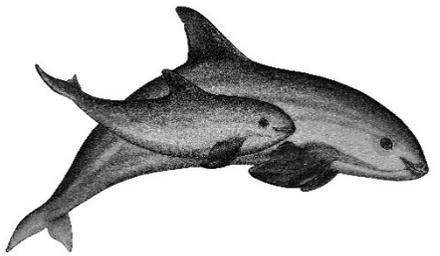


SUBMISSION ON ENFORCEMENT MATTERS

**to the Commission on Environmental Cooperation
pursuant to Article 24.27 of the
United States-Mexico-Canada Agreement**

**MEXICO'S FAILURE TO ENFORCE ITS ENVIRONMENTAL LAWS
FOR THE CRITICALLY ENDANGERED VAQUITA PORPOISE**



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Animal Welfare Institute
Natural Resources Defense Council
Environmental Investigation Agency**

August 11, 2021

Executive Summary

Pursuant to Article 24.27 of the United States-Mexico-Canada Agreement (“USMCA”), the Center for Biological Diversity, Animal Welfare Institute, Natural Resources Defense Council, and Environmental Investigation Agency (“Submitters”) provide the following Submission on Enforcement Matters (“Submission” or “SEM”) to the Secretariat of the Commission for Environmental Cooperation (“CEC”).

As detailed herein, the Mexican government is failing to effectively enforce several environmental laws and as a result has caused the near-extinction of the vaquita porpoise. Only approximately 10 vaquita remain. The vaquita population has been declining precipitously for decades due to bycatch in gillnets set to catch shrimp and fish, including totoaba, a large, endangered fish that is threatened by illegal fishing for international markets.

In an effort to address the vaquita’s decline, Mexican law generally prohibits the use of gillnets within the vaquita’s Upper Gulf of California habitat and bans the catch and commercial export of totoaba. Totoaba is also protected under Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”), which bans the commercial, international trade in the species. The USMCA Parties have already recognized the vaquita is a “species of common conservation concern,” and in 2008, the CEC developed a Conservation Action Plan for the species, which recommended the complete removal of gillnets from vaquita habitat.¹

Yet despite these bans, plans, and decades of promises by the Mexican government to reduce vaquita bycatch, Mexico has failed to fully implement and enforce its laws banning deadly gillnets and otherwise regulating fishing to protect the vaquita. Indeed, the most recent data reveal massive violations of these laws: the International Union for Conservation of Nature (“IUCN”) Cetacean Specialist Group (“IUCN CSG”) reported that in November 2020, 1,185 boats were documented in the vaquita’s habitat, nearly all gillnetting illegally.² IUCN CSG noted that “illegal fishing remains at high levels and takes place day and night.”³ If the Mexican government does not immediately rectify its enforcement failures, the vaquita’s extinction may be imminent, as its population is dangerously low.

For these reasons, we request the CEC Secretariat develop a factual record on this issue, as contemplated by Article 24.28 of the USMCA, on an expedited basis. A factual record is needed to clarify the issues, as the Mexican government continues to argue that its enforcement is adequate, despite the evidence to the contrary, and to help the Parties and larger international community develop a more effective strategy for saving the vaquita.

I. Procedural Requirements

This Submission meets the procedural requirements of Article 24.27. Specifically:

- Each Submitter is a “person of a Party,” as defined by the USMCA. Each is a non-profit, 501(c)(3) corporation “organized under applicable law” of the United States.⁴ Ex. A.

- Submitters assert that Mexico is failing to effectively enforce its “environmental laws,” as defined by the USMCA (“a statute or regulation of a Party...including any that implements the Party’s obligations under a multilateral environmental agreement”).⁵ Specifically:
 - o Mexico is failing to enforce its federal regulations governing fishing within vaquita habitat, including several *Acuerdos* published in Mexico’s Official Gazette of the Federation (“DOF”) that prohibit gillnet use and capture of totoaba.⁶ The purpose of these regulations is to protect and conserve wildlife, including the endangered vaquita and totoaba.
 - o Mexico is failing to enforce its domestic legislation that implements CITES, a treaty aimed at protecting endangered species. Specifically, Mexico’s General Wildlife Law requires that the import and export of species included under CITES “will be carried out in accordance with the Convention.”⁷
- The Mexican government’s long-standing enforcement failures have been communicated by Submitters in writing on numerous occasions, as documented in Exhibit B.
- Submitters are harmed by Mexico’s failures to enforce its laws and the consequent decline of the vaquita. Submitters are non-profit organizations whose missions include protecting wildlife. *See Ex. A.*
- Submitters have pursued private remedies under Mexican law. For example, in 2017, the Center for Biological Diversity filed a formal administrative complaint (“denuncia popular”), documenting the failure of the Procuraduría Federal de Protección al Ambiente (“PROFEPA”), Mexico’s environmental enforcement agency, to enforce laws prohibiting fishing within the vaquita’s habitat without an Environmental Impact Authorization. The Center received no substantive response. *See Ex. C.*
- Further study of this issue will advance the USMCA. As noted above, the Parties have recognized the vaquita is a “species of common conservation concern,” and the CEC prepared a North American Conservation Action Plan (“NACAP”) for the vaquita in 2008. Yet Mexico has failed to meet the recommendations of this Plan, including ensuring the “[i]mmediate removal of all gill nets . . . from areas where vaquitas are known to occur.”⁸ The Parties and the CEC have demonstrated long-standing concern, involvement, and expertise in this matter, and the development of a factual record will both clarify issues and help formulate recommendations to save this species.

II. Background and History

A. Endangered Vaquita and Totoaba

The vaquita (*Phocoena sinus*) is the world’s smallest and most endangered cetacean.⁹ With a rounded head and black patches around its eyes and mouth, the vaquita measures just five

feet in length. The porpoise occurs in only one place on Earth, a small, 1,500-square-mile area in Mexico's Upper Gulf of California near the town of San Felipe.¹⁰

The vaquita has likely been in decline since its identification by scientists in the 1950s, and that decline has only one cause: entanglement in gillnets set for shrimp, curvina, sierra, and totoaba.¹¹ The vaquita's more recent decline has been precipitous from around 570 animals in 1999 to likely 10 animals today,¹² a 98% decline in over 20 years. IUCN considers the vaquita "critically endangered."¹³

The totoaba (*Totoaba macdonaldi*) is a large, schooling marine fish in the croaker family (*Sciaenidae*) that exclusively inhabits Mexico's northern and central Gulf of California,¹⁴ overlapping with the vaquita's habitat. The fish can grow up to two meters in length and live up to 25 years with late sexual maturity, a life history that makes it vulnerable to exploitation.¹⁵ Totoaba migrate to the vaquita's Upper Gulf of California habitat to spawn between January and April each year.¹⁶ IUCN considers the totoaba "critically endangered."¹⁷

Despite the species' conservation status, totoaba are fished illegally for their swim bladders, which are dried and smuggled abroad, primarily to China, where the product is sought for its supposed health benefits and investment value.¹⁸ The dried bladder, referred to as "maw" or "buche," can be sold on the black market for extraordinary prices, reaching \$46,000 per kg¹⁹ to even \$100,000 per kg by some reports.²⁰ Totoaba are caught using illegal gillnets, which entangle and kill vaquita.

To save the vaquita from extinction, numerous scientists and international bodies have urged Mexico to remove *all* gillnets from vaquita habitat. The international scientific advisory group on vaquita, the Comité Internacional para la Recuperación de la Vaquita ("CIRVA"), has on numerous occasions called on Mexico to "*eliminate all gillnet fishing*" in the vaquita's habitat.²¹ The UNESCO World Heritage Committee has urged Mexico to ensure vaquita habitat "remains completely gillnet-free."²² The Parties to CITES have urged Mexico to "maintain the Vaquita Refuge area as a net-free zone."²³ This June, the International Whaling Commission's ("IWC") Scientific Committee "urgent[ly]" recommended that Mexico "remove gillnets from the species' range immediately."²⁴ And the CEC itself recommended the "immediate removal of all gill nets" in its 2008 vaquita NACAP.²⁵

B. The Vaquita and Totoaba's Decline and Mexico's History of Enforcement Failures

The Mexican government has a long and troubling history of failing to enforce vaquita and totoaba protections. Totoaba, once abundant, were overfished throughout the 1900s, and following drastic population decline, Mexico banned the capture of totoaba in 1975.²⁶ In 1976, the totoaba was included in Appendix I of CITES, banning international, commercial trade in the species.²⁷

Despite Mexico's ban on totoaba fishing and CITES' ban on totoaba trade, both activities have continued. Due to "the geographic isolation" of the area, "[p]oaching of adult totoaba in the upper Gulf [remained] a common practice," and in 1979, an estimated 70 metric tons of totoaba

were poached from just one fishing port.²⁸ There were reportedly 30 fishermen poaching totoaba in 1985, taking an estimated 161.7 metric tons each year.²⁹

By the 1990s, scientists began raising concerns regarding the vaquita's decline due to entanglement. In 1990, the IWC Scientific Committee specifically recommended that "further action be taken to stop of the major cause of [vaquita] entanglement by fully enforcing the closure of the totoaba fishery."³⁰

In response, in 1993, Mexico declared the Upper Gulf a Biosphere Reserve and claimed the government was "enforcing the closure of all commercial fisheries in the reserve."³¹ Yet vaquita scientists concluded these efforts were "ineffectual" and "half-hearted, at best,"³² and "[c]ommercial fishing with a variety of gill nets . . . continued without interruption both inside and outside the Biosphere Reserve."³³

In 2005, Mexico established a refuge area for the vaquita and attempted to ban certain gillnets.³⁴ But again, enforcement was lax, as the new "Refuge Area remained essentially unmanaged until 2008," when a new program was instituted officially banning all gillnets in the area.³⁵ Initially, Mexican authorities made a "strong effort" to enforce the new ban, but "that effort . . . waned," and illegal fishing continued.³⁶

In 2013, in yet another effort to restrict gillnet fishing, Mexico formally banned the use of the *chinchorro* gillnet used to catch shrimp in the Upper Gulf.³⁷ By 2014, CIRVA reported that only 97 vaquita remained, despite Mexico's two decades of regulation, numerous bans, and multiple protective areas.³⁸ CIRVA stated that Mexico's "at-sea enforcement efforts ha[d] failed, and illegal fishing ha[d] increased . . . throughout the range of the vaquita."³⁹

In 2015, Mexico instituted a temporary, two-year ban on most gillnets within vaquita habitat.⁴⁰ Almost immediately, it became clear the ban and its enforcement were ineffective, as the vaquita population plummeted to only around 30 animals by November 2016.⁴¹ CIRVA concluded that "illegal fishing [wa]s still common" and that "enforcement efforts to date have been insufficient."⁴²

In July 2017, under immense international pressure, Mexico finally made its gillnet ban in the Upper Gulf permanent.⁴³ However, "[h]igh levels of illegal fishing continue[d]" in 2018,⁴⁴ and by early 2019, CIRVA concluded that "only about 10 vaquitas remained alive."⁴⁵

In March 2020, after years of working with and urging Mexico to reduce vaquita bycatch, the U.S. government banned import of seafood products from Mexican fisheries operating in the vaquita's Upper Gulf habitat.⁴⁶ Specifically, the U.S. Marine Mammal Protection Act requires the U.S. government to ban import of any fish caught with gear that "incidental[ly] kill[s]" marine mammals "in excess of U.S. standards."⁴⁷ The United States concluded that, among other failures, the Government of Mexico "failed to fully implement and enforce its existing laws and regulatory regime including the . . . gillnet ban, the provisions which prohibit fishing in the vaquita refuge, and inspection of fishing vessels leaving and arriving to port."⁴⁸

C. Mexico's 2020 Vaquita Regulations and Totoaba Bans

In response to the U.S. ban, in September 2020, Mexico issued new regulations governing fishing in vaquita habitat.⁴⁹ The 2020 regulations have the potential to offer totoaba and vaquita important protections from fishing activities; however as detailed below, the Mexican government has failed to fully implement and enforce the new rules or its long-standing ban on totoaba fishing and trade.

Among the provisions, the regulations prohibit the use and possession of gillnets in the designated marine area, demarcated by the dashed line in Figure 1 below.⁵⁰ The regulations also prohibit the transport of gillnets within 10 kilometers of the marine area; prohibit manufacturing, owning, and sales of gillnets in towns around the marine area; and require fishermen to surrender gillnets to authorities within 60 days.⁵¹ The regulations further require vessel monitoring systems and inspections upon departure and arrival.⁵²

The regulations also designate a small “Zero Tolerance Area” – an area in which “[f]ishing activities of any kind, with any type of vessel . . . are permanently and totally prohibited” and transit of any unauthorized vessels is also prohibited.⁵³ The regulations commit authorities to surveillance in the area “24-hours a day surveillance throughout the year . . . to provide real-time response capabilities to avoid any case of violation.” Lastly, the regulations promise an “Application Plan” to address inspection and surveillance and “triggers” to address non-compliance.⁵⁴

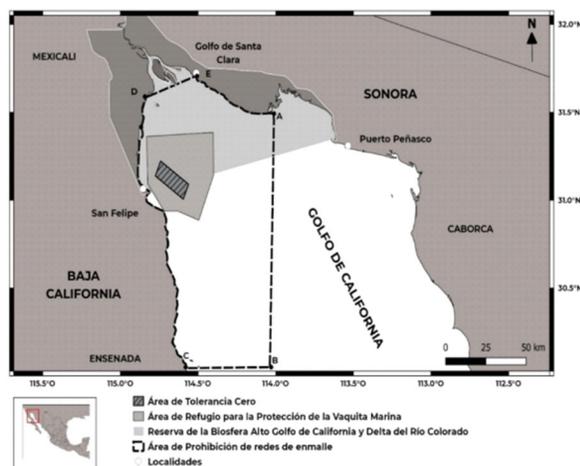


Figure 1. Management areas in the Upper Gulf of California.

In addition to the fishing regulations described above, Mexican law continues to ban both the capture and international trade of totoaba. The Mexican government's 1975 general ban on totoaba fishing remains in place.⁵⁵ Totoaba also remains listed on CITES Appendix I,⁵⁶ and the treaty strictly bans all international, commercial trade (including export) in Appendix-I species.⁵⁷ Moreover, Mexican domestic law requires compliance with CITES. Article 55 of the General Wildlife Law states that “[t]he . . . export . . . of specimens, parts and derivatives of wild species included in the Convention on International Trade in Endangered Species of Wild Fauna and Flora, will be carried out in accordance with that Convention, as provided in the present Law and the provisions derived from them.” Article 56 further affirms that “the import, export and re-

export of biological material of species included in the appendices of CITES will be subject to the provisions of said Convention.”⁵⁸ Accordingly, the trade and export of totoaba is banned both under CITES and Mexican domestic law.

III. Argument: The Mexican Government Has Failed to Implement and Enforce its Fishery Regulations in the Upper Gulf.

The Mexican government failed to both fully implement its new 2020 vaquita regulations and has utterly failed to enforce the gillnet ban, fishing regulations, and totoaba trade prohibitions in recent years. As such, the Mexican government is “failing to effectively enforce its environmental laws” under the USMCA and is driving the vaquita extinct. This grave situation warrants the development of a factual record by the CEC to clarify the issues so that Mexico and the international community can develop a new, ambitious strategy to finally save the vaquita.

A. Failure to Fully Implement Its 2020 Regulations

The Mexican government has failed to implement key provisions of its 2020 vaquita protection regulation and is therefore failing to enforce its environmental laws governing fishing in the vaquita habitat.

1. Insufficient Application Plan

As noted above, the Mexican government’s September 2020 regulations required agencies to issue an “Application Plan” within 30 days of the regulation’s publication, i.e., by October 24, 2020.⁵⁹ The Application Plan must specify “inspection and surveillance actions” and “actions for the recovery, disposal and recycling . . . of illegal” or lost gear.

To date, the Mexican government has not issued a plan that meets these requirements. The plan issued by the government in January 2021, nearly three months late, is vague and primarily delineates which agencies are charged with which functions related to the vaquita.⁶⁰ While such clarification was needed, many of the duties are vague and lack timeframes (e.g., directing agencies to “hold . . . meetings” and “participate . . . in inspection and monitoring”).

Moreover, the plan entirely fails to address “actions for the recovery, disposal and recycling . . . of illegal” or lost gear, as required by the 2020 regulations.⁶¹ This is a critical failure: from January to August 2021, net removal was not occurring in the vaquita habitat because required contracts had not been signed by the government.⁶² Numerous entities have recognized the importance of continued net removal: CIRVA has requested that the government “[f]ully fund and expand net removal efforts to maintain the area as a net-free zone;”⁶³ the World Heritage Committee has urged Mexico “to ensure that illegal net retrieval programmes are continued;”⁶⁴ and CITES urged Mexico to “intensify efforts and to secure resources to expand gillnet removal efforts.”⁶⁵ Mexico has failed to effectively implement and thus enforce this key regulatory requirement.

2. New “Trigger” Plan Demonstrates Lack of Enforcement and Violates the 2020 Regulations

To incentivize compliance with fishing closures and the gillnet ban, the September 2020 regulations also require that relevant agencies “develop . . . triggering factors” or “quantitative measures . . . which if exceeded will result in predetermined actions by authorities, such as prohibitions on fishing, closures of areas or similar responses” by October 24, 2020.⁶⁶ However, Mexico’s “trigger” plan – issued in July 2021, eight months late – blatantly fails to comport with the 2020 regulations’ requirement that authorities ensure full and adequate enforcement in the Zero Tolerance Area.⁶⁷

Under the plan, unless authorities observe 20 unauthorized vessels operating within the Zero Tolerance Area (“ZTA”) in a day, the government *will apply only 60%* of the human and material enforcement resources available in the area.⁶⁸ If 20 to 49 unauthorized vessels are observed, authorities will apply 80% of resources; 100% of available enforcement resources will not be applied until over 50 illegal vessels are observed. If more than 65 boats are observed (or if 60-65 boats are observed more than 3 days within a month), a week-long closure applies to an area 3nm around the ZTA. If more than 65 boats are observed on multiple days in a month, the resulting closure expands in both width and duration.⁶⁹ Similarly, the regulations specify lengths of gillnets, which, if found, would trigger enforcement resources and closures.⁷⁰

The trigger plan violates the 2020 regulations. Article 13 of the regulation states that the Zero Tolerance Area will be patrolled and surveilled “in a way as to provide real-time response capabilities to avoid *any case of violation*” of the regulation.⁷¹ Thus the regulations clearly require the government to commit sufficient enforcement resources to ensure *zero* violations, i.e., show “zero” tolerance for illegal activity in the area. In contrast, the trigger plan blatantly acknowledges that Mexican authorities will not commit all available enforcement resources *until 50 illegal vessels* are observed in the Zero Tolerance Area.

Scientists have repeatedly stated that, for the vaquita to survive, Mexico must “*eliminate all gillnet fishing*” in the vaquita’s remaining habitat, particularly in the ZTA.⁷² According to CIRVA, the scientific expert group who originally recommended the ZTA, the Area is intended to be one in which:

the Government of Mexico . . . [will] fully mobilize its enforcement assets to *eliminate* illegal fishing in the area where the last few vaquita remain . . . In this Zero Tolerance Area, . . . the goal is to remove any illegal net within hours of its deployment.⁷³

The Mexican government itself has recognized the Zero Tolerance Area is one in which fishing and vessel transit “are permanently *and totally* prohibited.”⁷⁴ Yet the Mexican government’s new “trigger” plan clearly contemplates allowing numerous, serious, and substantial violations to occur before applying full enforcement capacity in the small ZTA, instead of eliminating gillnet use (i.e., having “zero tolerance”) in the area – dashing the vaquita’s last and best hope.

The government also fails to state the total amount of enforcement resources available, so it is unclear how many inspectors, enforcement personnel, boats, and drones would be committed at 100%, much less 60% enforcement. Moreover, as detailed below, because the Mexican government has failed to enforce the ZTA, it is impossible to conclude that authorities will effectively enforce an *expanded* closure area, beyond the ZTA, if triggered.

3. Gillnet surrender

The 2020 regulations also require all permit holders, captains, and fishermen to deliver any gillnets to the Comisión Nacional de Acuacultura y Pesca (“CONAPESCA”) office closest to where their vessel is registered by November 2020,⁷⁵ as the regulations ban possession of such gillnets near vaquita habitat. In response to a public information request for how many nets it had received, CONAPESCA stated that it had no responsive information as of February 3, 2021,⁷⁶ suggesting no nets had been turned in.

B. Failure to Enforce Fishing and Trade Bans

In addition to failing to implement its 2020 regulation and consistent with its pattern over the last 30 years, the Mexican government has failed to enforce its ban on gillnet fishing, as well as the long-standing ban on totoaba fishing and trade. These gross enforcement failures neuter critical conservation protections and are driving the vaquita extinct. Below, we discuss enforcement failures in the last four years, since Mexico issued its permanent ban on gillnets in the vaquita habitat in 2017.

Despite much fanfare over Mexico’s announcement that it would permanently ban gillnets in vaquita habitat in 2017, Mexico has failed to enforce that ban. In its December 2017 report, CIRVA concluded once again that “[h]igh levels of illegal fishing continue[d].”⁷⁷ Net removal teams retrieved 396 illegal nets in the vaquita’s habitat in 2017, the majority set to catch totoaba. CIRVA concluded “new gillnets [were] still routinely set in the vaquita habitat;” that “[e]nforcement thus far ha[d] failed to prevent illegal fishing;” and that “illegal fishing activities, particularly the setting of large-mesh gillnets for totoaba, continue[d] at alarming levels.”⁷⁸

By early 2019, CIRVA concluded that “only about 10 vaquitas remained alive.”⁷⁹ CIRVA reported that, in 2018, 659 pieces of fishing gear were removed from the vaquita’s habitat; 67% of the gear was actively fishing for totoaba. CIRVA concluded that “high levels of illegal fishing for totoaba” had continued and that “illegal fishing is growing” in the area due to “continued failure of enforcement efforts.” The group concluded that “[e]nforcement efforts have been *completely ineffective* in reducing the illegal totoaba fishery in the Upper Gulf.”⁸⁰

In April 2019, a Mexican newspaper and television channel, *Excelsior*, a respected Mexican media organization, produced a three-part exposé on the vaquita and illegal fishing in the Upper Gulf, shown nationally across Mexico and published in a major newspaper.⁸¹ The *Excelsior* team interviewed and documented fishermen setting illegal gillnets for both shrimp and totoaba in broad daylight. The reporting was corroborated by a factual witness, who submitted a declaration describing the illegal activities to a U.S. federal court.⁸²

In October 2019, vaquita researchers reported observing 87 boats in a single day within the Zero Tolerance Area, as well as the use of gillnets 1km long.⁸³ In December 2019, the Sea Shepherd Conservation Society (“SSCS”) reported sighting around 80 small boats setting and retrieving illegal gillnets in vaquita habitat in a single day.⁸⁴ Yet more illegal gillnets were retrieved in early 2020. IUCN reported 50 active totoaba nets retrieved in January and February alone, many in the Zero Tolerance Area.⁸⁵ SSCS provided nearly real-time notification of these illegal activities to Mexican fishery authorities and other government officials in the course of their net retrieval and monitoring efforts.⁸⁶

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

In December 2020, the IUCN CSG published data demonstrating that “illegal fishing remains at high levels and *takes place day and night*.”⁸⁸ The IUCN CSG provided three maps documenting illegal fishing activities from October to December 2020 (*see* Figure 2, also attached as Exhibit D). The maps depict hundreds of pangas—most fishing with gillnets—within the Zero Tolerance Area, where both gillnetting and transit of any vessels are strictly prohibited. A total of 1,185 pangas were counted in November 2020 alone, with nearly all these pangas actively gillnetting.⁸⁹ Based on these data, the IUCN CSG concluded that “[i]llegal fishing remains uncontrolled.”⁹⁰ In July 2021, the World Heritage Committee agreed with this assessment, expressing its “utmost concern . . . that illegal fishing of totoaba has continued in the Upper Gulf.”⁹¹

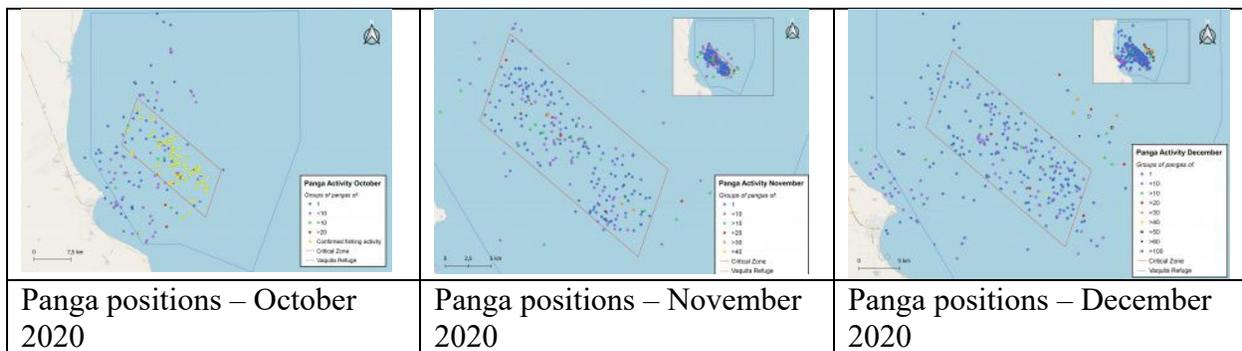


Figure 2. Each colored dot represents the approximate number of pangas observed. Red line is the Zero Tolerance Area.

Since the beginning of 2021, there has been little information reported about illegal activity because the primary non-profit organizations collecting nets and documenting illegal activity in the vaquita’s habitat have been unable to operate. Museo Ballena, a Mexican NGO conducting net removals, only received permission from the Mexican government in August 2021,⁹² and as of the date of this petition, we are not aware of permission for SSCS to operate. These entities contributed substantially both to removing deadly nets from the vaquita’s habitat but also reporting illegal fishing and net placement. The lack of recent, publicly available information documenting illegal activity does not suggest illegal activity has declined.

Local fishermen acknowledge and are gravely harmed by the lack of enforcement. In a February 2021 meeting with government officials, Mr. Ramón Franco, a San Felipe fishermen representative, noted that “everyone sees how in broad daylight illegals operate in total impunity.”⁹³ Carlos Tirado, a Golfo de Santa Clara fishing cooperative leader, asked, “[w]hen will there be a real strategy from the federal government and industry to find a solution, because as of today, February 26th, it does not exist?”⁹⁴ Tirado also noted that, the government had failed to provide alternatives to the communities.⁹⁵ On August 9, 2021, a major fishermen cooperative sent a letter to officials, stating that “the surveillance and supervision capacity to bring order to our fisheries is practically nil,” resulting in unfair competition to legal fishermen and “multiple social, environmental and economic conflicts.”⁹⁶

Lack of enforcement has also led to violence in the area. In December 2020, several fishermen attacked two SSCS vessels patrolling inside the ZTA, launching lead weights and Molotov cocktails at the crew and military officials onboard and colliding with the SSCS vessel.⁹⁷ The vessel’s bow caught fire. Tragically, one fisherman died from his injuries several days after the incident. Onshore, other assailants set fire to a SSCS truck.⁹⁸

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

In June 2021, *Excelsior* reported that videos showed unmarked, illegal fishing pangas departing from a dock in San Felipe, while authorities from a number of Mexican agencies, including CONAPESCA, PROFEPA and the Secretaría de Marina, were aware of their departure but failed to stop them or inspect their catches upon return.¹⁰¹ The budgets for wildlife and natural area protection agencies have been slashed by President Obrador’s government, with the overall budget for Secretaría del Medio Ambiente y Recursos Naturales dropping by 28% from 2018 to 2021.¹⁰²

Moreover, in addition to the documented use of totoaba gillnets, authorities in Mexico and China continue to discover illegal, international trade in totoaba bladders. For example, in 2018, Chinese authorities “confiscated 444 kg of swim bladders harvested from totoaba.”¹⁰³ The Environmental Investigation Agency (“EIA”) tracked reported seizures in Mexico from January 2018 to July 2019, and documented 2,000 bladders seized, plus 100kg of bladders for which the number of bladders were not specified.¹⁰⁴ During a five-month period between 2019 and 2020, 18 authorities opened investigations involving the seizure of 797 totoaba bladders.¹⁰⁵ In July 2021 – just last month – authorities in Hong Kong seized 39 totoaba bladders, with an estimated value over US\$423,000. While seizures by Mexican authorities demonstrate some enforcement effort, they also demonstrate continued illegal trade in violation of both CITES and Mexican domestic law, particularly as the busts likely represent a small part of the total trade.

IV. Conclusion

As described above, the Mexican government is failing to fully implement and enforce its fisheries regulations and its ban on totoaba export. As result, only approximately 10 vaquita remain, and the species could become extinct soon if Mexican authorities do not finally stop illegal activity and setting of gillnets in the vaquita habitat, as the CEC itself recommended in 2008.¹⁰⁶

Accordingly, Mexico is “failing to effectively enforce its environmental laws,” as defined by Article 24.27 of the USMCA. We request the CEC Secretariat develop a factual record on this issue, as contemplated by Article 24.28, on an expedited basis. A factual record is needed to clarify the issues, as the Mexican government continues to argue in several international fora and to the U.S. government that it is engaging in adequate enforcement, despite overwhelming evidence to the contrary. A factual record will also assist the Parties and potentially the CEC to develop a strong vaquita conservation strategy, to support Mexico in improving enforcement and complying with its own laws.

We urge the CEC to act with urgency: the spring totoaba season has ended but the fall shrimp season will begin in late August or early September. If the CEC takes the full time allowed under the SEM process to determine whether a response from Mexico and a factual record are warranted, the vaquita could be driven to extinction before those decisions are made.

Finally, we thank you for your time, effort, and interest in this important conservation issue. Following this submission, we will send a thumb drive containing electronic copies of all documents cited herein for your convenience. Please contact us anytime if you have any questions.

Sincerely,

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¹ CEC (2008). *Phocoena sinus* – North American Conservation Action Plan.

<http://www3.cec.org/islandora/en/item/1136-vaquita-north-american-conservation-action-plan>.

² IUCN Cetacean Specialist Group (Jan. 26, 2021). Vaquita update October through December 2020. <https://iucn-csg.org/vaquita-update-october-through-december-2020/>.

³ *Id.*

⁴ USMCA Art. 24.271; 1.513.

⁵ *Id.*, Art. 24.1.

⁶ DOF (Apr. 10, 2015). Agreement that suspends commercial fishing through the use of gillnets, Northern Gulf of California. http://www.dof.gob.mx/nota_detalle.php?codigo=5388486&fecha=10/04/2015 (“2015 Gillnet Acuerdo”); DOF (June 30, 2017). Agreement prohibits the use of ground networks for commercial fishing in waters for federal jurisdiction of the north of the Gulf of California.

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http://www.dof.gob.mx/nota_detalle.php?codigo=5601153&fecha=24/09/2020 (“Sept. 2020 Vaquita Regulations”); DOF (Jan. 8, 1975). Acuerdo que establece veda para la especie Totoaba, *Cynoscion MacDonaldi*, en aguas del Golfo de California, desde la desembocadura del Río Colorado hasta el Río Fuerte, Sinaloa en la costa oriental, y del Río Colorado a Bahía Concepción, Baja California, en la costa occidental.

http://www.dof.gob.mx/nota_detalle.php?codigo=4786520&fecha=01/08/1975 (“1975 Totoaba Ban”).

⁷ *Ley General de Vida Silvestre*, Art. 55; *see also id.* Arts. 65–66 (CITES permit requirements).

⁸ CEC (2008).

⁹ Rojas-Bracho, L., Reeves, R. R., & Jaramillo-Legorreta, A. (2006). Conservation of the vaquita *Phocoena sinus*. *Mammal Review*, 36(3), 179-216.

¹⁰ *Id.*

¹¹ Rojas-Bracho, L., & Reeves, R. R. (2013). Vaquitas and gillnets: Mexico’s ultimate cetacean conservation challenge. *Endangered Species Research*, 21(1), 77-87; Rojas-Bracho, L., Reeves, R.R., Jaramillo-Legorreta, A. & Taylor, B.L. 2008. *Phocoena sinus*. The IUCN Red List of Threatened Species. Version 2014.2.

<www.iucnredlist.org>; Letter from IUCN to Almirante Ojeda Durán (March 21, 2021). <https://iucn-csg.org/wp-content/uploads/2021/03/2021-03-26-SSC-vaquita-English.pdf>; D’agrosa, C., Lennert-Cody, C. E., & Vidal, O. (2000). Vaquita bycatch in Mexico’s artisanal gillnet fisheries: driving a small population to extinction.

Conservation Biology, 14(4), 1110-1119; CIRVA (2019). *Report of the Eleventh Meeting of CIRVA*. La Jolla, CA, Feb. 19–21, 2019 (“CIRVA-11 (2019)”).

¹² CIRVA (2004). *Report of the Third Meeting of CIRVA*, Ensenada, Baja California, México, Jan. 18–24, 2004; Rojas-Bracho, L., et al. (2021). *Report on using expert elicitation to estimate total unique vaquitas and calves in the Zero Tolerance Area with recommendations for future research efforts*. <https://iucn-csg.org/wp-content/uploads/2021/04/Vaquita-Report-on-Using-Expert-Elicitation-Final.pdf>.

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¹⁴ Cisneros-Mata, M.A., Montemayor-López, G., & Román-Rodríguez, M.J. (1995). Life history and conservation of *Totoaba macdonaldi*, *Conserv. Biol.* 9(4):806-814.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Findley, L. (2010). *Totoaba macdonaldi*. *The IUCN Red List of Threatened Species* 2010: e.T22003A9346099. <https://dx.doi.org/10.2305/IUCN.UK.2010-3.RLTS.T22003A9346099.en>.

¹⁸ CIRVA-11 (2019); EIA (2017). Facing Extinction: Survival of the vaquita depends on eliminating the illegal trade in totoaba. <https://eia-international.org/report/facing-extinction-survival-of-the-vaquita-depends-on-eliminating-the-illegal-trade-in-totoaba/>.

¹⁹ *Id.*

²⁰ De Mitcheson, Y., et al. (2019). Emerging from the murk: threats, challenges and opportunities for the global swim bladder trade. *Reviews in Fish Biology and Fisheries*, 29(4), 809-835.

²¹ CIRVA-11 (2019); CIRVA (2017). *Report of the Tenth Meeting of CIRVA*, La Jolla, CA, Dec. 11–12, 2017 (“CIRVA-10 (2017)”) (recommending “eliminate all setting of gillnets” in vaquita’s range); *see also* Taylor, B. L., Wells, R. S., Olson, P. A., Brownell Jr, R. L., Gulland, F. M., Read, A. J., ... & Rojas-Bracho, L. (2019). Likely annual calving in the vaquita, *Phocoena sinus*: A new hope?. *Marine Mammal Science*, 35(4), 1603-1612.

²² UNESCO World Heritage Committee (July 23, 2019). 43rd Session, Decisions adopted Dec. 43 COM 7B.26, Baku, Azerbaijan (June 3–July 10, 2019). <https://whc.unesco.org/archive/2019/whc19-43com-18-en.pdf>.

²³ CITES, Dec. 18.294: Totoaba (*Totoaba macdonaldi*). <https://cites.org/eng/taxonomy/term/42103>.

²⁴ International Whaling Commission (2021). *Report of the Scientific Committee* (Virtual Meetings, 27 April–14 May 2021), at 143. <https://archive.iwc.int/pages/view.php?ref=19276&k=>.

²⁵ CEC (2008).

²⁶ Cisneros-Mata, et al. (1995); 1975 Totoaba ban.

²⁷ CITES, Appendix I.

²⁸ Cisneros-Mata, et al. (1995).

²⁹ *Id.*

³⁰ International Whaling Commission Scientific Committee, Rep. Intl. Whal. Commn., 42, at 79 (June 10, 1990).

³¹ Rojas-Bracho et al. (2006).

³² Rojas-Bracho & Reeves (2013).

³³ Rojas-Bracho, et al. (2006).

³⁴ Rojas-Bracho & Reeves (2013).

³⁵ *Id.*

³⁶ *Id.*

³⁷ Letter from R. Garcia Soto, Attorney, SAGARPA, to John Hendershedt, NMFS (Dec. 6, 2017). According to the terms of the Official Mexican Standard NOM-002-SAG / PESC-2013 on shrimp, the ban was to be phased in over a three-year period, with zero usage of the *chinchorro* by 2016.

³⁸ CIRVA (2014). *Report of the Fifth Meeting of CIRVA*. Ensenada, Baja California, July 8–10, 2014.

³⁹ *Id.*

⁴⁰ 2015 Gillnet Acuerdo.

⁴¹ CIRVA (2016). *Report of the Eighth Meeting of CIRVA*. La Jolla, CA, Nov. 29–30, 2016.

⁴² *Id.*

⁴³ 2017 Gillnet Ban.

⁴⁴ CIRVA-10 (2017).

⁴⁵ CIRVA-11 (2019) (emphasis added).

⁴⁶ 85 Fed. Reg. 13,626 (Mar. 9, 2020).

⁴⁷ 16 U.S.C. § 1372(a).

⁴⁸ 85 Fed. Reg. at 13,626.

⁴⁹ Sept. 2020 Vaquita Regulations.

⁵⁰ *Id.*, Art. 2(I).

⁵¹ *Id.*, Art. 2(II), (III); 10.

⁵² *Id.*, Art. 6–9.

⁵³ *Id.*, Art. 13.

⁵⁴ *Id.*, 5th and 7th Transitory Articles.

⁵⁵ 1975 Totoaba Ban.

⁵⁶ Convention on International Trade in Endangered Species of Fauna and Flora, March 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 (entered into force July 1, 1975); *see also* CITES, Appendices. <https://cites.org/eng/app/appendices.php> (listing totoaba on Appendix I).

⁵⁷ CITES, Art. III(1), (2)(d), (3)(c); *see also id.* Art. I(c) (defining “trade” to include “export”).

⁵⁸ *Ley General de Vida Silvestre*, Art. 55, 56; *see also id.* Arts. 65–66 (CITES permit requirements).

- ⁵⁹ Sept. 2020 Vaquita Regulations, 5th Transitory Article.
- ⁶⁰ Diario Oficial de la Federación (Jan. 20, 2021). *Application Plan in the Zero Tolerance Zone and the Refuge Area for the Protection of the Vaquita*. http://dof.gob.mx/nota_detalle.php?codigo=5610105&fecha=20/01/2021.
- ⁶¹ *Id.*
- ⁶² See Gobierno de México (Aug. 7, 2021). *Gobierno de México fortalece acuerdos con la sociedad civil para la conservación de la vaquita marina en el Alto Golfo de California* [press release]. <https://www.gob.mx/semarnat/prensa/gobierno-de-mexico-fortalece-acuerdos-con-la-sociedad-civil-para-la-conservacion-de-la-vaquita-marina-en-el-alto-golfo-de-california> (announcing permission for one organization to conduct net removal in August 20210); Letter from IUCN to Durán, A., Arámbula, V., & Gonzáles, M. (Mar. 26, 2021). <https://iucn-csg.org/wp-content/uploads/2021/03/2021-03-26-SSC-vaquita-English.pdf>.
- ⁶³ CIRVA-11 (2019).
- ⁶⁴ World Heritage Committee (2019).
- ⁶⁵ CITES, Dec. 18.294: Totoaba (*Totoaba macdonaldi*).
- ⁶⁶ Sept. 2020 Vaquita Regulations, Art. 17.
- ⁶⁷ DOF (July 9, 2021). *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*. http://www.dof.gob.mx/nota_detalle.php?codigo=5623442&fecha=09/07/2021. (“Trigger Agreement”).
- ⁶⁸ *Id.* (Art. 6).
- ⁶⁹ *Id.*
- ⁷⁰ *Id.*
- ⁷¹ Sept. 2020 Vaquita Regulations (Art. 13).
- ⁷² CIRVA-11 (2019) (emphasis added).
- ⁷³ *Id.*
- ⁷⁴ Sept. 2020 Vaquita Regulations, Art. 13 (emphasis added).
- ⁷⁵ *Id.*, Art. 10.
- ⁷⁶ Information request number 0819700216820 under the Mexican General Law of Transparency and Access to Public Information.
- ⁷⁷ CIRVA-10 (2017).
- ⁷⁸ *Id.*
- ⁷⁹ CIRVA-11 (2019).
- ⁸⁰ *Id.* (emphasis added).
- ⁸¹ See *Excelsior* television report (in Spanish) available here: Part 1: <https://www.youtube.com/watch?v=75lyFoMCDyI>; Part 2: <https://www.youtube.com/watch?v=stxX9CYi0Mw>; Part 3: <https://www.youtube.com/watch?v=nUzY9-asO78>. The newspaper articles (also in Spanish) are available here: Part 1: <https://www.excelsior.com.mx/nacional/vaquita-marina-cronica-de-una-extincion-anunciada-1-de-3/1307832>; Part 2: <https://www.excelsior.com.mx/nacional/vaquita-marina-cronica-de-una-extincion-anunciada-2-de-3/1307907>; Part 3: <https://www.excelsior.com.mx/nacional/vaquita-marina-cronica-de-una-extincion-anunciada-3-de-3/1308023>.
- ⁸² See *id.*; *Nat. Res. Def. Council v. Ross*, 1:18-cv-00055-GSK, Second Decl. of Alejandro Olivera Bonilla (Apr. 19, 2019) (describing illegal fishing in the open).
- ⁸³ Rojas-Bracho, L., Taylor, B.L., Jaramillo-Legorreta, A., Olson, P., Ruiz, D., Hidalgo, E., ... & Henry, A.. (n.d.) *Survey report for Vaquita Photographic Identification Research 2019*, at Appendix 3; see also Sea Shepherd (2019, Oct. 23). Expedition Sights Endangered Vaquita Porpoise and Rampant Fishing Inside Biosphere Reserve (reporting mass violations the same day, including “dozens of skiffs ... retrieving prohibited gillnets mainly for shrimp, chano and corvina” within the vaquita Zero Tolerance Zone, including within sight of a vaquita); Garibay, A. (Oct. 25, 2019). Detectan embarcaciones sospechosas en zona de vaquita marina en Baja California, *Heraldo de México*. <https://heraldodemexico.com.mx/nacional/2019/10/25/detectan-embarcaciones-sospechosas-en-zona-de-vaquita-marina-en-baja-california-127846.html> (reporting that authorities detected around 35 small vessels fishing for shrimp and using prohibited nets in the vaquita marina protected area).
- ⁸⁴ Sea Shepherd (Dec. 9, 2019). *Sea Shepherd Reveals Unbridled Poaching as 80 Skiffs Raid Habitat of Critically Endangered Vaquita Porpoise*. <https://seashepherd.org/2019/12/10/sea-shepherd-reveals-unbridled-poaching-as-80-skiffs-raid-habitat-of-critically-endangered-vaquita-porpoise/>.

- ⁸⁵ IUCN Cetacean Specialist Group (March 3, 2020). December 2019 – February 2020 Vaquita Update. <https://iucn-csg.org/december-2019-february-2020-vaquita-update/>.
- ⁸⁶ See Sea Shepherd (n.d.). Operation Milagro: The solution. <https://seashepherd.org/milagro/solution/> (describing partnership with Mexican government).
- ⁸⁷ Baja shrimp fishermen defy rules designed to save vaquita (Sept. 28, 2020). *Mexico Daily*. <https://mexiconewsdaily.com/news/baja-shrimp-fishermen-defy-rules-designed-to-save-vaquita/>.
- ⁸⁸ IUCN Cetacean Specialist Group (Jan. 26, 2021) Vaquita update October through December 2020. <https://iucn-csg.org/vaquita-update-october-through-december-2020/> (emphasis added).
- ⁸⁹ *Id.*
- ⁹⁰ *Id.*; see also Letter from IUCN (2021).
- ⁹¹ UNESCO World Heritage Committee (July 31, 2021). 44th Session, Decisions adopted, Fuzhou, China/Online meeting (July 16–31). <http://whc.unesco.org/archive/2021/whc-21-44com-18-en.pdf>.
- ⁹² See Gobierno de México (2021).
- ⁹³ See Méndez, E. (Feb. 26, 2021). Gobierno llegó a reunión sin estrategia para hábitat de vaquita marina: pescadores. *Excelsior*. <https://www.excelsior.com.mx/nacional/gobierno-llego-a-reunion-sin-estrategia-para-habitat-de-vaquita-marina-pescadores/1435014>
- ⁹⁴ *Id.*
- ⁹⁵ *Id.*
- ⁹⁶ Letter from Confederacion Nacional Cooperativa Pesquera to President Lopez Obrador (Aug. 9, 2021).
- ⁹⁷ See Sea Shepherd (Jan. 1, 2021). Collision at Sea as Sea Shepherd Vessels Attacked in Mexico's Vaquita Refuge. <https://seashepherd.org/2021/01/01/collision-at-sea-as-sea-shepherd-vessels-attacked-in-mexicos-vaquita-refuge/>.
- ⁹⁸ *Id.*
- ⁹⁹ See Méndez, E. (Feb. 25, 2021). Sin recursos ni estrategia, Profepa enfrenta extinción de vaquita marina. *Excelsior* <https://www.excelsior.com.mx/nacional/sin-recursos-ni-estrategia-profepa-enfrenta-extincion-de-vaquita-marina/1434816>.
- ¹⁰⁰ *Id.*
- ¹⁰¹ Méndez, E. (June 10, 2021). Embarcaciones ilegales operan a pesar de vigilancia en hábitat de vaquita marina. *Excelsior*. <https://www.excelsior.com.mx/nacional/embarcaciones-ilegales-operan-a-pesar-de-vigilancia-en-habitat-de-vaquita-marina/1453994>.
- ¹⁰² de la Rosa, Y. (Apr. 27, 2021). El medio ambiente no es prioridad para AMLO; organismos tienen recortes de 37%. *Forbes México*. <https://www.forbes.com.mx/el-medio-ambiente-no-es-prioridad-para-amlo-organismos-tienen-recortes-de-37/>.
- ¹⁰³ De Mitcheson, et al. (2019).
- ¹⁰⁴ EIA, et al. (2019). CITES's Last Chance Stop the illegal totoaba trade to save the vaquita (2019). <https://eia-international.org/wp-content/uploads/EIA-report-citess-last-chance-spreads.pdf>.
- ¹⁰⁵ Daños ambientales en zona de la vaquita marina ascienden a 163 millones de pesos: Semar (Feb. 21, 2021). <https://www.infobae.com/america/mexico/2021/02/21/danos-ambientales-en-zona-de-la-vaquita-marina-ascienden-a-163-millones-de-pesos-semar/>.
- ¹⁰⁶ CEC (2008).

Exhibit A

Organizational Statements

Exhibit A: Organizational Statements

Center for Biological Diversity

The Center for Biological Diversity (“the Center”) is a 501(c)(3) non-profit organization organized under the laws of the United States. The Center was incorporated in the U.S. State of California on November 3, 2010, and the Center’s California State Entity Number is 3331202. With more than 1.7 million members and online activists, the Center is dedicated to the protection of endangered species and wild places. More information on the Center is available at our website: <https://www.biologicaldiversity.org/>.

The Center and our members are harmed by Mexico’s failures to enforce its fishing and trade laws and the vaquita’s resulting decline. The Center has members and staff who regularly visit the vaquita’s Upper Gulf of California to look for the vaquita, and as the species’ population declines, they are less likely to view the species. Members and staff are also deeply saddened by the continued entanglement of vaquitas and the vaquita’s impending extinction, if Mexico continues to fail to act.

Animal Welfare Institute

The Animal Welfare Institute (“AWI”) is a non-profit organization pursuant to section 501(c)(3) of the Internal Revenue Code devoted to the protection of animals. The organization’s FEIN registration is 13-5655952. Founded in 1951, AWI’s mission is to alleviate the suffering inflicted on animals by humans. AWI engages policymakers, scientists, industry professionals, non-governmental organizations, farmers, veterinarians, teachers, and the public in its animal protection mission. AWI has more than 240,000 members and constituents worldwide, including members in Mexico and the southwest United States who reside in areas near the Gulf of California and the Colorado River Delta Biosphere Reserve, the principal habitat of the vaquita. More information about AWI is available at our website: <https://awionline.org/>.

AWI and its members and constituents have been harmed by Mexico’s failure to protect the vaquita and its habitat — which is preventing the likelihood of species recovery — because those who regularly travel to the northern Gulf of California and the Colorado River Delta Biosphere Reserve are unable to observe vaquita in their natural habitat. Absent dramatic and urgent action by Mexico to enforce its laws, the harm experienced by AWI members who visit the area will continue into the future.

Natural Resources Defense Council

The Natural Resources Defense Council (“NRDC”) is a 501(c)(3) non-profit organization incorporated under the laws of the State of New York in 1970. The organization’s Federal Employer Identification Number is 13-2654926. With the support of our more than 3 million members and online activists, NRDC’s lawyers, scientists, and other environmental specialists work to safeguard the Earth – its people, its plants and animals, and the natural systems on which all life depends. More information on NRDC is available on its website: <https://www.nrdc.org>.

NRDC and its members are harmed by Mexico's failure to enforce its fishing and trade laws and the vaquita's resulting decline. NRDC has members who expend resources visiting the Upper Gulf of California and looking for the vaquita during those visits. As the species' population declines, they are harmed by the increased likelihood that they will be unable to see the species. Members and staff are also deeply saddened and outraged by the continued entanglement and drowning of vaquitas, the vaquita's impending extinction if Mexico continues to fail to act, and the knowledge that Mexico is choosing to allow the vaquita's extinction.

Environmental Investigation Agency

The Environmental Investigation Agency ("EIA") is an award-winning 501(c)(3) nonprofit organized under the laws of Washington, DC in 1989, FEIN 52-1654284. EIA is internationally renowned both for its use of innovative investigative techniques and analysis to expose and stop environmental crime and for its achievement of long-lasting tangible changes in the global economy that make local and sustainable management of the world's natural resources possible. EIA has worked for more than thirty years to increase protections for the world's whales, dolphins and porpoises on behalf of our donors, staff and the public. EIA has led investigations into the criminal networks and illegal markets that have fueled the trade in totoaba swim bladders and the consequent demise of the vaquita. EIA has expended significant resources on our investigations into the illegal totoaba trade and has been harmed by the Mexican government's failure to meaningfully crack down on the syndicates and criminal actors behind this trade and the continued decline of the vaquita.

Exhibit B:

Communication of Matter to Mexican Authorities

As required by USMCA 24.27(2)(e), Submitters have communicated this matter to the relevant Mexican authorities on numerous occasions:

- In April 2021, Submitters sent a letter to the CITES Secretariat detailing Mexico's failure to implement and enforce fishing and trade bans, including Mexico's September 2020 vaquita regulation. In May 2021, Submitters provided that letter to Mexican authorities, including the Secretaries of SEMARNAT and Semar, the head of CONAPESCA, the Federal Attorney for Environmental Protection, and CITES authorities. Submitters received no response. The email and letter are attached to this exhibit.
- In May 2019, Submitters the Center, AWI, and NRDC participated in an official fact-finding "mission" conducted by the CITES Secretariat in La Paz, Mexico regarding vaquita and totoaba. Submitters commented orally regarding enforcement failures and met with representatives from Semar, Sader, CONAPESCA, INAPESCA, SEMARNAT and PROFEPA during the meeting.
- In November 2018 and following the election of President Lopez Obrador, Submitters and other non-profits sent a letter to the new Secretary of SEMARNAT, raising concerns regarding the vaquita and needed conservation and enforcement actions. Submitters received no response. If needed, we can provide this letter to the CEC Secretariat.
- In April 2018, EIA sent an email with confidential information regarding the results of their investigation into the totoaba trade within Mexico to then-Counselor to the Legal and International Affairs Attorney's General Office. That document describes the details of an undercover investigation and cannot be made public.
- In May 2017, the Center for Biological Diversity filed a formal administrative complaint, documenting the failure of PROFEPA, Mexico's environmental enforcement agency, to enforce laws prohibiting fishing within the vaquita's habitat without an Environmental Impact Authorization. The Center received no substantive response. Certification of the Center's filing of this complaint is attached as Exhibit C.
- In August 2017, Submitters and other non-profit signatories sent a letter to the then-Secretary of SEMARNAT regarding public misstatements and enforcement concerns regarding the vaquita. Submitters received no response. If needed, we can provide this letter to the CEC Secretariat.
- In February, AWI and the Center met with Pable Arenas, Director General of INAPESCA, at the INAPESCA offices in Mexico City and raised concerns regarding enforcement and lack of approved alternative gear.
- In July 2016, we requested a meeting and met with the Mexican Ambassador and his staff on July 7 and then had a follow-up meeting with Embassy staff on July 12. At both meetings, we expressed concerns regarding regulatory and enforcement failures and shared our recommendations in writing via subsequent emails. If needed, we can document these communications with the CEC Secretariat.

From: [Sarah Uhlemann](mailto:sarah.uhlemann@biologicaldiversity.org)
To: secretaria@semarnat.gob.mx; octavio.almada@conapesca.gob.mx; blanca.mendez@profepa.gob.mx; srio@semarnat.gob.mx; maria.palma@semarnat.gob.mx
Cc: [Alex Olivera](mailto:Alex.Olivera@biologicaldiversity.org); [Kate O'Connell \(kate.oconnell@balaena.org\)](mailto:kate.oconnell@balaena.org); [DJ Schubert](mailto:DJ.Schubert@biologicaldiversity.org); ["ClarePerry@eia-international.org"](mailto:ClarePerry@eia-international.org); [Smith, Zak](mailto:Smith.Zak@biologicaldiversity.org); [Tanya Sanerib](mailto:Tanya.Sanerib@biologicaldiversity.org); [Dianne DuBois](mailto:Dianne.DuBois@biologicaldiversity.org)
Subject: Vaquita y CITES
Date: Tuesday, May 18, 2021 12:53:00 PM
Attachments: [Letter to CITES re Vaquita Update for Jan 2021 Reqs FINAL 4 1 21.pdf](#)

Estimadas Sra. María Luisa Albores González, Sr. Octavio Almada Palafox, Sra. Blanca Mendoza Vera, Sr. José Rafael Ojeda Durán, y Sra. María de los Ángeles Palma Irizarry -

En nombre del Centro para la Diversidad Biológica, el Instituto de Bienestar Animal, el Consejo de Defensa de los Recursos Naturales y la Agencia de Investigación Ambiental, escribimos para expresar una vez más nuestra preocupación constante con respecto al destino de la vaquita. Como saben, es probable que solo queden alrededor de 10 vaquitas debido a que el gobierno mexicano no ha hecho cumplir sus propias leyes, incluida la prohibición de la pesca con redes de enmalle en el hábitat de la vaquita, y los requisitos de la Convención sobre el Comercio Internacional de Especies en Peligro de Extinción (CITES).

Les escribimos para informarles que enviamos la carta adjunta a la Secretaría de la CITES el mes pasado, documentando la inacción del gobierno mexicano. Agradecemos su respuesta a esta carta. Creemos que la comunidad internacional debe hacer todo lo posible para alentar a su gobierno a que finalmente tome medidas y salve esta marsopa, antes de que sea demasiado tarde.

Sarah Uhlemann

Dear Ms. Maria Luisa Albores Gonzalez, Mr. Octavio Almada Palafox, Ms. Blanca Mendoza Vera, Mr. José Rafael Ojeda Durán, and Ms. María de los Ángeles Palma Irizarry –

On behalf of the Center for Biological Diversity, Animal Welfare Institute, Natural Resources Defense Council, and Environmental Investigation Agency, we write to once again express our ongoing concern regarding the fate of the vaquita. As you know, only around 10 vaquita likely remain because the Mexican government has failed to enforce its own laws, including the ban on gillnet fishing in the vaquita habitat and requirements under the Convention on International Trade in Endangered Species (CITES).

We write to inform you that we submitted the attached letter to the CITES Secretariat last month, documenting the Mexican government's inaction in this regard. We welcome your response to this letter. We believe the international community must do everything it can to encourage your government to finally take action and save this porpoise, before it's too late.

Sarah Uhlemann

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Via Electronic Mail

April 1, 2021

Re: Mexico's New Fishing Regulations Applicable to CITES Totoaba and Vaquita Decisions 18.292-18.295

Dear Secretary-General Higuero,

On behalf of the Animal Welfare Institute, Center for Biological Diversity, the Natural Resources Defense Council, and the Environmental Investigation Agency, we write to provide information regarding new fishing regulations issued by Mexico to protect vaquita and totoaba in Mexico's northern Gulf of California and Mexico's continued enforcement failures.

As detailed below, Mexico's new regulations, published on September 24, 2020¹ and supplemented in January 2021, potentially offer the vaquita and totoaba important, new protections and are a substantial improvement from previous regulations. However, key components of the regulations remain unimplemented, and illegal fishing continues—a familiar pattern, as the Mexican government has a long history of issuing but not enforcing regulations. The IUCN recently described illegal fishing as “uncontrolled,” and the Mexican government is considering shrinking the area in which gillnets are currently banned.

The Mexican government has not yet demonstrated that the vaquita and totoaba are effectively protected. Mexico's continued failure to address the ongoing fishing and trade of totoaba and ongoing critical endangerment of the vaquita violates the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Accordingly, we urge the Secretariat and Standing Committee to formally initiate compliance procedures under Resolution Conf. 14.3 and recommend sanctions against Mexico for its continued violation of CITES, to be discussed at the 73rd Standing Committee virtual meeting this spring, or no later than the Standing Committee meeting scheduled for September 2021.

At its 18th meeting, the CITES Conference of the Parties adopted Decisions 18.292 to 18.295 on totoaba (*Totoaba macdonaldi*). Among other things, those Decisions urged Mexico to do the following:

- a) take immediate and effective actions by 1 November 2019 in response to the threats to totoaba and vaquita posed by illegal trade;

¹ Diario Oficial de la Federación. *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* (Sept. 24, 2020), available at http://www.dof.gob.mx/nota_detalle.php?codigo=5601153&fecha=24/09/2020; see also Ex. A: Legal Fishing Guide for The Upper Gulf of California.

- b) intensify and secure resources for expanding gillnet removal efforts to maintain the Vaquita Refuge area as a net-free zone, and take all necessary measures to protect net removal teams and destroy confiscated nets;
- c) adhere to the implementation of Decision 43 COM 7B.26, adopted at the 43rd session of the World Heritage Committee;² and
- d) submit a comprehensive report.

Decision 18.294 further directs the Secretariat to report on information submitted by the Parties and Mexico with any recommendations the Secretariat may have. Decision 18.295 then directs the Standing Committee, at its 73rd meeting, to review and assess relevant information and “make any appropriate recommendations within the mandate of the Standing Committee in accordance with Resolution Conf. 14.3 (Rev. CoP18) on CITES compliance procedures.”

We emphasize that nearly all of the actions recommended under Resolution Conf. 14.3 to foster compliance have already been completed: Mexico has been notified of its compliance issue, Mexico has provided numerous responses, and the Secretariat has conducted a fact-finding mission in Mexico. The Mexican government has had ample notice and time to remedy its CITES violations regarding totoaba and vaquita.

The vaquita, however, is running out of time, as only around nine individuals likely remain.³ We urge the Secretariat and the Standing Committee to recommend the “suspension of commercial . . . trade in specimens of . . . CITES-listed species,” as contemplated by Resolution Conf. 14.3. The vaquita will not survive continued delay, and the Mexican government has failed to heed CITES’s warnings and recommendations. In fact, the Mexican government only issued its September 2020 regulations in response to the U.S. government’s ban on seafood from the vaquita’s habitat.⁴ The Mexican government has demonstrated there is only one way to make it act: economic sanctions. Without the ultimate pressure from the CITES Parties, the vaquita will go extinct on your watch.

A. Mexico’s September 2020 Regulations

As with other regulatory and policy initiatives Mexico has taken, its 2020 regulations have the potential to offer totoaba and vaquita important protections from illegal fishing activities. The regulations prohibit the use and possession of gillnets, including gillnets made of monofilament or multifilament nylon, whether used actively or passively in the designated marine area (Art. 2(I)). The regulations also prohibit the transport of gillnets in and within 10 kilometers of the marine area (Art. 2(II)); prohibit manufacturing, owning, and sales of gillnets

² <https://whc.unesco.org/en/news/2010>.

³ Rojas-Bracho, L., B.L. Taylor, A. Jaramillo-Legorreta, P. Olson, D. Ruiz, E. Hidalgo, T. Gerrodette, and A. Henry. Survey report for Vaquita Photographic Identification Research 2019. Vaquita were detected acoustically in September 2020, confirming their continued presence. *Esfuerzo de Monitorización Acústica de Pequeña Escala para Identificar la Presencia de Vaquitas en el Alto Golfo de California* (Sept. 23, 2020).

⁴ U.S. National Oceanic and Atmospheric Administration, *Implementation of Fish and Fish Product Import Provisions of the Marine Mammal Protection Act—Notification of Revocation of Comparability Findings and Implementation of Import Restrictions; Certification of Admissibility for Certain Fish Products From Mexico*, 85 Fed. Reg. 13,626 (Mar. 9, 2020).

in towns around the marine area (Art. 2(III)); and require fishermen to surrender gillnets to authorities within 60 days (Art. 10).

The regulations further specify the types of gear that small vessels are permitted to use within the marine area (Art. 2). They prohibit night fishing (Art. 4) and require the installation and operation of vessel monitoring systems (Art. 6, 7). The regulations require all small vessels to be inspected before departure and upon arrival at one of eight designated sites (Art. 8, 9). They also prohibit transshipment in the marine area (Art. 11). We are encouraged that Mexico has adopted these provisions.

However, the adoption of these regulations is insufficient if they are not fully implemented and enforced. In that regard, we highlight several key concerns below.

1. The “Marine Area” Does Not Cover the Full Vaquita Habitat

Most of the provisions in Mexico’s new regulations apply within or immediately surrounding a designated marine area (Art. 1). However, this area does not cover the vaquita’s full range, which includes waters of the Upper Gulf north of a line running from Puertecitos (90 km south of San Felipe) to Puerto Lobos (94 km southwest of Caborca), thus, from the coast of Baja California to the Sonoran Coast (see Figure 1).⁵ Moreover, and of great concern, the Mexican government is now discussing a proposal to reduce the size of the area in which gillnets are prohibited.⁶

⁵ Numerous studies document vaquita sightings south to Puertocitos and on the Sonoran coast south of Puerto Peñasco. Gerrodette, T., Fleischer, L.A., Perez-Cortes, H. and Villa-Ramírez, B., 1995. Distribution of the vaquita, *Phocoena sinus*, based on sightings from systematic surveys. *R Int Whal Com (Spec Issue)*, 16, pp.273-281; Gerrodette, T., Taylor, B.L., Swift, R., Rankin, S., Jaramillo-Legorreta, A.M. and Rojas-Bracho, L., 2011. A combined visual and acoustic estimate of 2008 abundance, and change in abundance since 1997, for the vaquita, *Phocoena sinus*. *Marine Mammal Science*, 27(2), pp. E79-E100; Brownell Jr, R.L., 1986. Distribution of the vaquita, *Phocoena sinus*, in Mexican waters. *Marine Mammal Science*, 2(4), pp.299-305; Silber, G.K., 1990. Occurrence and distribution of the vaquita *Phocoena sinus* in the northern Gulf of California. *Fishery Bulletin*, 88(2), pp.339-346; Silber, G.K., Newcomer, M.W., Silber, P.C., Pérez-Cortés M, H. and Ellis, G.M., 1994. Cetaceans of the northern Gulf of California: distribution, occurrence, and relative abundance. *Marine Mammal Science*, 10(3), pp. 283-298.

⁶ Grupo Intragubernamental sobre la Sustentabilidad en el Alto Golfo de California, Instalación de la mesa técnica de medio ambiente (March 12, 2021) (meeting agenda with “Reduction of the Prohibition Area for all gillnets including ‘gillnets’ as the first point of discussion).

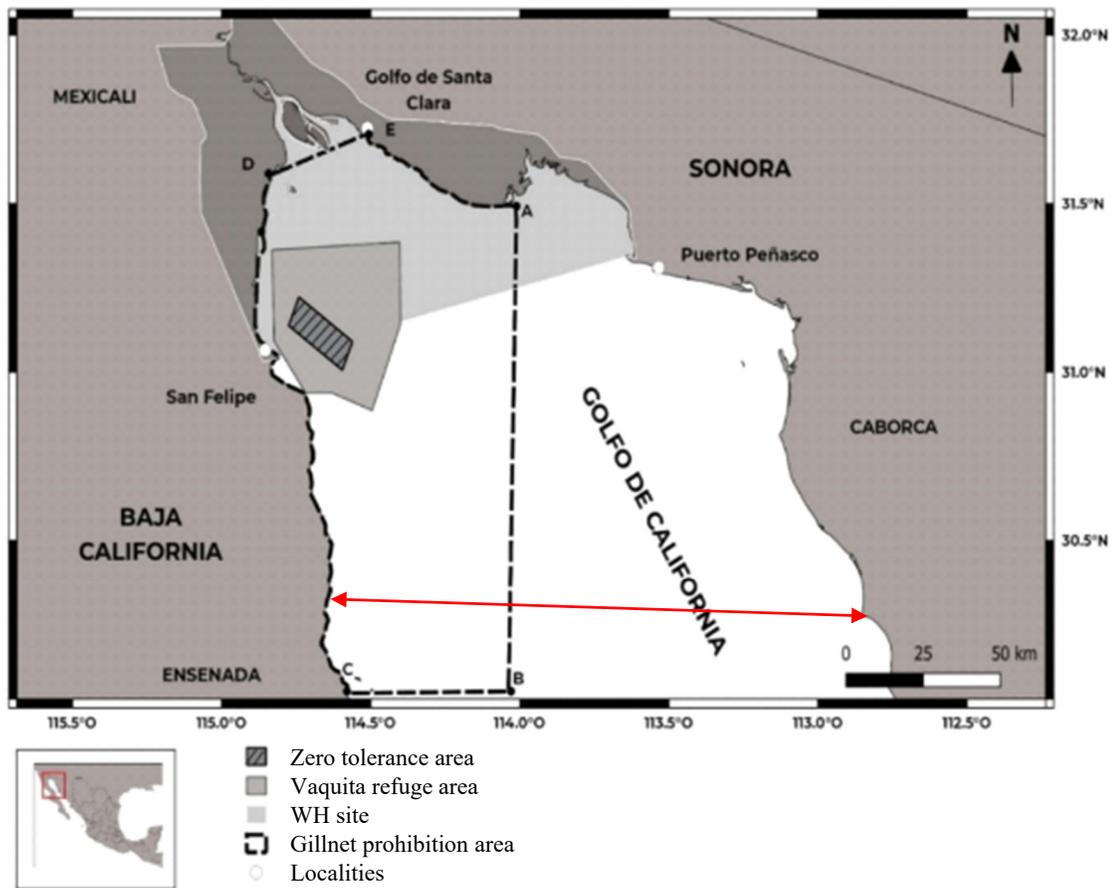


Figure 1. Marine Area within the Islands and Protected Areas of the Gulf of California World Heritage Site. The red line marks the gillnet embargo area.

2. Mexico Has Failed to Fully Implement its 2020 Regulations

Mexico has a history of promising but failing to adopt or implement regulatory programs to protect the vaquita and its habitat.⁷ In issuing its September 2020 regulations, the Mexican government committed to take a series of further actions to conserve the vaquita. But for each of these promises, the government either failed to meet its own regulatory deadline or entirely failed to follow-through on the commitment, as of the date of this submission.

a. Insufficient Application Plan

The Mexican government's 2020 regulations required an "Application Plan" to be issued in coordination with several Mexican agencies within 30 days of the regulation's publication, i.e.

⁷ See Cantú-Guzmán, J.C., Olivera-Bonilla, A., and Sánchez-Saldaña, M.E. 2015. A history (1990-2015) of mismanaging the vaquita into extinction – a Mexican NGO's perspective. *Journal of Marine Animals and Their Ecology*; 8(1): 15-25.

by October 24, 2020 (5th Transitory Article). The Application Plan is supposed to address inspection and surveillance, recovery and disposal of illegal and lost gear, and additional conservation measures. The Mexican government has not yet issued a plan that meets these requirements. While it did issue a plan on January 20, 2021, nearly three months late, the proposal is vague and primarily delineates which agencies are charged with particular functions related to the vaquita.⁸ While there has long been a need to clarify the various Mexican agencies' functions, the agencies' duties identified in the Plan overlap, and many of the duties are vague and lack timeframes (e.g., directing agencies to “hold . . . meetings” and “participate . . . in inspection and monitoring”). Moreover, the plan entirely fails to address “actions for the recovery, disposal and recycling . . . of illegal” or lost gear, as required by the 2020 regulations.⁹

b. Lack of triggers

Critically, to ensure compliance with the fishing closures and gillnet ban, the September regulations also require that relevant agencies “develop . . . triggering factors, defined as “those situations identified by means of quantitative measures . . . which if exceeded will result in predetermined actions by authorities, such as prohibitions on fishing, closures of areas or similar responses” (Art. 17). The regulations require the agencies to publish the triggering factors, their duration, scope, and a mechanism for implementing the triggers by October 24, 2020. The Mexican government has failed to meet this directive, as to date, no triggers have been published.¹⁰

c. Vague compliance working groups

The regulations further promise the creation of two compliance working groups. The “Intragovernmental Group on Sustainability” (GIS) is directed to analyze, coordinate, and evaluate the agreement and was to be established simultaneously with the September regulations (6th Transitory Article). A separate “Collaboration Group on Application” (GCAL) is directed to facilitate the exchange of information on illegal fishing, totoaba trafficking, and prosecutions and was to be established within 30 days (7th Transitory Article). It is unclear when the GIS was established, but Mexican agencies published “Guidelines for the organization and function” of the GIS on January 20, 2021.¹¹ It also is unclear whether the Collaboration Group has been established or is intended to meet with or within the GIS.

⁸ Diario Oficial de la Federación. *Application Plan in the Zero Tolerance Zone and the Refuge Area for the Protection of the Vaquita* (Jan. 20, 2021), available at http://dof.gob.mx/nota_detalle.php?codigo=5610105&fecha=20/01/2021.

⁹ *Id.*

¹⁰ Freedom of Information Request number 0819800027220. Letter RJL/INAPESCA/DG/DJ/UT/046/2021, dated in Mexico City, January 20, 2021.

¹¹ Diario Oficial de la Federación. *LINEAMIENTOS para la organización y funciones del Grupo Intragubernamental sobre la sustentabilidad en el Alto Golfo de California*. (Jan. 15, 2021), available at http://dof.gob.mx/nota_detalle.php?codigo=5609927&fecha=15/01/2021.

The first GIS meeting was initially planned to take place in January but was then postponed to February 26, 2021,¹² five months after the regulation's publication. In its press release regarding the first GIS meeting, SEMAR acknowledged that a much-anticipated reform of the Federal Penal Code to make environmental crimes a serious violation—and thereby allow preventative detention and increase both prison time and penalties—has not yet passed and is under review by the Senate.¹³

d. Marine mammal interaction reporting

The regulations further direct the Comisión Nacional de Acuacultura y Pesca (“Conapesca”) to publish a form and mechanism so fishermen can report marine mammal interactions (Art. 5). Conapesca has failed to publish any form or mechanism. Without instructions on how or where to report entanglements and bycatch, it is unlikely fishermen are reporting these events—information that is critical to knowing how much vaquita bycatch continues.

e. Gillnet surrender

The regulations required all permit holders, captains, and fishermen to deliver any gillnets to the Conapesca office closest to where their vessel is registered by November 23, 2020 (Art. 10), as the regulations ban possession of such gillnets near vaquita habitat. In response to a public information request for how many nets it had received, Conapesca stated that it had no responsive information as of February 3, 2021,¹ suggesting it had no nets had been turned over.

f. Gear marking

The regulations also direct Conapesca to develop and implement a gear marking scheme within 18 months of the regulation's publication (2nd Transitory Article). Given the delay of all other actions the regulations require, we are concerned the Mexican government will similarly fail to meet this commitment.

In sum, while we welcomed Mexico's publication of its September regulations and appreciate that the Mexican government now has taken some steps to meet the regulations' requirements, these actions were quite delayed, and the government has failed to follow through on essential commitments. We are very concerned that the current plans and promised future actions lack the detail necessary to ensure fisheries' vaquita bycatch and illegal totoaba poaching will be halted, and thus will fail to save the vaquita and totoaba from extinction.

3. Mexico's Vessel Monitoring System Is Not Currently Operative

The regulations require that all vessels install and operate vessel monitoring systems (Art. 6, 7); however, Mexico's system for monitoring the resulting data is not currently

¹² Secretariat of the Navy. Press release. Actions of the Government of Mexico in the Upper Gulf of California. February 20, 2021, available at <https://www.gob.mx/semar/prensa/acciones-del-gobierno-de-mexico-en-el-alto-golfo-de-california-264317>.

¹³ *Id.*

operative. According to an article published by *Excelsior*, Mexico missed several years of payments to Pelagic Data Systems (“PDS”), a vessel tracking company, and consequently, Mexico does not have access to the monitoring data.¹⁴ Indeed, the minutes from a recent meeting between fishermen and Mexican authorities confirm “the satellite monitoring system that the registered small vessels have . . . is not currently in service.”¹⁵ The lack of vessel monitoring undermines the efficacy of the new regulations because Mexico cannot track compliance.

Even if Mexico had access to the vessel-tracking data, that information is not reliable. In 2019, PDS had installed 937 monitoring devices on vessels in Upper Gulf.¹⁶ However, by November 2019, 189 of these registered PDS devices—approximately 20 percent—provided data indicating they had been removed from the vessel.¹⁷ Further, between November 2019 and June 2020, another 22 devices showed similar signs of having been removed.¹⁸ It is unknown how many devices are currently fully operational.

Despite this, the Mexican government has not taken enforcement action; instead it only “established communication with the cooperatives and/or licensees, to notify them first as a good faith gesture, about the anomalies recorded in the Pelagic Data Systems regarding their vessels, so that they will take corrective actions necessary, in order for the fishermen operating these vessels to avoid any irregularity.”¹⁹ Mexico’s new regulations cannot succeed if the government does not monitor compliance and ensure that monitoring devices are both present and operational. Mexico must pay for and use monitoring data to ensure that vessels comply with time and area management requirements.

B. Mexico’s Enforcement Failures

While we welcome the issuance of Mexico’s new regulations, the government has not demonstrated that its new regulations have or will effectively reduce vaquita bycatch or totoaba poaching. In fact, evidence shows Mexico has entirely failed to enforce its new regulations since

¹⁴ Ernesto Méndez, *Gobierno prohíbe uso de redes de pesca tradicionales en hábitat de vaquita marina*, EXCELSIOR, Sept. 23, 2020, available at <https://www.excelsior.com.mx/nacional/gobierno-prohíbe-uso-de-redes-de-pesca-tradicionales-en-habitat-de-vaquita-marina/1407345>. According to a 2017, 2021 Excelsior interview with Alejandro Castillo of ProNatura that small vessel monitoring still needed to be reactivated. Ernesto Méndez, *Sin condiciones para reducir polígono de protección de vaquita marina*, EXCELSIOR, Mar. 17, 2021, available at <https://www.excelsior.com.mx/nacional/sin-condiciones-para-reducir-poligono-de-proteccion-de-vaquita-marina/1438204>

¹⁵ Meeting between fishermen representatives and government officials, Minuta de Trabajo (Sept. 30, 2020), available at shorturl.at/uAM28

¹⁶ There were 454 devices installed in Gulf of Santa Clara in Sonora, and 342 in San Felipe, 47 in Bajo Río, and 94 in the Cucapá Indigenous Community in Baja California

¹⁷ The system detects when the devices are damaged or removed because they do not transmit anymore. Report on actions for the protection and conservation of the vaquita porpoise and the totoaba. Government of Mexico. November 2009. Convention on International Trade in Endangered Species of Wild Fauna and Flora CITES. In: STATE OF CONSERVATION REPORT Islands and Protected Areas of the Gulf of California (2005, Ref. 1182ter), available at <https://whc.unesco.org/document/180672>.

¹⁸ Conapesca Response to Information Request No. 0819700022020 (June 20, 2020), available at shorturl.at/mxGQX.

¹⁹ *Id.*

they were issued in September 2020. We strongly urge the Parties to look beyond the text of Mexico’s new regulations and continue to press Mexico to do more to save the vaquita. There is no evidence enforcement has improved since the Parties began reviewing Mexico’s compliance with CITES.

1. Mexico’s History of Non-Enforcement

The Mexican government has a long and troubling history of failing to enforce vaquita protections. In 1993, in response to the vaquita’s decline, Mexico declared the Upper Gulf a Biosphere Reserve and claimed the government was “enforcing the closure of all commercial fisheries in the reserve.”²⁰ Yet scientists concluded these early efforts were “ineffectual” and “half-hearted, at best,”²¹ and “[c]ommercial fishing with a variety of gill nets . . . continued without interruption both inside and outside the Biosphere Reserve.”²²

In 2005, Mexico established a refuge area for the vaquita and again attempted to ban certain gillnets.²³ But again, enforcement was lax, as the new “Refuge Area remained essentially unmanaged until 2008,” when a new program was instituted officially banning all gillnets in the area.²⁴ Initially, Mexican enforcement authorities made a “strong effort” to enforce the new ban, but “that effort . . . waned,” and illegal fishing continued.²⁵

In 2013, in yet another effort to restrict gillnet fishing, Mexico formally banned the use of the “chinchorro” gillnet used to catch shrimp in the Upper Gulf.²⁶ By 2014, the Comité Internacional para la Recuperación de la Vaquita (“CIRVA”) reported that only 97 vaquita remained, despite Mexico’s two decades of regulation, numerous bans, and multiple protective areas.²⁷ CIRVA stated that Mexico’s “at-sea enforcement efforts ha[d] failed, and illegal fishing ha[d] increased . . . throughout the range of the vaquita.”²⁸

In 2015, Mexico instituted a temporary, two-year ban on most gillnets within vaquita habitat, although it exempted the curvina gillnet fishery. Almost immediately, it became clear the

²⁰ Rojas-Bracho, L., Reeves, R.R., & Jaramillo-Legorreta, A. 2006. Conservation of the vaquita *Phocoena sinus*. *Mammal Rev.* 36:179-216.

²¹ Rojas-Bracho, L. & R.R. Reeves. 2013. Vaquitas and Gillnets: Mexico’s ultimate cetacean conservation challenge. *Endang. Species Res.* 21:77-87 (2013).

²² Rojas-Bracho (2006).

²³ Rojas-Bracho (2013).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Letter from R. Garcia Soto, Attorney, SAGARPA, to John Hendershedt, NMFS (Dec. 6, 2017).

According to the terms of the Official Mexican Standard NOM-002-SAG / PESC-2013 on shrimp, the ban was to be phased in over a three-year period, with zero usage of the *chinchorro* by 2016. However, it was reported that CONAPESCA continued to issue *chinchorro* permits in 2013 that were valid through 2017. Vaquita Marina: The decline of species due to government neglect. August 2017 report by the Center for Biological Diversity, COMARINO, Defenders of Wildlife, Greenpeace, and Teyeliz, at page 7. Available at https://www.greenpeace.org/static/planet4-mexico-stateless/2018/11/135a68b1-135a68b1-report-vaquita-version_ingles.pdf

²⁷ Report of the Fifth Meeting of the International Committee for the Recovery of the Vaquita. Ensenada, Baja California, July 8–10, 2014.

²⁸ *Id.*

ban and its enforcement were ineffective, as the vaquita population plummeted to only around 30 animals by November 2016.²⁹ CIRVA concluded that “illegal fishing [wa]s still common” and that “enforcement efforts to date have been insufficient.”³⁰

In July 2017, under immense international pressure, Mexico made its gillnet ban in the Upper Gulf permanent but again exempted the curvina and sierra fisheries. In January 2018, CIRVA concluded *once again* that “[h]igh levels of illegal fishing continue” based on more net retrieval sweeps that found active totoaba, shrimp, and curvina gillnets in the vaquita refuge.³¹

By early 2019, CIRVA concluded that “only about 10 vaquitas remained alive” as illegal fishing continued.³² In April 2019, a Mexican newspaper and television channel, *Excelsior*, produced a three-part expose on the vaquita and illegal fishing in the Upper Gulf, shown nationally across Mexico and published in a major Mexican newspaper.³³ The *Excelsior* team interviewed and documented fishermen setting illegal gillnets for both shrimp and totoaba in broad daylight. In October 2019, scientists reported observing 87 boats in a single day within the Zero Tolerance Area, as well as the use of gillnets 1-km long.³⁴ In December 2019, the Sea Shepherd Conservation Society reported sighting around 80 small boats setting and retrieving illegal gillnets in vaquita habitat in a single day.³⁵

²⁹ Eighth Meeting of the Comité Internacional para la Recuperación de la Vaquita, La Jolla, CA, Nov. 29–30, 2016.

³⁰ *Id.*

³¹ Report of the Tenth Meeting of the Comité Internacional para la Recuperación de la Vaquita, La Jolla, CA, Dec. 11–12, 2017.

³² Report of the Eleventh Meeting of the Comité Internacional para la Recuperación de la Vaquita. La Jolla, CA, Feb. 19–21, 2019.

³³ See *Excelsior* television report (in Spanish) available here: Part 1: <https://www.youtube.com/watch?v=75lyFoMCDyI>; Part 2: <https://www.youtube.com/watch?v=stxX9CYi0Mw>; Part 3: <https://www.youtube.com/watch?v=nUzY9-asO78>. The newspaper articles (also in Spanish) are available here: Part 1: <https://www.excelsior.com.mx/nacional/vaquita-marina-cronica-de-una-extincion-anunciada-1-de-3/1307832>; Part 2: <https://www.excelsior.com.mx/nacional/vaquita-marina-cronica-de-una-extincion-anunciada-2-de-3/1307907>; Part 3: <https://www.excelsior.com.mx/nacional/vaquita-marina-cronica-de-una-extincion-anunciada-3-de-3/1308023>.

³⁴ Rojas-Bracho, L., B.L. Taylor, A. Jaramillo-Legorreta, P. Olson, D. Ruiz, E. Hidalgo, T. Gerrodette, and A. Henry. Survey report for Vaquita Photographic Identification Research 2019, at Appendix 3; see also SSCS, *Expedition Sights Endangered Vaquita Porpoise and Rampant Fishing Inside Biosphere Reserve* (Oct. 23, 2019) (reporting mass violations the same day, including “dozens of skiffs ... retrieving prohibited gillnets mainly for shrimp, chano and corvina” within the vaquita Zero Tolerance Zone, including within sight of a vaquita); Atahualpa Garibay, *Detectan embarcaciones sospechosas en zona de vaquita marina en Baja California*, *Heraldo de México*, (Oct. 25, 2019) (reporting that authorities detected around 35 small vessels fishing for shrimp and using prohibited nets in the vaquita marina protected area), available at <https://heraldodemexico.com.mx/nacional/2019/10/25/detectan-embarcaciones-sospechosas-en-zona-de-vaquita-marina-en-baja-california-127846.html>.

³⁵ SSCS, *Sea Shepherd Reveals Unbridled Poaching as 80 Skiffs Raid Habitat of Critically Endangered Vaquita Porpoise* (Dec. 9, 2019).

2. Mexico's failure to enforce its September 2020 regulations

While Mexico's September 2020 regulations mark an improvement in Mexican regulation of shrimp and other legal fisheries, Mexico has failed to enforce the new regulations. Following the regulations' issuance, the head of the fishermen's federation in San Felipe, Lorenzo Garcia, stated that shrimpers used prohibited gillnets the very next day.³⁶ While Mr. Garcia noted that Mexican authorities tried to persuade fishermen not to go to sea, authorities did not threaten enforcement action. Indeed, according to local fishermen, they had no notice that these regulations would be published or information on their contents, despite having had meetings with authorities on the issue.³⁷

Violations of the gillnet fishing ban have continued at shocking levels since September. In December 2020, the IUCN Cetacean Specialist Group ("IUCN CSG") published data demonstrating that "illegal fishing remains at high levels and takes place day and night."³⁸ The IUCN CSG included three maps documenting illegal fishing activities in October 2020 at the onset of the shrimp season (Figure 2), November 2020 (Figure 3), and December 2020 (Figure 4). The maps depict hundreds of pangas—most fishing with gillnets—within the Zero Tolerance Area, where both gillnetting and transit of any vessels are strictly prohibited to protect the vaquita.

According to the IUCN CSG, a total of 1,185 pangas were counted throughout November 2020, with nearly all these pangas gillnetting for shrimp.³⁹ Based on these data, the IUCN CSG concluded that "[f]ishermen have no incentives to change their traditional fishing practices—very little alternative fishing gear, and few alternative livelihoods to feed their families" and that "[i]llegal fishing remains uncontrolled."⁴⁰

These data demonstrate that, despite Mexico's promises, regulatory improvements, and pages of submissions to the Secretariat, the same fact remains: Mexico has failed to halt gillnet fishing in the vaquita's habitat.

³⁶ *Baja shrimp fishermen defy rules designed to save vaquita*. MEXICO DAILY (Sept. 28, 2020), <https://mexiconewsdaily.com/news/baja-shrimp-fishermen-defy-rules-designed-to-save-vaquita/>.

³⁷ Minuta de Trabajo (Sept. 30, 2020). Several fishermen cooperatives have filed a legal challenge to the new regulations. In one case, [Expediente 790/2020-2 Juzgado primero de distrito en el estado de Baja California] the plaintiffs asked the court to invalidate multiple provisions of the regulations. In a preliminary ruling, however, the court only suspended a single provision – the requirement to turn over gillnets to the authorities – but made clear that this decision only applies to plaintiffs and that it does not permit them to use said gillnets to fish. [Expediente 790/2020-2 Juzgado primero de distrito en el estado de Baja California]. This case and others remain pending and, depending on the outcome of each, the regulations could be weakened or entirely invalidated.

³⁸ IUCN Cetacean Specialist Group, Vaquita update October through December 2020. Available at: <https://iucn-csg.org/vaquita-update-october-through-december-2020/>.

³⁹ While gillnetting clearly continues to illegally harvest shrimp, totoaba gillnetting also continues. In January 2021, authorities detected a 350-meter-long illegally set gillnet containing 13 totoaba, seven of which were dead. *See* <https://www.dossierpolitico.com/vernoticiasanteriores.php?artid=245273&relacion=&tipo=Noticias&categoria=1>. Such isolated enforcement actions do not address the extent of illegal fishing.

⁴⁰ IUCN Vaquita Update; *see also* Ex. B: IUCN SSC Letter re Vaquita Threats (Mar. 26, 2021).

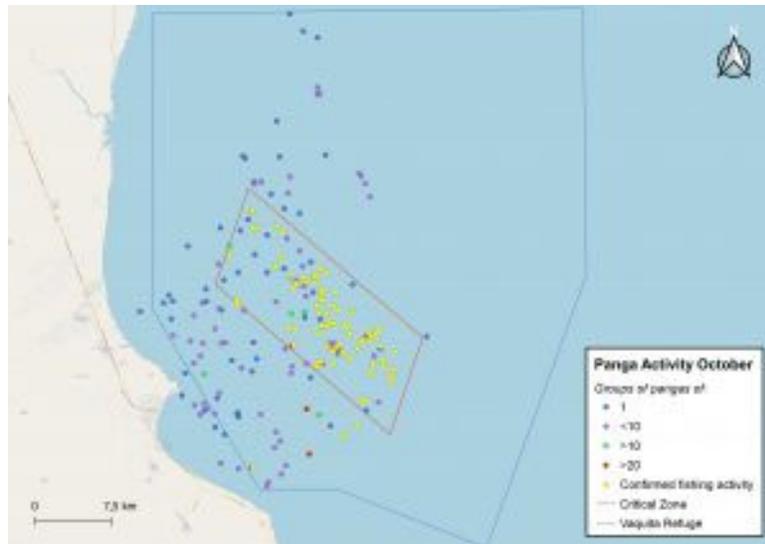


Figure 2. Panga positions in October 2020, with each color⁴¹ representing the approximate number of pangas observed from the survey vessel at a given time and location. Yellow dots indicate individual pangas that were confirmed to be fishing. The SSCS effort was concentrated in the ZTA (outlined in red but labeled as the ‘Critical Zone’ in the map legend).
Source: Sea Shepherd Conservation Society Internal Reports, October 2020.

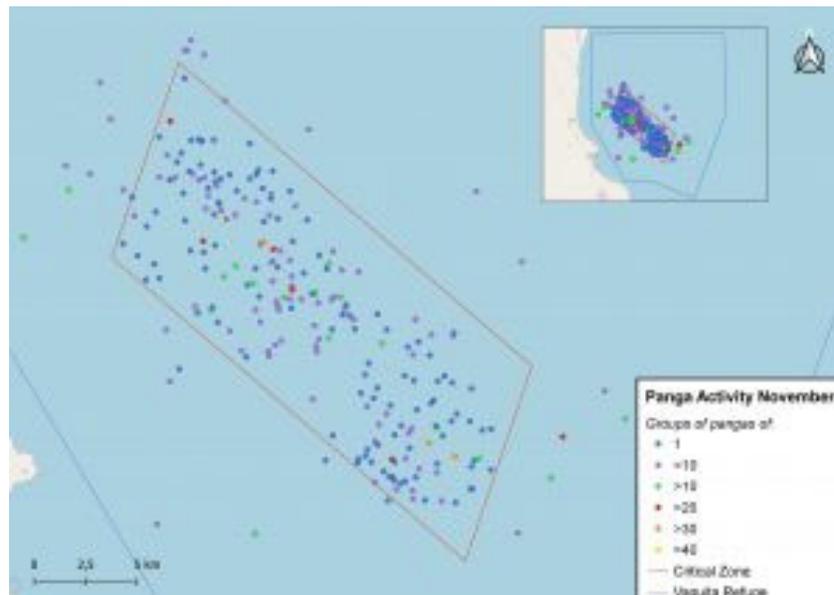


Figure 3. Panga positions in November 2020, with each color representing the approximate number of pangas observed at a given time. The effort by net-removal vessels that reported panga positions was concentrated in the ZTA (outlined in red but labeled as the ‘Critical Zone’ in the map legend).
Source: Sea Shepherd Conservation Society Internal Reports, November 2020.

⁴¹ In each of the figures, blue, purple, green, and red dots correspond to one, less than 10, more than 10, and more than 20 pangas, respectively.

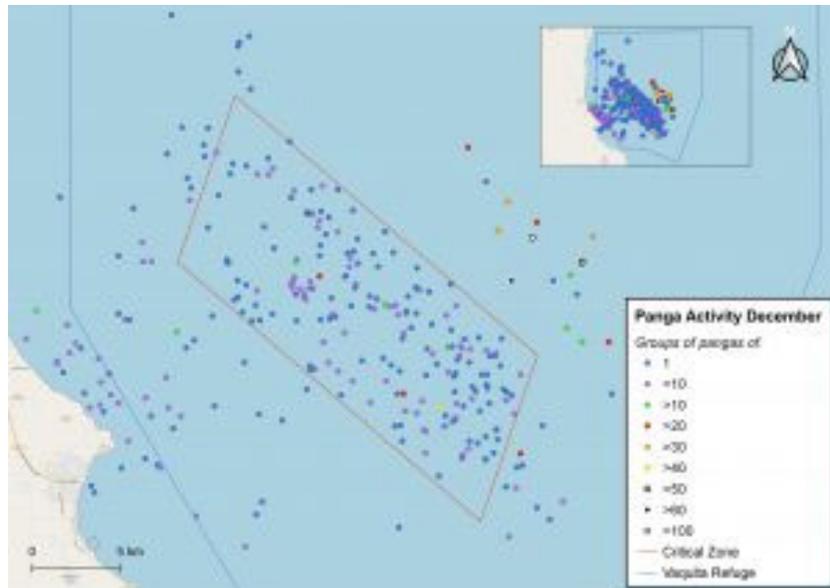


Figure 4. Panga positions in December 2020, with each color representing the approximate number of pangas observed at a given time. The effort was concentrated in the ZTA (outlined in red but labeled as the ‘Critical Zone’ in the map legend), but fishing was observed widely in the Vaquita Refuge (inset).
Source: Sea Shepherd Conservation Society Internal Reports, December 2020.

If anything, fishers have become more brazen in their efforts to continue illegal fishing, not only doing so in broad daylight, but also attacking those engaged in patrolling the area and removing illegal fishing nets. On 31 December 2020, fishermen in 5–7 pangas violently attacked two Sea Shepherd Conservation Society vessels, the *Farley Mowat* and *Sharpie*, inside the Zero Tolerance Area, launching lead weights and Molotov cocktails at the crew and military officials on board.⁴² One panga swerved in front of the *Farley Mowat*, which was attempting to leave the area, striking the larger ship, destroying the panga, and throwing the fishermen into the sea. The crew of the *Sharpie* immediately rescued the fishermen, and its medical personnel, along with medics from the Mexican Navy, provided medical care prior to their transport to medical facilities. During the rescue, two fishermen illegally boarded the *Sharpie* and threatened its crew and Mexican officials while other fishermen in pangas continued to throw projectiles and fuel at the ship, ultimately causing its bow and the recovered illegal fishing gear to catch fire.⁴³ Onshore, other assailants set fire to a Sea Shepherd truck.⁴⁴ Tragically, one of the rescued fishermen died from his injuries several days after the incident.

We note that, in November of 2020, Mr. Sunshine Antonio Rodriguez Peña, a well-known fishermen representative from San Felipe, Baja California, and seven others were taken into custody on charges of racketeering and organized crime related to totoaba trafficking.⁴⁵ For

⁴² See, <https://seashepherd.org/2021/01/01/collision-at-sea-as-sea-shepherd-vessels-attacked-in-mexicos-vaquita-refuge/>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Van a proceso 6 pescadores detenidos en hábitat de vaquita marina*. Excélsior. Nov, 17, 2020.

years, Mr. Rodríguez Peña had posted regularly on Facebook documenting his and others' illegal use of gillnets to catch shrimp, sierra, and curvina near San Felipe, which is prohibited under the new regulations. In December 2020, it was reported that President López Obrador had instructed the Secretary of the Navy, Admiral José Rafael Ojeda Durán, to review Mr. Rodríguez Peña's case.⁴⁶ While we applaud this long-overdue enforcement action, high levels of illegal fishing continue, and much more enforcement is needed.

The failure to enforce the gillnet prohibition in the Upper Gulf is indicative of a systemic problem in Mexico to responsibly manage and enforce its fishing regulations, as highlighted in a September 2020 assessment by Vanda Felbab-Brown of the Brookings Institute:

Fisheries management and enforcement in Mexico involves a complex and mostly ineffective tangle of institutions that tend to be under resourced, susceptible to corruption, and engage in buck-passing. . . . Well-meaning and dedicated officers get easily disheartened by the rock-bottom slashed budgets the López Obrador administration imposed, hollowing out already critically weak management, inspection, enforcement capacities—an institutional morass.⁴⁷

This institutional morass has contributed to illegal fishing accounting for between 45 and 90 percent of official fish production in Mexico.⁴⁸ Moreover, the problem is not limited to illegal fishing as enforcement failures are common throughout the seafood supply chain in Mexico. Yozell (2020), in a Stimson Center report analyzing the implementation of the U.S. Seafood Import Monitoring Program (SIMP), found as follows:

According to Stimson interviews with government, NGO, and industry stakeholders in Mexico, there are several steps along the seafood supply chain where information required for SIMP and verified by the Mexican government can be falsified, duplicated, or left unverified. Government capacity, reporting, and documentation have proven to be the main challenges for SIMP implementation in Mexico; and these challenges are clearest in the small-scale fishing sector. These findings stand in contrast to NOAA's initial statements to Stimson that there have been no major issues in Mexico as interviews with stakeholders on the ground revealed that there have been several key gaps for SIMP implementation in the country.⁴⁹

<https://www.excelsior.com.mx/nacional/van-a-proceso-6-pescadores-detenidos-en-habitat-de-vaquita-marina/1417384> Two suspects were subsequently released due to lack of evidence. To date, Mr. Rodríguez Peña remains in custody.

⁴⁶ *AMLO instruye al titular de Marina revisar caso de Sunshine Rodríguez, presunto líder del Cártel del Mar*. EL UNIVERSAL. Dec. 2, 2020. Available at <https://www.eluniversal.com.mx/nacion/amlo-instruye-al-titular-de-marina-revisar-caso-de-sunshine-rodriguez-presunto-lider-del>

⁴⁷ See <https://www.brookings.edu/blog/order-from-chaos/2020/09/14/illegal-fishing-in-mexico-and-policy-responses/>.

⁴⁸ *Id.*

⁴⁹ Yozell. 2020. A Qualitative Assessment of SIMP Implementation in Four Countries. Stimson Centre Report. Available at: <https://www.stimson.org/wp-content/uploads/2020/02/Stimson-Final-Traceability-Report.pdf>.

Fundamental solutions to mitigate the scope of illegal fishing, solutions that have been repeatedly suggested (and mirror recommendations made by the CITES Parties) but never substantively implemented by Mexico, include:⁵⁰

- Relentless detection and prosecution of all persons/entities engaged in illegal fishing with escalating fines that are multiples of the value of the illegal catch;
- Acquisition and implementation of better technologies including aerial, land, and marine water drones and other sensors to monitor fishing/fisher activities;
- Improve coordination among Mexican agencies (e.g., CONAPESCA, CONANP, PROFEPA, SEMAR, federal/state/municipal police forces, national guards, and customs) to share intelligence and data and to strengthen enforcement investigations and prosecutions;
- Enhance collaboration with counterparts in the United States including with the U.S. Fish and Wildlife Service, US customs agency, and government prosecutors;
- Address the needs of fishers by helping them adopt sustainable fishing practices, use ecologically low-impact fishing gear, and develop alternative livelihoods—none of which has, to date, succeeded in the Upper Gulf.

Felbab-Brown cautions, however, that such improvements will not succeed unless there is “better resourcing of environmental management and protection agencies.”⁵¹ She opines that “[a]s long as the López Obrador administration starves them of budgets, better environmental, fishery sustainability, and rule-of-law results won’t follow.”⁵²

A lack of resources is preventing coordinated, meaningful, and sustained efforts to prevent illegal fishing and protect the vaquita and totoaba. *Excelsior*, a respected media organization in Mexico City, recently reported, after a review of government reports about the recently-concluded shrimp season in the Upper Gulf, that a lack of resources, planning, logistics, and knowledge among senior officials of PROFEPA has led to “[lo]s nulos resultados” or zero results in the protection of the vaquita and efforts to combat the illegal trafficking of totoaba.⁵³ Specifically, PROFEPA’s low budget is used inappropriately and for improvised actions which yield no results. In November and December 2020, the 19 federal inspectors brought in to support local authorities in the Upper Gulf were unable to prevent unlawful conduct as no small vessels were available for their use “because there was not enough money for fuel.”⁵⁴ This prevented efforts to stop illegal fishing on, for example, November 11, 2020, when there were 60 pangas simultaneously engaged in illegal fishing inside the vaquita Zero Tolerance Area.

Furthermore, there are no towboats or four-wheeled drive vehicles available to conduct beach patrols. There are also no accommodations for PROFEPA officials to stay overnight in the area and no office space for PROFEPA since their facilities in San Felipe and Santa Clara were

⁵⁰ See, <https://www.brookings.edu/blog/order-from-chaos/2020/09/14/illegal-fishing-in-mexico-and-policy-responses/>

⁵¹ *Id.*

⁵² *Id.*

⁵³ See, <https://www.excelsior.com.mx/nacional/sin-recursos-ni-estrategia-profepa-enfrenta-extincion-de-vaquita-marina/1434816> (English translation)

⁵⁴ *Id.*

attacked by fishers and set on fire in 2018 and 2019, respectively, and have not been rebuilt.⁵⁵ The former PROFEPA coordinator for San Felipe also sent personnel to assist with inspecting vehicles on the road to Mexicali despite the Ministry of National Defense having sufficient personnel to conduct the checks.⁵⁶

The lack of any coherent strategy to address monitor legal fisheries, curtail the extent of illegal fishing, and enforce fishing prohibitions in the Upper Gulf was highlighted in the February 26, 2021 GIS meeting between government officials, fishers, industry representatives, politicians, and others. Mr. Ramón Franco, a representative of the organized fishermen of San Felipe, noted how “everyone sees how in broad daylight illegals operate in total impunity.”⁵⁷ Carlos Tirado, the leader of the fishing cooperatives in Golfo de Santa Clara and Golfo de Sonora, asked, “[w]hen will there be a real strategy from the federal government and industry to find a solution, because as of today, February 26th, it does not exist?”⁵⁸ Tirado also noted that, despite the prohibition on using gear that had been promulgated in September 2020, the government had failed to provide alternatives to the communities.⁵⁹ No new meaningful or substantive strategies that were not already underway or that are common sense (e.g., information sharing) came out of the meeting.

Indeed, instead of promising strict enforcement of its fishing laws, the Secretary of Environment and Natural Resources, María Luisa Albores González, indicated that the government was considering modifying the gillnet prohibition area by reducing the size of the vaquita refuge given the reduced distribution of vaquita.⁶⁰ This decision, if implemented, effectively rewards poachers for their illegal actions by increasing fishing opportunities (including for those who fish illegally) and dismisses the blatant incompetency of the government agencies that failed to enforce the law.

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While the record of Mexican authorities to stop illegal fishing has been abysmal, illegal net-recovery efforts have continued and some totoaba swim bladders have been seized. During a five-month period between 2019 and 2020, 163 and 104 pieces of illegal fishing gear were recovered from the water and on land, respectively, and 18 authorities opened investigations involving the seizure of 797 totoaba buches.⁶¹ Such actions, while welcome, provide further evidence of the failure to stop illegal fishing from occurring and will not produce a behavioral change in a timeframe capable of saving the vaquita. The corresponding economic damage to the environment is estimated to be nearly 164 million pesos (nearly 8 million USD).⁶²

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See, <https://www.excelsior.com.mx/nacional/gobierno-llego-a-reunion-sin-estrategia-para-habitat-de-vaquita-marina-pescadores/1435014>

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See, <https://www.gob.mx/conapesca/articulos/gobierno-de-mexico-acuerda-fortalecer-las-acciones-y-el-dialogo-para-lograr-el-desarrollo-del-alto-golfo-de-california-265142?idiom=es>

⁶¹ See, <https://www.infobae.com/america/mexico/2021/02/21/danos-ambientales-en-zona-de-la-vaquita-marina-ascienden-a-163-millones-de-pesos-semar/>

⁶² *Id.*

CONCLUSION

We recognize the importance of Mexico updating its regulations to align them with the critical status of the vaquita. The new regulations, if enforced, have the potential to reduce totoaba poaching and vaquita bycatch. However, because Mexico has not fully implemented the regulations and has utterly failed to enforce the regulations, Mexico has not made “timely progress in the implementation of Decisions 18.292 and 18.293.” Decision 18.295(b). Therefore, the Standing Committee should “make any appropriate recommendations ... in accordance with Res. Conf. 14.3 (Rev. CoP18) on CITES compliance procedures.” We request that the Secretariat and the Standing Committee consider this information in their ongoing efforts to implement Decisions 18.292-18.295 and recommend, given the perilous status of the vaquita, that Parties suspend commercial trade in specimens of CITES-listed species, as contemplated by Resolution Conf. 14.3.

We welcome the opportunity to discuss this issue with you and would be happy to answer any questions you may have.

Sincerely,

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CC via email:

Ms. Carolina Caceres, Chair, CITES Standing Committee
Mr. Tom De Meulenaer, Chief, Scientific Services, CITES Secretariat
Mr. Ben Janse van Rensburg, Chief, Enforcement Support, CITES Secretariat

Exhibit C:

Private Remedies Pursued by Submitters

Pursuant to USMCA Article 24.27(3)(c), Submitters have pursued private remedies available under Mexican law.

In May 2017, Submitter Center for Biological Diversity filed a formal administrative complaint, called a “denuncia popular,” documenting the failure of PROFEPA, Mexico’s environmental enforcement agency, to enforce laws regarding vaquita. Specifically, the complaint documented PROFEPA’s failure to enforce against fishing by licensees in the vaquita’s habitat in the Upper Gulf of California Biosphere Reserve and Colorado River Delta Natural Protected Area without authorization under an Environmental Impact Assessment. These acts were contrary to management and conservation programs in the area, causing risk of damage or serious deterioration to the vaquita and its habitat. The Center received no substantive response to this complaint. Certification of the Center’s filing of this complaint is attached to this Exhibit.



Asunto: Se presenta denuncia popular.
Referencia: Pesca ilegal en alto golfo.

Secretaría de Medio Ambiente y Recursos Naturales
(SEMARNAT)
Procuraduría Federal de Protección al Ambiente
(PROFEPA)

Guillermo Haro Belchez
Titular de la PROFEPA

Gabriel Calvillo Díaz
Subprocurador Jurídico



Maria Guadalupe Arminda Garcia Coronel

Titular de la Dirección General de Denuncias Ambientales Quejas y Participación Social

Presentes:

Sara Uhlemann mayor de edad, en plena capacidad de goce y ejercicio de mis derechos, señalando con fundamento en los artículos 190 de la Ley General del Equilibrio Ecológico y la Protección al Ambiente (LGEEPA), 15 y 19 de la LFPA, como domicilio convencional para oír y recibir notificaciones derivadas del presente en las oficinas del Centro para la Diversidad Biológica, ubicadas en la finca marcada con el número 460-D de la calle Álvaro Obregón, colonia Centro, en la Ciudad de La Paz, Baja California Sur, teléfono 6121040604; y autorizando por parte de mi Representante a dichos efectos, y los más amplios previstos en la LFPA, para efectos de la gestión y tramitación de ésta Denuncia Popular, así como autorizando para efectos de notificaciones y consulta del expediente relativo al C. Alejandro Olivera Bonilla, ante Usted con el debido respeto comparezco y

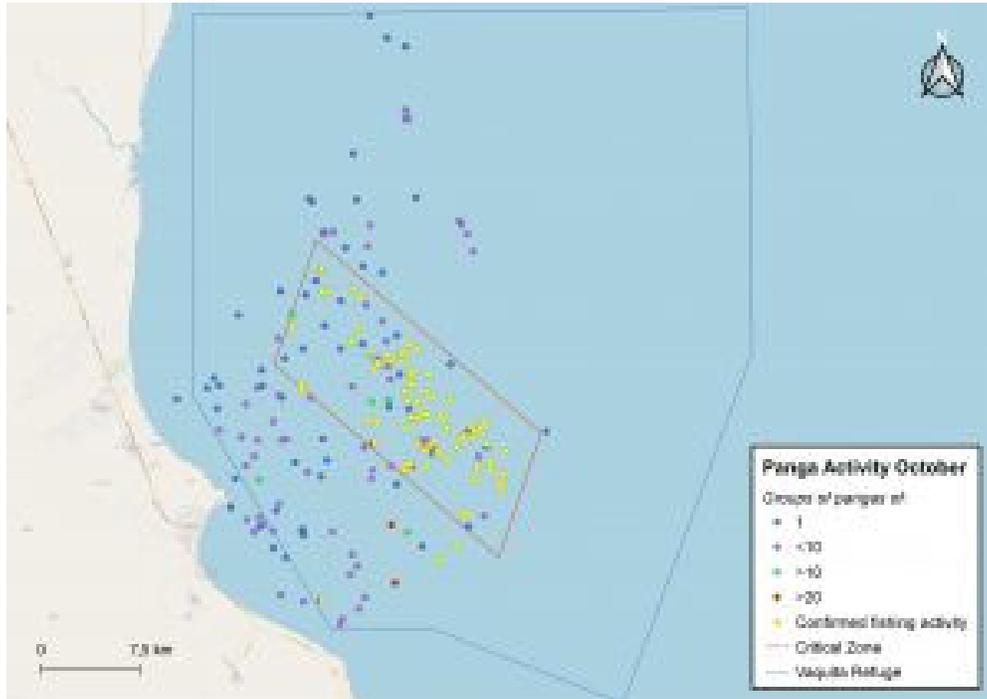
EXPONGO

Que actuando en representación del Centro para la Diversidad Biológica (CDB), mi Representada, personalidad y carácter acreditado en líneas previas, por medio del presente y con fundamento en los artículos 1, 4, derecho a un medio ambiente sano, 8 y 17 de la Constitución Política de los Estados Unidos Mexicanos (CPEUM); Principios 3, 8, 10 y 15 de la Declaración de Río sobre el Medio Ambiente y el Desarrollo; 1, 3, 6, 7 incisos b) y c), 8 incisos c), d), f), i), k), y l) de la Convenio sobre la Diversidad Biológica; 1, 2, 16, 23, 24, 25 y 26 de la

Exhibit D:

**Maps of Illegal Activities in Vaquita Habitat and ZTA,
October to December 2020 (IUCN and SSCS)**

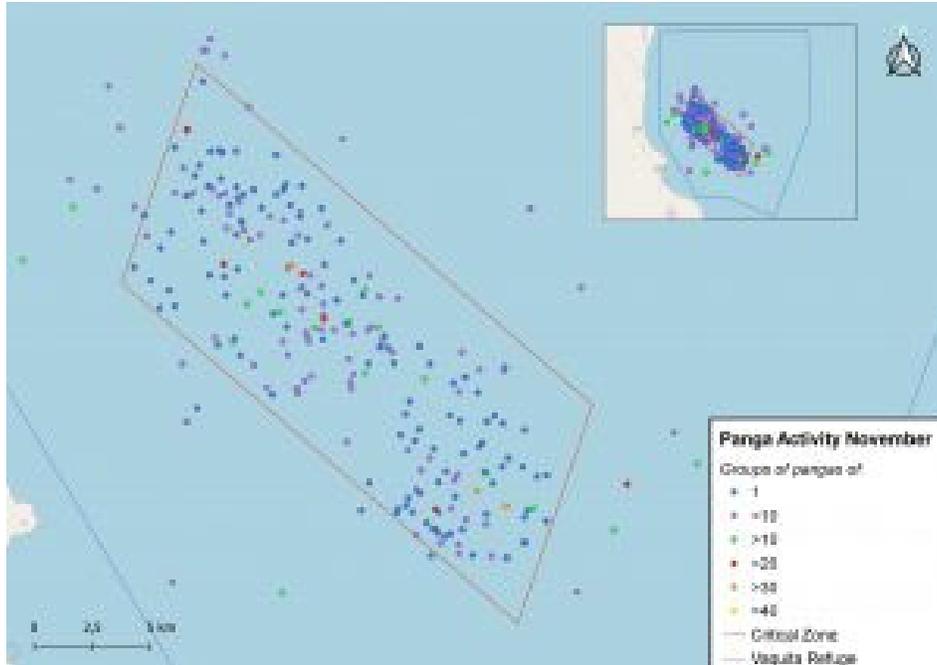
The following maps document panga activity in the vaquita habitat and Zero Tolerance Area during October, November, and December 2020 and are enlarged versions of the maps included as Figure 2 in the Submission. The maps were provided by IUCN CSG based on data from Sea Shepherd Conservation Society and are available online at: <https://iucn-csg.org/vaquita-update-october-through-december-2020/>.



Panga positions in October 2020, with each color¹ representing the approximate number of pangas observed from the survey vessel at a given time and location. Yellow dots indicate individual pangas that were confirmed to be fishing. Observer effort by SSCS was concentrated in the ZTA (outlined in red but labeled as the ‘Critical Zone’ in the map legend).

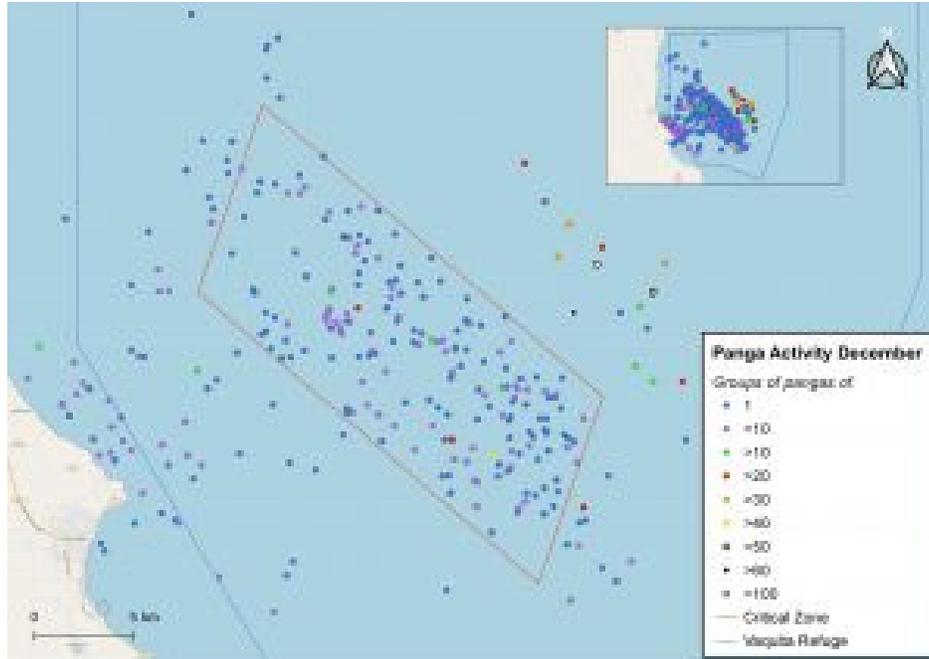
Source: Sea Shepherd Conservation Society Internal Reports, October 2020.

¹ In each of the figures, blue, purple, green, and red dots correspond to one, less than 10, more than 10, and more than 20 pangas, respectively.



Panga positions in November 2020, with each color representing the approximate number of pangas observed at a given time. The effort by net-removal vessels that reported panga positions was concentrated in the ZTA (outlined in red but labeled as the ‘Critical Zone’ in the map legend).

Source: Sea Shepherd Conservation Society Internal Reports, November 2020.



Panga positions in December 2020, with each color representing the approximate number of pangas observed at a given time. The effort was concentrated in the ZTA but fishing was observed widely in the Vaquita Refuge.

Source: Sea Shepherd Conservation Society Internal Reports, December 2020.