

UNOFFICIAL TRANSLATION



RESPONSE OF THE UNITED MEXICAN STATES

**SUBMISSION SEM-21-002
(VAQUITA PORPOISE)**

**FILED WITH THE SECRETARIAT OF THE COMMISSION FOR ENVIRONMENTAL COOPERATION
IN ACCORDANCE WITH ARTICLE 24.27(1) OF THE UNITED STATES-MEXICO-CANADA
AGREEMENT (USMCA)**

Mexico City, 31 January 2022

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GLOSSARY

Term	Definition
1975 Totoaba Fishing Ban	<i>Order establishing a fishing ban on the totoaba (Cynoscion macdonaldi) in the waters of the Gulf of California, from the mouth of the Colorado River to Río Fuerte, Sinaloa, on the East Coast, and from the Colorado River to Bahía Concepción, Baja California, on the West Coast, published in the Official Gazette of the Federation (Diario Oficial de la Federación—DOF) on 1 August 1975</i>
2015 Gillnets Order	<i>Order temporarily suspending commercial fishing by means of gillnets and longlines operated on small craft in the Northern Gulf of California, published in the Official Gazette of the Federation on 10 April 2015</i>
2017 Gillnets Order	<i>Order prohibiting specific fishing gear, systems, methods and techniques, and restricting permissible hours, for fishing by small craft in marine waters under Mexican federal government jurisdiction in the Northern Gulf of California, establishing landing sites, and mandating the use of monitoring systems by such craft, published in the Official Gazette of the Federation on 30 June 2017</i>
2020 Gillnets Order	<i>Order regulating fishing gear, systems, methods and techniques, and restricting permissible hours, for small and large craft in Mexican marine areas in the Northern Gulf of California, establishing landing sites, and mandating the use of monitoring systems for such craft, published in the Official Gazette of the Federation on 24 September 2020</i>
CEC	Commission for Environmental Cooperation
CEC Secretariat	Secretariat of the Commission for Environmental Cooperation
CIRVA	International Committee for the Recovery of the Vaquita
CITES	<i>Convention on International Trade in Endangered Species of Wild Fauna and Flora</i>
Conanp	National Protected Natural Areas Commission (<i>Comisión Nacional de Áreas Naturales Protegidas</i>)
Conapesca	National Aquaculture and Fisheries Commission (<i>Comisión Nacional de Acuacultura y Pesca</i>)
DGVS	General Wildlife Branch (<i>Dirección General de Vida Silvestre</i>)
ECA	Agreement on Environmental Cooperation among the Governments of Canada, the United States of America, and the United Mexican States
Enforcement Plan	Enforcement Plan for the Zero Tolerance Area and the Refuge Area for the Protection of the Vaquita
IAICRS	US International Affairs Information Capture and Reporting System
IUCN	International Union for the Conservation of Nature
LFTAIP	Federal Transparency and Access to Public Information Act (<i>Ley Federal de Transparencia y Acceso a la Información Pública</i>)
LGTAIP	General Transparency and Access to Public Information Act (<i>Ley General de Transparencia y Acceso a la Información Pública</i>)
LGEEPA	General Ecological Equilibrium and Environmental Protection Act (<i>Ley General del Equilibrio Ecológico y la Protección al Ambiente</i>)
LGPAS	General Sustainable Fisheries and Aquaculture Act (<i>Ley General de Pesca y Acuacultura Sustentables</i>)
LGVS	General Wildlife Act (<i>Ley General de Vida Silvestre</i>)
Mexico	United Mexican States
NAFTA	North American Free Trade Agreement

Profepa	Office of the Federal Attorney for Environmental Protection (<i>Procuraduría Federal de Protección al Ambiente</i>)
RGVS	Regulations to the General Wildlife Act (<i>Reglamento de la Ley General de Vida Silvestre</i>)
Sader	Ministry of Agriculture and Rural Development (<i>Secretaría de Agricultura y Desarrollo Rural</i>)
Sagarpa	Ministry of Agriculture, Livestock Production, Rural Development, Fisheries, and Food (<i>Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación</i>)
SEM	submissions on enforcement matters
Semar	Ministry of the Navy (<i>Secretaría de Marina</i>)
Semarnat	Ministry of the Environment and Natural Resources (<i>Secretaría de Medio Ambiente y Recursos Naturales</i>)
SSCS	Sea Shepherd Conservation Society
Submission	Submission filed under USMCA Article 24.27 (Submissions on Enforcement Matters) or a submission filed in accordance with Article 14 (Submissions on Enforcement Matters) of the North American Agreement on Environmental Cooperation
Submitters	The Center for Biological Diversity, the Animal Welfare Institute, the Natural Resources Defense Council, and the Environmental Investigation Agency, taken together
USMCA	United States-Mexico-Canada Agreement
Vaquita Porpoise Determination	Determination no. A24.27(2)(3)/SEM/21-002/14/DET of the Secretariat of the Commission for Environmental Cooperation on submission SEM-21-002
Vaquita Porpoise Submission	Submission by the Center for Biological Diversity, the Animal Welfare Institute, the Natural Resources Defense Council, and the Environmental Investigation Agency, filed with the Commission for Environmental Cooperation on 11 August 2021

TABLE OF DOCUMENTARY APPENDICES

Appendix	Document description
MX-001	Profepa complaint
MX-002	File no. DAJ/458/2021
MX-003	Summary of amparo 762/2020-IA
MX-004	Summary of amparos 167/2020-402/2021
MX-005	Summary of amparo 793/2020
MX-006	Summary of amparo 812/2020-I
MX-007	File no. SGPA/DGVVS/07328/21
MX-008	File no. 110.01.-2749/2021
MX-009	File no. UAJ.-13228/290921
MX-010	Evidence, inspection and surveillance measures
MX-011	Evidence, administrative proceeding
MX-012	Evidence, inspection records
MX-013	Administrative procedures, Conamer, <i>Order establishing the reporting format for any interaction with marine mammals and/or fishing gear lost and/or missing during activities in Mexican marine zones</i>
MX-014	File no. DGPPE.-10708/280621, Report for reinstatement of fishing comparability
MX-015	File no. SRE.02S.03/2021/002, Compliance with fishing comparability requirements
MX-016	Fishing comparability requirements
MX-017	File no. UAJ.-14555/221121, Additional information, Conapesca
MX-018	File no. SSPCC.- 848/2021, Semar
MX-019	Profepa inspection measures report
MX-020	Profepa complaints report
MX-021	Gillnet removal measures report
MX-022	Report on reports produced by Sea Conservation Society (SSCS) and International Union for the Conservation of Nature (IUCN)
MX-023	Second comprehensive report to the <i>Convention on International Trade in Endangered Species of Wild Fauna and Flora</i> (CITES)
MX-024	Collaboration Agreement
MX-025	<i>Order establishing a fishing ban on the totoaba (Cynoscion macdonaldi) in the waters of the Gulf of California, from the mouth of the Colorado River to Río Fuerte, Sinaloa on the East Coast, and from the Colorado River to Bahía Concepción, Baja California, on the West Coast</i>
MX-026	<i>Order temporarily suspending commercial fishing by means of gillnets and longlines operated on small craft in the Northern Gulf of California</i>
MX-027	<i>Order prohibiting specific fishing gear, systems, methods and techniques, and restricting permissible hours, for fishing activities by small craft in marine waters under Mexican federal government jurisdiction in the Northern Gulf of California, establishing landing sites, and mandating the use of monitoring systems by such craft</i>
MX-028	<i>Order regulating fishing gear, systems, methods and techniques, and restricting permissible hours, for small and large craft in Mexican marine areas in the Northern Gulf of California, establishing landing sites, and mandating the use of monitoring systems for such craft</i>
MX-029	CEC Secretariat Determination no. A14/SEM/19-004/07/DET_14(1)(2) ("Vaquita Porpoise Determination")
MX-030	Submission SEM-21-003, <i>North Atlantic Right Whale</i>
MX-031	Enforcement Plan for the Zero Tolerance Area and the Refuge Area for the Protection of the Vaquita

MX-032	General Transparency and Access to Public Information Act
MX-033	Federal Transparency and Access to Public Information Act
MX-034	CITES Decision 18.292
MX-035	<i>Order establishing indicators, implementation triggers, and predetermined measures in accordance with Article 17 of the Order regulating fishing gear, systems, methods and techniques, and restricting permissible hours, for small and large craft in Mexican marine areas in the Northern Gulf of California, establishing landing sites, and mandating the use of monitoring systems for such craft, published in the Official Gazette of the Federation on 24 September 2020 (the "Implementation Triggers Order")</i>
MX-036	List of pending and closed amparo motions in which Semarnat was named as the responsible authority

A. BACKGROUND

1. On 11 August 2021, the Center for Biological Diversity, the Animal Welfare Institute, the Natural Resources Defense Council, and the Environmental Investigation Agency (the “Submitters”) filed a submission (the “Vaquita Porpoise Submission”) with the Secretariat of the Commission for Environmental Cooperation (the “CEC Secretariat”) pursuant to Article 24.27(1) of the United States-Mexico-Canada Agreement (USMCA) asserting that Mexico is failing to effectively enforce the General Wildlife Act (*Ley General de Vida Silvestre—LGVS*), its regulations, and various ministerial orders intended to protect the vaquita porpoise.
2. On 8 September 2021, the CEC Secretariat issued determination no. A24.27(2)(3)/SEM/21-002/14/DET (the “Vaquita Porpoise Determination”), finding from its review of the Vaquita Porpoise Submission that the submission qualified for further review, since it met the requirements of USMCA Article 24.27(2). It thus found that the submission merited a response from the Government of Mexico pursuant to USMCA Article 24.27(3).
3. The Submitters’ assertions revolve around the issues mentioned in paragraph 10 of the Vaquita Porpoise Determination, which include “insufficient action to ensure the implementation of the 2020 Gillnets Order” and “failure to enforce fishing and trade bans.”¹
4. Correspondingly, the CEC Secretariat, in its determination, requested a response from the Government of Mexico with respect to the following legal provisions:²
 - i) Article 55 of the LGVS³ and Article 56 of the LGVS Regulations;⁴
 - ii) the *Order establishing a fishing ban on the totoaba (Cynoscion macdonaldi), in the waters of the Gulf of California, from the mouth of the Colorado River to Río Fuerte, Sinaloa, on the East Coast, and from the Colorado River to Bahía Concepción, Baja California, on the West Coast* (the “**1975 Totoaba Fishing Ban**”);⁵
 - iii) the *Order temporarily suspending commercial fishing by means of gillnets and longlines operated on small craft in the Northern Gulf of California* (the “**2015 Gillnets Order**”);⁶
 - iv) the *Order prohibiting specific fishing gear, systems, methods and techniques, and restricting permissible hours, for fishing activities by small craft in marine waters under Mexican federal government jurisdiction in the Northern Gulf of California, establishing landing sites, and mandating the use of monitoring systems by such craft* (the “**2017 Gillnets Order**”),⁷ and

¹ Vaquita Porpoise Determination, ¶10.

² *Ibid.*, ¶ 49.

³ “Article 55. The import, export, or re-export of wildlife specimens, parts, and derivatives included in the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* shall be conducted in accordance with said Convention, the provisions of this Act, and the provisions flowing from it, it being prohibited to import, export, re-export, and/or market ivory in violation of the international treaties to which Mexico is a party and of the applicable legislation.”

⁴ “Article 56. The import, export, and re-export of biological materials of species included in the CITES appendices shall be subject to the provisions of said Convention.”

⁵ **MX-025**, 1975 Totoaba Fishing Ban.

⁶ **MX-026**, 2015 Gillnets Order.

⁷ **MX-027**, 2017 Gillnets Order.

- v) the *Order regulating fishing gear, systems, methods and techniques, and restricting permissible hours, for small and large craft in Mexican marine areas in the Northern Gulf of California, establishing landing sites, and mandating the use of monitoring systems for such craft* (the “**2020 Gillnets Order**”).⁸

B. ANALYSIS OF THE VAQUITA PORPOISE DETERMINATION

5. Mexico is of the opinion that the Vaquita Porpoise Submission received by the CEC Secretariat on 11 August 2021 did not merit a response from Mexico because it did not meet the requirements of USMCA Article 24.27 (Submissions on Enforcement Matters), paragraph 3.

6. USMCA Article 24.27(3) provides as follows:

3. If the CEC Secretariat determines that a submission meets the criteria set out in paragraph 2, it shall determine within 30 days of receipt of the submission whether the submission merits requesting a response from the Party. In deciding whether to request a response, the CEC Secretariat shall be guided by whether:

- (a) the submission alleges harm to the person making the submission;
- (b) the submission, alone or in combination with other submissions, raises matters about which further study would advance the goals of this Chapter;
- (c) private remedies available under the Party’s law have been pursued; and
- (d) the submission is not drawn exclusively from mass media reports.

7. Pursuant to USMCA Article 24.27(3), the criteria to be met by the CEC Secretariat before requesting a response from a Party are, as the text indicates, *i*) binding, and *ii*) additive.

8. Being a binding provision—the text of the article reads “shall be guided”—the CEC Secretariat is not at leisure to ignore the conditions set out in USMCA Article 24.27(3)(a) to (d).⁹ That is, the USMCA Parties did not give the CEC Secretariat the discretion to decide when to be, or not to be, guided by these criteria.

9. Thus, the fact that the criteria are additive—the Spanish conjunction used between subparagraphs (c) and (d) is “y”—should signify that the CEC Secretariat must consider the criteria contained in all the paragraphs in arriving at a decision.¹⁰ If not all the criteria contained in USMCA Article 24.27(3)(a) to (d) are met, the CEC Secretariat should not request a response to the submission from the Party; put differently, if even one of the criteria is not met, the CEC Secretariat must not request a response from the Party.

10. Without prejudice to Mexico’s position on these or any other issues not addressed in this document, the following paragraphs address some of the issues that the CEC Secretariat should have considered before requesting a response from Mexico.

1. Analysis of USMCA Article 24.27(3)

⁸ **MX-028**, 2020 Gillnets Order.

⁹ The English and French text of USMCA Article 24.27(3) also use binding language: “shall be guided” and “cherche à déterminer.”

¹⁰ The English text of USMCA Article 24.27(3) also uses additive language: “and.”

a. No harm to the person making the Vaquita Porpoise Submission is demonstrated

11. According to the CEC Secretariat, “[t]he submission documents the gradual reduction in vaquita specimens in the Upper Gulf of California and presents information showing that illegal totoaba fishing has been detrimental to the vaquita porpoise since 1976 when the totoaba was included in Appendix I of CITES.”¹¹ The CEC Secretariat found in its determination that “when considering the question of damages it must consider whether the damages asserted are due to the alleged failure to effectively enforce environmental law and whether said damages are related to environmental protection,” and that “in keeping with normal SEM practices, the Secretariat finds that the submission satisfies the criterion of USMCA Article 24.27(3)(a).”¹²

12. However, USMCA Article 24.27(3)(a) makes no reference to the relationship between the damages and the alleged failure to effectively enforce environmental law; rather, its text provides that the submission must allege harm to the person making it.

13. In the Vaquita Porpoise Determination, the CEC Secretariat makes reference to the practice used by the CEC Secretariat for previous submissions, including submission SEM-19-004 (*Barred Owl*), when assessing harm to the person making the submission.¹³

14. The CEC Secretariat, in its determination in *Barred Owl*, reviewed the objectives and interests of the organization making the submission as well as the specific harms caused to members of the organization.¹⁴

15. In the Vaquita Porpoise Determination, the CEC Secretariat did not review the possible “harm” caused by any alleged enforcement failure “to the person making the submission.” That is, no causal relationship was established between the assertions made and the alleged negative impacts caused to the Submitters.

16. Since the Submitters failed to demonstrate that the alleged failure to enforce caused them harm, the CEC Secretariat should not have requested a response from Mexico in regard to the Vaquita Porpoise Submission.

b. Pursuit of private remedies available under the Party’s law

17. The CEC Secretariat found that the Vaquita Porpoise Submission meets the requirement of USMCA Article 24.27(3) in that “the Submitters provided documentation and information that substantiate their efforts to pursue private remedies” by filing a citizen complaint on 14 March 2017

¹¹ Vaquita Porpoise Determination, ¶ 41.

¹² Vaquita Porpoise Determination, ¶ 42.

¹³ See Vaquita Porpoise Determination, ¶ 42.

¹⁴ *Ibid.*, ¶ 29.

with the Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) in the state of Baja California pursuant to Article 189 of the General Ecological Equilibrium and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA) and LGVS Article 107, which “advanced the same assertions as the submission.”¹⁵

18. The legal provisions mentioned by the Submitters make reference to the right of any person to file a complaint with Profepa where he has knowledge of harm to the environment, wildlife, or its habitat. However, LGEEPA Article 189 and LGVS Article 107, at issue in the proceeding initiated by the Submitters in Mexico, are not mentioned in the Vaquita Porpoise Submission, nor is a response requested from Mexico in regard to them.¹⁶ The legal provisions mentioned in the Vaquita Porpoise Submission are different from the ones at issue in the complaint.

19. The CEC Secretariat found that the complaint filed by the Submitters in Mexico “advanced the same assertions as the submission.”¹⁷ However, the Vaquita Porpoise Determination does not describe which claims or matters are considered to be the same.

20. A perusal of the citizen complaint filed by Center for Biological Diversity with the Profepa office in the State of Baja California¹⁸ leads to the following remarks:

- i) The citizen complaint was filed in connection with an alleged failure to effectively enforce the environmental law with respect to **environmental impact approvals** in connection with the granting of concessions or permits to carry out fishing activities within the Upper Gulf of California and Colorado River Delta Biosphere Reserve (*Reserva de la Biosfera del Alto Golfo de California y Delta del Río Colorado*).¹⁹
- ii) The obligation to conduct an environmental impact assessment in order to carry out fishing or aquaculture activities that may endanger the preservation of one or more species or cause harm to ecosystems is governed by **LGEEPA Article 28 paragraph XII**.
- iii) A reading of the citizen complaint shows that it **bears no relationship to LGVS Article 55 or to Article 56 of the LGVS Regulations, the 1975 Totoaba Fishing Ban, the 2017 Gillnets Order, or the 2020 Gillnets Order**, all of these cited by the Submitters in the submission.

21. The Submitters assert that “Mexico is ‘failing to effectively enforce its environmental law’ under the USMCA,”²⁰ yet the legal proceedings brought by the submitters in Mexico are related to the regulation of environmental impact statements and to provisions not mentioned by the Submitters in the Vaquita Porpoise Submission, if they were in force at the time of entry into force

¹⁵ See Vaquita Porpoise Determination, ¶ 45–6.

¹⁶ See Vaquita Porpoise Determination, ¶ 49.

¹⁷ Vaquita Porpoise Determination, ¶ 45.

¹⁸

¹⁹ **MX-001**, Profepa Complaint, considerations of law, paragraphs 5–8.

²⁰ Vaquita Porpoise Submission at 8.

of the USMCA, which cannot be tantamount to saying that “Mexico is failing to effectively enforce the General Wildlife Act (*Ley General de Vida Silvestre*—LGVS), its regulations, and various other legal instruments intended to protect the vaquita.”²¹

22. The “pursuit of private remedies available under the Party’s law” has to be closely linked to the submission on enforcement matters filed under the USMCA. Otherwise, the requirement of USMCA Article 24.27(3)(c) would be pointless, since it could be met by any type of legal or administrative proceeding, including one whose object is different from that of the submission or whose result, even if favorable, would not lead to a resolution of the matter raised in the submission.

23. The submissions on enforcement matters procedure promotes the effective enforcement of environmental law, yet it cannot be the first remedy pursued by submitters. Submitters must appeal to domestic bodies of the Party, initiating proceedings relating to matters of concern to them with a view to achieving the effective enforcement of environmental law, with the subsequent possibility of filing a submission.

24. In previous cases, the CEC Secretariat has requested additional information from the submitter to ascertain whether the matters raised in the private remedies available under the Party’s law are the same as the ones raised in the submission.²² This was not the case for the Vaquita Porpoise Submission.

25. Since the Submitters failed to demonstrate that they pursued remedies under Mexico’s law in relation to the provisions adduced in the Vaquita Porpoise Submission, the CEC Secretariat should not have requested a response from Mexico in regard to the Vaquita Porpoise Submission.

c. The submission is exclusively based on mass media reports

26. According to the Secretariat, “the submission is *not* based on mass media reports”; furthermore, even though “the submission refers to an investigation by the Excelsior newspaper ... this investigation is not the submission’s principal source of information.”²³ Mexico does not concur with the CEC Secretariat on these assertions.

27. The Submitters make ample reference to newspaper articles in support of the Vaquita Porpoise Submission. Solely with respect to occurrences subsequent to the entry into force of the USMCA, all the references used by the Submitter come from publications in the following newspapers: *Mexico News Daily*, *Excelsior*, *Forbes*, and *Infobae*. Below, the cited articles on which the Submitters attempted to base the Vaquita Porpoise Submission are transcribed:²⁴

²¹ See Vaquita Porpoise Determination, ¶ 45

²² **MX-030**, Determination SEM-21-003 (*North Atlantic Right Whale*), ¶ 92, 95–6. Paragraph 92 of Determination SEM-21-003 (*North Atlantic Right Whale*) reads: “A revised submission could explain whether the issues raised in these cases [two cases before the US federal district courts] are the same issues raised in the submission and provide copies of the complaints filed in each case.”

²³ Vaquita Porpoise Determination, ¶ 47–8.

²⁴ Vaquita Porpoise Submission at 12–14.

- “In September 2020, Mexico issued its new vaquita regulations. Yet immediately, Mexico failed to enforce the restrictions. The head of the fishermen’s federation in San Felipe, Lorenzo Garcia, stated that shrimpers used prohibited gillnets the very day after the regulations were announced.”⁸⁷

⁸⁷ “Baja shrimp fishermen defy rules designed to save vaquita,” *Mexico Daily*, 28 September 2020, <https://mexiconewsdaily.com/news/baja-shrimp-fishermen-defy-rules-designed-to-save-vaquita>).

- “Local fishermen acknowledge and are gravely harmed by the lack of enforcement. In a February 2021 meeting with government officials, Mr. Ramón Franco, a San Felipe fishermen representative, noted that ‘everyone sees how in broad daylight illegals operate in total impunity.’⁹³ Carlos Tirado, a Golfo de Santa Clara fishing cooperative leader, asked, ‘[w]hen will there be a real strategy from the federal government and industry to find a solution, because as of today, February 26th, it does not exist?’⁹⁴ Tirado also noted that, the government had failed to provide alternatives to the communities.”⁹⁵

⁹³ See E. Méndez, “Gobierno llegó a reunión sin estrategia para hábitat de vaquita marina: pescadores,” *Excelsior*, 26 February 2021, <https://www.excelsior.com.mx/nacional/gobierno-llego-a-reunion-sin-estrategia-para-habitat-de-vaquita-marina-pescadores/1435014>.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

- “According to *Excelsior*, government reports on the 2020 Upper Gulf shrimp season reveal a lack of resources, planning, logistics, and knowledge among senior enforcement officials, leading to ‘[l]os nulos resultados’ or zero results in vaquita protection or in combatting illegal totoaba trafficking.⁹⁹ Specifically, Profepa’s low budget is used inappropriately and for improvised actions that yield no results. As an example, *Excelsior* reports that in late 2020, despite adding 19 federal inspectors to support local authorities, no small vessels were available for their use ‘because there was not enough money for fuel.’ *Excelsior* further reported that there were no towboats or four-wheeled drive vehicles available to conduct beach patrols, no accommodations for enforcement officials to stay overnight, and no office space.”¹⁰⁰

⁹⁹ See E. Méndez, “Sin recursos ni estrategia, Profepa enfrenta extinción de vaquita marina,” *Excelsior*, 25 February 2021, <https://www.excelsior.com.mx/nacional/sin-recursos-ni-estrategia-profepa-enfrenta-extincion-de-vaquita-marina/1434816>.

¹⁰⁰ *Ibid.*, 101; E. Méndez, “Embarcaciones ilegales operan a pesar de vigilancia en hábitat de vaquita marina,” *Excelsior*, 10 June 2021, <https://www.excelsior.com.mx/nacional/embarcaciones-ilegales-operan-a-pegar-de-vigilancia-en-habitat-de-vaquita-marina/1453994>.

¹⁰² Y. de la Rosa, “El medio ambiente no es prioridad para AMLO; organismos tienen recortes de 37%,” *Forbes México*, 27 April 2021, <https://www.forbes.com.mx/el-medio-ambiente-no-es->

[prioridad-para-amlo-organismos-tienen-recortes-de-37/](#).

28. Given this, and contrary to the Secretariat's finding that "the submission is *not* based on mass media reports but is instead based on the documentation and information gathered by the Submitters,"²⁵ Mexico's view is that the Submitters' assertions are based on mass media reports.

29. As an additional note, approximately 45 references used by the Submitters mention facts allegedly occurred in the period 1975–2019, or prior to the entry into force of the USMCA, and therefore prior to the Parties' obligations under the USMCA.

30. Since the Submitters substantially based the Vaquita Porpoise Submission on newspaper articles, the CEC Secretariat should not have requested a response from Mexico in regard to the Vaquita Porpoise Submission.

31. For the foregoing reasons, and with reference to USMCA Article 24.27(3)(a), (c), and (d), Mexico's view is that the Secretariat should not have requested a response from the Government of Mexico, since the criteria of these provisions were not met.

C. MEXICO'S RESPONSE UNDER USMCA ARTICLE 24.27(4)

32. Notwithstanding the considerations set out in section B), "Analysis of USMCA Article 24.27(3)," of this report, Mexico hereby submits to the CEC Secretariat various information on the matters and legal provisions addressed in the Vaquita Porpoise Submission for the purpose of complying with the provisions of USMCA Article 24.27(4).²⁶

1. Mexico submits information in accordance with the USMCA

33. As noted by the CEC Secretariat in its request for a response from Mexico, the USMCA came into force on 1 July 2020 pursuant to clause 2 of the *Protocol Replacing the North American Free Trade Agreement with the Agreement between Canada, the United States of America, and the United Mexican States* (the "Protocol").

34. At the moment when the USMCA came into force, it superseded the North American Free Trade Agreement (NAFTA) pursuant to clause 1 of the Protocol; that is, the provisions of NAFTA became invalid, "without prejudice to those provisions set forth in the USMCA that refer to provisions of the NAFTA."

35. Therefore, Mexico hereby submits a response in accordance with its undertakings within the framework of the USMCA, which are binding as from its entry into force; i.e., as of 1 July 2020.²⁷

²⁵ Vaquita Porpoise Determination, ¶ 47.

²⁶ The information contained in this report was provided by various administrative units and deconcentrated bodies of Semarnat as well as by administrative units of Sader and Semar.

²⁷ Various provisions of the USMCA confirm Mexico's position by stating it explicitly; e.g., Article 24.4 (Enforcement of Environmental Laws) provides that "[n]o Party shall fail to effectively enforce its environmental laws ... after the date of entry into force of this Agreement." Similarly, Article 28 (Non-retroactivity of Treaties) of the Vienna Convention on the Law of Treaties provides that "[the] provisions [of a treaty] do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry

2. Any other information the Party wishes to provide regarding the enforcement of the environmental law in question

36. Mexico hereby submits additional information for the consideration of the CEC Secretariat in accordance with USMCA Article 24.27(4)(b).

a. Enforcement of LGVS Article 55 and Article 56 of the LGVS Regulations

37. In file no. SGPA/DGVS/07328/21,²⁸ the General Wildlife Branch (*Dirección General de Vida Silvestre*—DGVS) of the Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*—Semarnat),²⁹ in its capacity as the administrative authority of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) in Mexico, stated that it has implemented the record of the procedure titled “Approval, permit, or certificate for the import, export, or re-export of wildlife specimens, parts, and derivatives” in the Federal Registry of Procedures and Services (*Registro Federal de Trámites y Servicios*) maintained by the National Regulatory Improvement Commission (*Comisión Nacional de Mejora Regulatoria*—Conamer).³⁰

38. The DGVS indicated that this is the procedure used for compliance with the provisions of CITES, mainly as regards those of Article VI (Permits and Certificates) of the Convention and the resolutions of the Conference of the Parties deriving from it.

39. In regard to the Secretariat’s request for a response from the Party in relation to the alleged failure to enforce LGVS Article 55 and Article 56 of the LGVS Regulations, the DGVS stated as follows:

This branch has no record of any complaint filed by any oversight body, ministerial authority, or the Convention itself, concerning any alleged failure to enforce, or non-enforcement, of Article 55 of the General Wildlife Act or Article 56 of its regulations; therefore, it is evident that the Center for Biological Diversity, the Animal Welfare Institute, the Natural Resources Defense Council, and the Environmental Investigation Agency have not attached to their submission documents demonstrating their statement, especially given that it is necessary to state the facts, referring to circumstances of method, time, and place, constituting the alleged failures of enforcement to which the submission refers.³¹

40. This is particularly relevant to a reiteration that the submission does not meet the requirement of USMCA Article 24.27(3)(c), since the Submitters did not exhaust the remedies available to them under the law of the Party (Mexico), nor was any complaint filed

into force of the treaty with respect to that party.”

²⁸ **MX-007**, File no. SGPA/DGVS/07328/21.

²⁹ The DGVS is competent to rule on applications for the import, export, or re-export of wildlife specimens, parts, and derivatives from species listed in the CITES appendices, in accordance with Article 32 paragraph XI of the Internal Regulation of Semarnat.

³⁰ For procedure SEMARNAT-08-009, “Approval, permit, or certificate for the import, export, or re-export of wildlife specimens, parts, and derivatives,” application form FF-SEMARNAT-008 applies.

³¹ **MX-007**, File no. SGPA/DGVS/07328/21 at 2.

for failure to enforce LGVS Articles 55 and 56. These considerations underlie Mexico's view that the CEC Secretariat's decision to request a response from the Party was incorrect.

41. On this score, it bears mention that the Mexican environmental authority did not fail to enforce LGVS Article 55 and Article 56 of the LGVS Regulations, in view of the measures that it took with Conamer in regard to the import, export, or re-export of wild species included in the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* as well as biological materials derived from species included in CITES, added to the absence of records of any complaint filed by an oversight body, ministerial authority, or the Convention itself concerning alleged failure to enforce, or non-enforcement of, the articles in question.
42. Additionally, the Secretariat is hereby informed that pursuant to LGVS Article 60 Bis, no marine mammal specimens, regardless of species, may be subject to extractive use, whether for subsistence or commercial purposes, with the exception of take whose purpose is scientific research and higher education by accredited institutions.
43. For the foregoing reasons, Mexico's view is that the Submitters' assertions regarding the alleged failure to enforce LGVS Article 55 and Article 56 of the LGVS Regulations are unfounded; on these grounds, it urges the CEC Secretariat to terminate the submission process with respect to these legal provisions.

b. Measures to ensure the implementation of the 2015 Gillnets Order

44. The CEC Secretariat is hereby informed that the 2015 Gillnets Order lapsed on 10 April 2015 and was not in force on the date of entry into force of the USMCA.

c. Measures to ensure the implementation of the 2017 Gillnets Order

45. The 2017 Gillnets Order was in force on the date of entry into force of the USMCA; however, it was repealed three months later, on 24 September 2020, with the entry into force of the 2020 Gillnets Order. Therefore, the enforcement measures set out in Article 9 of said order, under the responsibility of Semarnat, the Ministry of Agriculture and Rural Development (*Secretaría de Agricultura y Desarrollo Rural—Sader*), and the Ministry of the Navy (*Secretaría de Marina—Semar*) and applied during this period, were incorporated into the 2020 report that is presented in the corresponding section.

d. Measures to ensure the implementation of the 2020 Gillnets Order

46. The Submitters contend that the Enforcement Plan for the Zero Tolerance Area and the Refuge Area for the Protection of the Vaquita (*Plan de Aplicación en la Zona de Tolerancia Cero y el Área de Refugio para la Protección de la Vaquita Marina*, or the "Enforcement Plan") is insufficient. The Submitters assert that this instrument must specify the inspection

and surveillance measures as well as the measures for the recovery, disposal, and recycling of illegal or lost nets. The Submitters contend that “the Mexican government has not issued a plan that meets these requirements.”³²

47. In this regard, the CEC Secretariat is hereby informed that the Enforcement Plan was published in the Official Gazette of the Federation on 20 January 2021.³³ Paragraphs b(3), c(1), and d(1),(2), and (6) of section 2 (Operation and Coordination Functions) read as follows:

SECTION 2. OPERATION AND COORDINATION FUNCTIONS

b. MINISTRY OF THE NAVY (Semar):

3. Maintain close coordination with Conapesca, Profepa, and Conanp for efficient execution of the planned maritime inspection and surveillance operations.

c. NATIONAL AQUACULTURE AND FISHERIES COMMISSION (Conapesca):

1. Participate, within the scope of its jurisdiction and alongside Semar and Profepa, in the inspection and surveillance of the Zero Tolerance Area and Refuge Area for the Protection of the Vaquita.

d. OFFICE OF THE FEDERAL ATTORNEY FOR ENVIRONMENTAL PROTECTION (Profepa):

1. Participate, within the scope of its jurisdiction and alongside Semar and Conapesca, in the inspection and surveillance of the Zero Tolerance Area and Refuge Area for the Protection of the Vaquita.
2. Conduct inspection visits at places where illegal acts relating to totoaba fishing may be carried out.
6. Participate in maritime surveillance operations with Semar, the National Guard, Conapesca, and, as applicable, Conanp.

48. Along the same lines, section 7 reads as follows:

SECTION 7: LAW ENFORCEMENT. The authorities responsible for enforcement of the General Sustainable Fisheries and Aquaculture Act (*Ley General de Pesca y Acuicultura Sustentables*—LGPAS); the General Ecological Equilibrium and Environmental Protection Act (LGEEPA); the General Wildlife Act (LGVS), and other applicable legal provisions shall take the following measures, within the scope of their jurisdiction:

- a. Produce a specific plan for inspections among fishing communities, cooperatives, and ship owners, among others, with a view to verifying, seizing, or destroying fishing gear and/or craft that are illegal or lack the required permits.
- b. Draw up the relevant inspection report, as well as the report of results, where irregularities of an administrative and/or penal nature are detected, which shall be made available to the competent authority, along with the vessels, equipment, vehicles, fishing gear, and products seized, in accordance with the legal provisions and as prescribed by the Order.
- c. Carry on ongoing acts of law enforcement with respect to illegal totoaba fishing. Maritime surveillance patrols shall take place seven days a week in the Zero Tolerance Area. All vessels using or possessing fishing gear not permitted by the Order shall be immediately seized on a precautionary basis and the procedure to determine the offense committed shall be initiated as prescribed by LGPAS Articles 132 paragraph XVII and 133

³² Vaquita Porpoise Submission at 9.

³³ **MX-031**, Enforcement Plan for the Zero Tolerance Area and the Refuge Area for the Protection of the Vaquita.

paragraph VI.

49. On this note, the Party points out that contrary to the Submitter's assertions, the Enforcement Plan does contemplate inspection and surveillance measures.
50. In addition, the CEC Secretariat is hereby notified that the following information was received further to inquiries made with Sader, Semar, and Profepa in regard to compliance with the inspection and surveillance measures prescribed by the 2020 Gillnets Order.

I) Report of inspection and surveillance measures carried out by Sader

51. In file no. 110.01.-2749/2021,³⁴ the office of the Advocate-General of Sader submitted Conapesca file no. UAJ.-13228/290921,³⁵ which indicates the institutional report referring to law enforcement.
52. It is evident from this report that the measures taken to enforce the 2020 Gillnets Order and the Enforcement Plan during 2020 and 2021 by Conapesca in coordination with Semar and Profepa included prevention sessions, checkpoints, land and water surveillance tours, vessel checks, and vehicle checks in San Felipe, Baja California and in the Gulf of Santa Clara, Sonora, for the protection of the vaquita, as summarized in the following tables.³⁶

San Felipe, Baja California:

2020	Total
Prevention sessions	1
Checkpoints	151
Maritime surveillance tours	101
Land surveillance tours	278
Vessel checks	179
Vehicle checks	108

2021	Total
Prevention sessions	52
Observation points	2
Checkpoints	424
Maritime surveillance tours	189
Land surveillance tours	535
Vessel checks	2,089
Vehicle checks	207

Gulf of Santa Clara, Sonora

³⁴ **MX-008**, File no. 110.01.-2749/2021.

³⁵ **MX-009**, File no. UAJ.-13228/290921.

³⁶ The detailed description and documentary evidence of the activities are given in appendices **MX-009**, File no. UAJ.-13228/290921, and **MX-010**, Evidence, inspection and surveillance measures.

2020	Total
Observation points	1
Checkpoints	309
Maritime surveillance tours	14
Land surveillance tours	151
Vessel checks	324
Vehicle checks	0

2021	Total
Prevention sessions	25
Observation points	225
Checkpoints	256
Maritime surveillance tours	101
Land surveillance tours	299
Vessel checks	534
Vehicle checks	351

53. Concerning the handling of gillnets, Conapesca reported that further to various acts of inspection and surveillance, 8 administrative proceedings were opened, resulting in the destruction and/or confiscation of gillnets.³⁷
54. Likewise, Conapesca reported³⁸ that as a result of the inspection and surveillance measures prescribed by the Enforcement Plan, 36 official inspection records were produced.³⁹ Concerning the handling of gillnets, it reported that it is currently making administrative arrangements with Conamer in regard to the *Order establishing the reporting format for any interaction with marine mammals and/or fishing gear lost and/or missing during activities in Mexican marine zones*.⁴⁰
55. Similarly, Conapesca stated that in order to restore fishing comparability⁴¹ as reiterated 9 March 2020 by means of the *Notification of Revocation of Comparability Findings and Implementation of Import Restrictions; Certification of Admissibility for Certain Fish Products From Mexico*,⁴² negotiations are underway, as is strengthening of the regulatory framework, and a request will be made to reinstate fishing comparability in the US International Affairs Information Capture and Reporting System (IAICRS).
56. From the foregoing remarks, it may be observed that the Government of Mexico is

³⁷ **MX-011**, Evidence, administrative proceeding.

³⁸ **MX-009**, File no. UAJ.-13228/290921.

³⁹ For more information on the evidence, see **MX-012**, Evidence, inspection records.

⁴⁰ **MX-013**, Conamer administrative procedures, *Order establishing the reporting format for any interaction with marine mammals and/or fishing gear lost and/or missing during activities in Mexican marine zones*.

⁴¹ **MX-014**, File no. DGPPE.-10708/280621, Report for reinstatement of fishing comparability, and **MX-015**, File no. SER.02S.03/2021/002, Compliance with requirements for fishing comparability.

⁴² **MX-016**, Requirements for fishing comparability.

effectively enforcing the environmental legal provisions relating to inspection and surveillance. It is particularly notable that the competent authorities are implementing the provisions of the 2020 Gillnets Order.

57. In relation to the information submitted as evidence of inspection and surveillance measures in appendices **MX-010, MX-011 and MX-012**, the Parties and the Secretariat are asked to safeguard this information, which is deemed confidential pursuant to the General Transparency and Access to Public Information Act (*Ley General de Transparencia y Acceso a la Información Pública—LGTAIP*),⁴³ the Federal Transparency and Access to Public Information Act (*Ley Federal de Transparencia y Acceso a la Información Pública—LFTAIP*),⁴⁴ and the *Agreement on Environmental Cooperation among the Governments of Canada, the United States of America, and the United Mexican States* (the “Environmental Cooperation Agreement” or “ECA”).⁴⁵
58. Finally, with respect to the Submitter’s assertion relating to surrender of gillnets by concession and permit holders and their request for information, folio no. 0189700216820 of 3 February 2021, Conapesca reported that⁴⁶ pursuant to Article 10 of the 2020 Gillnets Order and in accordance with Mexican law, the surrender of fishing gear constitutes a voluntary act by the owners of the nets, protected by the constitutional right enshrined in Article 16.⁴⁷
59. Thus, unless a person fails to comply with the applicable legal framework—e.g., the 2020 Gillnets Order—his fishing gear may be confiscated and destroyed in accordance with the applicable administrative procedure. For this reason, there has been no report to date of voluntary surrender of gillnets to Conapesca by permit or concession holders.

II) Report of inspection and surveillance measures carried out by Semar

60. In a document,⁴⁸ Semar reported on inspection and surveillance activities carried out in the Upper Gulf of California for the preservation of the vaquita and to mitigate illicit trafficking in totoaba, in compliance with the 2020 Gillnets Order, as detailed in this section.
61. In December 2020, Semar modified its operational procedure in the region, increasing the human and material resources deployed to the naval sectors of San Felipe, B.C., and Puerto Peñasco, Sonora.

⁴³ **MX-032**, LGTAIP Article 113 paragraphs VI and XI.

⁴⁴ **MX-033**, LFTAIP Article 113 paragraphs VI and XI.

⁴⁵ See ECA Articles 15(3) and 16(1)(d).

⁴⁶ **MX-017**, File no. UAJ.-14555/221121, Additional information, Conapesca.

⁴⁷ **Article 16**. “No one may be disturbed in his person, family, home, papers, or possessions, except on the basis of a warrant in writing by the competent authority that explains the legal and factual basis of the procedure.”

⁴⁸ **MX-018**, File no. SSPCC.-848/2021 Semar.

62. The human and material resources in question are summarized in the following table:

Resources employed	Total
Naval infantry staff	309
Ocean patrol	2
Interception patrol	6
Defense	4
Small craft	6
Helicopters	1
Aircraft	1
Land vehicles	15
UAVs and drones	3

63. With these resources, the following measures are being taken on an ongoing basis:
- Maritime patrols with ocean patrol boats, interception patrols, search and rescue patrols, and small craft.
 - Land patrols with naval infantry personnel aboard pickup-type and armored vehicles.
 - Air patrols with aircraft, helicopters, and drones, on a random basis and in emergency situations endangering human life at sea.
 - Establishment of inspection points and checkpoints for fishing vessels at authorized departure and arrival sites in San Felipe and on the Gulf of Santa Clara.
 - Establishment of observation posts on the Gulf of Santa Clara through deployment of Puerto Peñasco Naval Sector personnel.
 - Similarly, for better results, inspection and verification groups were formed, composed of Profepa inspectors, Conapesca federal fisheries officials, and Semar fisheries officials.
64. In 2021, further to implementation of the aforementioned measures, the following results were obtained in the area of inspection and seizure:

Inspections	
Ships	321
Small craft	3,420
Vehicles	1,393
Persons	8,280
Facilities	15

Seizures	
Ships	0
Small craft	14
Vehicles	0
Persons	5
Facilities	0
Fishing gear recovered	151
Length of fishing nets	38,572

III) Report of inspection and surveillance measures carried out by Profepa

65. Profepa, for its part, reported 359 inspection measures during 2020 and 293 inspection measures from January to October 2021 in the Upper Gulf of California, consisting of tours of water and land, and departure and landing inspections, in collaboration with other federal government agencies.⁴⁹
66. The Parties and the Secretariat are asked to safeguard the information in Appendix MX-019, which is deemed confidential pursuant to the LGTAIP,⁵⁰ the LFTAIP,⁵¹ and the ECA.⁵²
67. Concerning measures taken by Profepa in coordination with the office of the Attorney General of the Republic (*Fiscalía General de la República*) and the Federal Judicial Branch (*Poder Judicial de la Federación*), it reported the following:⁵³

1. International cooperation

In terms of international cooperation, it is important to note that from September 2019 to October 2021, Profepa filed 4 complaints with the Office of the Attorney General of the Republic presumably involving international trafficking rings for totoaba from Mexico.

*The **first complaint**, dated 19 June 2020, was filed by Profepa with the Special Unit for Investigation of Environmental Crimes and Crimes Defined in Special Laws (Unidad Especializada en Investigación de Delitos contra el Ambiente y Previstos en Leyes Especiales) and relates to the seizure of 160 kg of fresh totoaba bellies on 4 June 2020 at the Hong Kong airport. The investigation file is currently at the initial investigation stage.*

*The **second complaint**, dated 27 August 2020, concerns the seizure of 161 totoaba swim bladders weighing approximately 19 kg. These were detected by the customs authorities of the Republic of Taiwan, with an estimated black market value of USD \$900,000 between 28 July and 12 August 2020. The investigation began as the result of a newspaper article and is intended to establish international legal assistance between Mexico and Taiwan. The investigation file is currently at the initial*

⁴⁹ **MX-019**, Profepa inspection measures report.

⁵⁰ **MX-032**, LGTAIP Article 113 paragraph VI.

⁵¹ **MX-033**, LFTAIP Article 110 paragraph VI.

⁵² See ECA Articles 15(3) and 16(1)(d).

⁵³ **MX-020**, Profepa complaints report.

investigation stage.

The **third complaint**, dated 25 November 2020, was filed by Profepa with the Special Unit for Investigation of Environmental Crimes and Crimes Defined in Special Laws. On 30 November 2020, it was taken up for investigation by the Office of the Special Attorney on Organized Crime (Fiscalía Especializada en Materia de Delincuencia Organizada), in relation to the illicit sale of Mexican totoaba in a Chinese store in Vancouver, Canada, with the aim of obtaining international legal assistance on joint investigations between Mexico, Canada, and the People's Republic of China. The investigation file was opened in response to an e-mail from Profepa's Natural Resources Division (Subprocuraduría de Recursos Naturales) relaying another e-mail from an individual who reported the sale of totoaba in Canada. The file is currently at the initial investigation stage.

The **fourth complaint**, dated 28 July 2021, filed with the Special Unit for Investigation of Environmental Crimes and Crimes Defined in Special Laws of the Office of the Attorney General of the Republic, relates to the seizure on 26 July 2021 of 14.4 kilograms of Mexican totoaba bellies by the customs office of the Hong Kong airport, with a value on the Asian market of USD \$415,000.00 (four hundred fifteen thousand dollars of the United States of America). This investigation seeks to obtain international legal assistance on joint investigations between Mexico and the People's Republic of China.

2. Coordination and cooperation with INTERPOL MEXICO

In the INTERPOL system of notifications (tool for combating this illegal trade), the National Central Bureau (NCB) of INTERPOL Mexico did the following:

- a. Published two red notices of priority goals in relation to environmental crimes, both published 8 March 2021 at the request of the Special Attorney on Organized Crime.
- b. Issued an Ecomessage dated 22 January 2021 on the arrest of 10 persons in connection with acts committed by members of the *Cártel del Mar* on 11 November 2020, which functions as an Interpol instrument for analysis of data relating to environmental crimes.

3. Arrest warrants and searches executed

During the period running from September 2019 to November 2021, a total of 10 arrest warrants and two searches were executed, resulting from an exchange of intelligence information between the Office of the Attorney General of the Republic and the Office of the Federal Attorney for Environmental Protection. This served to ascertain the structure of the criminal organization and the *modus operandi* for international trafficking in totoaba.

Detailing this information, 10 arrest warrants were executed on 11 November 2020 with the support of the Ministry of the Navy. The warrants were issued by a Judge Specializing in the Accusatory Penal System (Juez Especializado en el Sistema Penal Acusatorio) of the Federal Penal Justice Center (Centro de Justicia Penal Federal) of the state of Sonora against the *Cártel del Mar* criminal organization. Ten individuals were taken into custody, consisting of 4 leaders of the organization, 3 traffickers, and 3 fishermen, all involved in international trafficking in totoaba, who were charged and subjected to automatic preventive imprisonment.

On 29 April 2021, a Judge Specializing in the Accusatory Penal System of the Federal Penal Justice Center of the state of Baja California charged 3 persons (one a Chinese national) with possession of 224 totoaba bellies weighing 131.743 kg, with commercial intent as an aggravating circumstance, and ordered them preventively imprisoned as a precautionary measure. The charge stemmed from the execution of a search warrant obtained from a supervisory judge (juez de control) of the Federal Penal Justice Centre in the state of Baja California by the Office of the Attorney General of the Republic in that state.

On 20 October 2021, the Office of the Attorney General of the Republic executed a search warrant issued by a Baja California state supervisory judge, resulting in the seizure of 12 totoaba bellies and charges being laid against a person of Asian origin for possession of the totoaba bellies, with commercial intent as an aggravating circumstance; the person was subjected to preventive imprisonment based on the evidence presented.

4. Convictions in cases of illicit possession and transportation of totoaba

In cases of illicit possession and transportation of totoaba that are not associated with organized crime, Profepa secured 6 convictions from September 2019 to November 2021, 3 of them in coordination with the Special Unit for Investigation of Environmental Crimes and Crimes Defined in Special Laws, 2 in coordination with the Office of the Special Attorney for Regional Supervision (Fiscalía Especializada en Control Regional), and 1 in collaboration with the Office of the Special Attorney on Organized Crime (Fiscalía Especializada en Materia de Delincuencia Organizada), all under the Office of the Attorney General of the Republic. These convictions are as follows:

a) Not associated with organized crime

- 1) On 19 February 2020, two Mexican nationals were sentenced to three years, two months, and eighteen days imprisonment plus a fine of 1,300 indexed base units (Unidades de Medida y Actualización—UMA), equivalent to \$104,780.00 (one hundred four thousand seven hundred eighty pesos and 00/100 national currency) and compensation for environmental harm of 254,476.80 (two hundred fifty four thousand four hundred seventy six pesos and 80/100 national currency) for possession of 108 totoaba swim bladders in the state of Sonora.
- 2) On 1 December 2020, as part of an investigation, a trial judge (juez de enjuiciamiento) in the state of Baja California sentenced a Mexican national who, in 2018, had been found in possession of 209 totoaba bellies. The sentence consisted of three years' and nine months' imprisonment, a fine of 1,075 (one thousand seventy-five) indexed base units, equivalent to \$86,645.00 (eighty-six thousand six hundred forty-five pesos national currency), and reparations consisting of days of community service.
- 3) On 1 January 2021, two Mexican nationals were convicted as part of an investigation of incidents occurred in 2019. The trial judge sentenced the defendants to three years' imprisonment, 900 (nine hundred) indexed base units, equivalent to \$76,041.00 (seventy-six thousand forty-one and 00/100 pesos national currency) and repair of environmental harm for an amount of \$7,400,709.46 (seven million four hundred thousand seven hundred nine pesos and 46/100 national currency).

The sentence stemmed from a ministerial investigation in which the two aforementioned persons were detained at Monterrey International Airport en route to Seoul, South Korea, in the process of illegally transporting 647 sea cucumbers and 90 totoaba bellies.

- 4) On 26 February 2021, as part of an investigation opened in 2018, a Judge Specializing in the Accusatory Penal System in the state of Baja California sentenced a person found carrying 22 totoaba bellies in a vehicle. The trial judge sentenced the person to four years' imprisonment, a fine of 1,300 (one thousand three hundred) indexed base units, equivalent to \$104,780 (one hundred four thousand seven hundred eighty pesos and 00/100 national currency), and community service to repair the harm done.
- 5) On 12 April 2021, Profepa, in coordination with the Special Unit for Investigation of Environmental Crimes and Crimes Defined in Special Laws, in another investigation initiated in 2020, secured a conviction against a Mexican national guilty of illicitly transporting 38 totoaba bellies weighing approximately 25 kg, with commercial intent

as an aggravating circumstance. The person was sentenced to four years' and six months' imprisonment, a fine of 1,468 (one thousand four hundred sixty-eight) indexed base units, equivalent to \$127,539.84 (one hundred twenty-seven thousand five hundred thirty-nine pesos and 84/100 national currency), and repair of environmental harm for an amount of \$38'100,655.00 (thirty-eight million one hundred thousand six hundred fifty-five pesos and 00/100 national currency).

b) Associated with organized crime

- 6) On 6 September 2021, Profepa, in coordination with the Office of the Special Attorney on Organized Crime, secured a conviction in an investigation begun in 2019 against two people who were transporting 56 totoaba swim bladders. The Judge Specializing in the Accusatory Penal System of the Federal Penal Justice Center in the state of Baja California sentenced them to two years' and eight months' imprisonment, 300 (three hundred) indexed base units, equivalent to \$25,347.00 (twenty-five thousand three hundred forty-seven pesos and 00/100 national currency), and repair of environmental harm for an amount of \$14'028,416.40 (fourteen million twenty-eight thousand four hundred sixteen pesos and 40/100 national currency).

Result: Having obtained 6 convictions, Profepa's action resulted in federal judges sentencing 9 Mexican nationals to terms of imprisonment, plus total payment of environmental compensation in an amount of \$59'784,257.66 (fifty-nine million seven hundred eighty-four thousand two hundred fifty-seven pesos and 66/100 national currency).

c) Criminal cases in progress

As of November 2021, Profepa is currently processing with the Office of the Attorney General of the Republic a total of 20 complaints against totoaba possession and trafficking. Of this group, 10 files are at the initial investigation stage, 3 are at the complementary investigation stage, 6 are at the intermediate stage, and 1 is at the oral arguments stage.

Results: The aforementioned cases have resulted in 23 persons charged, consisting of 18 Mexican nationals, 4 Chinese nationals, and 1 Venezuelan national.

Summary: To date, a total of 29 investigation files have been opened, of which 20 are being processed, 2 did not lead to charges, 1 was sent for temporary archiving, and 6 resulted in convictions, corresponding to a total of 32 charges. In addition, there were ministerial seizures of 2,363 totoaba bellies in Mexico. Profepa ordered total environmental reparations of \$276'924,447.66 (two hundred seventy-six million nine hundred twenty-four thousand four hundred forty-seven and 66/100 pesos national currency).

68. Furthermore, with regard to removal of gillnets during the period running from 1 September 2019 to 30 September 2021, a total of 384 nets were recovered, for a total length of 73,101 meters.⁵⁴

3. Failure to enforce the fishing and trade bans

69. With respect to the Submitters' assertions concerning the alleged failure to enforce the fishing and trade bans, according to reports produced by the Sea Shepherd Conservation

⁵⁴ MX-021, Gillnet removal measures report.

Society (SSCS) and the International Union for the Conservation of Nature (IUCN), Profepa stated that the reports to which the Submitter refers do not constitute complaints for the purposes of LGEEPA Article 190.⁵⁵

70. Nevertheless, the Party hereby informs the CEC Secretariat that Sader, Semarnat, Semar, and the National Protected Natural Areas Commission (Conanp), within the scope of their respective jurisdictions, are implementing the bans and the inspection and surveillance measures set forth in the 2020 Gillnets Order, with the aim of safeguarding the vaquita and the totoaba, which inhabit the Upper Gulf of California; so much so that as a result of these measures, various individuals have sued the Government of Mexico for relief from the application of these measures and have filed amparo motions (*juicio de amparo*) opposing the 2020 Gillnets Order.
71. As evidence thereof, the CEC Secretariat is hereby informed that in file no. DAJ/458/2021,⁵⁶ the Legal Affairs Division (*Dirección de Asuntos Jurídicos*) of Conanp reported the existence of several amparo motions filed against it in connection with acts of inspection and surveillance of the *Order regulating fishing gear, systems, methods and techniques, and restricting permissible hours, for small and large craft in Mexican marine areas in the Northern Gulf of California, establishing landing sites, and mandating the use of monitoring systems for such craft*, published in the Official Gazette of the Federation on 24 September 2020.
72. Of the amparo motions mentioned in the file in question, five are pending. The acts challenged in the proceedings are as follows:
- i) The acts of enforcement of the *Order regulating fishing gear, systems, methods and techniques, and restricting permissible hours, for small and large craft in Mexican marine areas in the Northern Gulf of California, establishing landing sites, and mandating the use of monitoring systems for such craft*, published in the Official Gazette of the Federation on 24 September 2020.
 - ii) Those acts whose purpose is to prevent or limit fishing by the complainant in the marine zone regulated by Articles 1 and 13 of the Order.
 - iii) Those acts consisting in the development of implementation triggers.
 - iv) Any orders, however named, that are issued in violation of the applicable constitutional and legal requirements, for the purpose of detaining, or in any way depriving of their freedom, ship captains or owners, motorists, fishermen, and crew members of large craft authorized in the commercial fishing concessions and/or permits previously granted to

⁵⁵ **MX-022**, Report on reports produced by Sea Conservation Society (SSCS) and International Union for the Conservation of Nature (IUCN).

⁵⁶ **MX-002**, File no. DAJ/458/2021.

the complainant.

- v) Those inspection orders that are issued for verification by park wardens.
73. As evidence of the foregoing, see the appendices to this response for summaries of amparo motions 762/2020, 167/2020, 402/2021, 793/2020, and 812/2020-I,⁵⁷ consisting of various ongoing remedies against the government's refusal to suspend enforcement of the 2020 Gillnets Order.
74. Concerning amparo motion no. 762/2020-IA, the Secretariat is hereby informed that on 10 June 2021, the temporary injunction requested by the complainant was denied, and that on 12 August 2021, the district court judge denied a permanent injunction against the acts of enforcement of the 2020 Gillnets Order mentioned by the complainant. In addition, on 10 December 2021, a final judgment was rendered, against which the complainant filed a judicial review motion (*recurso de revisión*), which remains pending.
75. Likewise, the Secretariat is hereby informed that in amparo motion no. 402/2021, the district court judge, in an interlocutory judgment on 26 January 2021, denied the permanent injunction requested by the complainant against the authorities alleged to be responsible for the acts deriving from the implementation of the 2020 Gillnets Order, and on 20 August 2021, the judgment was rendered. It was challenged by the complainant in a judicial review motion of 7 September 2021, which remains pending.
76. In regard to amparo motion no. 793/2020, the Secretariat is hereby informed that on 9 November 2020, the temporary injunction requested by the complainant against the authorities asserted to be responsible for the acts of enforcement deriving from the 2020 Gillnets Order was denied. The district court judge dismissed the amparo motion; however, the complainant filed a judicial review motion, which remains pending.
77. Concerning amparo motion no. 812/2020-I, the district court judge denied the permanent injunction requested by the complainant in connection with the acts imputed to the authorities alleged to be responsible in relation to the 2020 Gillnets Order, and, in a decision issued 26 July 2021, the district court judge dismissed the amparo motion; the complainant challenged the decision in a judicial review motion filed 27 August 2021, which remains pending.
78. In addition, the Secretariat is hereby informed of the existence of 17 pending amparo motions in which Semarnat was also alleged to be the authority responsible for the implementation of the 2020 Gillnets Order, in which the complainants are requesting relief

⁵⁷ **MX-003**, Summary of amparo 762/2020-IA; **MX-004**, Summary of amparos 167/2020-402/2021; **MX-005**, Summary of amparo 793/2020, and **MX-006**, Summary of amparo 812/2020-I.

from confiscation of fishing gear and from other acts carried out by Mexican environmental authorities.⁵⁸

79. To view information on the state of the aforementioned amparo motions as of the filing date of this Party Response, the Secretariat may visit the website of the Federal Judicial Council (*Consejo de la Judicatura Federal*), where the corresponding public information may be found:

<https://www.cjf.gob.mx/micrositios/dggj/paginas/serviciosTramites.htm?pageName=servicios%2Fexpedientes.htm>

80. As may be observed, the pending judicial proceedings evidence the efforts deployed by Sader, Semarnat, Semar, and the other Mexican environmental authorities to enforce the 2020 Gillnets Order, those efforts whose aim is to prevent or limit fishing activities in the Zero Tolerance Area governed by Article 1 of the Order in question, and those acts consisting in the development of implementation triggers. It is for these reasons that various fishing permit and concession holders have taken legal action, filing amparo motions for the purpose of challenging the measures prescribed by the 2020 Gillnets Order that have been implemented by the Mexican authorities.
81. On the information provided, in accordance with the LGTAIP,⁵⁹ the LFTAIP,⁶⁰ and the ECA,⁶¹ it is requested that the information contained in file no. DAJ/458/2021 (Appendix MX-002) and its appendices be protected by the Parties and the CEC Secretariat as confidential information.

4. CITES Decision 18.292 made at COP18 in late August 2018

82. CITES Decision 18.292 provides that “Parties, in collaboration with relevant stakeholders, are encouraged to: a) communicate to the Secretariat and the CITES Authorities of relevant Parties information on seizures of specimens of totoaba, arrests of those engaged in illegal take and trade, results of any prosecutions, and actions taken to implement this Decision.”⁶² In this regard, the CEC Secretariat is hereby informed that in December 2021, the Government of Mexico submitted its second comprehensive report to CITES.⁶³
83. In this report, the Government of Mexico reports on measures taken to strengthen environmental law, the capacity of the Mexican authorities to make arrests and seizures, international cooperation on illegal take and traffic in totoaba, inspection and surveillance

⁵⁸ **MX-036**, List of pending and closed amparo motions in which Semarnat was named as the responsible authority.

⁵⁹ **MX-032**, LGTAIP Article 113 paragraph XI.

⁶⁰ **MX-033**, LFTAIP Article 110 paragraph XI.

⁶¹ See ECA Articles 15(3) (Technical and Confidential Information and Intellectual Property) and 16(1)(d) (Protection of Information).

⁶² **MX-034**, CITES Decision 18.292.

⁶³ **MX-023**, Second comprehensive report to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

measures, immediate domestic and international measures to halt organized crime, bilateral and trilateral meetings with CITES Standing Committee member countries, removal of nets, and other measures.

84. Likewise, Mexico reported on the search for new surveillance and control mechanisms and on cooperation and collaboration with Convention member countries, with a view to achieving adequate compliance with Decisions 18.292–295.
5. **The government’s trigger plan allows for violation of the Zero Tolerance Area, which imposes a “permanent and total” ban on fishing**
85. The Vaquita Porpoise Submission states that “the Mexican government’s new ‘trigger’ plan clearly contemplates allowing numerous, serious, and substantial violations to occur before applying full enforcement capacity in the small ZTA, instead of eliminating gillnet use (i.e., having ‘zero tolerance’) in the area – dashing the vaquita’s last and best hope.”⁶⁴
86. Concerning this assertion, the Party points out the Submitters’ erroneous interpretation of the implementation triggers. The Order establishes indicators, implementation triggers, and predetermined measures in the Zero Tolerance Area; it does not permit authorized vessels within the Zero Tolerance Area, but rather, bans navigation by any type of craft within this area, excepting surveillance, research, and net recovery craft. It also establishes critical thresholds above which specific predetermined measures are triggered. These include the closing of areas or zones, as indicated in Article 6 of the *Order regulating fishing gear, systems, methods and techniques, and restricting permissible hours, for small and large craft in Mexican marine areas in the Northern Gulf of California, establishing landing sites, and mandating the use of monitoring systems for such craft*, published in the Official Gazette of the Federation on 24 September 2020,⁶⁵ a portion of which is transcribed below:

Article 6. *For the purpose of applying the closing of areas or zones, Semarnat and AGRICULTURE, with the assistance of Semar, within the framework of their powers and duties and as applicable, with the adjustments recommended by the GIS, shall implement the predetermined measures based on the following indicators of the implementation triggers and their critical thresholds, in accordance with the quantitative measures set out below:*

INDICATORS:

I. Indicator based on number of unauthorized vessels in the Zo per day:

This indicator is defined as the number of unauthorized vessels observed in the Zo during one day and measures, in real or close-to-real time, the level of compliance with the provisions of the second paragraph of Article 13 of the Order.

The purpose of the predetermined measures is to contribute to the conservation and protection of the vaquita.

The ORDER prohibits the navigation of any type of craft within this zone, except

⁶⁴ Vaquita Porpoise Submission at 11.

⁶⁵ **MX-035**, Implementation Triggers Order.

surveillance, research, or net recovery craft; in addition, fishing of all types is prohibited.

The ranges and thresholds triggering specific predetermined measures for this indicator are given in the table below:

Trigger and thresholds	Predetermined measures	Recurrence
No. of vessels in the Zo per day		
1–20	<i>Ongoing monitoring and surveillance, deterrence: at least 60% of available human and material resources assigned to the Northern Gulf of California</i>	
21–50	<i>Ongoing monitoring and surveillance, deterrence: at least 80% of available human and material resources assigned to the Northern Gulf of California</i>	
51–65	<i>Ongoing monitoring and surveillance, deterrence: 100% of available human and material resources assigned to the Northern Gulf of California</i>	
60–65 three times a month	<i>Closing of areas and ban on all types of fishing</i>	
> 65 in a day	<i>Closing of areas and ban on all types of fishing</i>	<p><i>First occurrence: Closing of three nautical miles from the perimeter of the Zo for 7 days</i></p> <p><i>Second occurrence in 30 days: Closing of three nautical miles from the perimeter of the Zo for 30 days</i></p> <p><i>Third occurrence in 30 days: Closing of the Refuge Area (ZRV) for 7 days</i></p> <p><i>Fourth occurrence in 30 days: Closing of the ZRV for 30 days</i></p>

87. As may be observed in the aforementioned article, the Implementation Triggers Order bans navigation by any type of craft within this zone, excepting surveillance, research, or net recovery vessels; in addition, it bans fishing of any type; nevertheless, it sets out factual situations that may or may not occur. Where they do occur, they entail acts of authority whereby specific predetermined measures are taken by the Mexican authorities, all with the goal of protecting the vaquita and preventing illegal trafficking in totoaba.

6. Other measures taken by the Government of Mexico

88. Additionally, the Secretariat is hereby informed that with a view to taking measures allowing for the preservation and protection of the vaquita and the totoaba, on 23 June 2021, Semarnat, Semar, Sader, Conanp, Conapesca, and Profepa, in conjunction with SSCS and the Whale and Ocean Science Museum (*Museo de la Ballena y Ciencias del Mar*) in

Baja California Sur, signed a collaboration agreement. This agreement is effective until 30 September 2024.⁶⁶

89. In this regard, the Party points out that the Government of Mexico is taking inspection and enforcement measures 365 days a year through Semar, Profepa, Conapesca, and the National Guard.

90. Therefore, the Government of Mexico points out that the Submitter's assertions are unfounded, since, as noted and duly substantiated in the appended documents, the authorities are enforcing the environmental law for the protection of the vaquita and the totoaba; for this reason, the Secretariat is urged to terminate this submission process.

7. The Submitters did not pursue the domestic remedies available to them in connection with the matter in question

91. As described in this response, there are various remedies available in Mexico that allow people to request the effective enforcement of the Mexican legislation mentioned in the Vaquita Porpoise Submission, yet the Submitters have not pursued any of the remedies available to them, such as:

- Reporting a crime to the Office of the Attorney General of the Republic for violation of Article 420 of the Federal Penal Code.
- Asking Conapesca to cancel a fishing concession where the 2020 Gillnets Order is violated.
- Filing a complaint against public servants for failure to enforce the fishing-related laws, as prescribed by Article 148 of the Sustainable Fishing and Aquaculture Act (*Ley de Pesca y Acuacultura Sustentable*).

D. CONCLUSIONS

92. In conclusion, Mexico's view is that it was improper to request a response from the Party, since the Secretariat was not properly guided in its determination, having failed to adhere strictly to the provisions of USMCA Article 24.27(3), since the submission does not meet the following criteria:

- allegation of harm to the person making the submission;
- pursuit of private remedies available under the Party's law, and
- requirement that the submission not be based exclusively on mass media reports.

93. Nevertheless, Mexico reiterates that it has effectively enforced the environmental laws protecting the vaquita that were in force as at the date of entry into force of the USMCA:

⁶⁶ MX-024, Collaboration Agreement.

- LGVS Article 55 and Article 56 of the LGVS Regulations.
- The 1975 Totoaba Fishing Ban.
- The 2017 Gillnets Order.
- The 2020 Gillnets Order.
- NOM-059-SEMARNAT-2010.

94. In view of the foregoing considerations, the Secretariat is urged to terminate the Vaquita Porpoise Submission (SEM-21-002).