

Response of the Government of Mexico

Submission SEM-20-001 (Loggerhead Turtle)

**Filed with the Secretariat of the Commission for Environmental Cooperation, under
Article 24.27(1) of the United States-Mexico-Canada Agreement (USMCA)**

I. BACKGROUND INFORMATION

On 17 December 2020, the Mexican Center for Environmental Law (*Centro Mexicano de Derecho Ambiental*—CEMDA) and the Center for Biological Diversity (“the Submitters”) filed a submission with the Commission for Environmental Cooperation (CEC), in which they 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*), in the Gulf of Ulloa region, Baja California Sur.

In their submission, the Submitters affirm that the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat), the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa), the National Commission for Protected Natural Areas (*Comisión Nacional de Áreas Naturales Protegidas*—Conanp), and the National Commission for the Knowledge and Use of Biodiversity (*Comisión Nacional para el Conocimiento y Uso de la Biodiversidad*—Conabio) are failing to effectively enforce Mexican law, in their respective areas of jurisdiction, in relation to the protection and conservation of the loggerhead turtle.

The Submitters underlined the fact that the Gulf of Ulloa is the site of the highest number of loggerhead turtle deaths. Every year, hundreds of turtles and other creatures are found dead there. In effect, based on Profepa’s reply to their information request, they learned that from 2017 through 2019, 889 specimens of loggerhead turtles were captured in this area and that in the months of January to June 2020, 351 loggerhead turtle deaths were recorded.

The Submitters attribute the deaths of these specimens to various enforcement failures on the part of the environmental authorities, which they specify in Chapter IV of their submission: “Absence of effective enforcement of environmental law.”

For future reference, the assertions in question are as follows:

- A. The Mexican authorities have not lodged a single complaint with the Federal Public Prosecutor’s Office pursuant to the crime of deprivation of life for a specimen of loggerhead turtle under the Federal Criminal Code.
- B. The Mexican authorities have not once requested revoking or the suspension of authorizations, permits, licenses or concessions in response to high loggerhead turtle mortality.

UNOFFICIAL TRANSLATION

- C. The environmental authorities have carried out an average of less than two inspection and monitoring visits per year and have failed to carry out their inspection and monitoring responsibilities, along with their obligation to levy penalties and fines to ensure the protection and conservation of the loggerhead turtle in the Gulf of Ulloa.
- D. The environmental authorities do not rely on the technical and scientific information that would be required to design protection and conservation strategies and instruments.
- E. There is no program to ensure the monitoring of, and effective compliance with, measures aimed at protecting and conserving the loggerhead turtle in the Gulf of Ulloa, Baja California Sur. No recent studies exist on the size of the loggerhead turtle population, without which appropriate catch quotas cannot be determined.
- F. The Mexican authorities have not done an assessment of the effectiveness of these instruments in reducing bycatch-related mortality.
- G. No review mechanisms exist for assessing the effectiveness of the measures applied.

For its part, on 8 February 2021, the Secretariat found in its determination A24.27 (2) (3)/SEM/20-001/10/DET that the submission was admissible under USMCA Article 24.27(2). It likewise determined that under USMCA Article 24.27(3) the submission merited a response from the Government of Mexico concerning the effective enforcement of the following environmental laws:

- a. Article 4, paragraph V of the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*—the “Constitution”);
- b. Articles 5, paragraph XIX, 161, 171, 182, paragraph I, and 202, paragraph I of the General Ecological Equilibrium and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA);
- c. Articles 5, paragraphs I, II, III and IX, 9, paragraphs I, VII, X, XV and XXI, 60 paragraph I, 60 Bis 1, paragraph I, 62 and 104 of the General Wildlife Act (*Ley General de Vida Silvestre*—LGVS);
- d. Articles 5, paragraphs I, and IX, 45, paragraphs I, II, V subparagraphs a) and c), VI, X, XI, XII and XIX, and 70, paragraphs I, III, IV and XIII of the Internal Regulation of

the Ministry of the Environment and Natural Resources (*Reglamento Interior de la Semarnat*—RI-Semarnat);

- e. Order establishing a closed season on sea turtle species and subspecies in waters under federal jurisdiction in the Gulf of Mexico and the Caribbean, as well as in the Pacific Ocean, including the Gulf of California (*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”);¹
- f. Order establishing a loggerhead turtle refuge in the Gulf of Ulloa, Baja California Sur (*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”);² and
- g. Order establishing a fish refuge and new measures to reduce the likelihood of interaction between fishing activities and sea turtles on the west coast of Baja California Sur (*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”).³

II. CONSIDERATIONS REGARDING THE SUBMISSION’S ADMISSIBILITY

Under USMCA Article 24.27(2) subparagraph c), the Secretariat may consider a submission filed with the CEC if it finds that said submission “**provides sufficient information to allow for the review of the submission including any documentary evidence on which the submission may be based**” (emphasis added).

¹ 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

<http://www.dof.gob.mx/nota_detalle.php?codigo=4658226&fecha=31/05/1990#:~:text=ACUERDO%20por%20el%20que%20se,que%20dice%3A%20Estados%20Unidos%20Mexicanos>.

² Acuerdo por el que se establece el área de refugio para la tortuga amarilla (*Caretta caretta*) en el golfo de Ulloa, Baja California Sur

<https://www.dof.gob.mx/nota_detalle.php?codigo=5525056&fecha=05/06/2018#:~:text=Se%20establece%20como%20C3%81rea%20de,novecientas%20ochenta%20y%20nueve%20mil>.

³ El Acuerdo por el que se establece la zona de refugio pesquero y nuevas medidas para reducirla posible interacción de la pesca con tortugas marinas en la costa occidental de Baja California Sur

<http://dof.gob.mx/nota_detalle.php?codigo=5528971&fecha=25/06/2018>.

As is evident from this provision, the Secretariat may consider a submission, provided that sufficient information is furnished, including the documentary evidence on which the submission may be based. This point is worth emphasizing, as it is on the basis of said elements that objective criteria may be established for assessing the underlying facts of the Submitters' assertions.

Likewise, this response considers that the purpose of the requirements stipulated in USMCA Article 24.27(2) subparagraph c) is to eliminate any element that may be prejudicial to the submission process and thereby ensure that the analysis of the results of the Mexican environmental authorities' alleged enforcement failures is credibly related with the assertions raised in the submission.

With that consideration in mind, based on reading and analyzing the submission, including its enclosed documentation, one concludes that the Submitters do not provide sufficient information to demonstrate that loggerhead turtle beachings and deaths are directly associated to bycatch and consumption fishing. In fact, the submission itself mentions that *"there exist other factors that may cause sea turtle deaths, most notably including the presence of predators, accidental collisions with ships, the ingestion of anthropogenic waste and toxic contaminants, environmental factors, nutritional conditions and metabolic and infectious diseases."*⁴

Likewise, in reading and analyzing annex 20-1-anexo-iii-solicitud-1613100008820, one notes that this document includes Profepa communication PFPA/1.7/12C.6/0273/2020, which expressly states that, in relation to the number of dead loggerhead turtles mentioned in the response to the information request, it had not been possible to verify whether said deaths were related to fishing gear.

Accordingly, it is evident that the submission does not provide sufficient information regarding the cause of death of the specimens of loggerhead turtle in question. Consequently, the Secretariat should not have accepted this submission. Be that as it may, the Secretariat is urged to consider the issues raised, as well as those discussed in the relevant paragraphs below so that it may determine that the preparation of a factual record is not warranted, considering the lack of

⁴ Submission, 3.

evidence regarding the causes of loggerhead turtle mortality, as well as in light of the information provided herein on the past and future activities of the Mexican authorities to ensure compliance with environmental law.

III. Response of the Government of Mexico

Following analysis of the Secretariat's determination with respect to the alleged violations, which may have been committed against statutory provisions, i.e., those asserted by the Submitters, information was requested from various Semarnat administrative units and decentralized agencies, as well as from several federal public administration agencies with jurisdiction in this issue, namely:

- The Wildlife Department (*Dirección General de Vida Silvestre*—DGVS)
- The Office of Environmental Impact and Risk (*Dirección General de Impacto y Riesgo Ambiental*—DGIRA)
- The Planning and Evaluation Department (*Dirección General de Planeación y Evaluación*—DGPE)
- The National Commission for Protected Natural Areas (Conanp)
- The Federal Attorney for Environmental Protection (Profepa)
- The National Commission for the Knowledge and Use of Biodiversity (Conabio)
- The National Aquaculture and Fisheries Institute (*Instituto Nacional de Acuicultura y Pesca*—Inapesca)
- The National Commission of Aquaculture and Fisheries (*Comisión Nacional de Acuicultura y Pesca*—Conapesca)
- The Ministry of the Navy (*Secretaría de Marina*—Semar)

Based on the information provided by the abovementioned bodies and in accordance with USMCA Article 24.27(4), the Government of Mexico hereby issues its official response.

A. The Mexican authorities have not lodged a single complaint with the Federal Public Prosecutor's Office pursuant to the crime of deprivation of life for a specimen of loggerhead turtle under the Federal Criminal Code.

Regarding this type of assertion, it is necessary to consider the characteristics of the type of criminal offense raised by the Submitters. In effect, Article 420, paragraph I of the Federal Criminal Code reads as follows:

Article 420. Shall be imposed a sentence of imprisonment of one to nine years and the equivalent of three hundred to three thousand days of salary, to whom illicitly:

I. Captures, harms or deprives of life any specimen of turtle or marine mammal, or harvests or stores in any manner the products or by-products thereof.

In support of the preceding point, one may cite as jurisprudence ruling 1a./J. 143/2011 (9a.), published in the Judicial Weekly and Gazette of the Federation, Tenth Epoch, Book III, Tome 2, December 2011, p. 912, under the title: “Demonstration of the *Corpus Delicti* and the Crime per se: the Differences,”⁵ in which the First Chamber of the Supreme Court of Mexico ruled that to determine whether or not a crime exists one must analyze whether any typical unlawful and culpable conduct exists. That is to say, one must verify the existence of conduct consistent with the characteristics of the criminal offense in question.

The implication is that, beyond the normative elements which describe the crime in question, it is also necessary to substantiate elements in relation to states of mind, intentions, goals, etc., as well as the intellectual authorship or participation of the parties involved. Consequently, substantiating the commission of a crime demands a rigorous standard of evidence on the part of the authorities, founded on solid arguments which, *prima facie*, credibly establish the commission of the crime in question through an analysis of whether the characteristics typical of this type of crime exist based on the case’s objective and normative elements.

Therefore, in assessing the Submitters’ assertions regarding the failure to file complaints with the Public Prosecutor’s Office one must take into consideration the existence or not of sufficient evidence to substantiate the *corpus delicti*, that is to say to demonstrate the existence of a fact with all of its constituent elements. Specifically, in the present case, the matter to be

⁵Primera Sala, Suprema Corte de Justicia de la Nación, Jurisprudencia, “Acreditación del cuerpo del delito y del delito en sí. Sus diferencias,” *Semanario Judicial de la Federación y su Gaceta*, Tenth Epoch, Book 3, Tome 2, 912 <<https://sif2.scjn.gob.mx/detalle/tesis/160621>>.

substantiated is whether the harm or deprivation of life suffered by any specimen of turtle or marine mammal was caused by one or more responsible parties.

In this regard, as the Submitters themselves observed, it is noteworthy that various factors exist which may be causes of sea turtle mortality: in particular, the presence of predators, accidental collisions with ships, the ingestion of anthropogenic waste and toxic contaminants, environmental factors, nutritional conditions and metabolic and infectious diseases.

In conclusion, based on the information provided by Profepa in communication PFPA/1.7/12C.6/0273/2020 and considering the fact that it has not been possible to verify [any] deaths of loggerhead turtles related to fishing gear, it is our considered view that the environmental authorities did not fail to enforce LGEEPA Articles 182 and 202 and RI-Semarnat Article 45 paragraph XII. We therefore urge the Secretariat to terminate the present submission process.

B. The Mexican authorities have not once requested the revoking or suspension of authorizations, permits, licenses or concessions in response to high loggerhead turtle mortality.

In this regard, let us first specify that under LGVS Article 9, paragraph II, the federal government is responsible for the conservation and sustainable exploitation of wildlife and wildlife habitat. However, as may be seen in LGVS Article 60 Bis 1, certain activities are expressly prohibited on Mexican territory:

Article 60 Bis 1.- No specimen of any species of sea turtle, including any parts and derivatives thereof, may be the object of extractive exploitation, be it for subsistence or commercial purposes.

In this light, the Secretariat's attention might be drawn to the fact that the loggerhead turtle is not subject to extractive exploitation. As such, the Submitters' assertion concerning the failure to revoke or suspend authorizations, permits, licenses or concessions in response to the high mortality rates is inadmissible. In effect, given the existing prohibition of sea turtle capture and

exploitation, the environmental authorities are limited in their ability to issue authorizations, permits, licenses or concessions for any such activities and perform the revoking of same.

Even so, Profepa reported via its communication PFPA/5.3/2C.28.2/03124 (**Annex 1**) that in the framework of the Annual Operating Program it planned to conduct inspections of shrimp trawlers in the coastal states, pursuant to NOM-0061-SAG-PESC/Semarnat-2016 “Technical specifications of sea turtle excluder devices for use by the shrimp trawler fleet in waters under the federal jurisdiction in the United Mexican States,” particularly subparagraphs 7.1 and 7.2, which vest in Profepa, the Ministry of Rural Development (*Secretaría de Desarrollo Rural—Sader*), through Conapesca and Semar, the authority to ensure monitoring within the remit of their respective responsibilities.

Moreover, according to the same communication, prior to the beginning of the fishing season, Profepa personnel inspect sea turtle excluder devices in the presence of the concessionaire or permit holder, his legal representative, and/or the vessel’s captain. Said turtle excluder devices are then certified if they comply with the requirements described in paragraph 4 of -0061-SAG-PESC/Semarnat-2016, which stipulates the relevant specifications.

That said, in relation to authorized natural resources activities, works and projects in the Gulf of Ulloa, DGIRA, a Semarnat department, reported in communication SGPA/DGIRA/SG/02097 (**Annex 2**) that 27 authorized projects impact the marine area or indeed directly impact the Gulf of Ulloa, due to their proximity, including 17 that were authorized on a conditional basis.

DGIRA has provided the following hyperlink for parties wishing to review or download the complete database on projects submitted for Environmental Impact Assessment:

<http://apps1.semarnat.gob.mx/dgiraDocs/documentos/anexos/liqas/AutorizacionesUlloa.zip>

In light of the foregoing, it follows that the environmental authorities did not fail to effectively enforce LGEEPA Article 171, paragraph V, and RI-Semarnat Article 45, paragraph V. Consequently, the Secretariat is urged to terminate the present submission process, in respect of said legal provisions.

C. The environmental authorities have carried out an average of fewer than two inspection/monitoring visits per year, and [thus] have failed to carry out their inspection/monitoring responsibilities, along with their obligation to levy fines to ensure the protection and conservation of the loggerhead turtle in the Gulf of Ulloa.

In response to the assertions made by the Submitters—which are based on the provisions of LGEEPA Articles 5, paragraph XIX, 161 and 171; LGVS Articles 9, paragraph XXI, and 104; RI-Semarnat Article 45, paragraph I and V; Article 31, paragraphs XXIV and XXV of the Organic Federal Public Administration Act (*Ley Orgánica de la Administración Pública Federal*—LOAPF); Articles 9, paragraph II, 10, 21, and 124 of the General Sustainable Fisheries and Aquaculture Act (*Ley General de Pesca y Acuacultura Sustentables*—LGPAS); and the Fish Refuge Order—Profepa, Conapesca and Semar, per their respective areas of jurisdiction, were asked to provide information concerning compliance with their monitoring and inspection obligations related to the protection of the loggerhead turtle in the Gulf of Ulloa.

The present response, based on the resulting information, shall hereby inform the Secretariat of the monitoring and inspection actions carried out by the Mexican state to ensure environmental law compliance and enforcement.

Profepa reported via communication PFPA/5.3/2C.28.2/03124 (**Annex 1**) that in 2015 it commenced the Program to Monitor Sea Turtle Mortality in the Gulf of Ulloa, which entailed implementing terrestrial and marine monitoring to ensure compliance. Furthermore, it reported that from 2017 to 2021 it carried out 424 patrols in the Gulf of Ulloa, Baja California Sur.

In addition, Profepa reported that, under the auspices of the Office of the Assistant Attorney for Natural Resources, it strengthened the monitoring and inspection operations within the purview of its jurisdiction in order to:

- Inspect and monitor compliance with the commitments undertaken under the Inter-American Convention for the Protection and Conservation of Sea Turtles;
- Verify compliance with the closed season orders for at risk aquatic species;

UNOFFICIAL TRANSLATION

- Monitor compliance with the applicable regulations for the protection and conservation of turtles and marine mammals, as well as regarding their exploitation for recreational or exhibition purposes;
- Verify the monitoring of the origin and transport of wildlife specimens, parts and derivatives, including turtles;
- Inspect and, when applicable, certify the use of sea turtle excluder devices on shrimp trawlers, in accordance with Official Mexican Standard Nom-0061-SAG-PESC/Semarnat-2016;
- Conduct inspections, when predatory fishing activities or practices are detected or reported, which represent an imminent risk for the ecological balance; and
- Monitor compliance with the environmental impact provisions concerning fishing or aquaculture activities that may endanger the preservation of one or more species or cause damage to ecosystems.

Semar, for its part, reported via its communication SSPCC.408/2021 **(Annex 3)** that from 2017 to 2021 it had carried out 14 maritime surveillance operations on the high seas with interception patrols, for a total duration of 188 days.

In its report, Conapesca indicated that from 2016 to 2021, it carried out 1,350 inspection trips on land, 1929 at sea, and 41 vehicle inspection spot checks, resulting in the completion of 42 inspection reports and 724 verifications. **(Annex 4)**

Regarding the obligation to levy penalties and fines to ensure that no loggerhead turtle specimens may be caught in the Gulf of Ulloa, it should be noted that pursuant to the terms of the LGPAS, from 2016 to 2021 Conapesca reported the precautionary confiscation of 37 sets of fishing gear, 8 vessels, 6 outboard motors, 5 fishing boats and 5,334 kilos of fish products.

Profepa reported via communication PFPA/5.3/2C.28.2/03124 **(Annex 1)** that the following files are pending as a result of patrols conducted in the Gulf of Ulloa, in Baja California Sur: PFPA/10.3/2C.27./0038-19, PFPA/10.3/2C.27.3/0039-19 and the PFPA/10.3/2C.27.3/0029-20.

In light of the foregoing, it follows that the environmental authorities did not fail to effectively enforce the following legal provisions: LGEEPA Articles 5, paragraphs IX and XIX, 161 and 171; LGVS Articles 9, paragraph XXI, and 104; RI-Semarnat Articles 5, paragraph IX, and 45, paragraphs I, V, VI, IX and XI; and the Fish Refuge Order. The Secretariat is therefore urged to terminate the present submission process, in respect of said legal provisions.

D. The environmental authorities lack the technical and scientific information required to design protection and conservation strategies and instruments.

Regarding this assertion, Conabio indicated in communication CN/037/2021 (**Annex 5**) that in complying with its role of generating information to support decision-making conducive to the enforcement of legislation by the bodies concerned, it maintains loggerhead turtle (*Caretta caretta*) registers, which may be downloaded via the National Information System on Biodiversity (*Sistema Nacional de Información Sobre Biodiversidad*—SNIB):
<http://www.snib.mx/ejemplares/descarga/>.

For easy access, please refer to this communication for a description of how to consult these data.

Similarly, Semarnat's Department for Planning and Environmental Policy (*Subsecretaría de Planeación y Política Ambiental*) reported in communication SPPA/122/2021 (**Annex 6**) that in order to prevent impacts on the loggerhead turtle population from fishing activities, permissible areas and depths were demarcated and fishing gear and permissible mortality thresholds were specified, based on fishing gear-related incidents in the Gulf of Ulloa. This process was conducted pursuant to the provisions established in LGEEPA and its associated regulation to ensure the promotion, management, formulation, and implementation of the Marine and Pacific Region Ecological Management Program (*Programa de Ordenamiento Ecológico Marino y Región del Pacífico*—POEMR-PN) and entailed consultations and agreement with the region's actors, under the coordination of the Ecological Committee.

The permissible mortality thresholds were the product of a sea turtle population modeling study in the Gulf of Ulloa, based on the parameters of fishing effort and the bycatch recorded in local fisheries, with the best available information at that time (2015). Furthermore, although this

program was challenged by CEMDA via its amparo proceeding 1076/2018, which alleged a lack of supporting scientific-technical data for the permissible bycatch-related mortality thresholds, it was in fact shown that the ecological criteria underlying the permissible bycatch-related mortality thresholds (CB25, CB25 Bis, CB26, CB27 and CB28) were indeed based on proper scientific-technical grounds.

Be that as it may, the courts have ruled that actions for the conservation of the loggerhead turtle should be guaranteed on the basis of Mexico's international commitments. To comply with this ruling, Semarnat's Department for Environmental and Comprehensive Regional and Sectoral Policy (*Dirección General de Política Ambiental e Integral Regional y Sectorial de la Semarnat*) has put forward appropriate reforms to the aforementioned ecological criteria in the Management Committee. These reforms will soon be made available for public consultation in the form of a notice in *Diario Oficial de la Federación*, the Government of Mexico's official Gazette.

For its part, the DGVS reported via communication SGPA-DGVS/02913/21 (**Annex 7**) that in terms of technical and scientific information, it was actively preparing the supporting technical and scientific study for the proposal to declare a Refuge in the Gulf of Ulloa, Baja California Sur.

As well, Conanp reported in communication DGOR/0301/2021 (**Annex 8**) that it had implemented via program subsidies, ecosystem conservation and restoration projects focusing on mangrove and ecosystems remediation through solid waste extraction from affected islands. Furthermore, it also reported that the following projects had been authorized under the auspices of the Conservation Program for Sustainable Development: a course on restoration measures (2017), ecosystem sanitation (2018), and ecosystem restoration (2019). The objective of these projects was the preservation of the area's existing ecosystems and their associated species, including the loggerhead turtle.

In light of the foregoing, it follows that the environmental authorities did not fail to effectively enforce the following legal provisions: LGVS Articles 5, paragraphs I, II, III and IX, 9, paragraphs I, VII, X and XV, 60, paragraph I, and 62. Consequently, the Secretariat is urged to terminate the present submission process, in respect of these legal provisions.

E. There is no program to ensure the monitoring and effective compliance with measures aimed at protecting and conserving the loggerhead turtle in the Gulf of Ulloa, Baja California Sur.

In communication DGOPA.-09512/170521 (**Annex 9**), Conapesca referred to background information on the problem of loggerhead turtle beaching and mortality in the Gulf of Ulloa dating back to 2012 and 2013. In particular, since the problem first arose, Conapesca maintains that it has been consistent in observing and indicating that fishing is not the principal cause of loggerhead turtle deaths and beachings in the Gulf of Ulloa. In effect, other causes are relevant, including disease, predators, parasites, hypothermia, etc.

In its communication, Conapesca also reported that from 2014 to 2018, pursuant to its statutory responsibilities, it carried out coordinated actions with fishers in the framework of the Comprehensive Program for Fisheries Management in the Gulf of Ulloa (*Programa Integral de Ordenamiento Pesquero en el Golfo de Ulloa*), which included various assessments by research institutions, dissemination and community outreach activities, and the completion of specific projects through the then Ministry of Agriculture, Livestock Farming, Rural Development, Fisheries and Nutrition (*Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación*).

Furthermore, Conapesca reported that, in addition to increasing the size of the fish refuge, it decreed prohibitions on the following activities, based on the provisions of the Fish Refuge Order:

- 1) Gillnets with a mesh size greater than 15.2 centimeters (6 inches) shall not be used at any time throughout the year.
- 2) Gillnets with a mesh size between 10.8 centimeters (4 1/4 inches) and 15.2 centimeters (6 inches) may not be used during the period of peak sea turtle presence, which occurs every year between May and August.
- 3) In the marine waters of the "Specific Fishing Restrictions Zone," (*Área Específica de Restricciones Pesqueras*) gillnets may not be in operation for more than six continuous hours.
- 4) Longlines with "J" hooks may not be used under any circumstance. Only longlines with circular hooks may be used, provided that they do not exceed a maximum inclination of 10 degrees in relation to the vertical axis.

5) Large temporary fixed traps, known as "almadrabas," may not be used under any circumstance.

In addition, Conapesca announced that, pursuant to the Turtle Refuge Order, it suspended fishing activities of both large and small vessels from the month of June to the end of September 2016, with the exception of the abalone, lobster, clam, snail, octopus and sea cucumber fisheries.

Finally, Conapesca reported that to realize the actions proposed in the framework of the Comprehensive Program for Fisheries Management in the Gulf of Ulloa, in accordance with operating rules, it had budgeted approximately 40 million pesos per year, of which 20 million were allocated to the On Board Technical Assistants Program (*Programa de Asistentes Técnicos a Bordo*), established by the Fish Refuge Order, 15 million for the videotaping and satellite monitoring of fishing operations, and the remaining sum for replacing nets and technical training. Conapesca explained that said activities made it possible to generate information on different fisheries practices, introduce changes via a comprehensive fisheries improvement program, and assist in maintaining fishing as a sustainable activity.

For its part, Profepa reported via its communication PFPA/5.3/2C.28.2/03124 (**Annex 1**) that in the interests of promoting the protection, conservation, and recovery of sea turtle populations and habitats, it periodically publishes the results of its sea turtle-related monitoring and inspection actions, including the monitoring of turtle *arribadas* (swarms), roadside check points, sea turtle excluder device inspections, maritime monitoring patrols, monitoring of turtle beachings, sea turtle colony inspections, etc. As evidence of these activities, the hyperlinks to the relevant publications and bulletins, which are available for consultation, were included in this communication.

Similarly, Profepa also reported that it participated with Semarnat's Development and Environmental Regulation Department (*Subsecretaría de Fomento y Normatividad Ambiental*) and the Ministry of Agriculture and Rural Development in the specification of prohibited fishing gear, methods and equipment, and in monitoring compliance with restrictions on human activities, when the utilization of prohibited fishing gear, methods, and equipment affect or may affect species or ecosystems (**Annex 1**).

Furthermore, Conanp, in communication DGOR/0301/2021 (**Annex 8**), reported that it is currently developing a protection program for the loggerhead turtle refuge in the Gulf of Ulloa pursuant to a provision of the Turtle Refuge Order of 5 June 2018, which established the loggerhead turtle refuge in the Gulf. According to Conanp, it has encountered numerous challenges to organizing a public consultation process for this program.

In the same document, Conanp reported that in 2021 it resumed the elaboration of a Trinational Plan between Mexico, the United States and Japan to promote the recovery of loggerhead turtle populations. The principal purpose of this plan is to update information on the biology and state of loggerhead turtle populations in the North Pacific and to furnish a reference framework for identifying and attending to threats to the species throughout its entire range of distribution.

Furthermore, Conanp reported in communication DAJ/176/2021 (**Annex 10**) that a few meetings have been held by the governments of the three countries to advance the process of elaborating this Trinational Plan. These meetings included the participation of the Ministry of Foreign Affairs, Semarnat, and the National Commission for Protected Natural Areas.

Inapesca also reported in its communication RJL/INAPESCA/DG/DJ/072/2021 (**Annex 11**) that, pursuant to Article 2 of the Fish Refuge Order, it is currently elaborating the relevant Management Plan, which will be publicly released upon completion.

In light of the foregoing, it is evident that the environmental authorities did not fail to effectively enforce environmental law in relation to the following provisions: LGEEPA Articles 5, paragraph XIX, 161 and 171; Articles LGVS 9, paragraph XXI, and 104; RI-Semarnat Articles 45, paragraphs I, V, XIX, and 70, paragraphs I, III, IV and XIII; and the Fish Refuge Order. The Secretariat is therefore urged to terminate the present submission process, in respect of said legal provisions.

F. No recent studies exist on the size of the loggerhead turtle population, without which appropriate catch quotas cannot be determined.

With respect to this assertion, it bears reiterating that in the terms of LGVS Article 160 Bis, no specimen of any species of sea turtle, including any parts or derivatives thereof, may be the object of extractive exploitation, be it for subsistence or commercial purposes.

Moreover, regarding this assertion of the Submitters, Conabio stated in its communication CN/037/2021 (**Annex 5**) that it had received no request for either advice or information on the estimated volumes of extractive activities or trade in relation to the loggerhead turtle.

In any case, may the Secretariat be hereby informed that according to communication SGPA-DGVS/03251/21 (**Annex 12**) a supporting technical study for the declaration of the Gulf of Ulloa, Baja California Sur, as a Refuge for the Loggerhead or Yellow Turtle (*Caretta caretta*) was indeed presented (**Annex 13**). It emerges from this study's analysis that the Mexican state has carried out studies on the issues associated with loggerhead turtle mortality and the threats to said species in the Gulf of Ulloa, as the following excerpts attest.

"Throughout its entire range of distribution, the loggerhead turtle is subject to different threats such as the presence of predators, bycatch from offshore industrial fishing activities, collisions with ships, bycatch due to certain fishing gear used by coastal fishers, and fishing intended for human consumption. In Baja California Sur in particular, there existed a tradition of sea turtle meat consumption.

In addition to this problem, there is the impact of bycatch in gillnets and longlines which are used by coastal fishing fleets to exploit marine resources such as sole and sharks. This is probably the most important cause of sea turtle mortality in the area" (p. 13).

"Sea turtle mortality due to bycatch in longline fishing is, inter alia, one of the principal factors affecting the survival of sea turtle populations" (p. 25).

In this respect, it emerges that the Mexican state, far from failing to conduct a thorough analysis, has acknowledged the problem by identifying the Pacific Ocean as the region where populations are at greatest risk of extinction.

In light of the foregoing, one may conclude that the environmental authorities did not fail to effectively enforce the following provisions of environmental law: LGVS Article 9, paragraphs VI and X. The Secretariat is therefore urged to terminate the present submission process.

G. The Mexican authorities have not done an assessment of the effectiveness of these instruments in reducing bycatch-related mortality.

Regarding these assertions, Conapesca stated in its communication DGOPA.-09512/170521 **(Annex 9)** that as the authority responsible for compliance monitoring of the Fisheries Management Plan's research, evaluation and monitoring activities, as per the provisions of the Fish Refuge Order, it can affirm, after three years of implementing fish management in the region through the Onboard Technical Assistants and Videotaping Systems programs that it has been documented and proven that fishing was not the principal cause of the sea turtle deaths recorded on the west coast of Baja California Sur, attested by the fact that have been no more than 90 proven fishing-relating deaths, in any given year.

H. No review mechanisms exist for assessing the effectiveness of the measures applied.

Regarding this assertion, Conapesca reported in its communication DGOPA.-09512/170521 **(Annex 9)** that based on the fisheries management activities carried out in the Gulf of Ulloa region, and in particular the Onboard Technical Assistants and Videotaping System programs, it has been documented and proven that fishing was not the principal cause of the sea turtle deaths recorded in the Gulf of Ulloa, attested, moreover, by the number of deaths attributed to fishing activities, which have never exceeded 90 in any given year.

This state of affairs is sufficiently clear that on 1 September 2016, the Government of the United States endorsed Mexico's actions to reduce loggerhead turtle bycatch in the Gulf of Ulloa, Baja California Sur.

Furthermore, the DGDE reported via communication number DGPE/077/2021 **(Annex 14)** that according to Semarnat's Sixth 2017-2018 Activities Report *"a total of 586 Civic Environmental Monitoring Committees (Comités de Vigilancia Ambiental Participativa—CVAP) were active from*

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September 2017 to June 2018, with 246 focusing on forest-related issues, 183 on wildlife, 95 on environmental impact, 49 on the ZOFEMAT (Federal Maritime Terrestrial Zone) and 13 on marine resources. Regarding the CVAPs focusing on wildlife, it's worth mentioning that 139 sought to protect priority species, such as the golden eagle, the thick-billed parrot, the scarlet macaw, the military macaw, the jaguar, the black bear, the Mexican prairie dog, the tapir, and various sea turtles, namely the loggerhead, the hawksbill, the olive ridley, the leatherback, the kemp's ridley and the green sea turtle."

Likewise, DGPE reported that in the present administration's first activities report of 2018-2019 a reference was made to the actions carried out to ensure the protection and preservation of sea turtles, which read as follows: *"In April 2019, a report was prepared on the sea turtle conservation and protection actions carried out on Mexican territory and then communicated to the United States to facilitate comparisons in fishing activity pursuant to the provisions of American regulations on the importing of fisheries products."*

In the same vein, the DGPE added that the following information was reported in the second activities report of 2019-2020:

"In the context of the Program for the Protection and Restoration of Ecosystems and Priority Species, as well as other priority species conservation actions, Conanp supported, between September 2019 and June 2020, 36 projects for the conservation, monitoring and management of the following species: the California condor, the South American sea lion, the peninsular pronghorn, the vaquita, the thick-billed parrot, the Mexican wolf, the golden eagle, the long-nosed bat, the Sierra Madre sparrow, the tapir, the jaguar, neotropical eagles, the quetzal, the manatee, crocodiles, sea turtles, coral reefs, the Sonoran pronghorn, the otter, the green iguana, the Mexican spiny-tailed the iguana and mangroves."

Regarding biodiversity, in February and July 2020 *"reports on Sea Turtle conservation and protection actions were filed with the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC) with the objective of ensuring compliance with the legislation passed to protect sea turtles both offshore and in their nesting sites from disturbances arising from human activities."*

Finally, the DGPE reported via communication DGPE/085/2021 (**Annex 15**) that in accordance with the programs to support the recovery of priority species through the protection of their populations and habitats, and in keeping with the 2020-2024 Environment and Natural Resources Sectoral Program, Conanp carried out actions from July 2020 to December 2020 aimed at *“supporting 28 projects for the conservation, monitoring and management of the golden eagle, the mountain stream salamander, mangroves (buttonwood, black and red), the otter, the Mexican wolf, the peninsular pronghorn, the thick-billed parrot, the green macaw, the jaguar, the spider monkey, the black bear, the white-lipped peccary, the Central American tapir, the margay, sea turtles (white, loggerhead, hawksbill, olive ridley, leatherback, kemp’s ridley, green), the mule deer, the volcano rabbit, the South American sea lion, the American crocodile, inter alia, through investments in the amount of 42.4 million pesos.”*

IV. CONCLUSIONS

On the basis of the facts and arguments presented herein, the Government of Mexico attests its compliance with its obligations, as established under the following legal provisions: Article 4 paragraph VI of the Constitution; LGEEPA Articles 5 paragraph XIX, 161, 171, 182 paragraph I and 202 paragraph I; LGVS Articles 5, paragraphs I, II, III and IX, 9, paragraphs I, VII, X, XV and XXI, 60, paragraph I, 60 Bis 1, paragraph I, 62 and 104; RI-Semarnat Articles 5, paragraphs I and IX, 45, paragraphs I, II, V subparagraphs a) and c), VI, X, XI, XII and XIX, and 70, paragraphs I, III, IV and XIII; the Closed Season Order and the Fish Refuge Order. Therefore, in the terms of the provisions of USMCA Article 24.28, the Government of Mexico takes the view that the present submission does not merit the preparation of a factual record.