



**Secretariat of the Commission for Environmental Cooperation**  
**REQUEST FOR INFORMATION**  
**for the preparation of a factual record regarding submission**  
**SEM-21-003 (*North Atlantic right whale*)**

**I. Submissions on Enforcement Matters process**

The Commission for Environmental Cooperation (CEC) is an international organization created under the North American Agreement on Environmental Cooperation (NAAEC), signed by Canada, Mexico, and the United States (the Parties) in 1994. On 1 July 2020, the United States-Mexico-Canada Agreement (USMCA/CUSMA) and the Environmental Cooperation Agreement (ECA) entered into force. As of that date, the Submissions on Enforcement Matters (SEM) process, originally established in NAAEC Articles 14 and 15, is governed by USMCA/CUSMA Articles 24.27 and 24.28. The CEC Secretariat remains responsible for implementation of the SEM process, as stipulated in the ECA.

USMCA/CUSMA Articles 24.27 and 24.28 provide for a process allowing any person of a Party or entity organized under the laws of a Party to file a submission asserting that a Party to the USMCA/CUSMA is failing to effectively enforce its environmental laws. The CEC Secretariat initially reviews submissions based on the requirements set out in USMCA/CUSMA Article 24.27(1) and (2). Where the Secretariat finds that a submission meets these requirements, it then determines, in accordance with the criteria of Article 24.27(3), whether the submission merits a response from the Party in question. In light of the Party's response, the Secretariat then determines whether the matter warrants the preparation of a factual record and, if so, it so informs the CEC Council and the Environment Committee, providing its reasons in accordance with USMCA/CUSMA Article 24.28(1); otherwise, it terminates review of the submission.

The purpose of a factual record is to provide an objective presentation of the facts relevant to the assertion made in a submission and to allow readers to draw their own conclusions regarding a Party's environmental law enforcement. A factual record is expected to generally outline the history of the environmental enforcement issue raised in the submission, the relevant environmental laws of the Party in question, and the actions taken by the Party to effectively enforce those environmental laws, thus serving as a valuable information-sharing tool.

USMCA/CUSMA Article 24.28(4) establishes that for the preparation of a factual record, the CEC Secretariat shall consider any information provided by a Party and may consider any relevant technical, scientific, or other information that is publicly available; submitted by the Joint Public Advisory Committee; submitted by national advisory or consultative committees; submitted by interested persons or non-governmental organizations; developed by independent experts or developed under the ECA.

## II. Submission SEM-21-003 (*North Atlantic right whale*)

On 17 January 2025, the CEC Council members adopted Council Resolution 25-01 which instructs the Secretariat to prepare a factual record regarding submission SEM-21-003 (*North Atlantic right whale*). The CEC Secretariat is now requesting relevant information on the matters to be addressed in the factual record:

- A. The effective enforcement of the Vessel Speed Rule, regarding the manner in which the United States enforces the Vessel Speed Rule and the number of actions taken and sanctions sought, among other factors;
- B. The effective enforcement of the National Environmental Policy Act's requirements relating to the consideration of reasonable alternatives and analysis of cumulative effects when producing the Environmental Impact Statement for the Risk Reduction Rule;
- C. The effective enforcement of the Marine Mammal Protection Act and Endangered Species Act, with respect to reducing incidental mortality and serious injury of North Atlantic right whales from commercial fishing.

The submission, the United States' response, the Secretariat's determinations, Council Resolution 25-01, and other information related to submission SEM-21-003 (*North Atlantic right whale*) is available in the registry of submissions, at <<http://www.cec.org/submissions/registry-of-submissions/north-atlantic-right-whale/>>. These documents may also be requested from the Secretariat at <[sem@cec.org](mailto:sem@cec.org)>.

## III. Examples of relevant factual information

The following is a description of data and information required for the preparation of the factual record. To facilitate efficient handling and integration, the CEC Secretariat requests that the information be sent in electronic format. Please also note that the Secretariat does not guarantee confidentiality of the transmission, or the data or information contained therein.

1. New or superseding information and data on the various measures and statistics provided in the United States' Response from 4 April 2022.<sup>1</sup>
2. Data and information on compliance with and enforcement of the speed restrictions to protect North Atlantic Right Whales<sup>2</sup> (hereinafter "Vessel Speed Rule"), from 2008 to present, including:
  - a. Information about any warnings, civil penalties, and criminal fines following detected violations of the Vessel Speed Rule and any efforts by the United States to improve compliance.

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<sup>1</sup> Response of the United States of America to the Submission Made by Oceana under Article 24.27 of the United States–Mexico–Canada Agreement (4 April 2022), available at: <[http://www.cec.org/wp-content/uploads/wpallimport/files/21-3-rsp\\_en.pdf](http://www.cec.org/wp-content/uploads/wpallimport/files/21-3-rsp_en.pdf)>.

<sup>2</sup> 50 C.F.R. § 224.105, available at: <<https://www.ecfr.gov/current/title-50/chapter-II/subchapter-C/part-224#224.105>>.

- b. Information about any incentive-based or voluntary compliance efforts undertaken by regulated entities, including commercial shipping corporations, research institutions, conservation organizations, and professional and recreational mariners, and any research or data on the effectiveness of such efforts.
- 3. Information on the National Environmental Policy Act (NEPA) process conducted for 2021 Rule to Amend the Atlantic Large Whale Take Reduction Plan regulations (“Risk Reduction Rule”),<sup>3</sup> specifically:
  - a. References to additional information provided during the public comment period on the Draft Environmental Impact Statement (EIS) that could have been considered as part of the cumulative impact analysis in the final EIS.
    - i. In particular, any research or information on the synergistic effects of entanglement and vessel strikes on North Atlantic right whales.
  - b. References to information on additional, reasonable alternatives provided during the public comment period on the Draft EIS that could have been considered in final EIS.
    - i. In particular, alternatives related to trap reductions, enhanced weak line requirements, static area closures, gear marking requirements, and dynamic area management strategies.
- 4. Data and information on compliance with and enforcement of the Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations (50 C.F.R. § 229.32) from 2014 to present, including:
  - a. Information about any warnings, civil administrative penalties, permit sanctions or some combination thereof issued for violations of the ALWTRP regulations and any efforts by the United States to improve compliance.
  - b. Information about any incentive-based or voluntary compliance efforts undertaken by the fishing industry or other institutions or organizations, and any research or data on the effectiveness of such efforts.
  - c. Quantitative or qualitative studies or assessments of the effectiveness of federal enforcement and compliance activities for the ALWTRP regulations.
- 5. Information about compliance with and enforcement of the Marine Mammal Protection Act and Endangered Species Act with regard to the commercial fishing industry from 2014 to present, including:

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<sup>3</sup> *Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery*, 86 Fed. Reg. 51970 (17 Sept. 2021), at: <<https://www.govinfo.gov/content/pkg/FR-2021-09-17/pdf/2021-19040.pdf>>.

- a. Information about any incidental takings<sup>4</sup> of North Atlantic right whales by the commercial fishing industry.
  - b. Information about any incentive-based or voluntary compliance efforts undertaken by the commercial fishing industry, or other institutions or organizations, and any research or data on the effectiveness of such efforts.
  - c. Quantitative or qualitative studies or assessments of the effectiveness of federal ESA and MMPA enforcement and compliance activities in relation to the North Atlantic right whale.
6. Information about the cultural significance of North Atlantic right whales to Indigenous tribes and communities, and other communities on the east coast of the United States.
  7. Photographs and representations of North Atlantic right whales.
  8. Photographs and images related to the implementation of measures to protect the North Atlantic right whale.
  9. Data and information on vessel traffic along the east coast of the United States and the effect on North Atlantic right whales.
  10. Data and information on the risks and effects of vessel strikes on North Atlantic right whales.
  11. Data and information on the risks and effects of fishing gear entanglement on North Atlantic right whales.
  12. Any other information that may be relevant to the issues raised in the factual record.

#### **IV. Deadline for submitting information**

In order to comply with the deadlines established in USMCA/CUSMA Article 24.28(5) and with the Overall Plan for the Preparation of a Factual Record, it is requested that the information be provided to the Secretariat no later than 60 calendar days following the publication of this request in the CEC's public registry of submissions, i.e. by **24 March 2025**.

#### **V. Where to send the information**

The Secretariat requests that relevant responsive information be in electronic form and be sent by email to <[sem@cec.org](mailto:sem@cec.org)>. Large files can be uploaded and shared via cloud storage platforms such as SharePoint or Dropbox.

Please mention submission SEM-21-003 (*North Atlantic right whale*) in the subject line of all communications.

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<sup>4</sup> Any "take" incidental to an otherwise lawful activity. Under the MMPA, "take" is defined as "to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal." 50 CFR 216.3. Under the ESA, "take" is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. §1532(19).