

**THE UNITED STATES-MEXICO-CANADA
AGREEMENT
CHAPTER 24 ENVIRONMENT
2022
ANNUAL REPORT TO CONGRESS**



Office of the United States Trade Representative

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TABLE OF ACRONYMS

ACE	Automated Commercial Environment System
AER	Alberta Energy Regulator
ALDFG	Abandoned, Lost, or otherwise Discarded Fishing Gear
APHIS	U.S. Department of Agriculture- Animal and Plant Health Inspection Service
B.C.	British Columbia, Canada
BWIP	U.S.-Mexico Border Water Infrastructure Program
CBP	U.S. Customs and Border Protection
CEC	Commission for Environmental Cooperation
CEPA	Canadian Environmental Protection Act, 1999
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COA	Certificate of Admissibility
CONAFOR	Mexico's National Forest Commission
CONANP	Mexico's National Protected Areas Commission
CONAPESCA	Mexico's National Aquaculture and Fisheries Commission
CoP19	19 th meeting of the Conference of the Parties to CITES (scheduled in November 2022)
CTAC	Commercial Targeting and Analysis Center
CVA	U.S.-Mexico Environment Cooperation and Customs Verification Agreement
DART-TOFMS	Direct Analysis in Real Time Time-of-Flight Mass Spectrometry
DOC	U.S. Department of Commerce
DOF	Federal Official Gazette (<i>Diario Oficial de la Federación</i>)
DOI	U.S. Department of the Interior
DOJ	U.S. Department of Justice
DOS	U.S. Department of State

ECCC	Environment and Climate Change Canada
ECHO	EPA’s Enforcement and Compliance History Online
EIF	USMCA entry-into-force (July 1, 2020)
END Act	Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act
ENRD	Environment and Natural Resources Division of the U.S. Department of Justice
EPA	U.S. Environmental Protection Agency
ERP	2030 Emissions Reduction Plan
ESA	Endangered Species Act
EVWQP	Elk Valley Water Quality Plan
FGR	Mexico’s Attorney General’s Office
FONATUR	Mexico’s National Trust for the Promotion of Tourism
FWS	U.S. Fish and Wildlife Service
GCAL	Collaboration Group on the Enforcement of the (Regulatory) Agreement
GGGI	Global Ghost Gear Initiative
GHG	Greenhouse Gas
GIS	Intragovernmental Group on Sustainability
GOM	Government of Mexico
HFC	Hydrofluorocarbon
HTS	Harmonized Tariff Schedule
IAA	Interagency Agreements
IBWC	International Boundary and Water Commission
IECME	USMCA Interagency Environment Committee for Monitoring and Enforcement
ILAT	Illegal Logging and Associated Trade
INAI	National Institute of Transparency, Access to Information and Protection of Personal Data (<i>Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales</i>)

INSC	National Inventory of Contaminated Sites (<i>Inventario Nacional de Sitios Contaminados</i>)
IUU fishing	Illegal, Unreported, and Unregulated fishing
LGEEPA	General Law of Ecological Equilibrium and Environmental Protection (<i>Ley General del Equilibrio Ecológico y la Protección al Ambiente</i>)
LGPGIR	General Law for the Prevention and Integral Management of Wastes (<i>Ley General para la Prevención y Gestión Integral de los Residuos</i>)
LON	Letter of Non-Compliance
MBTA	Migratory Bird Treaty Act of 1918
MDP	NOAA Marine Debris Program
MMPA	Marine Mammal Protection Act
MPA	High Seas Driftnet Fishing Moratorium Protection Act
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NANCI	North American Net Collection Initiative
NARW	North Atlantic right whale
NEPA	National Environmental Policy Act
NGO	Non-Governmental Organization
NOAA	U.S. National Oceanic and Atmospheric Administration
NOM-001	NOM-001-SEMARNAT-2021
OLE	Office of Law Enforcement
PROFEPA	Mexico's Federal Attorney for Environmental Protection
SARA	Species at Risk Act
SC74	74th meeting of the CITES Standing Committee (held in March 2022)
SCJN	Mexican Supreme Court of Justice (<i>Suprema Corte de Justicia de la Nación</i>)
SEM	Submission on Enforcement Matters
SEMAR	Mexico's Secretariat of the Navy

SIMP	Seafood Import Monitoring Program
SEMARNAT	Mexico's Secretariat of Environment and Natural Resources
SIRA	Stable Isotope Ratio Analysis
SNGF	Mexico's timber and land management system (<i>Sistema Nacional de Gestión Forestal</i>)
TED	Turtle Excluder Device
UGC	Upper Gulf of California
USAID	U.S. Agency for International Development
USFS	U.S. Forest Service
USG	U.S. Government
USMCA	United States-Mexico-Canada Agreement
USTR	The U.S. Trade Representative or Office of the U.S. Trade Representative
WFID	World Forest ID
WISC	Wood Identification & Screening Center at Oregon State University
ZTA	Zero Tolerance Area

I. INTRODUCTION AND OVERVIEW OF SECTION 816 REPORT ON USMCA CHAPTER 24 ENVIRONMENT IMPLEMENTATION

This is the second annual report to Congress, submitted pursuant to section 816 of the United States-Mexico-Canada Agreement Implementation Act (“the Act”).¹ As required by section 816, the U.S. Trade Representative (“USTR”) prepared this report in consultation with the heads of the Federal agencies listed in subtitle A of title VIII (Environment Monitoring and Enforcement) of the Act. The report builds on or references the ongoing efforts that were described in the 2021 Annual Report to Congress,² and focuses on measures taken by the United States, Mexico, and Canada (“the Parties”) since July 1, 2021, that implement Chapter 24 (the “environment chapter”) of the United States-Mexico-Canada Agreement (“USMCA” or “Agreement”). This report discusses U.S. implementation efforts under subtitles A and B of title VIII of the Act, Mexico’s and Canada’s new and continuing implementation efforts, and challenges each Party has faced with respect to implementation of environment chapter commitments.

The USMCA, which entered into force on July 1, 2020 (“EIF”), includes the strongest, most comprehensive set of environmental obligations of any U.S. trade agreement. The environmental commitments are fully enforceable through the Agreement’s dispute settlement procedures, affirming the Parties’ recognition that a healthy environment is an integral element of both sustainable development and a robust, liberalized trading relationship across all sectors of the economy.

The environment chapter requires Parties to effectively enforce their environmental laws, promotes continued cooperation between the Parties, encourages public participation, and includes commitments to implement key multilateral environment agreements. Further, the environment chapter contains commitments to, *inter alia*, improve air quality; reduce and prevent marine litter; promote the conservation of certain marine species; combat trafficking in wildlife; promote conservation and sustainable management of fisheries and forests; and requires the Parties to protect coastal and marine environments by prohibiting fisheries subsidies that contribute to overfishing and overcapacity, and stem illegal, unreported, and unregulated (“IUU”) fishing.

The environment chapter also promotes continuing trilateral cooperation and public participation through the Environment Committee and Commission for Environmental Cooperation (“CEC”).³ The environment chapter incorporates the submissions on enforcement matters (“SEM”) process

¹ United States-Mexico-Canada Agreement Implementation Act, Pub. L. No. 116-113 (2020) [hereinafter the Act].

² See USMCA Chapter 24 Environment 2021 Annual Report to Congress that was submitted on July 1, 2021.

³ The CEC was originally established under the North American Agreement on Environmental Cooperation, a side-treaty of the North American Free Trade Agreement (“NAFTA”), to promote trilateral cooperation.

that CEC facilitates, which allows any person of a Party to the USMCA to file a submission asserting that a Party is failing to effectively enforce its environmental laws.

II. IMPLEMENTATION OF SUBTITLE A OF TITLE VIII OF THE ACT

The United States continues to implement, monitor, and enforce USMCA environmental obligations through the work of the USMCA Interagency Environment Committee for Monitoring and Enforcement (“IECME”), enforcement action under USMCA Article 24.29, and implementation of section 815 authorities.⁴

A. USMCA Interagency Environment Committee for Monitoring and Enforcement Actions

The IECME was established pursuant to section 811 of the Act, under Executive Order 13907,⁵ and consists of eleven members.⁶ The IECME is mandated to (1) coordinate U.S. efforts to monitor and enforce environmental obligations generally; and (2) with respect to Mexico and Canada, (a) carry out an assessment of their environmental laws and policies;⁷ (b) carry out monitoring actions with respect to the implementation and maintenance of their environmental obligations; and (c) request enforcement actions with respect to USMCA countries that are not in compliance with their environmental obligations.

As Chair of the IECME, USTR regularly convened the committee, or its informal subsidiary body and working groups, to ensure effective coordination and execution of monitoring and enforcement activities. USTR has: (i) coordinated reviews of public submissions and SEMs; (ii) prepared quarterly environment attaché reports; (iii) requested cooperation under the U.S.-Mexico Environment Cooperation and Customs Verification Agreement (“CVA”); and (iv) utilized USMCA environment enforcement supplemental appropriations.

i. Review of Public Submissions and Public Participation

The USMCA’s environment chapter provides for enhanced public participation and allows persons of any USMCA Party to file a SEM with the trilateral CEC Secretariat asserting that a

⁴ The Act, § 815 (2020).

⁵ USMCA Interagency Environment Committee for Monitoring and Enforcement (“IECME”) was established pursuant to section 811 of the Act, under Executive Order 13907, 85 Fed. Reg. 12977 (Feb. 28, 2020),

⁶ The members of the IECME are USTR, National Oceanic and Atmospheric Administration (“NOAA”), U.S. Fish and Wildlife Service (“FWS”), U.S. Forest Service (“USFS”), U.S. Environmental Protection Agency (“EPA”), the Animal and Plant Health Inspection Service (“APHIS”); U.S. Customs and Border Patrol (“CBP”), the Department of State (“DOS”), Department of Justice (“DOJ”), the Department of the Treasury, and the United States Agency for International Development (“USAID”).

⁷ Pursuant to its mandate under section 812 of the Act, the IECME assessed Mexico’s and Canada’s environmental laws and policies. USTR submitted the environmental assessment report to the appropriate congressional committees and the Trade and Environment Policy Advisory Committee in May 2020.

Party is failing to effectively enforce its environmental laws. Separate from, and parallel to the CEC SEM process, persons of a Party may submit information regarding a Party's implementation of the environment chapter directly to USTR, as the Chair of the IECME. To facilitate direct public engagement and inquiries regarding Chapter 24 implementation, USTR has provided a dedicated email address to receive such submissions on its website. Related to its monitoring mandate under section 813 of the Act, the IECME has reviewed each CEC-SEM and public submission that has been filed since USMCA EIF.⁸

Since July 1, 2021, four public submissions have been filed. The first submission was filed by four non-governmental organizations ("NGOs") asserting that Mexico is failing to effectively enforce its environmental laws, and as a result, has caused the near-extinction of the critically endangered vaquita porpoise, which is endemic to the Upper Gulf of California waters in Mexico. On April 1, 2022, the CEC Secretariat published a determination recommending the CEC Council approve the preparation of a Factual Record.

USTR, as chair of the IECME, also directly received a submission from the coordinator of the international Vaquita Enforcement Study Group, asserting that Mexico is failing to effectively enforce its environmental laws that protect the vaquita. In so doing, the submitters argue that Mexico is also enabling high-value Mexican wild-caught shrimp imports into the U.S. under allegedly fraudulent export certifications that are designed to evade the MMPA import ban on shrimp from the Upper Gulf of California.

In June 2022, another submission was filed with the CEC Secretariat by a group of Mexican NGOs asserting that Mexico is failing to effectively enforce environmental laws designed to protect the coastal ecosystem of Playa Hermosa that is located in the municipality of Ensenada in the state of Baja California. The CEC Secretariat is expected to make a decision on whether each assertion made in this SEM merits a response from Mexico in July 2022.

The fourth submission was filed by Oceana, asserting that the United States is failing to effectively enforce its environmental laws to adequately protect the critically endangered North Atlantic right whale ("NARW"). As requested by the CEC Secretariat, the U.S. government ("USG") submitted a response to the assertions made in the submission. On June 3, 2022, the CEC Secretariat published a determination recommending that the CEC Council approve the preparation of a Factual Record.

⁸ Since USMCA EIF to date, the IECME has reviewed a total of nine submissions. *See* USMCA Chapter 24 Environment 2021 Annual Report to Congress, note 11 and accompanying text (providing that the IECME reviewed five legacy submissions that were filed prior to USMCA EIF, as well as the Loggerhead Sea Turtles and Fairview Terminal submissions that were filed after USMCA EIF, in December 2020 and February 2021, respectively).

In addition to offering the public a channel to submit information directly to the IECME, USTR provides quarterly updates on USMCA implementation to its cleared advisors in the Trade and Environment Policy Advisory Committee.

ii. Environment Attachés

Per section 822 of the Act, three persons, one employee from each EPA, FWS, and NOAA, are detailed to USTR to serve as environment attachés to assist the IECME to monitor Mexico's compliance with its USMCA environmental obligations. The three environment attachés have been posted at the U.S. Embassy in Mexico City since March 2021, and continue to engage with relevant USG agencies, Government of Mexico ("GOM") officials, and NGO stakeholders in the United States and Mexico. The attachés provide quarterly updates to the IECME on their information gathering and monitoring efforts. The priority issue areas that they monitor include efforts related to vaquita and totoaba conservation and protection, marine litter prevention and mitigation, fisheries management, forestry management and timber legality, air quality improvement, lithium mining, and climate change.

iii. U.S.-Mexico Environment Cooperation and Customs Verification Agreement

The CVA, negotiated alongside the USMCA and implemented under section 813 of the Act, is a separate and additional bilateral tool to facilitate cooperation between the United States and Mexico regarding specific shipments of fisheries, timber, and wildlife products. Among other things, the CVA allows the United States and Mexico to request information to verify whether an importer has provided accurate and adequate documentation demonstrating a shipment's legality.

In March 2021, USTR made its first request under the CVA regarding the potential import into Mexico and transshipment to the United States of timber illegally harvested in Colombia. Mexico responded positively to the request, and the cooperation resulted in a useful exchange of trade information that allowed the United States to assess potential timber legality issues concerning imports from Mexico. Related to the issue raised in this first CVA request, CBP is utilizing its Commercial Targeting and Analysis Center ("CTAC") to further monitor imports of Mexican timber products, and is planning a joint operation with FWS to target timber being imported from Mexico with fraudulent Lacey Act declarations. USTR will continue to monitor this issue and consider other potential uses of the CVA.

iv. USMCA Environment Enforcement Supplemental Appropriations

USTR has entered into seven interagency agreements ("IAAs") using its supplemental appropriations to strengthen USG implementation, monitoring, and enforcement of USMCA environment obligations. The IAAs are with (1) NOAA, to support sea turtle conservation; (2)

NOAA, to promote NARW conservation;⁹ (3) FWS, to improve strategic interdictions;¹⁰ (4) USFS, to enhance legal and regulated management and trade of forest resources;¹¹ (5) DOJ, to increase prosecutions for illegal trade in flora and fauna;¹² (6) CBP, to strengthen intelligence and enforcement capabilities to better target high-risk shipments and entities;¹³ and (7) EPA, to combat illegal trade of regulated chemicals and prevent and mitigate pollution from ships.¹⁴

USG agencies, including NOAA, APHIS, and EPA, that received direct supplemental appropriations to implement the USMCA have also continued to make progress in addressing issues such as marine debris, illegal fishing and seafood traceability, and Lacey Act administration and enforcement.

B. Implementation of Section 815 Authorities

Section 815 of the Act identifies existing and longstanding U.S. environmental laws under which the heads of Federal agencies have authorities to initiate monitoring or enforcement actions with respect to Canada and Mexico.¹⁵

i. Marine Mammal Protection Act

The Marine Mammal Protection Act (“MMPA”)¹⁶ contains provisions relevant to the monitoring and enforcement of Mexico’s and Canada’s USMCA environmental obligations related to sustainable fisheries management,¹⁷ conservation of marine species,¹⁸ and conservation and trade,¹⁹ and is administrated by the U.S. Department of Commerce (“DOC”) through NOAA and by the Department of the Interior (“DOI”) through FWS.

Prior to USMCA EIF, under the MMPA, the United States implemented import restrictions for certain fish and fish products from certain Mexican fisheries in the Upper Gulf of California on

⁹ See *infra* pp. 10-11 (expanding on efforts carried out under NOAA-USTR IAAs).

¹⁰ See *infra* pp. 9-10 (describing enforcement capacities bolstered by FWS-USTR IAA funding).

¹¹ See *infra* pp. 13-16 (elaborating on the USFS, USAID, and USTR IAA efforts to improve sustainable forest management and trade in Mexico).

¹² See *infra* p. 23 (summarizing USMCA implementation enhancements under DOJ-USTR IAA).

¹³ See *infra* p. 19 (depicting CBP’s efforts under the IAA with USTR).

¹⁴ See *infra* pp. 21-22 (summarizing EPA’s work under the IAA); see also USTR Actions to Monitor and Enforce USMCA Environmental Obligations, at <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/benefits-environment-united-states-mexico-canada-agreement> (providing fact sheets on the work carried out under each IAA).

¹⁵ See subsections (i)-(viii), *infra* pp. 5-23 (listing the USMCA environmental provisions that each section 815 authority implements as well as other provisions of law (under section 815(k))).

¹⁶ The MMPA is listed as an available monitoring and enforcement authority under Section 815(a) of the Act.

¹⁷ See USMCA Article 24.18.

¹⁸ See USMCA Article 24.19.

¹⁹ See USMCA Article 24.22.

the grounds that the GOM failed to implement a regulatory program comparable in effectiveness to the U.S regulatory program for mitigating fishery bycatch of marine mammals.

Under the MMPA, NOAA, along with USTR and DOS, continued bilateral engagement in to provide advice and technical assistance to the GOM. This engagement included multiple consultative meetings in an effort to establish a fisheries management scheme and enforcement mechanisms for the Upper Gulf of California to improve Mexico's efforts to prevent the extinction of the vaquita. These consultations also identified much needed enforcement actions by the GOM to stem illegal fishing for shrimp and the illegal capture and trade of totoaba, an endangered species of fish from those waters.²⁰ This engagement led to the publication by Mexico, in September 2020 and January 2021, of new regulatory measures aimed at regulating fishing activities in the vaquita habitat.²¹

Although Mexico published new regulatory measures, there are indications that these measures may not be implemented effectively, in a manner comparable to that of the United States.²² Mexico has submitted its comparability finding application for all of its fisheries (38 export fisheries and 32 exempt fisheries), including the 7 export fisheries subject to import restrictions in the Upper Gulf of California. NOAA will review Mexico's application, in light of its implementation of the new regulatory measures, and consider whether to grant comparability findings for the relevant fisheries and lift the trade restrictions.

NOAA is currently reviewing applications for Comparability Findings received from Canada for its fisheries operating in the Atlantic, Arctic, and Pacific Oceans. Canada has 156 Export and

²⁰ Both the vaquita and totoaba are protected species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"), which is a covered multilateral environment agreement under USMCA Article 24.8.

²¹ *Acuerdo por el que se regulan artes, sistemas, métodos, técnicas y horarios para la realización de actividades de pesca con embarcaciones menores y mayores en Zonas Marinas Mexicanas en el Norte del Golfo de California y se establecen sitios de desembarque, así como el uso de sistemas de monitoreo para tales embarcaciones*. [DOF] Sept. 24, 2020, online at https://www.dof.gob.mx/nota_detalle.php?codigo=5601153&fecha=24/09/2020 [hereinafter Upper Gulf of California ("UGC") Regulatory Agreement]; *Plan de Aplicación en la Zona de Tolerancia Cero y el Área de Refugio para la Protección de la Vaquita Marina*, Diario Oficial de la Federación [DOF] Jan. 20, 2021; online at http://dof.gob.mx/nota_detalle.php?codigo=5610105&fecha=20/01/2021 [hereinafter Enforcement Plan]; *Lineamientos para la organización y funciones del Grupo Intragubernamental sobre la sustentabilidad en el Alto Golfo de California*, Diario Oficial de la Federación [DOF] Jan.15, 2021, online at https://www.dof.gob.mx/nota_detalle.php?codigo=5609927&fecha=15/01/2021 [hereinafter GIS]; and *Lineamientos para el Grupo de Colaboración sobre aplicación del Acuerdo por el que se regulan artes, sistemas, métodos, técnicas y horarios para la realización de actividades de pesca con embarcaciones menores y mayores en zonas marinas mexicanas en el norte del Golfo de California y se establecen sitios de desembarque, así como el uso de sistemas de monitoreo para tales embarcaciones*, Diario Oficial de la Federación [DOF] Jan. 18, 2021, online at https://www.dof.gob.mx/nota_detalle.php?codigo=5609966&fecha=18/01/2021 [hereinafter GCAL]; see also USMCA Chapter 24 Environment 2021 Annual Report to Congress, pp. 27-29 (describing each of the regulatory measures listed above).

²² See *infra* pp. 44-45 (explaining the relevance of these regulations in the first USMCA environment consultations under Article 24.29).

167 Exempt fisheries on its List of Foreign Fisheries. NOAA has been in communication with Canada requesting additional information about Canada's regulatory program during this review process, particularly with regard to mitigating large whale interactions with pot/trap fisheries and gillnet fisheries in the Atlantic. NOAA will publish the results of the Comparability Finding evaluations in the Federal Register for all nations' fisheries.

ii. Magnuson-Stevens Fishery Conservation and Management Act

Under the Magnuson-Stevens Fishery Conservation and Management Act ("MSA"),²³ the Secretary of Commerce has the authority to take monitoring and enforcement action under the MSA, Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, High Seas Driftnet Fishing Moratorium Protection Act ("MPA"), Shark Conservation Act of 2010, and the Shark Finning Prohibition Act. These authorities relate to the monitoring and enforcement of Mexico's and Canada's environmental obligations concerning sustainable fisheries management,²⁴ conservation of marine species,²⁵ and conservation and trade.²⁶

Pursuant to the MPA, NOAA identified Mexico in its 2019 biennial Report to Congress on Improving International Fisheries Management ("biennial report") for IUU fishing, specifically for unauthorized fishing activities by small hulled vessels (called *lanchas*) in U.S. waters, an issue that Mexico has failed to effectively combat in the past. NOAA subsequently issued Mexico a negative certification in the 2021 biennial report for not taking sufficient action to address these activities. As a result of the 2021 negative certification, effective February 7, 2022, the United States began denying U.S. port privileges for all Mexican fishing vessels that fish in the Gulf of Mexico. As a result of the negative certification, and pursuant to the MPA the United States has the authority to impose import restrictions. At the time of publication of this Report, no import restrictions have been imposed.

In its 2021 biennial report, NOAA again identified Mexico for IUU fishing and its continued failure to effectively combat unauthorized fishing activities by *lanchas* in U.S. waters. NOAA also identified Mexico for not having management measures to end or reduce bycatch of North Pacific loggerhead sea turtles in Gulf of Ulloa fisheries that are comparable in effectiveness to U.S. measures. NOAA and the GOM have met several times to discuss Mexico's negative certification and its 2021 identifications. NOAA will make certification decisions on these two issues in its 2023 biennial report.

²³ The MSA (16 U.S.C. § 1801 *et seq.*) is listed as an available monitoring and enforcement authority under Section 815(b) of the Act.

²⁴ See USMCA Article 24.18.

²⁵ See USMCA Article 24.19.

²⁶ See USMCA Article 24.22.

iii. Fishermen's Protective Act of 1967

The Pelly Amendment to the Fishermen's Protective Act of 1967²⁷ provides that if (1) the Secretary of Commerce determines that nationals of a foreign country are conducting fishing operations in a manner which diminishes the effectiveness of an international fishery conservation program, then the Secretary of Commerce shall certify such fact to the President; and (2) when the Secretary of Commerce or the Secretary of the Interior, in consultation with the Secretary of State, finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking of a species, which diminishes the effectiveness of any international program for endangered or threatened species, then the Secretary making such finding shall certify such fact to the President. Upon receipt of a certification, the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of products from the offending country. This authority relates to monitoring and enforcement of Mexico's and Canada's environmental obligations concerning conservation and trade, including in relation to multilateral environmental agreements such as CITES.²⁸ A petition was filed by the Center for Biological Diversity in 2014 to certify Mexico for its illegal fishing and international trade of totoaba, a species that is included in CITES Appendix I. The petitioner alleges that Mexico's failure to stem the growing trade and export of totoaba 'diminishes the effectiveness' of CITES as it simultaneously drives the critically endangered vaquita to extinction. The DOI is currently reviewing the petition and seeking interagency views.

iv. Endangered Species Act

The Endangered Species Act ("ESA")²⁹ is administered by FWS and NOAA, and includes provisions relevant to the monitoring and enforcement of Mexico's and Canada's USMCA obligations concerning trade and biodiversity,³⁰ sustainable fisheries management,³¹ conservation of marine species,³² conservation and trade,³³ and sustainable forest management and trade³⁴ as well as Mexico's and Canada's obligations under CITES. FWS is granted authority under the ESA to implement CITES, and generally has responsibility for ESA authorities for the protection of endangered and threatened wildlife and plants related to terrestrial and freshwater species, while NOAA has responsibility for ESA authorities for the protection of endangered and threatened marine and anadromous wildlife and plants. FWS and NOAA share jurisdiction regarding sea turtles. USDA shares jurisdiction regarding enforcement

²⁷ The Fishermen's Protective Act of 1967 (22 U.S.C. § 1978) is a listed monitoring and enforcement authority under Section 815(c) of the Act.

²⁸ See USMCA Article 24.8 and 24.22.

²⁹ The ESA (16 U.S.C. 16 U.S.C. § 1531 *et seq.*) is listed as an available monitoring and enforcement authority under Section 815(e) of the Act.

³⁰ See USMCA Article 24.15.

³¹ See USMCA Article 24.18.

³² See USMCA Article 24.19.

³³ See USMCA Article 24.22.

³⁴ See USMCA Article 24.23.

of the ESA with regard to import and export of terrestrial plants. The ESA designates the Secretary of the Interior as the U.S. Management Authority and Scientific Authority for CITES, and directs that the Secretary of the Interior shall do all things necessary and appropriate to carry out the functions of each such Authority under CITES, and provides that the respective functions of each such Authority shall be carried out through FWS.

Under the ESA, it is unlawful for any person subject to the jurisdiction of the United States: to engage in any trade in any specimens contrary to the provisions of CITES; to possess any specimens traded contrary to the provisions of CITES; to otherwise violate U.S. CITES implementing regulations or provisions of CITES permits or certificates; or to attempt to commit, solicit another to commit, or cause to be committed, any of these offenses. The ESA also provides authority for the designation of ports, requirements for commercial wildlife importers and exporters, reporting for wildlife importers and exporters, inspection authority, civil/criminal penalties, and other enforcement authority.

a. U.S. Fish and Wildlife Service

Through USMCA supplemental appropriations, FWS Office of Law Enforcement (“OLE”) has continued to strengthen its enforcement of the ESA by enhancing its capacity to detect and interdict illegal flora and fauna coming into the United States. These efforts include the hiring of three additional Senior Wildlife Inspectors, an intelligence analyst, and an additional K-9 team at strategic locations along the U.S.-Mexico border. With additional funding from USTR through an IAA, FWS has also been able to invest in new technology solutions and is in the process of establishing a first-of-its-kind mobile forensic lab.

The new technology purchases allow agents and inspectors to be more strategic in interdicting the illegal flow of protected species across the U.S.-Mexico border. Specifically, the new software platforms enable the Wildlife Intelligence Unit to identify interconnected illicit networks operating on the southern border. The software also allows the already-stored information kept by FWS to be merged with multiple other platforms available to the USG to identify criminal networks and associations. These software purchases focus FWS efforts on targeting illegal trade, while simultaneously allowing legal trade to proceed. In addition to software, FWS purchased forward-looking infrared devices that are being used at the busiest ports to quickly inspect containers and packages for live wildlife without having to open them. These expanded technological capabilities will expedite legal trade and help identify suspected persons and businesses.

Further expanding its investigative and enforcement capabilities, FWS has awarded a contract to build a mobile forensic lab, which will operate along the U.S.-Mexico border. This new platform will enhance the United States’ ability to quickly identify and process evidence, and will facilitate legal trade by enabling staff to more efficiently determine the legality of goods entering the United States. FWS estimates that the platform will be operational by the end of FY2022, and will be staffed with a new FWS forensic scientist and analyst, in addition to staff

from partner USG agencies to ensure a whole-of-government, coordinated approach to implementation.

In addition, throughout 2021, FWS International Affairs, Western Hemisphere Branch continued to provide technical and financial assistance to nine grantees working to conserve priority species and ecosystems in Mexico. Funded projects advanced the conservation of species of binational concern and those affected by the illegal pet trade. Funding provided support for enhancing the capacity of local communities to conserve the monarch butterfly overwintering areas through reforestation, certified forest management, and sustainable small enterprises; improving human-jaguar coexistence and landscape connectivity of key habitats around the country; ensuring the reintroduction and prevention of poaching for the illegal pet trade of scarlet macaws and other native parrot species in Veracruz; and fostering tropical forest connectivity across two networks of indigenous-owned protected areas in the Mayan Forest of Mexico. In August 2021, the FWS Western Hemisphere Branch funded eight new grants to Mexican NGOs working to protect the critically endangered California condor, as well as species like the jaguar, scarlet macaw, and monarch butterfly. This funding will also help reduce the negative impacts of the COVID-19 pandemic on biodiversity conservation by aiding local communities to overcome ecotourism revenue loss and ensuring that community-owned protected area operations continued throughout the pandemic. Further, the FWS Combating Wildlife Trafficking Branch continued to support the efforts of the Mexican NGO, *Natura y Ecosistemas Mexicanos, A.C.*, to recover and protect scarlet macaws in the Lacandon jungle region from poaching for the illegal domestic and international pet trade.

FWS is preparing for the 26th annual meeting of the U.S.-Mexico-Canada Trilateral Committee for Wildlife and Ecosystem Conservation and Management (“Trilateral Committee”), which will take place in June 2022 and be hosted by Canada. The Trilateral Committee facilitates and enhances cooperation and coordination among the wildlife agencies of the three nations in projects and programs for the conservation and management of wildlife, plants, biological diversity, and ecosystems of mutual interest. The Species of Common Conservation Concern Working Table, co-chaired by FWS Ecological Services, will bring together delegates from the three countries to facilitate and enhance cooperation and coordination among the wildlife agencies of the three nations in projects and programs for the conservation and management of wildlife and plants of mutual interest. The 2022 meeting will cover conservation of several transboundary species of bi-national and tri-national interest including Mexican wolf, jaguar, condor, black-footed ferret, and North American bison.

b. National Oceanic and Atmospheric Administration

Through IAAs with USTR, NOAA, consistent with its authority under the ESA, has initiated two projects relevant to the implementation of USMCA commitments related to conserving marine species. The first project is intended to enhance U.S.-Canada NARW recovery through improved transboundary monitoring and entanglement risk reduction collaboration. This multi-year effort, which started in February 2021 and is ongoing, involves collecting data on the

whales' movement using new passive acoustic monitoring and aerial surveys; expanding habitat-based distribution modeling; strengthening existing U.S.-Canada stranding response and necropsy coordination efforts, especially in light of the ongoing Unusual Mortality Event; and expanding NOAA's innovative fishing gear technologies program. The second project aims to support the recovery of North Pacific loggerhead and East Pacific leatherback sea turtles. This project, which began in May 2021, focuses on bycatch reduction efforts by using port surveys and rapid bycatch assessments; expands innovative bycatch mitigation technologies in fisheries to reduce bycatch; and builds support among local fishing communities for sea turtle conservation.

v. Lacey Act

The Lacey Act³⁵ includes provisions relevant to the monitoring and enforcement of Mexico's and Canada's USMCA commitments concerning conservation and trade,³⁶ and sustainable forest management and trade.³⁷ This authority is administered by the DOI, DOC, and the U.S. Department of Agriculture, through their respective agencies, FWS, NOAA, USFS, and APHIS.

a. *U.S. Fish and Wildlife Service*

Complementing efforts carried out under the ESA, FWS OLE has also continued to prioritize Lacey Act enforcement actions to stem the trafficking of protected wildlife and wildlife products, such as totoaba, and illegally-sourced timber. FWS OLE has aggressively investigated and prosecuted criminal networks involved in illegal wildlife and timber trade. Recent successes include the following:

- In September 2021, a Mexican national was sentenced to 3 years in prison, followed by 3 years of supervised release for his role in trafficking endangered reptiles into the United States.
- In September 2021, FWS OLE Wildlife Inspectors intercepted a courier parcel containing 50 smuggled totoaba swim bladders in-transit from Mexico to Vietnam. The investigation was coordinated with Mexican and Vietnamese authorities through the FWS attachés located at both Posts.
- In October 2021, Mexico, Canada, and the United States joined 115 other countries in Operation Thunder 2021, a global counter wildlife trafficking operation facilitated by Interpol and the World Customs Organization. During the course of the operation, FWS OLE Wildlife Inspectors and Agents conducted increased inspections along the U.S.-Mexico border and coordinated with foreign counterparts on wildlife seizures.
- In November 2021, FWS OLE Special Agents interdicted a consignment of live endangered cacti being smuggled from Mexico to Vietnam. Previously unknown

³⁵ The Lacey Act (16 U.S.C. § 3371 *et seq.*) is included as an available monitoring and enforcement authority under section 815(f) of the Act.

³⁶ See USMCA Article 24.22.

³⁷ See USMCA Article 24.23.

subjects were identified and a transnational investigation was initiated and coordinated with the Mexican authorities.

- During the period October - December 2021, data derived from the FWS OLE Law Enforcement Management and Investigations System (LEMIS) documented a dramatic increase in seizures (totaling 1,783 CITES-listed wildlife and plant specimens) at the U.S.-Mexico border; a 346 percent increase in seizures at the Mexican border during the same period in the previous year.
- In February 2022, a Mexican national was arrested by FWS OLE Agents at the San Ysidro border attempting to smuggle 52 live reptiles hidden on his person. After a preliminary investigation by FWS OLE, the man was subsequently charged with smuggling 1,700 reptiles from Mexico.

During the period September 2021 - April 2022, a FWS OLE K-9 and Wildlife Inspector K-9 handler were trained and will be deployed to the Port of El Paso, Texas. The FWS/OLE K-9 is the first of its kind to be posted along the Mexico border, and will enhance to FWS' ability to combat wildlife trafficking along the southern border.

FWS OLE will continue to dedicate resources to its Special Investigations Unit and its FWS attaché stationed at the U.S. Embassy in Mexico City³⁸ to investigate, seize, and prosecute illegal wildlife and timber trade.

FWS International Affairs works closely with Mexico and Canada on CITES matters, including to achieve regional consensus on positions for CITES meetings. FWS International Affairs led the U.S. Delegation to the 74th meeting of the CITES Standing Committee ("SC74"), which was held in March 2022, and is working closely with Mexico and Canada to prepare for the 19th meeting of the Conference of the Parties to CITES ("CoP19") that is scheduled to be held in November 2022 in Panama City, Panama.

b. National Oceanic and Atmospheric Administration

Under the Lacey Act, NOAA OLE continues to address wildlife trafficking crimes related to marine species. Utilizing funding from NOAA's USMCA supplemental appropriations, OLE has increased staff along the border with Mexico, added analytical support and worked to increase its capacity building staff. In May 2022, NOAA OLE sent a special agent to Mexico City to take part in a USCG-led IUU fishing training exercise with Mexican officials. A few other examples of NOAA OLE's case work along the southern border include the following:

- NOAA apprehended an individual who failed to declare eight bags (19 pounds) of dried shark fins when entering the United States from Mexico. Said individual had no receipts showing the lawful origin of the product. A summary settlement for \$500 was issued and paid.

³⁸ For clarity, the FWS law enforcement attaché is a different individual than the individual detailed from FWS to USTR for the USMCA environment attaché position.

- NOAA investigated an individual who failed to declare large quantities of fish swim bladders (18.7 pounds) and shark fins (42.3 pounds) when entering the United States from Mexico. The items were seized and a summary settlement for \$500 was issued and paid.
- OLE investigators found that an individual attempted to import five live black abalones along with other non-regulated wildlife products into the United States at the San Ysidro port of entry. The five live black abalones were abandoned to NOAA OLE. A summary settlement for \$750 was issued and paid.
- A special agent completed an investigation involving a shipment of red grouper filets imported to the United States from Mexico, and determined there were inconsistencies within the Certificate of Admissibility (“COA”) documents. A Summary Settlement for \$1,000 was issued but not paid. The case was referred to NOAA’s Office of General Counsel and resulted in the issuance of a Notice of Violation Assessment. A settlement agreement for \$1,000 was reached.
- A special agent investigated a shipment of red and black grouper filets imported to the United States from Mexico, and determined that required COA documents were not submitted for all the grouper species. The broker later uploaded a revised COA. A summary settlement for \$1,000 was issued and paid.
- A special agent concluded an investigation involving an importer found to have multiple SIMP reporting violations associated with a shipment of imported shrimp from Mexico to the United States. A summary settlement for \$1,000 was issued and paid.
- A special agent concluded an investigation involving SIMP reporting violations associated with a shipment of imported tuna from Mexico to the United States. A summary settlement for \$1,000 was issued and paid.

c. U.S. Forest Service and U.S. Agency for International Development

USFS and USAID have continued their longstanding partnership in carrying out efforts to monitor and support Mexico in implementing its USMCA environment commitments related to forest legality. The goal of USAID’s and USFS’ forest legality program is to facilitate legal avenues for the sustainable management of forest products and resources, and to support the GOM, communities, and private sector participation in legal natural resource management activities. These efforts support transparent, legal and regulated management, governance, harvest, and trade of forest resources; and as a result, support the monitoring and enforcement authority under the Lacey Act.

Since its establishment in 2020, USFS and USAID have continued to engage with the interagency forest legality and transparency working group. This working group is comprised of high-level officials from Mexico’s Secretariat of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales* (“SEMARNAT”)), National Forest Commission (*Comisión Nacional Forestal* (“CONAFOR”)), National Protected Areas Commission (*Comisión Nacional de Áreas Naturales Protegidas* (“CONANP”)), and Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente* (“PROFEPa”)) and aims to foster interagency collaboration to stem illegal logging. USFS and USAID are working

to establish commitment levels from key agencies to develop capacity-building activities and recommend technological investments related to forest legality issues, such as early warning systems. The working group is developing a comprehensive strategy to address illegality in the forest sector, enforce laws, and monitor compliance with USMCA environmental obligations, and promote legal avenues for timber production and trade.

In 2021, USFS, under its agreement with USAID, completed a comprehensive assessment of Mexico's timber and land management system (*Sistema Nacional de Gestión Forestal* ("SNGF")).³⁹ To modernize the SNGF, which was originally designed in 2006, USFS and USAID developed questionnaires and conducted interviews, virtual workshops, and discussion groups to identify areas in need of improvement or complete redesign. The results of the diagnostic indicate a need for a redesigned system with updated programming language, improved security controls, and increased geo-spatial capacity, among other recommendations. Once a redesign plan is finalized and approved, USFS and USAID, in coordination with SEMARNAT, will support Mexico to develop and implement a new SNGF. The SNGF diagnostic supports the monitoring and enforcement authority under the Lacey Act, as it provides a set of detailed recommendations for SEMARNAT to improve the oversight and management of timber resources in Mexico.

USFS and USAID are also working with CONAFOR to develop early deforestation alert systems using remote sensing technologies for two priority protected areas in southern Mexico that are threatened by illegal logging and illicit land-use change. Field verifications of the early alert system are being supported with funding from USTR. The early warning systems will improve Mexico's monitoring and inspection capacity by providing near real-time updates on deforestation events in protected areas.

Through the IAA with USTR, USFS is also enhancing USMCA Article 24.23 (Sustainable Forest Management and Trade) implementation through its support of tropical community forest enterprises in southern Mexico. USFS is coordinating with CONAFOR and local NGOs to increase legal opportunities for sustainable timber management and trade in forest-dependent communities in Mexico.

USFS has also partnered with APHIS to continue development of the Arbor Harbor system. The Arbor Harbor system is an electronic framework that is used by the USG and some foreign governments to assist in efforts to combat illegal logging and help conservation organizations and importers practice due diligence. Enhancements of Arbor Harbor will enable APHIS to conduct semi-automatic compliance reviews of Lacey Act import declarations and generate

³⁹ The SNGF is Mexico's primary land-use permitting system, processing approximately 50,000 to 60,000 permit authorizations each year. There are currently 38 different types of procedures that can be processed through the SNGF, including timber and non-timber extraction, forest health management actions, land-use conversion, and the transport and transformation of raw materials, among others. The SNGF is key to ensuring transparency and legality and improving land management and decision-making within Mexico's forest sector.

specialized reports that include species, geographical, conservation, trade, and other data needed by APHIS to review declarations more efficiently. APHIS used a portion of its USMCA supplemental appropriations to fund this work with USFS.

Through its IAA with USTR, USFS is further developing Arbor Harbor into a risk indicator tool for automated Lacey Act compliance. The Lacey Act declaration and Arbor Harbor reference data networks will provide inputs for a machine learning model to identify risk indicators, anomalies, and inconsistencies in declaration data. These inconsistencies will be vetted via the Arbor Harbor system, which is comprised of aggregated datasets that are routinely checked for errors, including the appropriate connections made between scientific names and complementary information (*e.g.*, distribution, conservation status). The automation of risk and anomaly detection through machine learning will provide APHIS' Lacey Act compliance personnel with a risk assessment process that will significantly simplify compliance monitoring.

Related to its work on Arbor Harbor, USFS is part of a global consortium of partners called World Forest ID ("WFID") that is actively collecting wood samples from countries at higher risk for illegal logging. World Forest ID is building the world's largest geo-referenced collection of the most commonly traded tree species globally. These samples are being used to build open-source reference databases of wood species and origin for use by enforcement officials to verify the declared species and origin of a wood product in trade. To date, WFID has collected over 1,000 samples from nine countries, including Mexico.

WFID also continues to build the Stable Isotope Ratio Analysis ("SIRA") reference database to validate the provenance of wood products exported from Mexico. Through the WFID program, global partners are building up SIRA reference data from countries with high risks of illegal logging. This work will also entail collaboration with chemistry labs in the United States that specialize in various provenance-based methodologies.

In 2022, USFS conducted a comprehensive assessment of Mexico's wood identification capacities using USMCA supplemental funds. USFS sent out a survey to 114 relevant actors from the government, academia, and the private sector to better understand the current resources, opportunities, and challenges related to wood identification and screening within Mexico. Additionally, 110 timber producers and sawmill operators from across 14 states responded to the survey, providing valuable information and opinions on timber certification, perceived types of illegal logging (falsification of documents, extracting more than the permitted volume, etc.), and capacity needs for timber management and control of timber shipments. CONAFOR also incorporated results of the assessment report into their National Forest Information System (SNIF in Spanish),⁴⁰ Mexico's public facing platform that reports forest sector data. The redesign of the SNIF was supported through USFS' agreement with USAID.

⁴⁰ NATIONAL FOREST INFORMATION SYSTEM (*SISTEMA NACIONAL DE INFORMACIÓN FORESTAL* (SNIF)), <https://snif.cnf.gob.mx/>.

The results of this comprehensive assessment, along with APHIS data from Lacey Act declarations on wood product imports from Mexico, is being used to inform WFID on which samples it should collect from the most commonly traded species and source countries for wood products coming to the United States from Mexico. The resulting reference databases built from these samples will allow APHIS to validate species and origin claims of wood imports from Mexico using wood identification technologies.

Additionally, in relation to wood identification efforts, the USFS Wood Identification & Screening Center (“WISC”) has further developed the capacity of forensic wood identification through direct analysis in real time time-of-flight mass spectrometry (“DART-TOFMS”). DART-TOFMS enables species identification with evidence of geographic location. The georeferenced wood samples allow WISC to further develop origin identification methods. DART-TOFMS confirmation of both species as well as country of origin claims will be a powerful tool for Lacey Act enforcement for wood products exported from Mexico.

d. Animal and Plant Health Inspection Service

APHIS has continued to advance efforts to implement the Lacey Act. In 2020, APHIS initiated the development of a modification of CBP’s Automated Commercial Environment (“ACE”) system to automatically reject certain inaccuracies provided by importers on import documentation that is required under the Lacey Act when submitting the scientific names of plants. The supplemental funding that APHIS received as part of USMCA allowed this project to move from concept to reality. This modification was completed in December 2021 and flags unintentional errors, as well as errors that appear to be intentional. ACE automatically rejects these errors during the filing process, forcing the filer to correct the information to allow the Lacey Act declaration submission. The automatic rejections not only improve the quality of the submitted declaration data but also improve efficiency in supporting data requests from APHIS’ internal and external enforcement partners. This effort advances USMCA implementation as it relates to stemming wildlife trafficking through fraudulent documentation detection and facilitating the legal trade in flora and fauna through more efficient processes.

To further advance Lacey Act implementation, APHIS collaborates with CBP to survey importers. These surveys consist of questions about the robustness of importers’ Lacey Act compliance programs and a review of their import documentation for selected shipments. The next round of surveys is expected to start in October 2022. The results of past surveys have led to significant improvements in the quality of declaration information, increased attention to supply chain matters, and referrals to the Department of Homeland Security and DOJ for investigation and possible prosecution.

As a result of renewed focus directed by APHIS’ Lacey Act enforcement supplemental appropriations, to date in FY2022, APHIS issued 37 letters of non-compliance (“LONs”) to importers and brokers, who are responsible for importing wood products from Mexico, but

submitted declaration data incorrectly or incompletely. The letter serves as a first step in the compliance continuum and seeks only to notify the importers and their agent of the noncompliance or questionable entry in their Lacey Act declaration(s). Recipients of LONs are afforded an opportunity to question APHIS about the identified noncompliance and, if appropriate, provide justification to validate the information they provided. If the importer or broker cannot provide evidence sufficient to refute the LON, they must make the appropriate corrections to all future declarations. After the LONs were issued, follow-up reviews of new declarations showed that 17 of the 37 LON recipients submitted accurate information, 12 recipients did not submit new declarations since the LON, and 7 have not demonstrated a change in behavior. APHIS will continue to monitor these filers closely to determine if additional action is necessary, which could include referrals to law enforcement partners.

On October 1, 2021, APHIS implemented phase six of the Lacey Act enforcement schedule, requiring U.S. importers to file a Lacey Act declaration for additional commodities, including new wooden pallets and containers listed under subheading 4415 of the Harmonized Tariff Schedule (“HTS”), certain essential oils, and musical instrument parts. Mexico and Canada are among the top exporters of pallets to the United States. Through the declaration requirement, the importer is accountable for exercising reasonable care for products entering U.S. trade. APHIS and other agencies expect they will use information from the declaration to monitor implementation of Lacey Act requirements.

To prioritize the next phase of imports to require an import declaration, both in general and with regards to Mexico, APHIS engaged its internal research staff to develop a risk score for imported plant and plant products. In 2021, APHIS conducted a pilot project to develop a risk score for a handful of commodities. The risk score indicates the likelihood of a Lacey Act violation for a given import commodity and is determined by combining data from the U.S. Census Bureau and the Global Illegal Logging and Associated Trade (“ILAT”) Risk Assessment Tool. The results were promising, showing the risk of a Lacey Act violation over time, by country and by value of trade. In FY2022 and FY2023, APHIS will apply this risk score to rank plant commodities imported into the United States, producing summary documents and data visualizations for each commodity. APHIS will also determine how the score for each commodity is influenced by trade with Mexico and which highly ranked commodities have large proportions of trade coming from Mexico. This information will assist the Lacey Act Program in enforcing the Lacey Act on commodities imported from Mexico by prioritizing those that have the highest potential for violations.

The initial work conducted on the risk score development was to review HTS codes, which are the basis for determining whether or not an import links to the Lacey Act. Of approximately 19,000 HTS codes, about 3,000 link to plants and plant products. After eliminating common crops and common cultivars, which are exempt from the import declaration requirement, 883 HTS codes remained. Risk scores are being calculated for these commodities, to be presented in tabular and graphic formats. Initial results are expected in 2022, but were not yet available at the time of this Report.

vi. Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918⁴¹ (“MBTA”) implements bilateral conventions with both Mexico and Canada. The underlying conventions and the MBTA promote actions that ensure all three countries will work to improve bird conservation actions. The United States, Mexico, and Canada have a long history of collaboration and striving to improve conservation outcomes for our shared migratory bird resources. The three nations meet annually at the Trilateral Committee Migratory Bird Working Table to discuss priority issues affecting all three countries and to seek ways to improve communication and collaboration. Regular communications are exchanged on actions such as waterfowl population monitoring, issues related to disease outbreaks, actions that promote the reduction in threats to birds from human-caused sources, as well as data management, data sharing, and decision-support tools.

On January 7, 2021, FWS published a final rule defining the scope of the MBTA as it applies to conduct resulting in the injury or death of migratory birds protected by the MBTA. The January 7 rule defined the MBTA’s prohibitions on pursuing, hunting, taking, capturing, and killing to apply only to actions directed at migratory birds, their nests, or their eggs. On October 4, 2021, FWS published a final rule that revoked the January 7 rule, thus returning FWS to implementing the MBTA as prohibiting incidental take and prioritizing enforcement discretion accordingly. The revocation of the January 7 rule reflects the United States’ strong relationship with Migratory Bird Convention partners. In response to Canada raising significant concerns that the January 7 rule did not align with the bilateral convention, the United States engaged in extensive dialogue with Canada and Mexico. This dialogue ultimately helped FWS decide that the January 7 rule was not the best reading of the statute.

vii. Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act

The 2016 Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act (“END Act”)⁴² relates to the monitoring and enforcement of Mexico’s and Canada’s USMCA environment commitments concerning conservation and trade of wild flora and fauna.⁴³ The END Act requires DOS, in coordination with DOI and DOJ, and other members of the Presidential Task Force on Wildlife Trafficking, to submit an annual report to Congress which, among other things, identifies Focus Countries⁴⁴ and Countries of Concern.⁴⁵ DOS identified 28 Focus Countries, including Mexico, and six Countries of Concern in the 2021 END Act Report. Consistent with the END Act, the

⁴¹ The Migratory Bird Treaty Act (16 U.S.C. § 703 *et seq.*) is listed as a monitoring and enforcement authority under Section 815(g) of the Act.

⁴² The END Act (16 U.S.C. § 7601 *et seq.*) is listed as a monitoring and enforcement authority under Section 815(h) of the Act.

⁴³ USMCA Article 24.22.

⁴⁴ Focus countries are countries which serve as points of origin, transit, or destination for trafficked wildlife or wildlife products.

⁴⁵ Countries of Concern are Focus Countries whose governments are engaged in or are actively profiting from wildlife trafficking.

U.S. Embassy in Mexico prepared an assessment and strategic plan to guide interagency efforts to combat wildlife trafficking in Mexico.

viii. Customs Seizure and Other Authorities under the Tariff Act of 1930

CBP has continued to enhance and expand its efforts related to the monitoring and enforcement of Mexico's and Canada's USMCA environment commitments concerning wildlife trafficking, illegal logging and associated trade, IUU fishing, and seafood fraud.

CTAC is one of the main mechanisms through which CBP has improved information sharing and leveraged the collective resources of participating government agencies to prevent, deter, interdict, and investigate violations of U.S. import and export laws. CTAC conducts cargo targeting, surveillance activities, and other trade-related operations. To manage its targeting activities, CTAC employs a six-step import safety risk mitigation process: (1) identify the import safety risk associated with commodities, manufacturers, and/or importers; (2) conduct a thorough risk assessment and establish the scope of the targeting; (3) input and monitor targeting criteria; (4) conduct intensive cargo examinations at ports of entry; (5) compile exam data and report findings; and (6) evaluate reported data and determine whether risk has been mitigated or if further targeting is merited. Throughout 2021, CBP has provided law enforcement sensitive intelligence to federal agency partners on areas of risk for smuggling specific environmental products on the U.S.-Mexico border and has worked with partner government agencies on joint operations related to environmental products.

To develop expertise in the area of illicit environmental trade and better investigate related leads, CBP has increased its engagement with NGOs, including the Environmental Investigation Agency, Wildlife Conservation Society, Center for Advanced Defense Studies, Global Fishing Watch, Secure Fisheries-One Earth Future, and World Wildlife Fund. CBP expects continued collaboration with NGOs, key USG agencies, and its Mexican and Canadian Customs counterparts to strengthen law enforcement coordination related to the USMCA environmental obligations.

Through an IAA, USTR provided CBP with USMCA supplemental funds to strengthen CBP's capabilities to produce and use intelligence and other data to more effectively target high-risk shipments. This includes adding additional, full-time targeting team staff dedicated to enforcing the USMCA environmental obligations, providing enforcement-related training for CBP personnel, and engaging with the trade community through outreach events to ensure awareness of U.S. laws and regulations associated with the environmental obligations of the USMCA.

Since its launch in March 2020, the USMCA Center continues to coordinate CBP's implementation of the Agreement and ensures comprehensive, consistent, and transparent enforcement. The USMCA Center's staff is composed of operational, legal, and audit professionals. They have strengthened networks with relevant USG partners, and Canadian and

Mexican customs authorities. The USMCA Center also serves as a central communication hub for CBP and the private sector community, most notably through CBP's Commercial Operations Advisory Committee USMCA Working Group. The Center has engaged in comprehensive efforts to create and distribute compliance guidance resources and briefings to private sector stakeholders, including traders, brokers, freight forwarders, and producers.

CBP is also an active participant in numerous interagency committees and working groups, including the IECME, and partners with agencies that implement authorities relevant to the environment chapter. For example, CBP's Office of Trade participates in the interagency ILAT working group, with DOJ, USTR, DOS, USFS, APHIS, and USAID to collaborate on efforts to combat illegal timber trafficking. Under this working group, CBP is discussing potential virtual trainings with Mexico, in partnership with DOJ and USFS, on trade enforcement, risk-based targeting, regulatory audit techniques, and timber targeting and identification; collaborating with APHIS to conduct FY2022 Lacey Act audit surveys; and, planning a joint operation with FWS to target timber being imported from Mexico with fraudulent Lacey Act declarations.

ix. Implementation of Other Relevant Provisions of Law by Other Agencies

The following summarizes efforts NOAA, EPA, DOS, FWS, and DOJ carried out under other provisions of law that are relevant to the U.S. implementation, monitoring, or enforcement of USMCA environmental obligations.⁴⁶

a. *National Oceanic and Atmospheric Administration*

Through its Marine Debris Program ("MDP"), which is authorized by the Marine Debris Act,⁴⁷ NOAA funded ten cooperative grants, totaling almost \$4.1 million in funding, on marine debris removal and prevention activities in Mexico and the U.S.-Mexico and U.S.-Canada border areas. This funding was made possible through \$8 million in USMCA supplemental appropriations that the Act provided directly to NOAA to implement the Marine Debris Act in the North American region. Through funding partners' implementation of these grants, the MDP is addressing marine debris issues in North America by focusing on preventing litter from entering the environment, and activities targeted at removing harmful marine debris from the marine environment. These projects are addressing marine debris from both land- and sea-based sources and promoting cross-border collaboration and monitoring to address common marine debris issues facing the Parties. Projects began in October/November of 2021 and are being implemented for up to two years. These grant awards represent the U.S. commitment to

⁴⁶ Section 815(k) provides that the IECME may request the heads of other Federal agencies to take monitoring or enforcement actions under any provisions of law that are relevant to USMCA environmental obligations.

⁴⁷ The MDP program is carried out mainly under NOAA's authorities and legislative mandates under the Marine Debris Research, Prevention, and Reduction Act and Save Our Seas 2.0 Act, which implements USMCA obligations under Article 24.12.

supporting the environmental goals of the USMCA, including the need to take action to prevent and reduce marine debris in order to preserve human health and marine and coastal ecosystems, prevent the loss of biodiversity, and mitigate the costs and impacts of marine debris. MDP will announce additional USMCA marine litter grants in August/September 2022 to utilize the remainder of the \$8 million USMCA supplemental appropriations.

In addition, through USMCA supplemental appropriations, NOAA received \$8 million to engage in cooperation with the GOM to combat IUU fishing, and to enhance the implementation of the Seafood Import Monitoring Program (“SIMP”) authorized under 16 U.S.C. 1826 and 1829.⁴⁸ These funds have enabled additional hires that will support program management, policy and data analysis, including assessing the legality of priority species imported from Mexico, support SIMP, and increase NOAA’s law enforcement capacity.

b. U.S. Environmental Protection Agency

EPA, as the U.S. member of the CEC Council,⁴⁹ received USMCA supplemental appropriations to carry out its efforts related to the CEC, including activities to reduce pollution, strengthen environmental governance, conserve biological diversity, and sustainably manage natural resources. The EJ4Climate grant program, launched by EPA Administrator Michael S. Regan at the 28th annual CEC Council Session in September 2021, provides funding directly to local and Indigenous communities and community-based organizations in Canada, Mexico, and the United States, helping advance local solutions and promote shared responsibility and stewardship for the environment. EPA provided \$1M in funds in 2021, which were matched by the CEC. Implementation of 15 grants (5 per country) began in February 2022. EPA plans to announce a new cycle of the grant program at the July 2022 CEC Council Session, with the launch of a call for proposals in September 2022.

Through an IAA with USTR, EPA is expanding its efforts related to the monitoring and enforcement of Mexico’s and Canada’s USMCA environment commitments concerning the protection of the marine environment from ship pollution⁵⁰ and air quality.⁵¹ These actions are enabled under various U.S. environmental authorities, including, *inter alia*, the Clean Air Act, the Clean Water Act, and the Act to Prevent Pollution from Ships. This work includes expanding investigative targeting and analysis of illegally traded non-compliant engines and wood heaters; hazardous waste, biodiesel, chemicals, and ozone-depleting substances; enhancing vessel pollution enforcement; and improving information sharing and coordination with Mexico and Canada related to these matters, including supporting additional enhanced inspections and

⁴⁸ SIMP implements environmental obligations under USMCA Article 24.21 on IUU fishing.

⁴⁹ The CEC Council is the CEC’s governing body and is composed of the highest-level federal environmental authorities from the United States, Mexico, and Canada: The Administrator of the U.S. Environmental Protection Agency, the Mexican Minister of Environment and Natural Resources, and the Canadian Minister of Environment and Climate Change.

⁵⁰ See USMCA Article 24.10.

⁵¹ See USMCA Article 24.11.

sampling at ports and border crossings. EPA is currently negotiating a new IAA with the US Coast Guard to collaborate on vessel pollution efforts.

To build public visibility of U.S. border environmental enforcement, a new “Search” function has been added to EPA’s Enforcement and Compliance History Online (“ECHO”) for facilities located along the U.S.-Canada border. This capability was already available for facilities located along the U.S.-Mexico border. Searching for EPA-regulated facilities using this tool can quickly communicate border compliance status to any interested party.

c. U.S. Department of State

In April 2021, DOS suspended Mexico’s certification under section 609 of P.L.101-162. Section 609 implements the USMCA environmental obligation to conserve marine species⁵² by prohibiting the importation of wild-caught shrimp and products from shrimp harvested with commercial fishing technology that may adversely affect sea turtles. The suspension of Mexico’s certification resulted in an import prohibition on wild-caught shrimp from Mexico. The GOM subsequently implemented a plan of action to strengthen sea turtle conservation in its shrimp trawl fisheries, including intensive training of their fleets on the use of turtle excluder devices (“TEDs”) and strengthening of compliance efforts. As a result of significantly improved use of TEDs by Mexico’s commercial shrimp trawlers, on October 21, 2021, the DOS certified to Congress that Mexico’s TED program was determined to again be comparable to the United States program under section 609. Therefore, wild-caught shrimp harvested in Mexico are again eligible to enter the United States pursuant to section 609, and Mexico was re-certified in May 2022 by DOS.

d. U.S. Fish and Wildlife Service

FWS’ National Wetlands Inventory Program, authorized under the North American Wetlands Conservation Act,⁵³ has partnered with DOS to assist the GOM to map their Ramsar-designated wetlands. Wetlands protected under the Convention on Wetlands of International Importance (“Ramsar Convention”) are among the world’s most important and strategic, meeting specific criteria for conserving biodiversity and supporting local livelihoods. The Ramsar Convention in Mexico is implemented by CONANP and covers over 3.6 million hectares of wetlands. Mapping the Ramsar-designated wetlands provides baseline information for determining the presence, extent, and ecological character for management action and for annual reporting to the Ramsar Convention. The project started in September 2020 and will end in August 2024.

⁵² See USMCA Article 24.19.

⁵³ North American Wetlands Conservation Act, 16 U.S.C. § 4401 *et seq.* (2010).

e. U.S. Department of Justice

The DOJ Environment and Natural Resources Division (“ENRD”) prioritizes civil and criminal enforcement of U.S. environmental laws and is working to enhance that effort with respect to cases involving violations of environmental laws encompassed under Chapter 24 of the USMCA, including through the use of USTR supplemental funding. ENRD works with its partner federal investigative agencies to prosecute such cases and support DOJ’s agency partners’ environment-related investigations. Since July 2021, DOJ, in conjunction with its federal agency partners, has charged or prosecuted several such cases under the Lacey Act, including with respect to several CITES-protected species from Mexico, such as river turtles, box turtles, crocodiles, spider monkeys and beaded lizards. Prosecutions have also continued with respect to illegally-imported totoaba fish swim bladders from Mexico. Sentences in these cases have included some combination of imprisonment and payment of criminal penalties and restitution.

Additionally, ENRD supports EPA in the judicial prosecution of civil and criminal violations of the import and export provisions of several statutes, such as the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and the Clean Air Act. For example, ENRD prosecutors and the U.S. Attorney’s Office for the Southern District of California have partnered with EPA, Homeland Security Investigations, and various California agencies to continue to implement a border pesticide initiative to interdict illegal Mexican pesticides being smuggled into the United States (typically for marijuana cultivation). In all, 59 defendants have been charged, resulting in 18 felony and 34 misdemeanor pleas to date, and the seizure of nearly 1,200 containers of illegal Mexican pesticides (including many cases since July 2021). The pesticides most frequently encountered in these cases contain highly toxic chemicals not registered pursuant to FIFRA and, thus, not permitted to be sold or distributed in the United States. The application of these chemicals on public lands has been documented to pollute streams and soils, kill wildlife, create waste disposal issues, and pose a public health risk.

DOJ will continue to increase its focus on prosecutions of illegally-sourced timber, wildlife trafficking, import of non-compliant engines, illegal import of ozone-depleting and other substances, illegal fishing, and pollution from ships, which are relevant to the enforcement of various obligations under the environment chapter of the USMCA.

C. Summary and Next Steps

In the second year since USMCA EIF, the United States has continued to build on its strong foundation for implementing its environmental commitments, as well as monitoring and enforcing Mexico’s and Canada’s USMCA environmental obligations, through a whole-of-government approach. The United States has taken broad and strategic steps to advance USMCA Chapter 24 implementation. Through coordinated USG efforts and application of supplemental appropriations, the United States has strengthened marine species conservation measures; bolstered intelligence, inspection, investigative, and enforcement capacity to combat

wildlife trafficking, IUU fishing, and illegal trade in timber species; increased prosecutorial capacity related to environmental crimes; and advanced vessel pollution reduction efforts. The United States will continue to address any identified gaps in enforcement capacity to implement USMCA environmental obligations. The United States will also continue to collaborate with Mexico and Canada on implementation of USMCA environment chapter commitments.

III. IMPLEMENTATION OF SUBTITLE B OF THE ACT

Under section 821 of the Act, EPA is required to, in coordination with eligible public entities, carry out the planning, design, construction, and operation and maintenance of high priority treatment works in the Tijuana watershed that is in the United States to treat wastewater (including stormwater), nonpoint sources of pollution, and related matters resulting from international transboundary water flows originating in Mexico.

Since USMCA EIF, EPA, through its existing Border Water Infrastructure Program (“BWIP”), has continued to work collaboratively with partners and communities to address urgent public health and environmental needs along the U.S.-Mexico border. EPA’s BWIP provides funding, which was significantly enhanced through USMCA supplemental appropriations, for the planning, design, and construction of critical water and wastewater infrastructure in underserved communities in the border region, defined as 100 kilometers north and 100 kilometers south of the U.S.-Mexico border. Through the BWIP, EPA is also investing in further improvements to advance the reliability of Tijuana’s wastewater collection and pumping system.

Throughout 2021 and 2022, EPA strengthened its engagement with Mexico and the eligible public entities listed in section 821 of the Act, including with the International Boundary and Water Commission (“IBWC”), to prioritize projects to build sanitation infrastructure and mitigate polluted transboundary flows in the area of the U.S.-Mexico border. EPA convened meetings with the Eligible Public Entities Coordinating Group, composed of Federal, State, and local organizations, and held public meetings to share updates on project progress and answer questions about project implementation. EPA completed a technical analysis of ten projects to address polluted transboundary flows and, in parallel, initiated the public scoping and data collection for the environmental review process. On April 5, 2021, EPA published a Notice of Intent to conduct National Environmental Policy Act (“NEPA”) public scoping in the Federal Register⁵⁴ and completed an Environmental Information Document in Fall 2021. EPA announced on November 8, 2021, that a comprehensive infrastructure solution comprising nine projects⁵⁵ would move forward for environmental review to meet NEPA requirements. EPA began developing an Environmental Impact Statement that will lead to issuance of the NEPA Record of Decision identifying the project(s) that will use the \$300 million of USMCA supplemental appropriated funds for final design and construction. In parallel, EPA is holding

⁵⁴ *United States-Mexico-Canada Agreement Mitigation of Contaminated Transboundary Flows*, 86 Fed. Reg. 17595 (EPA Apr. 4, 2021).

⁵⁵ One of the original ten projects was determined to be infeasible.

regular discussions with Mexico to align project and investment priorities to advance implementation of a comprehensive infrastructure solution. EPA and CONAGUA are also finalizing a Statement of Intent to work in coordination in the planning, design, construction, and rehabilitation of infrastructure to help solve the sanitation problem in the San Diego/Tijuana region, including the Pacific Ocean.

EPA is working to ensure that the constructed infrastructure represents the best solutions to the environmental problems faced in San Diego and the Tijuana River Valley, and leadership is engaging at the highest level of the Agency. On August 22, 2021, Administrator Regan met with members of the local congressional delegation, including Representative Scott Peters, and federal agents working along the border during a tour of the Mexico border area. In support of the binational effort, EPA Administrator Regan and U.S. Ambassador to Mexico, Ken Salazar, convened in-person meetings with high-level Mexican officials on November 22, 2021, to encourage additional Mexican engagement and financing of infrastructure projects in the San Diego/Tijuana region. In addition, the discussions focused on the need to align project and investment priorities and ensure long-term operations and maintenance of those systems.

IV. IMPLEMENTATION OF USMCA ENVIRONMENTAL OBLIGATIONS BY MEXICO AND CANADA

A. MEXICO

Since July 1, 2021, Mexico has continued to further its implementation of the measures described in the first USMCA Environment Annual Report to Congress, and has since established new environmental laws and regulatory programs. However, stakeholder concerns remain regarding Mexico's lack of enforcement of its measures related to sustainable fisheries management⁵⁶ and conservation of marine species.⁵⁷

i. Key Areas of Implementation (by issue)

a. *Levels of Environmental Protection*

The GOM has advanced its implementation of USMCA Article 24.3 by increasing its levels of environmental protection through establishing new laws and regulations and modifying existing laws, including, for example, publishing the Organic Law of the Mexican Navy,⁵⁸ updating the

⁵⁶ See USMCA Article 24.18.

⁵⁷ See USMCA Article 24.19.

⁵⁸ Decree issuing the Organic Law of the Navy (*Decreto por el que se expide la Ley Orgánica de la Armada de México*), Diario Oficial de la Federación [DOF] Oct. 14, 2021, available online at https://www.dof.gob.mx/nota_detalle.php?codigo=5632665&fecha=14/10/2021.

Regulations on the Law of Ports,⁵⁹ approving the National Program for Contaminated Site Remediation for 2021-2024,⁶⁰ and modernizing NOM-001-SEMARNAT-1996.⁶¹

The Mexican Secretariat of the Navy (“SEMAR”) has a pivotal role in the enforcement of USMCA commitments related to the protection of the marine environment from ship pollution, sustainable fisheries management, conservation of marine species, IUU fishing, conservation and trade, and sustainable forest management and trade. In July 2020, GOM transferred from the Secretariat of Communications and Transportation to SEMAR the national maritime authority to improve Mexico’s procedural and enforcement capacity in Mexican waters.⁶² The Organic Law of the Mexican Navy cements SEMAR’s new role as the national maritime authority and expands SEMAR’s authority in marine, coastal, and port areas. It requires SEMAR to control maritime traffic, prevent marine pollution, conduct surveillance and inspection actions, and establish and monitor marine areas (and their corresponding air spaces) that restrict vessel navigation. This law also creates a naval police unit that collaborates with the National Guard to increase the rule of law in Mexican marine areas, coasts, and port areas, and contributes to ensuring security on land.

Similarly, the updated Regulations on the Law of Ports broaden the scope of SEMAR’s authority. The regulations provide guidance on the construction, use, utilization, exploitation, operation, protection, forms of administration and provision of services in ports, terminals, marinas, and port facilities. They require that works comply with the specifications provided in the technical projects authorized by SEMAR, as well as with the approval, where appropriate, of SEMARNAT in matters of environmental impact. The regulations also state that port service providers must be accredited by SEMAR, and that garbage, waste, and wastewater management must comply with provisions of the International Convention for the Prevention of Pollution from Ships, General Law of Ecological Equilibrium and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente* (“LGEEPA”)), and Law of Discharges in Mexican Marine Zones, among other relevant provisions of law. Further, they delineate SEMAR’s responsibility to conduct regular inspections, surveillance, and control of people, vehicles, and vessels to ensure compliance with these regulations. These provisions strengthen Mexico’s implementation of environmental obligations under USMCA Articles 24.7

⁵⁹ Regulation on the Law of Ports (*Reglamento de la Ley de Puertos*), Diario Oficial de la Federación [DOF] Dec. 16, 2021, available online at https://www.dof.gob.mx/nota_detalle.php?codigo=5638489&fecha=16/12/2021.

⁶⁰ National Program for the Remediation of Contaminated Sites 2021-2024 (*Programa Nacional de Remediación de Sitios Contaminados 2021-2024*), Diario Oficial de la Federación [DOF] Nov. 5, 2021, available online at https://www.dof.gob.mx/nota_detalle.php?codigo=5634656&fecha=05/11/2021.

⁶¹ NOM-001-SEMARNAT-2021 (*Norma Oficial Mexicana NOM-001-SEMARNAT-2021, Que establece los límites permisibles de contaminantes en las descargas de aguas residuales en cuerpos receptores propiedad de la nación*), Diario Oficial de la Federación [DOF] Mar. 11, 2022, available online at https://www.dof.gob.mx/nota_detalle.php?codigo=5645374&fecha=11/03/2022.

⁶² Law of Navigation and Maritime Trade (*Ley de Navegación y Comercio Marítimos*), Diario Oficial de la Federación [DOF] Jun. 1, 2006, last amended DOF Dec. 7, 2020, available online at https://www.diputados.gob.mx/LeyesBiblio/pdf/LNCM_071220.pdf.

(Environmental Impact Assessment), 24.10 (Protection of the Marine Environment from Ship Pollution), and 24.18 (Sustainable Fisheries Management).

SEMARNAT also launched the National Contaminated Sites Remediation Program for 2021-2024 in November 2021. This program furthers the implementation of the General Law for the Prevention and Integral Management of Wastes (“LGPGIR”).⁶³ SEMARNAT sets three priority objectives to achieve the prevention, mitigation, and management of contaminated sites⁶⁴: (1) to improve the National Inventory of Contaminated Sites (“INSC”); (2) promote remediation actions at contaminated sites to contribute to the well-being of the population; and (3) strengthen the regulatory framework for remediation of contaminated sites. The INSC currently only identifies contaminated sites, but SEMARNAT plans to enhance it to include full information identifying the types of pollutants and their impact on soil and water in each site, and the status of each site’s remediation. These improvements will allow SEMARNAT to rank and prioritize the sites that need to be remediated. The program encourages those responsible for remediation⁶⁵ to obtain the necessary authorizations to begin remediating their sites, and adds that responsible parties that have stalled their remediation efforts must justify their reasons for not completing their remediation plans. The remediation program also provides that PROFEPA is to establish a monitoring and inspection program to ensure compliance with LGPGIR.

On March 11, 2022, SEMARNAT published in the DOF NOM-001-SEMARNAT-2021 (“NOM-001”), which aims to improve water quality by establishing new permissible limits for pollutants in wastewater discharge into Federal waters. NOM-001 effectively replaces NOM-001-SEMARNAT-1996, which had not been modified since 1996. Some key differences between the modernized norm and its predecessor include a broadened scope of pollutants to be analyzed and methods of analysis (i.e., true color and acute toxicity), more stringent limits for each pollutant, particular discharge conditions into wetlands and karstic ecosystems, a new compliance assessment procedure, and requirements for sampling ports at discharge points to facilitate verification for both internal review and by environmental authorities. In consideration of the time needed to make all the required technical and infrastructural adjustments, SEMARNAT set a two-phase entry into force of NOM-001’s provisions. The general permissible limits of pollutants will enter into force on March 11, 2023, while the parameters for water toxicity and true color will only be enforced after March 11, 2026. Until then, all regulated parties are required to continue complying with NOM-001-SEMARNAT-1996.

⁶³ General Law for the Prevention and Integral Management of Wastes (*Ley General para la Prevención y Gestión Integral de los Residuos*), Diario Oficial de la Federación [DOF] Oct. 8, 2003, last amended Jan. 18, 2021, available online at https://www.diputados.gob.mx/LeyesBiblio/pdf/263_180121.pdf.

⁶⁴ LGPGIR defines “contaminated sites” as the place, space, soil, body of water, facility, or any combination of these that has been contaminated with materials or wastes that, due to their quantities and characteristics, may present a risk to human health, living organisms, and the use of goods or property of persons.”

⁶⁵ Under LGPGIR, individuals, legal entities, or owners or possessors of private property or concessions who/which have directly or indirectly polluted or caused damage to the environment are responsible for remediating contaminated sites.

b. *Public Information and Participation*

The GOM adheres to its commitment to ensure that environmental laws and policies are made available to the public through the Federal Official Gazette (*Diario Oficial de la Federación* (“DOF”)). The GOM publishes, *inter alia*, notices for public comment, amendments made to legal and regulatory measures in response to public input, and decrees that bring measures into force. To facilitate tracking legal reforms, the Ministry of Economy (*Secretaría de Economía*) publishes in the DOF a monthly list that promotes awareness of which provisions of law are being considered for regulatory improvement. However, interested U.S. persons have expressed concerns about the GOM consistently providing a meaningful opportunity for public participation in the development of new measures.

c. *Protection of the Ozone Layer*

In September 2021, the GOM strengthened its commitment under USMCA Articles 24.8 and 24.9 by implementing a regulatory agreement to control the consumption of hydrofluorocarbons (“HFCs”) that are covered under the Montreal Protocol.⁶⁶ The regulatory agreement provides technical specifications for the maximum permitted consumption of HFCs, HCFC-22, HCFC-123, HCFC-124, HCFC-141b and HCFC-142b, during the period of 2021 to 2023, and restricts the importation of HFCs to only include HCFC-22, HCFC-123 and HCFC-141b.

d. *Marine Litter*

In an effort to prevent and reduce marine litter,⁶⁷ Mexico joined the Global Ghost Gear Initiative (“GGGI”) in October 2020. The GGGI is a group of 18 countries that are committed to improve marine ecosystems and protect fauna from harm caused by the most prevalent form of ocean plastic pollution, ghost gear, a.k.a., abandoned, lost, or otherwise discarded fishing gear (“ALDFG”).

Since joining the GGGI, Mexico has advanced its implementation of USMCA Article 24.12. Through GGGI, Mexico joined the North American Net Collection Initiative (“NANCI”), the first-ever transboundary initiative to prevent ghost gear in the coastal waters of the western United States, Mexico, and Canada. The initiative is supported by a grant from the NOAA Marine Debris Program. Mexico’s efforts with Nanci include, *inter alia*, conducting research

⁶⁶ Agreement through which the general public is informed about the scheduled reduction in the consumption of hydrochlorofluorocarbons in the United Mexican States, for the period 2021-2023 within the framework of the Montreal Protocol on substances that deplete the ozone layer (*Acuerdo mediante el cual se informa al público en general sobre la reducción programada en el consumo de hidroclorofluorocarbonos en los Estados Unidos Mexicanos, para el periodo 2021-2023 en el marco del Protocolo de Montreal relativo a las sustancias que agotan la capa de ozono.*), *Diario Oficial de la Federación* [DOF] Sept. 17, 2021, available online at https://www.dof.gob.mx/nota_detalle.php?codigo=5630094&fecha=17/09/2021.

⁶⁷ See USMCA Article 24.12.

to map areas of high concentration of ghost gear in Mexican waters, developing a probability model to identify areas of potential for ghost gear occurrence in the Pacific and the Atlantic waters of Mexico, and establishing collection hubs in the Port of Ensenada to collect end-of-life fishing nets that will be upcycled into products by a Nanci partner NGO, Bureo.⁶⁸ In addition to tracking developments with regard to the GGGI, USTR is consulting with NOAA and monitoring Mexico's commitment to develop and implement a dedicated action plan to address the problem of abandoned fishing gear at a national level.

Additionally, Mexico has indicated an interest in conducting regional studies to evaluate various marine litter and debris issues, in particular the issue of microplastics flows, and consider how additional cooperation, including through USMCA channels, could have a positive impact on addressing challenges related to this issue.

e. Sustainable Fisheries Management

In July 2021, Mexico adopted a new measure titled, *Agreement that establishes the indicators, triggering factors and predetermined actions, in accordance with the seventeenth article of the Agreement that regulates gear, systems, methods, techniques and schedules for carrying out fishing activities with smaller and larger vessels in Mexican marine areas in the Upper Gulf of California and landing sites are established, as well as the use of monitoring systems for such vessels, which was published on September 24, 2020* ("Triggers Agreement"),⁶⁹ that relates to commitments under USMCA Article 24.18.

The Triggers Agreement is the latest legal instrument to complement the UGC Regulatory Agreement,⁷⁰ which establishes a Zero Tolerance Area ("ZTA") in which fishing activities of any kind, with any type of vessels are permanently prohibited to enhance the protection and recovery of the vaquita. The Triggers Agreement requires GOM to surveil the ZTA 24/7 using surface radars, aerial, drone, and satellite surveillance methods, and land patrols and checkpoints. It also requires competent authorities to recover illegal, lost or abandoned gillnets in the ZTA.

⁶⁸ *Tackling Ghost Gear in Mexico Waters*, <https://oceanconservancy.org/blog/2022/02/11/tackling-ghost-gear-mexico-waters/#:~:text=In%20response%20to%20the%20inclusion,States%2C%20Mexico%2C%20and%20Canada> (published Feb. 11, 2022).

⁶⁹ *Agreement that establishes the indicators, triggering factors and predetermined actions, in accordance with the seventeenth article of the Agreement that regulates gear, systems, methods, techniques and schedules for carrying out fishing activities with smaller and larger vessels in Mexican marine areas in the northern Gulf of California and landing sites are established, as well as the use of monitoring systems for such vessels, which was published on September 24, 2020* (*Acuerdo por el que se establecen los indicadores, factores detonantes y acciones predeterminadas, de conformidad con el artículo décimo séptimo del Acuerdo por el que se regulan artes, sistemas, métodos, técnicas y horarios para la realización de actividades de pesca con embarcaciones menores y mayores en zonas marinas mexicanas en el norte del Golfo de California y se establecen sitios de desembarque, así como el uso de sistemas de monitoreo para tales embarcaciones, publicado el 24 de septiembre de 2020*), Diario Oficial de la Federación [DOF] Jul. 9, 2021, available online at https://www.dof.gob.mx/nota_detalle.php?codigo=5623442&fecha=09/07/2021.

⁷⁰ See *supra* note 21 (citing to the UGC Regulatory Agreement and its complementing measures, and referring to pages 27-29 of the USMCA Chapter 24 Environment 2021 Annual Report to Congress that describe these legal measures)).

Further, it provides conditions, or “triggering factors,” to help determine the duration, scope, and mechanism to enforce provisions of the UGC 2020 Regulatory Agreement. The triggering factors are quantitative measures that were established by the National Fisheries and Aquaculture Institute (*Instituto Nacional de Pesca y Acuacultura* (“INAPESCA”)), and are intended to provide an incremental enforcement response (*i.e.*, sending out additional enforcement resources to the Upper Gulf of California, establishing fishing prohibitions, or closing marine areas for up to a month) to either the presence of vessels in the ZTA per day or the measurement (in meters) of gillnets recovered in a day. For example, at the lowest response level, SEMAR will commit sixty percent of its available enforcement resources if no more than twenty boats are observed in the ZTA in a day. SEMAR will only apply one hundred percent of its resources to the Upper Gulf of California if there are more than fifty and up to sixty-five vessels in the ZTA. At the highest response level, where there is a trigger of more than 65 vessels in the ZTA, GOM will close marine areas and prohibit any type of fishing.

Environmental stakeholders have expressed that the Triggers Agreement is an inadequate measure for protecting the vaquita from extinction because it effectively nullifies the purpose of the ZTA where there should be no vessel presence or fishing activities taking place. A group of four NGOs jointly filed a public submission with the CEC and the IECME regarding Mexico’s lack of enforcement related to vaquita and totoaba protection and conservation, and more specifically, of the UGC Regulatory Agreement and its complementing measures, including the Triggers Agreement. USTR is currently in Article 24.29 environment consultations with Mexico regarding this matter, among others concerning the vaquita and totoaba,⁷¹ and continues to closely monitor the implementation of these measures in the Upper Gulf of California.

f. *Conservation of Marine Species*

To promote the long-term conservation of marine mammals, the GOM published in December 2021 the marine mammal interaction and ALDFG reporting form,⁷² which also further implements the UGC Regulatory Agreement.⁷³ Article 5 of the UGC Regulatory Agreement requires that individuals or legal entities that carry out fishing activities with smaller vessels in the Upper Gulf of California must inform CONAPESCA offices closest to their domicile of any marine mammal interactions within 24 hours, and describe the methods used to release the mammal(s) or last known location and state of the mammal in the case of entanglement. The individual or legal entity is also responsible for reporting any gear that they lost or abandoned during their fishing activities. Accordingly, the format of the form provides prompts for these information needs, and also includes a section specifically on vaquita sightings. In response to these forms, CONAPESCA is required to record the time, manner, and place of the reported

⁷¹ See *infra* pp. 44-45 (elaborating on consultations with Mexico on the conservation and protection of vaquita and totoaba).

⁷² *Agreement that establishes the reporting format on any interaction with marine mammals and/or loss and/or misplacement of fishing gear during fishing activities, in Mexican marine areas in the Upper Gulf of California (Acuerdo por el que se establece el formato de informe sobre cualquier interacción con mamíferos marinos y/o pérdida y/o extravío de artes de pesca durante las actividades de pesca, en zonas marinas mexicanas en el Norte del Golfo de California)*, Diario Oficial de la Federación [DOF] Dec. 8, 2021, available online at https://www.dof.gob.mx/nota_detalle.php?codigo=5637600&fecha=08/12/2021.

⁷³ See UGC Regulatory Agreement, *supra* note 21.

marine mammal interaction or vaquita sighting, or where the ALDFG was lost, and to send a letter to CONANP and PROFEPA to notify them of the reported event. All three agencies are then responsible for coordinating the recovery of the marine mammal or ALDFG collection.

To promote the long-term conservation of CITES-protected loggerhead sea turtles (*Caretta caretta*), in July 2021 SEMARNAT modified the North Pacific Marine and Regional Ecological Planning Program to comply with a court order to reform three provisions of the program, CB25, CB25(a), and CB26, to ensure that the risk of loggerhead turtle population loss remains at sustainable levels.⁷⁴ The reform to CB25 reduced the threshold number of loggerhead turtle deaths due to bycatch to trigger the GOM's response to completely suspend all fishing exploitation activities in the Gulf of Ulloa, from 200 to 90 individuals per year. Similarly, CB25(a) was amended to suspend all commercial fishing activities with gillnets or longlines in the Fishing Refuge Area,⁷⁵ when more than 90 loggerhead turtle mortalities occur during the foraging season from May to September. The amendment to CB26 also reflects the same reduction, and prohibits gillnet use in depths of less than 15 meters if there are more than 90 deaths during the months of May through August.

g. Sustainable Forestry Management and Trade

Mexico strengthened its implementation of environmental obligations under USMCA Article 24.23 by continuing to implement its 2020-2024 Institutional Program of CONAFOR (*Programa Institucional de la Comisión Nacional Forestal 2020-2024*) and 2020-2024 National Forestry Program (*Programa Nacional Forestal 2020-2024*).⁷⁶ Additional implementation measures include, *inter alia*, the *Agreement on the format of Requests for Forest Referrals and, notice of commercial forest plantation without registration established prior to the entry into force of the General Law of Sustainable Forest Development* ("Request for Forest Referrals");⁷⁷ and *Agreement that discloses the forms called Notice of Transfer of Mobile Transformation Centers, Entry and Exit Registration Format for raw materials and forest products, and the Annual*

⁷⁴ Notice informing the general public of the modification to the North Pacific Marine and Regional Ecological Planning Program (*Aviso por el que se informa al público en general la modificación al Programa de Ordenamiento Ecológico Marino y Regional del Pacífico Norte*), Diario Oficial de la Federación [DOF] Jul. 20, 2021, available online at https://www.dof.gob.mx/nota_detalle.php?codigo=5624319&fecha=20/07/2021.

⁷⁵ A fishing refuge area, encompassing the Gulf of Ulloa, was established in an Agreement published on April 10, 2015 to reduce the risk of sea turtle bycatch (Agreement that establishes a fishing refuge area and measures to reduce the possible interaction of fishing with sea turtles on the West Coast of Baja California Sur (*Acuerdo por el que se establece una zona de refugio pesquero y medidas para reducir la posible interacción de la pesca con tortugas marinas en la Costa Occidental de Baja California Sur*), Diario Oficial de la Federación [DOF] Apr. 10, 2015, available online at https://www.dof.gob.mx/nota_detalle.php?codigo=5388487&fecha=10/04/2015).

⁷⁶ See USMCA Chapter 24 Environment 2021 Annual Report to Congress, p. 30 (describing the 2020-2024 Institutional Program of CONAFOR and National Forestry Program).

⁷⁷ Agreement by which the formats of the procedures called Request for Forest Referrals derived from the acts issued by CONAFOR are disclosed; and, notice of commercial forest plantation without registration established prior to the entry into force of the General Law of Sustainable Forest Development (*Acuerdo por el que se dan a conocer los formatos de los trámites denominados Solicitud de Remisiones Forestales derivadas de los actos emitidos por la CONAFOR; y, aviso de plantación forestal comercial sin registro establecida con anterioridad a la entrada en vigor de la Ley General de Desarrollo Forestal Sustentable*), Diario Oficial de la Federación [DOF] Aug. 20, 2021, available online at https://www.dof.gob.mx/nota_detalle.php?codigo=5627252&fecha=20/08/2021.

Report on Mobile Transformation Centers (“Notice of Transfer of Mobile Transformation Centers”).⁷⁸ These measures strengthen government capacity and institutional frameworks to promote sustainable forest management and trade in legally harvested forest products.

The Request for Forest Referrals improves the documentation and process to ensure the legal origin of raw forest materials. Under the General Law on Sustainable Forestry Development,⁷⁹ individuals or entities that hold a harvesting permit or forest plantation registration that transport timber to any destination must request a forest referral from SEMARNAT. The new form updates and clarifies the information needs that SEMARNAT requires to determine that the timber in a particular shipment was legally and sustainably harvested. This includes, *inter alia*, valid identification and address of the requester; timber exploitation permits; certificates for distribution, including the maximum volumes of each raw material that are allowed to be transported; and descriptions of raw materials and the respective volume of each being transported.

The Notice of Transfer of Mobile Transformation Centers also promotes forest legality by requiring mobile transformation centers to report their activity annually; submit logs that record inputs and outputs of raw forest products to SEMARNAT to ensure timber legality; and file a notice with SEMARNAT every time they plan to move, and wait for SEMARNAT to acknowledge receipt of the moving notice via the DOF.

There have also been a number of legislative initiatives to amend the Federal Penal Code to increase penalties for illegal logging that the Mexican Congress is considering. Varying amendments were proposed in July 2020, March 2021, and February 2022, all aiming to increase fines and the maximum number of years of prison from nine to up to twelve years, depending on the offense.

ii. Summary and Next Steps

Mexico took steps to advance implementation of its USMCA environmental obligations since July 1, 2021, through promulgating new laws, regulations, and regulatory programs, as well as building on existing efforts. Despite Mexico’s robust legislative and regulatory framework, effective enforcement of its environmental laws and compliance with the environment chapter remains a challenge. In light of implementation concerns related to vaquita and totoaba protection and conservation, USTR initiated consultations with Mexico under USMCA Article 24.29. The United States will continue to closely monitor developments in each of the

⁷⁸ Agreement that discloses the forms called Notice of Transfer of Mobile Transformation Centers, Entry and Exit Registration Format for raw materials and forest products, and the Annual Report on Mobile Transformation Centers (*Acuerdo por el que se dan a conocer los formatos denominados Aviso de traslado de Centros de Transformación Móviles, Formato de registro de entradas y salidas de materias primas y productos forestales e Informe Anual de Centros de Transformación Móviles*), Diario Oficial de la Federación [DOF] Oct. 1, 2021, available online at https://www.dof.gob.mx/nota_detalle.php?codigo=5631491&fecha=01/10/2021.

⁷⁹ General Law of Sustainable Forest Development (*Ley General de Desarrollo Forestal Sustentable*), [DOF] Jun. 5, 2018, last amended Apr. 28, 2022, available online at <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGDFS.pdf>.

implementation areas outlined above, with particular attention to measures related to vaquita and totoaba conservation, sea turtle bycatch, and illegal fishing.

B. CANADA

Since July 1, 2021, Canada has continued to take actions to implement its environmental obligations under the USMCA. These efforts include a number of legislative, regulatory, and administrative measures that have strengthened levels of environmental protection; enhanced opportunities for public participation; reduced and mitigated air and water pollution; invested in clean growth; addressed marine litter; sustainably managed its fisheries; and conserved marine species, lands, and oceans.

i. Key Areas of Implementation (by issue)

a. *Levels of Environmental Protection*

Canada has implemented several measures to address the global climate change crisis, achieve its commitments under the Paris Agreement, reduce plastic pollution, and generally improve environmental factors. In February 2022, the Federal Government introduced the *Strengthening Environmental Protection for a Healthier Canada Act* in the Senate.⁸⁰ The bill would update the Canadian Environmental Protection Act, 1999 (“CEPA”), for the first time in 20 years, as well as the Food and Drugs Act.⁸¹ Key proposed changes include a requirement for the government to develop an implementation framework for the right to a healthy environment; protection of vulnerable populations; inclusion of real-life substance exposure in risk assessments; a stronger risk-based approach to toxic and highest risk substances; and creation of an environmental notification and risk assessment and management framework for drugs.⁸² The chemicals industry generally supported the proposed bill’s CEPA changes, as initially introduced, because they would create high and low-risk classifications for toxic substances, with most substances in the lower category, though subsequently opposed amendments to the bill. Under the existing law, all substances are considered equally toxic. However, some environmental stakeholders have criticized the bill for removing existing authorities in CEPA such as the virtual elimination of toxic substances, which stakeholders argue could result in subjecting almost 90 percent of listed substances to less stringent controls.⁸³ Multiple Canadian environmental organizations

⁸⁰ *Bill S-5, Strengthening Environmental Protection for a Healthier Canada Act - Summary of Amendments*, GOV’T OF CANADA, <https://www.canada.ca/en/services/environment/pollution-waste-management/strengthening-canadian-environmental-protection-act-1999/bill-c-28-strengthening-environmental-protection-healthier-canada-act-summary-amendments.html> (last modified Feb. 9, 2022).

⁸¹ *Id.*

⁸² *Id.*

⁸³ “Blog: CELA Proposes Amendments to Fix Toxic Substances Law,” CANADIAN ENVIRONMENTAL LAW ASSOCIATION (CELA), <https://cela.ca/blog-cela-proposes-amendments-to-fix-toxic-substances-law/> (Mar. 4, 2022).

publicly supported the version of the bill as amended and passed by the Senate in June.⁸⁴ The bill to update the CEPA will move to the House of Commons for review in September.

Other investments in 2021 that aim to address climate change include: CAD \$1.375 billion for the Disaster Mitigation and Adaptation Fund, which focuses on infrastructure resiliency; CAD \$144.5 million for wildfire preparedness in national parks and for mapping areas at risk of wildfires and flooding; and CAD \$10 million for the Fisheries and Aquaculture Clean Tech Adoption Program, which was renewed in July 2021 for an additional two years and helps the fisheries and aquaculture industries adopt clean technologies such as upgraded waste treatment facilities.⁸⁵

In June 2022, Canada published regulations to prohibit six single-use plastic items, including bags, straws, stir sticks, six-pack rings, cutlery, and food containers made from expanded polystyrene, six months after issuing the draft regulations.⁸⁶ The phase-out of use of the six single-use plastic items will enter into force over several years. Canada will also publish draft guidance to help industry stakeholders comply with the regulations.⁸⁷ In February 2022, Canada launched public consultations for a technical issues paper outlining the government's approach to developing mandatory minimum levels of recycled content for certain plastic products.⁸⁸ The proposed regulations target non-food packaging, including beverage containers, bottles, containers and trays, foam and film plastic packaging, garbage bags, and waste bins.⁸⁹ Consultations on these two measures, which are part of Canada's goal to achieve zero plastic

⁸⁴ *Environmental and health groups call out big polluters for lobbying the Senate to weaken and delay environmental protection bill*, DAVID SUZUKI FOUNDATION, <https://davidssuzuki.org/press/environmental-and-health-groups-call-out-big-polluters-for-lobbying-the-senate-to-weaken-and-delay-environmental-protection-bill/> (Jun. 21, 2022); *Cepa reform bill clears Canada Senate*, CHEMICAL WATCH, <https://chemicalwatch.com/511234/cepa-reform-bill-clears-canada-senate> (Jun. 23, 2022).

⁸⁵ Disaster Mitigation and Adaptation Fund: Overview, GOV'T OF CANADA, <https://www.infrastructure.gc.ca/dmaf-faac/index-eng.html> (last modified Jul. 20, 2021); *Minister Guilbeault thanks the Canadian delegation participating in the fifty-fifth Session of the Intergovernmental Panel on Climate Change and reinforces Canada's commitment to fight climate change*, GOV'T OF CANADA, <https://www.canada.ca/en/environment-climate-change/news/2022/02/minister-guilbeault-thanks-the-canadian-delegation-participating-in-the-fifty-fifth-session-of-the-intergovernmental-panel-on-climate-change-and-re.html> (Feb. 28, 2022). *Government of Canada accepting applications to fund clean technology for fisheries and aquaculture industries*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2021/07/government-of-canada-accepting-applications-to-fund-clean-technology-for-fisheries-and-aquaculture-industries.html> (Jul. 8, 2021).

⁸⁶ *Government of Canada delivers on commitment to ban harmful single-use plastics*, GOV'T OF CANADA, <https://www.canada.ca/en/environment-climate-change/news/2022/06/government-of-canada-delivers-on-commitment-to-ban-harmful-single-use-plastics.html> (Jun. 20, 2022); *Single-use Plastics Prohibition Regulations – Overview*, GOV'T OF CANADA, <https://www.canada.ca/en/environment-climate-change/services/managing-reducing-waste/reduce-plastic-waste/single-use-plastic-overview.html> (last modified Jun. 22, 2022).

⁸⁷ *Single-use Plastics Prohibition Regulations – Overview*, GOV'T OF CANADA, <https://www.canada.ca/en/environment-climate-change/services/managing-reducing-waste/reduce-plastic-waste/single-use-plastic-overview.html> (last modified Jun. 22, 2022).

⁸⁸ *Technical issues paper: Recycled content for certain plastic manufactured items Regulations*, GOV'T OF CANADA, <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/technical-issues-paper-recycled-content-plastic-manufactured-regulations.html> (last modified Feb. 11, 2022).

⁸⁹ *Id.*

waste by 2030, ended in March 2022. The United States anticipates extensive cooperation with Canada on plastics pollution as part of the collaborative efforts to implement USMCA environmental commitments.

Canada also continued several programs that are part of the Prime Minister's November 2021 commitment at the North American Leaders Summit to protect 25 percent each of lands and oceans by 2025 and 30 percent by 2030. The Nature Smart Climate Solutions Fund under the Natural Climate Solutions Fund (created in December 2020 with an initial commitment of CAD \$4 billion) awarded over CAD \$71 million in 2021 for 14 three-year projects.⁹⁰ In January 2022, Canada ended a national call for applications for the Nature Smart Climate Solutions Fund for 2022-2023.⁹¹ The application process has three project streams: (1) restoration of grasslands and wetlands to capture and store carbon; (2) implementation of nature-based climate solutions; and (3) development of a reverse auction method for land use to reduce emissions or increase carbon capture and storage.⁹² The Natural Climate Solutions Fund also includes CAD \$3.19 billion for Canada's 2 Billion Trees program and CAD \$185 million for the Agricultural Climate Solutions program.⁹³

Additional measures taken since July 1, 2021, to achieve its goal of conserving 25 percent of Canada's oceans by 2025 and 30 percent by 2030 consist of: the distribution of CAD \$976.8 million over five years for marine conservation, including CAD \$8.7 million for ocean research and observation activities;⁹⁴ the launch of the first national call for proposals under the Oceans Management Contribution Program to effectively manage existing marine protected areas and establish new marine protected areas;⁹⁵ and CAD \$20 million for specific regional agreements to support ocean conservation and planning activities.⁹⁶

⁹⁰ *Government of Canada announces \$200M to address climate change by restoring carbon-rich ecosystems through nature-based solutions*, GOV'T OF CANADA, <https://www.newswire.ca/news-releases/government-of-canada-announces-200m-to-address-climate-change-by-restoring-carbon-rich-ecosystems-through-nature-based-solutions-869346102.html> (Dec. 7, 2021).

⁹¹ *Id.*

⁹² *Nature Smart Climate Solutions Fund*, GOV'T OF CANADA, <https://www.canada.ca/en/environment-climate-change/services/environmental-funding/programs/nature-smart-climate-solutions-fund.html> (last updated Dec. 9, 2021).

⁹³ *Government of Canada announces \$200M to address climate change by restoring carbon-rich ecosystems through nature-based solutions*, GOV'T OF CANADA, <https://www.newswire.ca/news-releases/government-of-canada-announces-200m-to-address-climate-change-by-restoring-carbon-rich-ecosystems-through-nature-based-solutions-869346102.html> (Dec. 7, 2021).

⁹⁴ *Government of Canada launches Call for Proposals to support marine conservation efforts across Canada*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2021/12/government-of-canada-launches-call-for-proposals-to-support-marine-conservation-efforts-across-canada.html> (Dec. 15, 2021). *Government of Canada invests in ocean observation science to help protect Canada's oceans*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2021/08/government-of-canada-invests-in-ocean-observation-science-to-help-protect-canadas-oceans.html> (Aug. 11, 2021).

⁹⁵ *Oceans Management Funding Opportunities*, GOV'T OF CANADA, <https://www.dfo-mpo.gc.ca/oceans/funding-financement/management-gestion/index-eng.html> (Dec. 15, 2021).

⁹⁶ *Government of Canada launches Call for Proposals to support marine conservation efforts across Canada*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2021/12/government-of-canada-launches-call-for-proposals-to-support-marine-conservation-efforts-across-canada.html> (Dec. 15, 2021).

In 2021, Canada also committed to investing almost CAD \$800 million in the recovery of species at risk and their habitats and the protection and conservation of lands and freshwater as part of its conservation goals, focused on bilateral nature agreements with provinces and territories.⁹⁷ The Habitat Stewardship Program and the Aboriginal Fund for Species at Risk also received CAD \$5.4 million in 2021 to fund 105 species at risk conservation projects over 2021-2022.⁹⁸ The Habitat Stewardship Program protects species at risk, while the Aboriginal Fund for Species at Risk supports and strengthens the capacity of Indigenous peoples to help implement the federal Species at Risk Act (“SARA”). Finally, Canada also expanded protected areas, including the Kitaskino Nuwenēné Wildland Park in Alberta, and agreed to establish new protected areas, such as the Eagle River Watershed protected area in Newfoundland and Labrador, by 2025.⁹⁹

Canada has continued to pursue pollution reduction and investments in clean technology. In March 2022, Canada released its *2030 Emissions Reduction Plan* (“ERP”), which presents a detailed plan of how Canada will cut emissions on a sector-by-sector basis to achieve net-zero emissions by 2050.¹⁰⁰ The ERP called for reductions in oil and gas emissions, driven by carbon pricing policies and incentives for carbon capture, utilization, and storage technologies, but does not cap such emissions at a specific level.¹⁰¹ Officials have said the government plans to establish a cap in consultation with industry.¹⁰² The ERP also previewed sales targets for electric vehicles: one in five new personal vehicles sold in Canada will be zero emission by 2026 and 60 percent by 2030, reaching 100 percent by 2035.¹⁰³ The ERP announced CAD \$1.7 billion for the Incentives for Zero-Emission Vehicles Program, CAD \$1 billion to make homes and buildings more energy-efficient, and CAD \$9 billion to expand existing climate grants and loan programs.¹⁰⁴ Some environmental stakeholders have criticized the ERP, claiming that the Federal Government employed a unique methodology to calculate emissions produced by the logging industry that underestimated the sector’s emissions by 80 megatons – the same amount of annual emissions produced by the oil sands industry – and undermines Canada’s climate

⁹⁷ *Canada invests \$796 million to collaborate with provinces, territories, and other partners to protect nature across the country*, GOV’T OF CANADA, <https://www.canada.ca/en/environment-climate-change/news/2021/08/canada-invests-796-million-to-collaborate-with-provinces-territories-and-other-partners-to-protect-nature-across-the-country.html> (Aug. 13, 2021).

⁹⁸ *Government of Canada announces funding for protection of species at risk and their habitats*, GOV’T OF CANADA, <https://www.canada.ca/en/environment-climate-change/news/2021/12/government-of-canada-announces-funding-for-protection-of-species-at-risk-and-their-habitats.html> (Dec. 8, 2021).

⁹⁹ *Government of Canada supports the expansion of Kitaskino Nuwenēné Wildland Park and boosts conservation efforts*, GOV’T OF CANADA, <https://www.canada.ca/en/environment-climate-change/news/2022/02/government-of-canada-supports-the-expansion-of-kitaskino-nuwenene-wildland-park-and-boosts-conservation-efforts.html> (Feb. 2, 2022) ; *Working with Newfoundland and Labrador to halt biodiversity loss*, GOV’T OF CANADA, <https://www.canada.ca/en/environment-climate-change/news/2022/04/working-with-newfoundland-and-labrador-to-halt-biodiversity-loss.html> (Apr. 6, 2022).

¹⁰⁰ *2030 Emissions Reduction Plan*, ENVIRONMENT AND CLIMATE CHANGE CANADA, <https://www.canada.ca/content/dam/eccc/documents/pdf/climate-change/erp/Canada-2030-Emissions-Reduction-Plan-eng.pdf> (published Mar. 29, 2022).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

ambition.¹⁰⁵ The ERP is not a legal mechanism and will require regulations, consultation with stakeholders, and legislation to be implemented. ERP funding announcements were confirmed in the Federal Government's 2022 budget, released in April 2022.

Other environment-related budget investments released in April 2022 included CAD \$2.6 billion in tax credits up to 60 percent for investment in carbon capture, sequestration, utilization, and storage projects that permanently store captured carbon.¹⁰⁶ Canada will also establish a 30 percent tax credit to support net zero technologies, such as battery storage solutions and clean hydrogen, but the budget did not include a dollar value.¹⁰⁷ Additionally, Canada will distribute more than CAD \$3.1 million to fund 32 new projects over three years under the Great Lakes Protection Initiative.¹⁰⁸ These projects aim to restore water quality and ecosystem health in areas of concern, including preventing toxic and nuisance algae and enhancing engagement with Indigenous Peoples and the public. However, the full amounts budgeted for Great Lakes water management elements are disproportionately below U.S. spending.¹⁰⁹

Canada also launched consultations in March 2022 on the Clean Electricity Standard (CES) discussion paper as part of its goal of achieving net-zero emissions by 2050 by transitioning to a net-zero electricity grid by 2035.¹¹⁰ The objective of the consultations is to receive input from the public regarding the scope and the design of the CES. Consultations on the CES discussion paper ended in April 2022, and Canada has not yet released a timeframe for expected publication of the final CES.

In January 2022, Canada launched public comment periods on two measures aimed at reducing methane emissions from landfills and would contribute to Canada's goal of net-zero emissions by 2050. The two measures are: the draft protocol, *Landfill Methane Recovery and Destruction*; and the discussion paper on *Reducing methane emissions from Canada's municipal solid waste landfills*.¹¹¹ The *Landfill Methane Recovery and Destruction* protocol would generate offset credits for landfill operators that capture methane from their sites and destroy or repurpose it into energy using certain types of methane destruction devices, including enclosed and open flares,

¹⁰⁵ *Canada's Climate Plan Has a Logging Industry-Sized Hole*, NATURAL RESOURCES DEFENSE COUNCIL, <https://www.nrdc.org/experts/jennifer-skene/canadas-climate-plan-has-logging-industry-sized-hole> (Mar. 28, 2022).

¹⁰⁶ *Budget 2022: A Plan to Grow Our Economy and Make Life More Affordable*, GOV'T OF CANADA, <https://budget.gc.ca/2022/home-accueil-en.html> (Apr 13, 2022).

¹⁰⁷ *Id.*

¹⁰⁸ *Canada invests \$3.1 million to protect the Great Lakes and launches new call for proposals*, GOV'T OF CANADA, <https://www.canada.ca/en/environment-climate-change/news/2021/12/canada-invests-31-million-to-protect-the-great-lakes-and-launches-new-call-for-proposals.html> (Dec. 8, 2021).

¹⁰⁹ *Budget 2022: A Plan to Grow Our Economy and Make Life More Affordable*, GOV'T OF CANADA, <https://budget.gc.ca/2022/home-accueil-en.html> (Apr 13, 2022).

¹¹⁰ *A clean electricity standard in support of a net-zero electricity sector: discussion paper*, GOV'T OF CANADA, <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/achieving-net-zero-emissions-electricity-generation-discussion-paper.html#toc9> (Mar. 8, 2022).

¹¹¹ *Government of Canada seeks feedback on new measures to reduce pollution from Canada's landfills*, GOV'T OF CANADA, <https://www.canada.ca/en/environment-climate-change/news/2022/01/government-of-canada-seeks-feedback-on-new-measures-to-reduce-pollution-from-canadas-landfills.html> (Jan. 28, 2022).

boilers, turbines, and internal combustion engines.¹¹² ECCC would administer the *Landfill Methane Recovery and Destruction* protocol through the Federal Greenhouse Gas Offset System, which is currently under development and expected to be finalized in mid-2022.¹¹³ The second measure, discussion paper on *Reducing methane emissions from Canada's municipal solid waste landfills*, outlines ECCC's proposed regulatory approach to increase the number of landfills that voluntarily reduce methane emissions and to ensure that landfills maximize methane recovery.¹¹⁴ These two public comment periods ended in mid-February 2022. In March 2022, Canada also held a public comment period on a discussion paper on reducing methane emissions from Canada's oil and gas sector, with consultations ending in May 2022.¹¹⁵ Canada plans to publish draft regulations on reducing methane emissions in the sector in early 2023.

In November 2021, the Federal Government delayed publication of the final Clean Fuel Standard, which will require liquid fuel (gasoline and diesel) suppliers to gradually reduce the carbon intensity of the fuels they produce and sell for use in Canada over time, leading to a decrease of approximately 13 percent (below 2016 levels) in the carbon intensity of liquid fuels used in Canada by 2030.¹¹⁶ The Clean Fuel Standard will replace the Renewable Fuels Regulations, 2010.¹¹⁷ The final standard was expected to be published in the spring of 2022 and enter into force by December 2022; as of the date of this report, it has not yet been published. There have been reports regarding the protection of species at risk that potentially implicate Canada's USMCA environmental obligations. In particular, in November 2021, the Auditor General of Ontario published a report claiming that the government of Ontario is at risk of failing to effectively enforce the federal SARA.¹¹⁸ According to the report, legislation passed in 2019 that made changes to the classification criteria for species at risk in Ontario, among other things, led to substantially fewer enforcement actions, potentially putting Ontario's species, such as the boreal caribou and Blanding's turtle, at greater risk of extinction.¹¹⁹ In March 2021, the Federal Government had warned provincial officials that the legislation may not conform with federal laws and requested that they take corrective action by November 2021.¹²⁰ To date, Ontario has not taken the requested corrective action. The United States continues to monitor this issue.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Government of Canada launches next steps towards deeper methane reductions from oil and gas*, GOV'T OF CANADA, <https://www.canada.ca/en/environment-climate-change/news/2022/03/government-of-canada-launches-next-steps-towards-deeper-methane-reductions-from-oil-and-gas.html> (Mar. 25, 2022).

¹¹⁶ *Canada delays completion of clean fuel standard*, ARGUS, <https://www.argusmedia.com/en/news/2272652-canada-delays-completion-of-clean-fuel-standard> (Nov. 10, 2021).

¹¹⁷ *Id.*

¹¹⁸ *Value-for-Money Audit: Protecting and Recovering Species at Risk*, OFFICE OF THE AUDITOR GENERAL OF ONTARIO, https://www.auditor.on.ca/en/content/annualreports/arreports/en21/ENV_ProtectingSpecies_en21.pdf (Nov. 2021). *Ontario is Making Little Effort to Protect At-Risk Species from Building and Resource Development: Auditor General*, OFFICE OF THE AUDITOR GENERAL OF ONTARIO, https://www.auditor.on.ca/en/content/news/21_newsreleases/2021_news_ENV_ProtectingSpecies.pdf (Nov. 22, 2021).

¹¹⁹ *Id.*

¹²⁰ *Id.*

b. *Public Information and Participation*

Canada has continued to consult and inform the public on environmental measures, as described in this report, including through publication in Part 1 of the Canada Gazette and on government websites. These actions demonstrate Canada's commitment to USMCA environmental obligations related to public information and participation.

c. *Marine Litter*

Canada has continued to demonstrate effort to fulfill its USMCA environmental obligations to prevent and reduce marine litter, including the distribution of an additional CAD \$10 million investment in the Ghost Gear Fund for 2021-2022.¹²¹ The fund was launched in January 2020 to retrieve, dispose, and prevent abandoned, lost, or discarded fishing gear and marine debris. In 2021, the fund supported 37 projects; to date (as of May 2022), the fund has supported 49 projects for a total of CAD \$16.7 million and has helped remove over 7,300 units of fishing gear and 150 kilometers of rope from Canadian waters.¹²² The fund also supports the new Fishing Gear Reporting System, launched in July 2021. An online system for commercial harvesters to report lost fishing gear, the Fishing Gear Reporting System has made it possible for Canada to locate and retrieve fishing gear and improving targeting of retrieval activities, which in turn contributes to improving habitats for marine species.¹²³ In May 2022, Canada launched a new call for proposals under the Ghost Gear Fund for 2022-2023, with up to CAD \$10 million in funding for selected projects.¹²⁴

d. *Sustainable Fisheries Management*

In August 2021, Canada announced nearly CAD \$8 million in funding for seven projects through the British Columbia Salmon Restoration and Innovation Fund, and in April 2022, Canada

¹²¹ *Canada's Ghost Gear Fund delivering results for cleaner oceans*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2021/12/canadas-ghost-gear-fund-delivering-results-for-cleaner-oceans.html> (Dec. 2, 2021).

¹²² *Canada continues to combat ghost gear in our oceans with launch of new reporting system*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2021/07/canada-continues-to-combat-ghost-gear-in-our-oceans-with-launch-of-new-reporting-system.html> (Jul. 21, 2021); *Ghost Gear Fund*, GOV'T OF CANADA, <https://www.dfo-mpo.gc.ca/fisheries-peches/management-gestion/ghostgear-equipementfantome/program-programme/index-eng.html> (May 12, 2022); *Government of Canada launches third call for proposals under the Ghost Gear Fund*, GOV'T OF CANADA, <https://www.newswire.ca/news-releases/government-of-canada-launches-third-call-for-proposals-under-the-ghost-gear-fund-892768275.html> (May 13, 2022).

¹²³ *Id.*

¹²⁴ *Update on the 2022 call for proposals*, GOV'T OF CANADA, <https://www.dfo-mpo.gc.ca/fisheries-peches/management-gestion/ghostgear-equipementfantome/program-programme/index-eng.html> (May 12, 2022); *Government of Canada launches third call for proposals under the Ghost Gear Fund*, GOV'T OF CANADA, <https://www.newswire.ca/news-releases/government-of-canada-launches-third-call-for-proposals-under-the-ghost-gear-fund-892768275.html> (May 13, 2022).

announced that it will fund 22 projects under the BCSRIF with CAD \$30.5 million in funding.¹²⁵ A partnership between the Federal Government and the Government of British Columbia, the fund aims to promote the recovery of wild Pacific salmon habitats and stocks on the coast of British Columbia.¹²⁶ Since its establishment in 2019, the fund has supported 83 projects with an investment of over CAD \$116 million and is part of Canada's goal to create a more sustainable seafood sector.¹²⁷ Canada initially invested CAD \$100 million over five years in the fund, and Budget 2021 invested an additional CAD \$100 million to expand the program. Currently, the Government of British Columbia is investing CAD \$42.85 million over five years.¹²⁸ Canada also launched a public comment period on wild Atlantic salmon conservation to inform the government's efforts to protect and support the recovery of wild Atlantic salmon.¹²⁹

In March 2022, Canada imposed a moratorium on commercial or bait fishing for southern Gulf spring herring and the Atlantic mackerel following those stocks' decline, in accordance with Canada's Department of Fisheries and Ocean's ("DFO") Precautionary Approach Framework.¹³⁰ These fish are a traditional source of bait in some commercial fisheries, such as lobster and snow crab, and an important food source for other species, including tuna and Atlantic cod. The moratorium aims to rebuild fish stocks and ensure the long-term sustainability of East Coast fisheries. DFO has also supported alternative bait projects.

In addition, several regulatory changes made under the 2019 Fisheries Act have come into force since July 1, 2021. Specifically, the Fish Stocks provisions entered into force in April 2022, requiring DFO to create rebuilding plans in a timely and consistent manner when stocks become depleted.¹³¹ These provisions aim to rebuild vulnerable fish stocks. Species subject to the Fish

¹²⁵ *Government of Canada and Province of British Columbia invest in sustainable salmon research and aquaculture science*, GOV'T OF BRITISH COLUMBIA, [https://news.gov.bc.ca/stories/government-of-canada-and-province-of-british-columbia-invest-in-sustainable-salmon-research-and-aqua#:~:text=Today%2C%20the%20Minister%20of%20Fisheries,and%20Innovation%20Fund%20\(BCSRIF\)](https://news.gov.bc.ca/stories/government-of-canada-and-province-of-british-columbia-invest-in-sustainable-salmon-research-and-aqua#:~:text=Today%2C%20the%20Minister%20of%20Fisheries,and%20Innovation%20Fund%20(BCSRIF)(Aug.5,2021);) (Aug. 5, 2021); *Government of Canada and Province of British Columbia make a significant investment in salmon research and restoration projects*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2022/04/government-of-canada-and-province-of-british-columbia-make-a-significant-investment-in-salmon-research-and-restoration-projects0.html> (Apr. 22, 2022).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Government of Canada taking next steps to develop wild Atlantic salmon conservation approach*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2021/08/government-of-canada-taking-next-steps-to-develop-wild-atlantic-salmon-conservation-approach.html> (Aug. 12, 2021).

¹³⁰ *Rebuilding key forage fish stocks for healthier East Coast fisheries*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2022/03/rebuilding-key-forage-fish-stocks-for-healthier-east-coast-fisheries.html> (Mar. 30, 2022).

¹³¹ *Government of Canada takes critical step to rebuilding fish stocks*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2022/04/government-of-canada-takes-critical-step-to-rebuilding-fish-stocks.html> (Apr. 28, 2022).

Stocks provisions include Atlantic Cod, Atlantic mackerel, lobster, and snow crab, among others.¹³²

e. *Conservation of Marine Species*

Canada has continued to take measures to promote the long-term conservation of marine species. In 2021, Canada piloted a fishing closure protocol for recreational and commercial salmon fisheries in the Southern Gulf Islands in Vancouver.¹³³ Canada began monitoring the area in June 2021, and closed fishing areas from July to October 2021, following confirmation of Southern Resident killer whales in the area.¹³⁴ To further reduce vessel disturbances, Canada implemented a mandatory one-year 400-meter vessel approach distance for all killer whales in southern British Columbia.¹³⁵ In August 2021, Canada announced an investment of CAD \$228,740 over three years for the University of Manitoba to conduct research on narwhals, bowhead whales, and beluga whales to inform the government's sustainable management of these species.¹³⁶

Canada has continued to develop its management measures to reduce entanglement risk and vessel strike risk to NARWs.¹³⁷ Specifically, in 2021, Canada extended vessel traffic management measures, focusing on the region of the Gulf of St. Lawrence, where NARWs migrate in greater numbers in the fall and spring. Those traffic management measures included speed restrictions for all vessels over 13 meters and the establishment of a restricted access area covering approximately 72,000 square kilometers.¹³⁸ Canada reported over 99.9 percent compliance with the mandatory vessel traffic measures in 2021.¹³⁹ In addition, Canada has taken action to reduce the risk of entanglement in fishing gear, including the imposition of temporary and season-long fishing area closures following detection of right whales in the area.¹⁴⁰ To further reduce entanglement risk, Canada also established the CAD \$20 million Whalesafe Gear Adoption Fund in August 2021 to help commercial harvesters in Atlantic Canada and Quebec

¹³² *First Batch of 30 Major Stocks Prescribed to the Fish Stocks Provisions*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2022/04/first-batch-of-30-major-stocks-prescribed-to-the-fish-stocks-provisions.html> (Apr. 28, 2022).

¹³³ *2021 management measures to protect Southern Resident killer whales*, GOV'T OF CANADA, <https://www.pac.dfo-mpo.gc.ca/fin-gp/mammals-mammiferes/whales-baleines/srkw-measures-mesures-ers-eng.html> (last updated Mar. 3, 2022).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Government of Canada invests in research to better understand whale populations in the Arctic*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2021/08/government-of-canada-invests-in-research-to-better-understand-whale-populations-in-the-arctic.html> (Aug. 12, 2021).

¹³⁷ See USMCA Article 24.19 (relating to the conservation of marine species including the prohibition on killing of great whales).

¹³⁸ *Government of Canada continues to help protect North Atlantic right whales*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2021/11/government-of-canada-continues-to-help-protect-north-atlantic-right-whales.html> (Nov. 24, 2021).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

comply with new whalesafe gear requirements announced in 2020 for the 2023 fishing season.¹⁴¹ In March 2022, Canada announced NARW protection measures for 2022, including the continuation of seasonal and temporary fishing area closures and vessel traffic management measures, in effect from April 20, 2022, to November 15, 2022, one week earlier than in 2021.¹⁴²

In August 2021, Canada announced the launch of its first vessel in the southern Gulf of St. Lawrence dedicated to responding to large whale incidents.¹⁴³ An additional CAD \$30,000 was provided to the vessel crew for whale disentanglement equipment and other operational costs.¹⁴⁴ The vessel will enable trained experts to respond more quickly to reported incidents of whale entanglements to potentially remove the gear and reduce related injuries and deaths. Reducing NARW vessel strikes and entanglements in fishing gear, however, remains a challenge for both Canada and the United States and is an area where collaboration is underway.

While no NARW deaths were observed in Canadian waters in 2021, an entangled NARW was detected off the coast of New Brunswick in July 2021.¹⁴⁵ Canada's national Marine Mammal Response Program was unable to disentangle the whale; however, as of December 2021, the whale had shed some of the gear on its own.¹⁴⁶ In addition, the entangled right whale found in March 2021 (reported in the 2021 USMCA Annual Report) has since given birth to a calf. While the calf appears to be healthy, the mother is thin and a wound from the fishing rope is apparent.¹⁴⁷ Finally, in May 2022, an entangled right whale was sighted in the Gulf of St. Lawrence.¹⁴⁸ It is important to recognize that even with extensive survey efforts, many NARW

¹⁴¹ *Government of Canada launches new \$20 million fund to make fishing gear safer for whales*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2021/08/government-of-canada-launches-new-20-million-fund-to-make-fishing-gear-safer-for-whales.html> (Aug. 11, 2021).

¹⁴² *Government of Canada announces 2022 North Atlantic right whale protection measures*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2022/03/government-of-canada-announces-2022-north-atlantic-right-whale-protection-measures.html> (Mar. 10, 2022). See also: *Protecting North Atlantic right whales from collisions with vessels in the Gulf of St. Lawrence*, GOV'T OF CANADA, <https://tc.canada.ca/en/marine-transportation/navigation-marine-conditions/protecting-north-atlantic-right-whales-collisions-vessels-gulf-st-lawrence> (Apr. 21, 2022).

¹⁴³ *Government of Canada increases marine mammal response capacity in the southern Gulf of St. Lawrence*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2021/08/government-of-canada-increases-marine-mammal-response-capacity-in-the-southern-gulf-of-st-lawrence.html> (Aug. 4, 2021).

¹⁴⁴ *Id.*

¹⁴⁵ *2 North Atlantic right whales entangled off New Brunswick*, CBC CANADA, <https://www.cbc.ca/news/canada/new-brunswick/north-atlantic-right-whales-miscou-entangled-1.6103068> (Jul. 14, 2021).

¹⁴⁶ *Government of Canada continues to help protect North Atlantic right whales*, GOV'T OF CANADA, <https://www.canada.ca/en/fisheries-oceans/news/2021/11/government-of-canada-continues-to-help-protect-north-atlantic-right-whales.html> (Nov. 24, 2021).

¹⁴⁷ *Snow Cone Watch: Updates on Entangled Right Whale Mother and Newborn Calf*, NOAA, <https://www.fisheries.noaa.gov/feature-story/snow-cone-watch-updates-entangled-right-whale-mother-and-newborn-calf> (Jan. 31, 2022); see also *North Atlantic Right Whale Updates*, NOAA, <https://www.fisheries.noaa.gov/national/endangered-species-conservation/north-atlantic-right-whale-updates#snow-cone-entangled-right-whale-mother-and-newborn-calf> (May 23, 2022).

¹⁴⁸ *Search underway for entangled North Atlantic right whale spotted in Gulf of St. Lawrence*, CANADIAN RADIO BROADCASTING COMMISSION, <https://www.cbc.ca/news/canada/new-brunswick/entangled-north-atlantic-right-whale-gaspe-endangered-female-sundog-gulf-st-lawrence-1.6460879> (May 20, 2022).

deaths go unseen; the number of observed dead NARW likely only accounts for about one third of the total deaths.¹⁴⁹

The United States and Canada have continued active collaboration on NARW recovery in both Canadian and U.S. waters through ongoing bilateral discussions. This includes regular meetings at the staff and leadership level, both nationally and regionally, to share information and coordinate on science and management considerations related to NARWs.

ii. Summary and Next Steps

Canada has taken steps to implement its USMCA environmental obligations, including through improving levels of environmental protection on a range of issues relevant to Chapter 24. This includes cooperating with the United States on many key areas of mutual interest, such as NARW conservation and tackling the issue of marine litter. Next steps include continued engagement with Canada on shared priorities, with a potential increase in future collaboration on combating wildlife trafficking and conserving marine species.

V. ADDITIONAL EFFORTS TO BE TAKEN WITH RESPECT TO IMPLEMENTATION OF USMCA COUNTRIES' ENVIRONMENTAL OBLIGATIONS

Prior to USMCA EIF, the IECME undertook an assessment of Mexico's and Canada's domestic legislative and regulatory frameworks and determined that both Parties have sufficient measures in place to implement the USMCA environmental obligations effectively.¹⁵⁰ However, in the assessment, the IECME also described challenges that Mexico and Canada respectively face to implement and enforce certain aspects of their domestic regimes, and identified those as areas for continuous monitoring and cooperation. For Mexico, those areas included enhancing the protection and conservation of vaquita and totoaba, preventing sea turtle bycatch, curbing illegal fishing in the Gulf of Mexico, addressing transboundary water pollution, and mitigating environmental impacts associated with the Maya Train project. For Canada, the assessment focused on the need to update and evolve solutions to address the continuing threat to NARWs due to vessel strikes and entanglements. In the 2021 USMCA Environment Annual Report to Congress, USTR identified two additional issue areas with respect to Canada, coal mining effluent and pollution from oil sands in transboundary waters.

While both Parties have continued to further their implementation and enforcement in these identified areas as described throughout this report, the challenges described below remain. The USG will continue to collaborate with the governments of Mexico and Canada to advance shared Chapter 24 goals, including through direct bilateral engagement, trilateral discussions in the

¹⁴⁹ Richard M. Pace III et al., *Cryptic mortality of North Atlantic right whales*, 3 CONSERVATION SCIENCE AND PRACTICE (Issue 2), <https://conbio.onlinelibrary.wiley.com/doi/10.1111/csp2.346> (published Feb. 2, 2021).

¹⁵⁰ See *supra* note 7 (providing that the assessment was written pursuant to Section 812 of the Act and submitted to Congress in May 2020).

USMCA Free Trade Commission and Environment Committee, and cooperation through the CEC.

A. MEXICO

i. Protection and Conservation of the Vaquita and Totoaba

The protection and conservation of the vaquita and illegal take of and trade in totoaba, has been a high-profile fisheries issue for decades. Both of these CITES Appendix I species¹⁵¹ are endemic to the Upper Gulf of California in Mexico. Gillnet entanglements are the primary cause of vaquita mortality. However, even though this is a widely acknowledged fact, fishers continue to use illegal gillnets to illegally fish for totoaba to supply China's illicit market demand for totoaba swim bladders and to fish for other commercial species (*e.g.*, shrimp) with impunity. In 2021, the International Union for Conservation of Nature reported that approximately 10 individual vaquita remain.

The United States and Mexico have jointly undertaken significant efforts to address this issue under the MMPA, which resulted, *inter alia*, in the publication of the UGC Regulatory Agreement and its complementing measures (*i.e.*, the Enforcement Plan and the GIS and GCAL guidelines) in September 2020 and January 2021,¹⁵² as well as the Triggers Agreement in July 2021.¹⁵³ Evidence, however, shows a persistent lack of effective enforcement by Mexican authorities of these measures.

Further, evidence suggests that organized criminal networks perpetuating the illegal harvest and trade in totoaba swim bladders remain active and undeterred in Mexico. For example, since USMCA EIF, numerous seizures of totoaba swim bladders have been reported in East Asia, Mexico, and in the United States, indicating that the illegal harvest and trade of totoaba remains robust. USTR continues to work closely with NOAA, DOS, the USCG, FWS, and the GOM on this issue.

On February 10, 2022, USTR initiated environment consultations with Mexico under USMCA Article 24.29 to address concerns about the effectiveness of Mexico's enforcement of its environmental laws and Mexico's compliance with USMCA Articles 24.4 (Enforcement of Environmental Laws), 24.8.4 (CITES), 24.18 (Sustainable Fisheries Management), 24.19 (Conservation of Marine Species), 24.21 (IUU Fishing), and 24.22 (Conservation and Trade). USTR held initial meetings with Mexico on March 29-30, 2022, and consultations are ongoing.

¹⁵¹ The vaquita is protected under the Endangered Species Act in the United States, which implements CITES obligations into U.S. law, and under the Mexican Official Standard NOM-059-SEMARNAT-2010, which implements CITES obligations into Mexican law.

¹⁵² See USMCA Chapter 24 Environment 2021 Annual Report to Congress, pp. 27-29 (summarizing each of the legal instruments that were implemented to specifically address vaquita and totoaba protection and conservation in the Upper Gulf of California).

¹⁵³ See *supra* pp. 29-30 (describing the Triggers Agreement and associated stakeholder concerns).

The poaching of and illegal trade in totoaba has also been the subject of considerable focus in CITES for the last several years. Mexico submitted comprehensive reports to the CITES Secretariat on its actions regarding vaquita and totoaba in time for SC74, which took place in March 2022. During SC74, the Standing Committee noted Mexico's efforts to address illegal fishing and trafficking of totoaba as well as the ongoing concerns about fishers illegally operating in the Vaquita Refuge and ZTA, and encouraged, *inter alia*, that Mexico strengthen its measures to ensure application of a zero-tolerance policy in the vaquita refuge and ZTA. The Committee also invited the CITES Secretariat to undertake a second mission to Mexico to evaluate Mexico's progress. The Secretariat will also propose revised decisions to CoP19. In addition, despite U.S. interventions against the following, the Standing Committee accepted the application from Mexico to include *totoaba macdonaldi*, bred by Earth Ocean Farms, in the *CITES Register of operations that breed Appendix-I animal species for commercial purposes*. Mexico committed to only commercially trade totoaba meat (not swim bladders) from this facility for the time being. The Standing Committee's decision raises serious concerns because it is anticipated that allowing commercial trade in totoaba from the registered facility will not achieve the intended effect of reducing the demand for wild-sourced totoaba swim bladders, in particular given the apparent lack of an international market for totoaba meat. Instead, it is expected that this decision will counteract enforcement efforts to prevent and control the illegal trade of totoaba, thereby further jeopardizing the survival of the vaquita. At SC74, the United States noted for the record that totoaba is separately protected by the United States as an endangered species under the ESA.¹⁵⁴ Import of any specimen of the species is prohibited.¹⁵⁵ Any shipment of totoaba, whether from the Earth Ocean Farms facility or otherwise, that is moving through the United States is considered an import, cannot be treated as an in-transit shipment, and is prohibited.¹⁵⁶ For example, if a commercial shipment of totoaba meat is exported from Mexico, it cannot legally move through the United States.

USTR continues to closely monitor the implementation and enforcement of measures that are intended to protect the vaquita and prevent illegal fishing and trafficking of totoaba. Recent media reports have described concerning new proposed actions regarding this issue. According to these reports, INAPESCA, CONAPESCA, and SEMARNAT are in discussions whether to propose downlisting totoaba from CITES Appendix I to Appendix II at CoP19. These reports also suggest that SEMAR is planning to build a sea wall in the ZTA to prevent illegal fishing and more effectively protect the vaquita,¹⁵⁷ which has raised serious concerns among marine scientists and vaquita experts.

¹⁵⁴ Endangered Species Act, 50 C.F.R. § 17.11(h).

¹⁵⁵ 16 U.S.C. § 1538(a)(1)(A).

¹⁵⁶ 50 C.F.R. § 23.22(e).

¹⁵⁷ See, e.g., Ernesto Mendez, *Con 'muro marino' buscan proteger a la vaquita marina de pescadores furtivos*, <https://www.excelsior.com.mx/nacional/vaquita-marina-con-muro-de-concreto-unido-con-malla-buscan-protegerla/1512496#:~:text=Con%20muro%20marino%20buscan%20proteger,para%20capturar%20a%20la%20To toaba> (published Apr. 29, 2022); Yerson Martínez, *Liberan en San Felipe 20 mil totoaba*, <https://www.lavozdelafrontera.com.mx/local/liberan-en-san-felipe-20-mil-totoaba-8214363.html> (published Apr. 30, 2022).

ii. Illegal Fishing in the Gulf of Mexico

Mexico continues to struggle to address the ongoing unauthorized activities of its fishing vessels in the U.S. waters of the Gulf of Mexico. The illegal activities of these vessels, known locally as *lanchas*, have deleterious effects on fish stocks managed by the United States, including red snapper and sharks, as well as bycatch of protected sea turtles. Reports by USCG and NOAA indicate that incursions by *lanchas* in the U.S. Exclusive Economic Zone have increased in the past year.

USTR has been working closely with NOAA, DOS, the USCG, and the GOM on this issue, both through MPA consultations and as a member of the Gulf of Mexico IUU Fishing Sub-Working Group, which was established under the Maritime Security and Fisheries Enforcement (“SAFE”) Act. USTR will continue to actively monitor this issue and analyze any potential breaches of USMCA environmental obligations.

iii. Sea Turtle Bycatch

The IECME received the loggerhead turtle public submission in January 2021, which asserted Mexico is failing to enforce its domestic and international commitments related to the conservation and protection of the CITES-protected loggerhead sea turtle, and thus, is failing to implement USMCA Article 24.4 and 24.19. The petitioners provided records that show 889 loggerhead turtle bycatch mortalities occurred between 2017 and 2019 in the Gulf of Ulloa, which greatly exceeds the number of permissible loggerhead mortalities per year.¹⁵⁸ In July 2021, the CEC Secretariat determined that the SEM warrants a factual record. USTR has joined NOAA in their MPA consultations with Mexico to address this matter. The IECME continues to collect and analyze information related to the issues raised in the submission and potential breaches of USMCA environment obligations.

iv. Maya Train Project

The Maya Train project is one of largest projects underway that could have significant implications for Mexico’s USMCA commitments related to levels of environmental protection and environmental impact assessments. The Maya Train project is proposed to be a 1,500-kilometer train route designed to pass through the biodiverse states of Chiapas, Tabasco, Campeche, Yucatán, and Quintana Roo. The project is intended to reduce the time and cost of transporting goods and passengers, boost tourism, and promote economic growth in the Yucatán region. Many stakeholders in Mexico and the United States, however, are concerned about the

¹⁵⁸ A technical study carried out under the Inter-American Convention for the Protection and Conservation of Sea Turtles states that the death toll of loggerhead turtles cannot exceed 92 specimens *throughout the Pacific* per year to ensure their viability as a species.

potential environmental impacts of the project, including with respect to the protection and conservation of wildlife, wetlands, forests, and cultural heritage.

Despite growing dissent from stakeholder groups, Mexico has continued with its plan to construct the Maya Train by 2024. The Minister of Environment and Natural Resources recently acknowledged that the National Trust for the Promotion of Tourism (“FONATUR”), the agency in charge of overseeing the project, does not have the required environmental impact permits.¹⁵⁹ Although environmental impact assessments were filed and approved for sections 1, 2 and 3 of the Maya Train,¹⁶⁰ challenges remain with the other four sections of the train route.

In November 2021, President López Obrador published a decree¹⁶¹ that enabled him to unilaterally waive all permitting requirements for his priority infrastructure projects, including the Maya Train project, declaring that these projects’ bureaucratic processes should be expedited in the interest of “national security.” The National Institute of Transparency, Access to Information and Protection of Personal Data (“INAI”) filed an *amparo* motion against this decree on the basis that the decree is unconstitutional and violates transparency laws. SCJN granted INAI a definitive suspension in February 2022, nullifying President López Obrador’s power to further waive permitting requirements. Before the decree was suspended, however, President López Obrador issued provisional permits for sections 4, 5, 6, and 7 of the Maya Train that are valid for 12 months. Even though the decree is now suspended, construction of sections 4, 6 and 7 continues under the provisional permits. Construction of section 5 of the route was temporarily suspended on April 18, 2022 as a result of a separate *amparo* motion that asserted irreversible damage would occur to ecosystems due to clearing the forest route from Cancun to Tulum. FONATUR filed an appeal in May 2022 to lift the temporary suspension. USTR will continue to monitor this issue.

¹⁵⁹ *Environment minister admits Maya Train lacks permits*, MEXICO NEWS DAILY (May 2, 2022), <https://mexiconewsdaily.com/news/environment-minister-maya-train-lacks-permits/>.

¹⁶⁰ See USMCA Chapter 24 Environment 2021 Annual Report to Congress, p. 34 (summarizing that construction on sections 1-3 was suspended until FONATUR complied with environmental impact assessment requirements and obtained an environmental permit to continue building the train route).

¹⁶¹ Agreement instructing the agencies and entities of the Federal Public Administration to carry out the actions indicated, in relation to the projects and works of the Government of Mexico considered to be of public interest and national security, as well as priority and strategic for the national development (*Acuerdo por el que se instruye a las dependencias y entidades de la Administración Pública Federal a realizar las acciones que se indican, en relación con los proyectos y obras del Gobierno de México considerados de interés público y seguridad nacional, así como prioritarios y estratégicos para el desarrollo nacional*) https://www.dof.gob.mx/nota_detalle.php?codigo=5635985&fecha=22/11/2021 [DOF] Nov 22, 2021.

B. CANADA

i. Coal Mining Effluent

Coal mining effluent is an issue that could potentially raise concerns under Canada's USMCA commitments as open-pit coal mines in British Columbia have been leaching high concentrations of pollutants such as selenium, nitrate, cadmium, and sulfate into the Elk River watershed, affecting water quality, aquatic resources, Tribal natural and cultural resources, and drinking water. This pollution flows across the U.S.-Canadian border into Lake Koocanusa and the Kootenai River in Montana and Idaho. U.S. federal and state government studies have traced an estimated 95 percent of the selenium detected in Lake Koocanusa, Montana, to the Elk River, and in particular, to coal mines owned and operated by Teck Resources, Ltd. ("Teck").¹⁶² Teck has been repeatedly fined for its violations of the Canadian Fisheries Act as well as for violations of provincial mining and effluent discharge permit requirements.¹⁶³ Teck has opened three water treatment facilities to treat selenium, with the latest coming online in February 2022 and a fourth planned for later in 2022.¹⁶⁴ Teck plans to construct and operate additional water treatment facilities in the future.¹⁶⁵

¹⁶² Mebane, C.A., and Schmidt, C.G., 2019, *Selenium and mercury in the Kootenai River, Montana and Idaho, 2018-2019*, U.S. Geological Survey and U.S. Environmental Protection Agency, <https://www.sciencebase.gov/catalog/item/5d3b6ef1e4b01d82ce8d7aef> (published Sept. 20, 2019).

¹⁶³ See, e.g., *Teck Coal Limited to pay \$60 million under the Fisheries Act and must comply with a Direction requiring pollution reduction measures*, GOV'T OF CANADA, <https://www.canada.ca/en/environment-climate-change/services/environmental-enforcement/notifications/teck-coal-limited-pay-fisheries-act-direction-requiring-pollution-reduction-measures.html> (Mar. 26, 2021); see also *Enforcement Notification on Exporter of steelmaking coal fined for Fisheries Act violations at Line Creek in British Columbia's Elk River Valley*, ENVIRONMENT AND CLIMATE CHANGE CANADA, <http://ec.gc.ca/alef-ewe/default.asp?lang=En&n=C574EED8-1> (Oct. 5, 2017) (detailing that Teck Resources pleaded guilty to three violations of the federal Fisheries Act for polluting a tributary of the Elk River and was ordered to pay \$1,425,000 into the federal Environmental Damages Fund to help restore Elk Valley fish habitat); *Quarterly environmental enforcement penalties total \$715,000*, ENVIRONMENT AND CLIMATE CHANGE CANADA BRITISH COLUMBIA, <https://news.gov.bc.ca/releases/2018ENV0052-001303> (Jun. 28, 2018) (showing Teck Coal Ltd. received three penalties, totaling \$78,100, for failure to comply with an effluent-discharge permit for its Line Creek Operations in Elk River Valley).

¹⁶⁴ In October 2020, Teck was ordered to open four water treatment facilities along the Elk River utilizing Saturated Rock Fill technology. Two of the four facilities were completed by mid-2021. (*Implementing the Elk Valley Water Quality Plan*, TECK RESOURCES LTD., <https://www.teck.com/sustainability/sustainability-topics/water/water-quality-in-the-elk-valley/> (last visited Apr. 2021)); *Teck Doubles Water Treatment Capacity at Elkview Operations*, TECK RESOURCES LTD., <http://www.globenewswire.com/en/news-release/2021/02/16/2176440/0/en/Teck-Doubles-Water-Treatment-Capacity-at-Elkview-Operations.html> (published Feb. 16, 2021)); *Teck opens third B.C. water treatment plant*, THE WESTERN NEWS, <https://thewesternnews.com/news/2022/mar/01/teck-opens-third-bc-water-treatment-plant/> (Mar. 1, 2022).

¹⁶⁵ Letter from Dean Runzer (General Manager of Water Quality Management at Teck) to Herman Henning (Chief Inspector of Mines, Ministry of Energy, Mines and Petroleum Resources for Province of B.C.) and Doug Hill (Regional Director of Mining Operations, Ministry of Environment and Climate Change Strategy, Williams Lake, B.C.), TECK RESOURCES LTD., <https://www.teck.com/media/Elk-Valley-Water-Quality-Plan%E2%80%93932019-Implementation-Plan-Adjustment.pdf> (published Jul. 31, 2019).

ECCC has been working on proposed coal mining effluent regulations since 2017.¹⁶⁶ In January 2022, ECCC launched consultations on a discussion document outlining its current proposed approach to establishing minimum effluent quality standards for coal mines.¹⁶⁷ The proposed regulations set effluent limits for suspended solids, nitrate, and selenium for new and existing coal mining operations and alternative effluent limits for Elk Valley coal mines. Coal mining companies in Canada oppose the proposed limits, claiming that they are too strict and not achievable using current technology.¹⁶⁸ Environmental stakeholders have also criticized the discussion document for its reliance on end-of-pipe effluent instead of overall effluent.¹⁶⁹ EPA and impacted Tribes in the United States have been engaged in the coal mine effluent regulation consultations and are concerned that the proposed January 2022 effluent quality standards are not stringent enough and could detrimentally impact water quality, aquatic, and tribal resources in the Kootenai watershed, United States.¹⁷⁰ Canada is expected to publish draft regulations in late 2022, with final regulations following in late 2023. USG agencies continue to engage closely with Canada on the issue of coal mining effluent.

ii. Oil Sands Extraction

Another issue on which to continue engagement with Canada relates to oil extraction from Canada's oil sands, which are some of the largest in the world.¹⁷¹ Oil sands processing water, a by-product of oil sands mining that is recaptured by seepage collection systems (*i.e.*, tailings ponds¹⁷²), is of particular concern. Numerous studies point to these tailings ponds as the cause of migratory bird deaths and the source of bitumen pollution in the Athabasca River.¹⁷³ This pollution can affect caribou, bison, moose, birds, fish, and water quality, which in turn, impacts greatly the health of First Nations communities that rely on these natural resources.¹⁷⁴ Oil sands production could threaten Canada's air quality commitments under Article 24.11 of the USMCA.

¹⁶⁶ *Proposed Coal Mining Effluent Regulations: Overview*, GOV'T OF CANADA, <https://www.canada.ca/en/environment-climate-change/services/managing-pollution/sources-industry/proposed-coal-mining-effluent-regulations.html> (Jan. 25, 2022).

¹⁶⁷ *Id.*

¹⁶⁸ *Not achievable: Mining association objects to proposed federal coal effluent rules*, THE CANADIAN PRESS, <https://www.ctvnews.ca/climate-and-environment/not-achievable-mining-association-objects-to-proposed-federal-coal-effluent-rules-1.5817458> (Mar. 13, 2022). *Proposed federal rules would allow coal mines to release more toxins in their effluent*, THE CANADIAN PRESS, <https://www.cbc.ca/news/canada/edmonton/proposed-federal-rules-would-allow-coal-mines-to-release-more-toxins-in-their-effluent-1.6350205> (last updated Feb 14, 2022).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Oil sands are naturally-occurring deposits composed of a mixture of sand, water, clay, and an extremely heavy crude oil called bitumen.

¹⁷² Tailings ponds are large, open pits filled with a mixture of water, sand, clay, and residual bitumen.

¹⁷³ See, e.g., Kevin P. Timoney and Robert A. Ronconi, *Annual Bird Mortality in the Bitumen Tailings Ponds in Northeastern Alberta, Canada*, *The Wilson J. of Ornithology*, Vol. 122, No. 3 (Sept. 2010), 569-76; Erin N. Kelly et al., *Oil sands development contributes elements toxic at low concentrations to the Athabasca River and its tributaries*, *Proceedings of the National Academy of Sciences* (Sep. 2010), 107.

¹⁷⁴ Erin N. Kelly et al., *Oil sands development contributes elements toxic at low concentrations to the Athabasca River and its tributaries*, *Proceedings of the National Academy of Sciences* (Sep. 2010), 107.

In September 2021, the Alberta Energy Regulator (“AER”) reported that oil sands tailings were estimated to have increased 90 million cubic meters in 2020 despite a drop in oil production as a result of lower demand.¹⁷⁵ AER’s next report on oil sands tailings will be published in September 2022 and will include updated data for 2020.

To address these concerns, the federal government and the provincial government of Alberta are working with Indigenous peoples and their communities, stakeholders, and environmental agencies, through the Canada-Alberta oil sands monitoring program,¹⁷⁶ to ensure the oil sands region is developed in a manner consistent with Canada’s environmental and health goals. Together, they are working to provide comprehensive environmental monitoring data and information to improve understanding of the long-term cumulative effects of oil sands development.¹⁷⁷ However, in January 2022, a survey of scientists and other participants in the program obtained by the Canadian Press revealed concerns about the program.¹⁷⁸ In particular, survey respondents reported a lack of overall direction, poor communication, and arbitrary and inadequate funding limits.¹⁷⁹ As a result, Canada may not have sufficient data on the overall environmental impacts of oil sands production to address oil sands pollution.

The Canadian press has reported that Canada is developing regulations that would lift a decades-old prohibition on the release of treated tailings water back into the environment.¹⁸⁰ Proponents of the regulations claim that treated tailings water can be safely discharged and that releasing it may reduce the environmental risk of storing tailings.¹⁸¹ Final regulations are expected to be published in 2025.¹⁸²

In addition, six companies responsible for 95 percent of Canada’s oil sands production are voluntarily pursuing plans to reach net zero for their operations by 2050. The Oil Sands Pathways to Net Zero initiative has increasingly detailed plans to reduce emissions by 75

¹⁷⁵ *Enviro groups want feds to step in after report reveals Alberta’s tailings ponds are growing*, CANADA’S NATIONAL OBSERVER, <https://www.nationalobserver.com/2021/10/18/news/enviro-groups-want-feds-step-after-report-reveals-albertas-tailings-ponds> (Oct. 18, 2021). *State of Fluid Tailings Management for Mineable Oil Sands, 2020*, Alberta Energy Regulator, GOV’T OF CANADA, <https://static.aer.ca/prd/documents/reports/2020-State-Fluid-Tailings-Management-Mineable-OilSands.pdf> (Sept. 2021). (Note: Monitoring and reporting of tailings were affected by the pandemic, so reported 2020 volumes are estimates. Oil sands producers will need to confirm those volumes in their 2021 reports to AER.)

¹⁷⁶ Canada-Alberta oil sands environmental monitoring, GOV’T OF CANADA, <https://www.canada.ca/en/environment-climate-change/services/oil-sands-monitoring.html> (last updated Feb. 1, 2022).

¹⁷⁷ *See id.* (collecting data on air, water, wildlife contaminants, and biodiversity and disturbance, as well as compiling annual work plans and technical reports on oil sands monitoring activities and environmental impacts).

¹⁷⁸ *Survey finds oilsands environmental monitoring in effective after 10 years*, THE CANADIAN PRESS, <https://www.cbc.ca/news/canada/edmonton/alberta-oilsands-environment-monitoring-survey-1.6308983> (Jan. 9, 2022).

¹⁷⁹ *Id.*

¹⁸⁰ *Banned for decades, releasing oilsands tailings water is now on the horizon*, CBC NEWS, <https://www.cbc.ca/news/business/bakx-oilsands-tailings-release-mining-effluent-regulations-1.6271537> (Dec. 6, 2021).

¹⁸¹ *Id.*

¹⁸² *Id.*

megatons per year. The plans emphasize a variety of “pathways” but are anchored in “a foundational project” consisting of major carbon capture, utilization, and storage infrastructure capable of permanently storing at least 44 megatons of greenhouse gases per year when complete.¹⁸³ Additionally, the Government of Canada committed to imposing an emissions cap on oil sands production that would bolster the 110 megaton oil sands emissions cap already imposed by the Government of Alberta in 2017.¹⁸⁴ USG agencies will continue to monitor and engage with Canada on this issue.

VI. CONCLUSION

During the second year since USMCA EIF, the Parties have each continued to make strides in implementing USMCA environmental obligations. The United States, using a whole-of-government approach, carried out its environment monitoring and enforcement mandate under the Act; implemented efforts under section 815 authorities; utilized trade enforcement tools provided under the USMCA and the Act; and strengthened its capabilities through the application of USMCA supplemental appropriations. The United States also initiated the first ever environment consultations under USMCA Article 24.29 to address concerns with the effectiveness of Mexico’s enforcement of its environmental laws and compliance with USMCA environmental obligations with respect to illegal fishing, vaquita conservation and protection, and totoaba trafficking. Mexico continued to focus its implementation efforts on modifying and adopting new legal measures. However, despite Mexico’s increasingly robust legal and regulatory environmental framework, effective enforcement of and compliance with USMCA environmental obligations presents a persistent challenge, especially with respect to commitments related to sustainable fisheries management, marine species conservation, and illegal fishing and wildlife trade. Canada also made progress in its implementation of USMCA environmental obligations, including, *inter alia*, through significant investments in climate change mitigation and adaptation, ocean conservation, protection, and conservation of species at risk, and pollution reduction. Canada has sustained efforts to protect the NARWs and existing efforts are underway to address the coal mining effluent in transboundary waters and oil sands pollution.

The United States will continue to adhere to its monitoring and enforcement mandate, especially in relation to the issue areas highlighted above, and take firm steps to fill gaps in enforcement measures, strengthen ongoing efforts, and cooperate with the governments of Mexico and Canada to bolster capacity building and compliance efforts with respect to USMCA environmental commitments.

¹⁸³ *Oil Sands Pathways alliance outlines three-phase plan to achieve goal of net zero emissions*, CANADA NEWSWIRE, <https://www.newswire.ca/news-releases/oil-sands-pathways-alliance-outlines-three-phase-plan-to-achieve-goal-of-net-zero-emissions-881120319.html> (October 21, 2021)

¹⁸⁴ *Ottawa to implement new cap on oil and gas sector GHG emissions, Wilkinson says*, CBC NEWS, <https://www.cbc.ca/news/canada/calgary/oil-and-gas-sector-ghg-emissions-federal-cap-1.6254254> (November 18, 2021)