restrictions necessary to control their circulation. Although this provision could be considered "environmental law," it is not related to the submission's assertions.
29. **LGEEPA Article 117** establishes that water pollution prevention and control is fundamental to avoiding reductions in water availability and protecting ecosystems (**section I**); it indicates that the government and society are responsible for preventing the pollution of rivers, basins, watercourses, marine waters, and other surface and underground water bodies (**section II**); it stipulates that water use in productive activities that could generate pollution comes with the responsibility to treat wastewater discharges adequately for their

³⁴ *Idem*.

reintegration into the environment to maintain the equilibrium of ecosystems (**section III**); it establishes that urban wastewater must be treated before it is discharged into rivers, watercourses, marine waters, and other water bodies (**section IV**); and it envisages the participation and co-responsibility of society as an indispensable condition for preventing water pollution (**section V**). The Secretariat finds that the provisions of LGEEPA Article 117 in its totality qualify as environmental law, as their principal purpose is environmental protection through water pollution prevention and control.

30. **LGEEPA Article 123** establishes that all discharges into sewage systems, rivers, aquifers, marine waters, and other water bodies or streams shall comply with the applicable official Mexican standards and the particular conditions governing such discharges, as determined by Semarnat or the local authorities. Moreover, any party or entity that generates such discharges shall be responsible for ensuring the applicable treatment. The Secretariat finds that this provision qualifies as environmental law, as its principal purpose is environmental protection through water pollution prevention and control.
31. **LGEEPA Article 157** stipulates that the Federal Government shall promote societal participation in the planning, execution, evaluation, and monitoring of environmental and natural resources policy. This provision qualifies as environmental law, as its principal purpose is to contribute to the implementation of actions to protect the environment. The Secretariat notes that the Submitters assert that they have attempted via various mechanisms to participate in addressing the issues at Playa Hermosa without achieving specific results to date.
32. **LGEEPA Article 189** establishes that any person, social group, nongovernmental organization, association or grassroots group may file a complaint with Profepa or other authorities concerning any fact, act or omission which produces or may produce an ecological imbalance or damage to the environment or natural resources or which contravenes the provisions of LGEEPA or other statutory and regulatory instruments that regulate environmental protection and the preservation and restoration of ecological balance. The Secretariat finds that LGEEPA Article 189 qualifies as environmental law, as it is oriented toward environmental protection through the implementation of the citizen complaint process.
33. **LGEEPA Article 194** establishes that Profepa is authorized to commission academic institutions, research centers and public, social, and private sector organizations to prepare studies, technical opinions or surveys on the issues raised in citizen complaints. The Secretariat therefore considers this provision to be environmental law, as its aim is environmental protection through the commission of scientific studies and technical opinions that—in the specific case of the submission in question—contribute to clarifying environmental issues raised in citizen complaints such as water quality and habitat restoration at Playa Hermosa.
34. **LGEEPA Article 195** establishes that if acts, facts or omissions come to light, as a result of Profepa's investigations, which implicate federal, state or municipal authorities, Profepa may issue recommendations necessary to foster implementation of corresponding actions. The Secretariat finds that this provision qualifies as environmental law, as its principal purpose is environmental protection via measures, which if implemented in the case of Playa Hermosa, could address the water pollution and coastal habitat restoration issues.

35. **LGEEPA Article 202** establishes that Profepa is authorized to initiate the appropriate proceedings with the competent authorities when it becomes aware of acts, facts or omissions which contribute to violations of administrative or criminal law. The Secretariat finds that this provision qualifies as environmental law, as its principal purpose is environmental protection through mechanisms to promote environmental responsibility.
36. **LGBN Article 7** specifies categories of common goods subject to the public domain, specifically including seaside beaches (**section IV**). The Secretariat determines that this provision does not qualify as environmental law, as environmental protection is not its principal purpose. However, the Secretariat may cite this provision in its analysis of enforcement of the environmental law in question.
37. **LGBN Article 63** refers to the use and care that “recipient institutions” must provide to federal property and national assets, including areas of the federal maritime terrestrial zone, that have been assigned to them. It also stipulates that the institutions in charge of national assets destined for public service may allocate assets assigned to them on a pro bono basis to private parties with whom they have entered into public works or service delivery contracts, provided that they are not given a use different from the one authorized. The Secretariat determines that the provision cited does not qualify as environmental law, as environmental protection is not its principal purpose. However, the Secretariat may cite this provision in its analysis of enforcement of the environmental law in question.
38. **LAN Article 47** stipulates that wastewater discharges into national property and soil infiltration into land that may contaminate the subsoil or aquifers shall be subject to the provisions of the National Waters Act (LAN). Likewise, this provision stipulates that the water authority shall promote wastewater use by municipalities, utilities or third parties involved in the drinking water and sewage systems. The Secretariat determines that this provision qualifies as environmental law, as its principal purpose is to protect the environment through the control of wastewater pollution and the preservation of water quality.
39. **LAN Article 88 bis 1** stipulates that discharges of wastewater from domestic use, which occur outside the municipal sewage system, shall observe the applicable official Mexican standards; moreover, this provision establishes that municipalities, states and the Federal District (now known as Mexico City) are responsible for the control of wastewater in the drainage or urban/municipal sewage systems of population centers, as well as in receiving bodies of water (**paragraph three**). The Secretariat determines that this provision qualifies as environmental law, as its aim is environmental protection through the establishment of rules on wastewater quality control.
40. **LAN Article 95** specifies that “the water authority,” within the purview of federal jurisdiction, shall conduct inspections or audits of wastewater discharges to verify compliance with regulatory standards. The results of the inspections or audits must be prepared for legal purposes and able to serve as a basis for the application of sanctions provided for in LAN. The Secretariat determines that this provision qualifies as environmental law, as it is aimed at protecting the environment through inspections of wastewater discharges for the prevention and control of pollution.
41. **LAN Article 96** establishes that in irrigated areas and areas where there are extensive or dispersed sources of pollution, the management and application of substances which may

contaminate national surface or underground waters must comply with the standards, conditions, and provisions established under LAN or the LAN Regulations. Furthermore, the National Water Commission (*Comisión Nacional del Agua*—Conagua) is responsible for promoting compatibility between land uses and water uses to preserve water quality in ecosystems, hydrological basins, and aquifers. The Secretariat finds that this provision qualifies as environmental law, as its principal purpose is environmental protection through the safeguarding of water quality.

42. Under **LAN Article 96 bis 1**, any party or entity that discharges wastewater in violation of applicable statutes and regulations and causes pollution in a receiving water body, shall assume responsibility for the environmental damages within the terms of the LAN and the LAN Regulations. Furthermore, Conagua, with the support of the competent water basin authority, shall intervene to ensure the implementation of measures to repair the environmental damage to the affected waterbody. The Secretariat finds that this provision qualifies as environmental law, as its principal purpose is to assign liability for environmental damage caused by water pollution in order to protect the environment and prevent danger to human life or health.
43. **LGCC Article 29** identifies actions that are considered “adaptation measures,” such as conservation, sustainable use, the rehabilitation of beaches, coasts, federal maritime terrestrial zones, lands reclaimed from the sea and any other water bodies formed by marine waters (**section IV**). Although this provision qualifies as environmental law by having protection of the environment as its principal purpose, it is not directly enforceable, as its purpose is to simply identify categories of adaptation actions. As such, it will only be considered to the extent that doing so may inform the Secretariat’s analysis of enforcement issues.
44. **LGCC Article 30** stipulates that the federal, state and municipal authorities must implement adaptation measures to restore the integrity and ecological connection of terrestrial ecosystems, beaches, coasts and federal maritime terrestrial zones, etc. (**section XVIII**). The Secretariat finds that although this provision qualifies as environmental law, the submission does not allege a lack of action on climate change.
45. **LGCC Article 82** establishes that the resources for supporting the implementation of measures to address the adverse effects of climate change will be allocated to initiatives including projects that simultaneously contribute to both climate change mitigation and adaptation, as well as to actions aimed at preserving the integrity of beaches, coasts, federal maritime terrestrial zones, lands reclaimed from the sea, etc. (**section II**). Although the principal purpose of this provision is environmental protection, it is not applicable to the issues raised in the submission. Consequently, it is not considered in the Secretariat’s analysis of effective enforcement.
 - ii) **Regulations of federal laws**
46. **REIA Article 5** lists the works and activities which require environmental impact authorization from Semarnat, including real estate developments that affect coastal ecosystems (**subparagraph Q**).³⁵ The Secretariat finds that this provision qualifies as

³⁵ *Idem.*

environmental law, as its principal purpose is environmental protection through the environmental impact assessment procedure.

47. **REIA Article 55** establishes that Profepa is responsible for carrying out inspections and compliance enforcement within the provisions of the REIA and that it may impose safety measures and the appropriate fines and penalties. For that purpose, Profepa may require people or entities subject to inspection and monitoring to present information and documentation on REIA compliance. The Secretariat finds that this provision qualifies as environmental law, as its principal purpose is environmental protection in the sense that it establishes the scope of Profepa's authority in relation to environmental impact issues.
48. **REIA Article 57** establishes that in the event actions or activities subject to the environmental impact procedure proceed without the applicable authorization, Semarnat shall order corrective or emergency enforcement measures, without prejudice to the imposition of further administrative sanctions, the pursuit of applicable civil and criminal proceedings, and the imposition of safety measures. Furthermore, Semarnat shall determine the extent of the environmental effects and conduct an environmental impact assessment of the actions or activities not yet initiated. The Secretariat finds that this provision qualifies as environmental law, as its purpose is environmental protection through the application of corrective, safety, and emergency enforcement measures, together with the imposition of penalties when construction work proceeds without the required environmental impact authorization.
49. **REIA Article 58** establishes that the purpose of corrective or emergency enforcement measures is to avoid impacts on the environment, ecosystems or their constituent elements, to re-establish the conditions of natural resources affected by actions or activities, and to generate an alternative, positive effect equivalent to the adverse effects identified. This provision also indicates the requisite procedure and deadlines for imposition of corrective or emergency enforcement measures. It qualifies as environmental law, as its principal purpose is environmental protection through the environmental restoration measures available to the authority.
50. **REIA Article 59** indicates that in the event the party responsible for an action or activity fails to comply with the conditions stipulated in the environmental impact authorization, Profepa shall order the imposition of corresponding safety measures, without prejudice to corrective measures and sanctions. The Secretariat determines that this provision qualifies as environmental law. Moreover, it notes that one of the concerns of the Submitters' allegations of non-compliance with the conditions in AIA-2011 aimed at preserving parts of Playa Hermosa for beach conservation and dune vegetation restoration.
51. **REIA Article 65** establishes that any person, social group, nongovernmental organization, association or entity may file a complaint with Profepa concerning any fact, act or omission that may produce an ecological imbalance or damage to the environment or to natural resources, or may contravene applicable legal provisions and/or the manner with which they are dealt. The Secretariat determines that this provision qualifies as environmental law, as its principal purpose is environmental protection through complaint mechanisms to encourage action by the authority and ensure that environmental issues are addressed. It is in this regard that the Secretariat notes the Submitters' assertion that the complaints filed about Playa Hermosa have not been addressed in a timely fashion.

52. **Article 84** of the **LAN Regulations** stipulates that municipalities, utilities or businesses that provide drinking water and sewage services must treat wastewater before it is discharged. Moreover, utilities charged with providing public drinking water and sewage services are responsible for the authorization and contracting or granting of a concession for wastewater treatment projects if such works are to be implemented in national waters, water streams or bodies of water. The Secretariat determines that this provision qualifies as environmental law, as its principal purpose is environmental protection through the establishment of wastewater discharge treatment obligations.
53. **Article 149** of the **LAN Regulations** specifies the actions to be taken in the event of accidental discharges in receiving bodies of water. This provision also establishes the obligation to give immediate notice of the discharge and the obligation for responsible parties to perform clean-up and remediation work. The Secretariat determines that this provision qualifies as environmental law, as its aim is to protect the environment (in particular, water quality) through corrective actions when accidental discharges of sewage occur.
54. **Article 7** of the **Zofemat Regulations** specifies that beaches and federal maritime terrestrial zones are for public use and enjoyment, subject to certain restrictions, such as the prohibition against engaging in acts or events that pollute the public areas in question (**section III**). The Secretariat determines that this provision is environmental law, as its aim is to prevent pollution and protect beaches and coastal ecosystems.
55. **Article 47** of the **Zofemat Regulations** indicates the grounds for revoking a concession or permit, such as carrying out activities or work not foreseen in the concession agreement or permit without prior authorization (**section III**) or the commission or approval of criminal acts in the concession or permit area (**section V**). The Secretariat finds that this provision does not qualify as environmental law, as it does not have environmental protection as its principal purpose. Rather, it is meant to monitor and protect national assets subject to a permit or under a concession agreement.
56. **Article 52** of the **Zofemat Regulations** establishes that Semarnat shall be systematic in its monitoring of beaches, Zofemats, lands reclaimed from the sea or any other bodies of maritime waters and it may request support for such surveillance from federal, state, and municipal authorities, within the purview of their respective jurisdictions. This provision also provides for inspection visits to verify compliance with legal and administrative provisions and to verify that use and activities in the area in question correspond to what is authorized. The Secretariat determines that this provision does not qualify as environmental law because its purpose is to authorize Semarnat to systematically monitor Zofemat “with the purpose of protecting the national heritage of the country” without establishing provisions for the protection of coastal ecosystems in the Zofemat.

iii) **Other statutory and regulatory instruments cited in the submission**

57. **Article 121** of the **Ensenada Environmental Quality Regulations** establishes the assessment criteria applicable to the City of Ensenada's environmental permit. The Secretariat determines that this provision does not qualify as environmental law, as it is not a regulation promulgated in accordance with an Act of Mexico's Congress, and it is not enforceable by the federal government, as per the definition in USMCA Article 24.1.
58. The provisions of the **Escazú Agreement** and the **Protocol of San Salvador** cited in the submission are not considered to be environmental law, as they do not emanate from an Act promulgated by Mexico's Congress, as per the definition in USMCA Article 24.1.
59. The **POEBC** is not considered environmental law, as it is without regulatory content; however, the Secretariat considers that it may inform its analysis regarding the enforcement of environmental law.³⁶
60. The *Acuerdo de Destino* (concession permit) is not considered environmental law, as it is not an instrument that emanates from an Act promulgated by Mexico's Congress. Nevertheless, the Secretariat may consider it in its analysis of the alleged failure to take adequate action to protect and restore the Playa Hermosa coastal ecosystem.
61. Official Mexican Standard **NOM-001-SEMARNAT-2021** is based on the Constitution, LGEEPA, LAN, the LAN Regulations and other federal statutes, and was recently published in *Diario Oficial de la Federación* (DOF) on 11 March 2022. NOM-001 establishes permissible pollutant limits for wastewater discharges into waterbodies in order to protect, conserve, and improve the quality of national water assets and resources. The Secretariat determines that NOM-001-SEMARNAT-2021 is environmental law, as it contains regulatory provisions that emanate from federal statutes. Moreover, the principal purpose of NOM-001 is environmental protection through the establishment of parameters to regulate wastewater discharges and, consequently, contribute to water quality.

c. **Compliance with USMCA Article 24.27(2) requirements**

62. Having examined submission SEM-22-001 (*Pollution in Playa Hermosa*), in accordance with the provisions of USMCA Article 24.27(2), the Secretariat has determined that it satisfies the requirements, as explained 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

63. The submission in question is written in Spanish. The Secretariat therefore finds that it satisfies the requirement established in USMCA Article 24.27(2)(a).

b) clearly identifies the person making the submission

64. The submission includes the names, addresses, emails, and telephone numbers of the organizations filing it, which is sufficient information to identify and communicate with the Submitters' representative. The Submitters requested that this identification data remain

³⁶ See SEM-09-002 (*Wetlands in Manzanillo*), Article 14(1) Determination (9 October 2009), §9.

confidential in accordance with ECA Article 16(1)(a). The submission satisfies the requirement established in 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*

65. The submission cites publications and provides links for downloading supporting documentation, such as scientific information on the benefits of “green and blue” recreational areas for mental health,³⁷ information on Playa Hermosa water quality,³⁸ Playa Hermosa’s protection and conservation policies, the Playa Hermosa Public Beach Management Program³⁹ and the state ecological management program (POEBC).⁴⁰
66. In addition, the submission includes multiple authorizations and related documents concerning activities or projects located in Playa Hermosa, including: AIA-2011;⁴¹ the *Acuerdo de Destino* (Concession Permit);⁴² the document containing the environmental impact feasibility assessment for the “Playa Hermosa Boardwalk and Services Area Construction Project” issued by the Urban, Ecology and Environment Administration of the City of Ensenada;⁴³ and the Semarnat order which denied an environmental impact authorization to MIA-2021.⁴⁴
67. The Submitters also include the following documents: 1) photographs showing the damage and impacts caused by the construction work on Playa Hermosa;⁴⁵ 2) information requests regarding the temporary closure of the “Playa Hermosa Boardwalk and Services Area

³⁷ Mireia Gascon, M. Triguero-Mas, D. Martínez, P. Dadvand, J. Forns, A. Plasencia and M.J. Nieuwenhuijsen, “Mental Health Benefits of Long-Term Exposure to Residential Green and Blue Spaces: A Systematic Review,” *International Journal of Environmental Research and Public Health* 12, 4 (2015): 4354-4379.

³⁸ Federal Commission for the Prevention of Sanitary Risks, "Pre-holiday monitoring of beaches during Easter week 2022". (21 March 2022) online at: <<https://bit.ly/3ywzhT7>> ["Beach Monitoring Report"].

³⁹ Carlos Peynador Sánchez (coord.), *Management Program for Playa Hermosa Public Beach, located in Todos Santos Bay, Municipality of Ensenada, Baja California, Mexico. (PROMAPP)*, Lorax Consultores S.A. de C.V. (September 2008) <<https://bit.ly/3PE32In>>.

⁴⁰ Secretary of Environmental Protection, Government of Baja California, Mexico, Ecological Management Program of the State of Baja California (POEBC) 2014 extensive version, online at: <<https://bit.ly/3Gf6vIU>>.

⁴¹ AIA-2011 (see note 8, *supra*).

⁴² Designation Agreement (see note 7, *supra*).

⁴³ Urban Administration, Ecology and Environment, Ensenada City Hall, communication no. 138/DPGA/2021 (7 April 2021) <<https://bit.ly/3wFRX1T>>.

⁴⁴ Semarnat, Federal Delegation in Baja California, document number: DFBC/SGPA/UGA/DIRA/957/2021 (10 de junio de 2021), online at: <<https://bit.ly/3wKrwbr>>.

⁴⁵ Colectivo Playa Hermosa, Photos of dunes being dredged on Playa Hermosa (30 May 2021).

Construction Project” work site;⁴⁶ and meeting requests addressed to the municipal authorities along with the minutes from the resulting meetings.⁴⁷

68. Accordingly, the submission contains sufficient information to allow the Secretariat to review and analyze it, as it includes documentation that supports the Submitters’ assertions and identifies the statutes, environmental regulations, and information pertaining to the environmental law in question (see section III-b of this Determination). The Secretariat therefore finds that this submission satisfies the requirement established in USMCA Article 24.27(2)(c).

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

69. The Secretariat finds that the submission complies with USMCA Article 24.27(2)(d), as it is evident that the submission's aim is not to harass an industry, but rather to ensure the effective enforcement of the environmental law applicable to the alleged damages on Playa Hermosa, based on the information and documentation included in the submission and its annexes.

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

70. The Submitters cite documentation demonstrating that the matter was communicated to the relevant authorities in the Government of Mexico. Specifically, the submission cites the citizen complaints filed in 2021 and 2022 with Profepa, a competent authority;⁴⁸ includes the written request for a public consultation, dated 3 June 2021, filed with the Semarnat office in Baja California;⁴⁹ includes the written communication of 2 June 2021, addressed to the mayor of Ensenada;⁵⁰ and encloses the written communications of 14 June 2021 and 13 July 2021, in which the Submitters requested meetings with the mayor of Ensenada.⁵¹

71. The Secretariat finds that the submission satisfies the requirement established in USMCA Article 24.27(2)(e), as it includes information which demonstrates that the matter at hand was communicated in writing to the relevant authorities of the Party, in this case, Semarnat, the Profepa office in Baja California, and the municipal authorities of Ensenada, Baja California.

d. Compliance with USMCA Article 24.27(3) requirements

72. Having established that the submission fully satisfies the requirements of USMCA Article 24.27(2), the Secretariat now analyzes whether the submission merits a response from the

⁴⁶ Profepa, Document number: PFPA/1.7/12C.6/0894/2022 (17 May 2022), Federal Attorney General's Office for Environmental Protection, online at: <<https://shorturl.at/fAMW4>>.

⁴⁷ Written meeting request addressed to the authorities and expression of concern regarding the project by the spokesperson of the Clean Beaches Committee (*Comité de Playas Limpias*) (26 May 2021).

⁴⁸ Submission at paras 14 and 28.

⁴⁹ Id. at para 17.

⁵⁰ Id. at para 18.

⁵¹ Id. at paras 21 and 23.

Party pursuant to Article 24.27(3). In its analysis, the Secretariat is guided by the following considerations:

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

73. The submission documents the effects on the Playa Hermosa coastal ecosystem since March 2021, caused by the construction work and activities undertaken by the City of Ensenada. The submission stresses the following facts: coastal dunes “function as sand deposits and reservoirs” which serve to offset the volume of beach sand lost due to marine erosion;⁵² the City of Ensenada commenced construction work in May 2021 prior to obtaining the required environmental impact authorization; and no actions have been implemented to restore the coastal ecosystem following Semarnat’s refusal to grant the authorization.⁵³ According to the Submitters, the damage to the Playa Hermosa ecosystem is not irreparable and timely restoration and remediation measures could be implemented:

Although the coastal ecosystem of Playa Hermosa has already been damaged by the works undertaken by the City of Ensenada, said damages are not yet considered irreparable. Consequently, this coastal ecosystem could still be restored at this time, if and only if, the works presently under way cease totally and immediately, the heavy machinery on the dunes is withdrawn and a process to restore Playa Hermosa’s system of dunes begun.⁵⁴

74. The Submitters argue that the 2022 report of Cofepris’ Clean Beaches Program determined that Playa Hermosa is not fit for recreational use due to the high levels of fecal matter in the water.⁵⁵ Among the causes cited in the submission is the sub-standard operation of the wastewater treatment plant operated by CESPE.
75. In sum, the Submitters stress that the construction activities in Playa Hermosa without the applicable environmental impact authorization and the discharging of untreated wastewater are both violations of the human rights to a healthy environment, and to potable water and sanitation.⁵⁶
76. The Secretariat has found in previous determinations that, when considering the question of harm, it must consider 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.⁵⁷

⁵² Id. at para 6.

⁵³ Id. at page 2 and paras 29 and 38.

⁵⁴ Id. at para 22.

⁵⁵ Beach Monitoring Report (see note 38, *supra*).

⁵⁶ Submission at pages 9-10, in particular paras 43-44: “The authorities [are] bound to respect human rights... [and] it is a requirement that they adopt all positive and concrete measures designed to satisfy and guarantee them”; “if, in their decision-making, the authorities do not use all means at their disposal... that constitutes a violation of the rights to a healthy environment, health and the unhindered development of human personality.”

⁵⁷ SEM-19-004 (*Barred Owl*), Articles 14(1) and (2) Determination (21 November 2019), §28; SEM-11-002 (*Sumidero Canyon II*), Articles 14(1) and (2) Determination (6 September 2012), §36; and SEM-13-001 (*Tourism Development in the Gulf of California*), Articles 14(1) and (2) Determination (23 November 2013), §62. *Cfr. Guidelines*, subparagraph 7.4.

Therefore, in keeping with normal SEM practices, the Secretariat finds that the submission satisfies 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

77. 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 capacities of the Parties to address trade-related environmental issues, including through cooperation, in the furtherance of sustainable development.”
78. The Secretariat finds that reviewing the submission in question would contribute to encouraging high levels of environmental protection, as well as to the effective enforcement of environmental laws, in relation to water quality and the alleged damage to the Playa Hermosa coastal ecosystem caused by construction work that had proceeded without the required implementation of environmental impact measures. The Secretariat finds that the Submission satisfies the criterion of USMCA Article 24.27(3)(b).

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

79. The submission documents the efforts to obtain action from the federal authorities by filing citizen complaints with Profepa’s Baja California office on 21 May, 23 June, 20 July, and 29 July 2021 as well as 16 May 2022. These complaints were lodged against the municipal government of Ensenada and the Government of the State of Baja California in relation to the construction work on the coastal dunes and sand removal activities along the shoreline of Playa Hermosa, Ensenada. These complaints are consistent with the facts presented in the submission.⁵⁸
80. In the citizen complaints filed with Profepa on 21 May and 29 July 2021, the complainants point out that the construction and subsequent expansions of the port of Ensenada encouraged the placement of rocks and grading of the city’s sandy beaches, which reduced the portion of the coastline known as “Playa Hermosa” and which eventually became the only public beach in the urban area of Ensenada.⁵⁹ On 21 May 2021, the complainants noticed the presence of heavy machinery in Playa Hermosa as well as activities grading the area, compacting the sand, and removing the dunes.⁶⁰ They claim that such activities are presumed to be part of the “Playa Hermosa Boardwalk and Services Area Construction Project” and that, in any case, the municipal authority is responsible for the damage to the coastal dunes and the beach.⁶¹ Finally, the complainants state that activities continue to be carried out at the site, developing the boardwalk on Playa Hermosa, despite the fact that they have been shut down by Profepa for not having an environmental impact authorization.⁶²

⁵⁸ Complaints cited in: Profepa, Communication allowing the complaints, no. PFPA/9.7/2C.28.2/0911/2021, (16 August 2021).

⁵⁹ Profepa, communication allowing the complaints no. PFPA/9.7/2C.28.2/0911/2021, (16 August 2021).

⁶⁰ *Id.* at 1.

⁶¹ *Id.* at 2.

⁶² *Idem.*

81. Regarding the citizen complaints filed on 23 June and 20 July 2021, the complainants make very similar assertions to those in the complaints from 21 May and 29 July 2021⁶³ and emphasize the existence of a project in Playa Hermosa to build and modify the Zofemat, as well as the elimination of coastal dunes, construction of foundations, and serious consequences to the natural resources in Playa Hermosa.⁶⁴ The complainants pointed out that the project in question should have been submitted to Semarnat's environmental impact assessment process prior to the start of construction, which did not occur, as stated in the complaint.⁶⁵
82. On the other hand, the 16 May 2022 citizen complaint presented before Profepa in Baja California asserts that the 2022 report of Cofepris' Clean Beaches Program determined that Playa Hermosa is not fit for recreational use, due to the high level of fecal matter in the water. One of the causes of the water pollution affecting Playa Hermosa is the sub-standard operation of the "El Gallo" wastewater treatment plant.⁶⁶ Furthermore, the complainants maintain that wastewater is still being dumped directly into the sea without any form of treatment, which impacts the coastal and marine ecosystems, including in terms of their biodiversity.⁶⁷ The complaint requested the following actions: permanent closure of the construction work, notification to the Public Prosecutor's Office to ensure investigation of federal crimes, site water quality remediation, and requiring the responsible parties to restore the environmental damage they caused.⁶⁸
83. The Secretariat finds that the submission satisfies the criterion of USMCA Article 24.27(3)(c), as the Submitters provided documentation and information that substantiate their efforts to pursue private remedies provided for under Mexican law.

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

84. Regarding subparagraph (d), the Secretariat finds that the submission is *not* based on mass media reports. Although the submission refers to news items in the media, it does so to reflect the public attention regarding an issue of concern for the community in Ensenada. The submission is based on documentation and information on the environmental situation in Playa Hermosa, Ensenada, compiled by the Submitters, collected largely from official sources, technical documents, information requests and citizen complaints filed by the Submitters themselves.
85. Consequently, the Secretariat finds that the submission satisfies the criterion of USMCA Article 24.27(3)(d).

IV. DETERMINATION

86. For the reasons outlined above, the Secretariat finds that submission SEM-22-001 (*Pollution in Playa Hermosa*) satisfies the admissibility requirements stipulated in USMCA Article

⁶³ Citizen complaint (23 June 2021), at 1.

⁶⁴ Id. at 6.

⁶⁵ Id. at 1-5.

⁶⁶ Citizen complaint, (16 May 2022) at 1.

⁶⁷ Id. at 2.

⁶⁸ Id. at 8.

24.27(2) and merits a response from the Government of Mexico, in accordance with USMCA Article 24.27(3), concerning the effective enforcement of the following environmental laws:

- a. Article 4, paragraphs fifth and sixth of the Constitution;
- b. LGEEPA Article 2 sections I and V, Article 28 section X, Article 29, Article 117 sections I, II, III, IV and V, and Articles 123, 157, 189, 194, 195 and 202;
- c. LAN Articles 47, 88 *bis* 1, 95, 96 and 96 *bis* 1;
- d. REIA Articles 5 subparagraph (Q), 55, 57, 58, 59 and 65;
- e. LAN Regulations Articles 84 and 149; and,
- f. Official Mexican Standard NOM-001-SEMARNAT-2021.

87. In accordance with the provisions of USMCA Article 24.27(4), the Party may provide a response to the submission within sixty days of receipt of the present determination, i.e., by **2 September 2022**.

Respectfully submitted for your consideration,

Secretariat of the Commission for Environmental Cooperation



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

cc: Miguel Ángel Zerón, Alternate Representative of Mexico
Catherine Stewart, Alternate Representative of Canada
Jane Nishida, Alternate Representative of the United States
Environment Committee Contact Points
Richard A. Morgan, Executive Director, CEC
Submitters