

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES  
OF WILD FAUNA AND FLORA

Nineteenth meeting of the Conference of the Parties  
Panama City (Panama), 14 – 25 November 2022

Interpretation and implementation matters

General compliance and enforcement

Totoaba (*Totoaba macdonaldi*)

RENEWED AND UPDATED DECISIONS FOR COP19

1. This document has been submitted by the United States of America.\*

Introduction

2. The totoaba (*Totoaba macdonaldi*) is a large, marine finfish endemic to the northern part of the Gulf of California (Sea of Cortez) in Mexico. Mexico declared the totoaba as a protected species in 1975, and the United States classified the species as endangered under the U.S. Endangered Species Act (ESA) in 1979. The vaquita is a small cetacean endemic to the northern part of the Gulf of California in Mexico, whose range overlaps with that of the totoaba and is often killed inadvertently in illegal gillnets set for harvesting totoaba. It is considered the world's most endangered cetacean. Mexico has listed the species as "in danger of extinction" under its domestic wildlife law. Both the totoaba and vaquita are included in CITES Appendix I. Despite international protections and Mexico's domestic ban on totoaba fishing, the illegal harvest of and international trade in totoaba continues due to ongoing demand in East Asia for totoaba swim bladders, which are consumed in soup, used in traditional medicinal practices, given as gifts, and held as investments.
3. According to experts, there are only an estimated 10 individual vaquitas remaining in the world. While that does not bode well for recovery, a recently published genetic analysis from the University of California, Los Angeles, concluded that if bycatch mortality is eliminated from their habitat range (i.e., by eliminating illegal gillnet fishing for totoaba), the species can still be saved from extinction. This is due to a naturally low population size and approximately 1000 years of stable genomic diversity. Genetic comparisons with other cetacean species demonstrated that the vaquita have fewer strongly deleterious mutations and are better positioned to withstand future inbreeding. For this reason it is imperative to take all possible steps to ensure that illegal fishing and trafficking of totoaba is halted.<sup>1</sup>

Background

4. At the 17<sup>th</sup> meeting of the Conference of the Parties (CoP17; Johannesburg, 2016), the Government of Mexico submitted Document CoP17 Doc. 74 in which it reported that illegal harvest and trade of totoaba continued despite its domestic ban on totoaba fishing and requested support from CITES to combat this illegal trade. Consequently, the Conference of the Parties adopted Decisions 17.145-17.151 on *Totoaba* (*Totoaba macdonaldi*). An update on implementation of these Decisions was provided in Document CoP18 Doc. 89 (Rev. 1), along with draft decisions aimed at ensuring a stronger, measurable and time-bound

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\* The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat (or the United Nations Environment Programme) concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.

<sup>1</sup> Robinson, J.A. et al. (2022). The critically endangered vaquita is not doomed to extinction by inbreeding depression. *Science* 376(6593): pp 652-639. <https://www.science.org/doi/10.1126/science.abm1742>

mandate representative of the Convention's priorities in matters related to the long-term survival of totoaba and vaquita. Following debate and amendment at CoP18, the Conference of the Parties adopted new, strengthened Decisions 18.292-18.295.

5. Updates on Mexico's progress toward implementation of Decisions 18.292-18.295 were provided to the Standing Committee by the Secretariat in November 2020 via Document SC2020 Inf. 14 ([SC2020 Inf. 14](#)) and to the 74th meeting of the Standing Committee (SC74; Lyon, 2022) in Document SC74 Doc. 28.5.
6. In Document SC2020 Inf. 14, paragraph 10, following a review of reports submitted by Mexico in accordance with Decision 18.293, the Secretariat stated:

*From the reporting provided by Mexico, it is evident that, from 1 September 2019 to date, surveillance activities and inspections with a particular focus on the vaquita (Phocoena sinus) refuge area have significantly increased compared to the period January-August 2019. However, from the information provided by Mexico in its November 2019 and April 2020 reports, the Secretariat concluded that the actions of the authorities were lenient and non-deterrent, and that activities of illegal fishers seemed to continue with impunity. The Secretariat communicated this to Mexico, encouraging the Party to review and strengthen its responses to the illegal fishery activities.*

7. Annex 1 to Document SC74 Doc. 28.5 included a detailed "Summary and assessment of Mexico's reporting." Mexico's reporting was contained in Annexes 2 and 3 to Document SC74 Doc. 28.5. Five additional Annexes were posted, including the Outcomes of the October 2021 *Meeting of range, transit and consumer States of totoaba* and Responses from the United States of America and Mexico to Notification to the Parties No. 2019/061. In Document SC74 Doc. 28.5, the Secretariat acknowledged that Mexico has not effectively implemented the directives in Decision 18.293, stating in paragraph 34:

*[The] Secretariat continues to conclude that the provisions of Decision 18.293, subparagraph a) i) to effectively prevent fishers and vessels from entering the vaquita refuge area have not been implemented.*

In paragraph 53 of Document SC74 Doc. 28.5, the Secretariat provided specific recommendations on the way forward.

8. Following discussion over whether compliance measures should be taken at SC74 based on the conclusions in Document SC2020 Inf.14 and Document SC74 Doc. 28.5 regarding the lack of effective implementation of Decision 18.293, the Standing Committee deferred the decision to be further assessed at SC75. The Standing Committee also adopted the draft decisions proposed by the Secretariat, and additionally, requested the Secretariat to undertake a second mission to Mexico before SC75 to evaluate progress on the implementation of Decision 18.293, with a particular focus on the areas of concern identified in Document SC74 Doc. 28.5. The Standing Committee also invited the Secretariat to propose to CoP19 revisions to Decisions 18.292 to 18.295 after its second mission to Mexico, taking into consideration the 30 April 2022 report by Mexico, and in consultation with the Standing Committee through its Chair. (See SC74 Sum. 4 (Rev. 1); SC74 Draft SR – pp. 57-59).

#### Discussion

9. Acknowledging the effort invested and the resources deployed by Mexico to address illegal fishing and trafficking of totoaba, these actions have been neither sufficient nor effective as illegal fishing and trade continues unabated while the nearly extinct vaquita continue to drown in illegal gillnets targeting totoaba.
10. The Standing Committee at SC74 recognized the need to update and renew Decisions 18.292 to 18.295, to continue to take action toward preventing the ongoing illegal harvest and trade of Appendix-I listed totoaba, and the concurrent decline of the critically endangered vaquita.
11. The United States shares the Secretariat's conclusion that urgent progress on implementation is needed. In order to prevent the ongoing illegal take and trade in totoaba and associated harm to vaquita, we believe immediate effective action is needed by Mexico. Specifically, Mexico must: apply a zero-tolerance policy for fishers and vessels entering the Zero Tolerance Area; enhance monitoring of fishing vessels and the gear they employ; and take strict action against any individuals engaged in unauthorized activities to effectively prevent and deter illegal harvest and trade of totoaba. Effective implementation is also needed of the *Agreement regulating gear, systems, methods, techniques and schedules for carrying out fishing activities with smaller and larger vessels in Mexican Marine Zones in the Northern Gulf of California and establishment*

of landing sites as well as monitoring systems for such vessels, as noted in the concluding paragraph of Document SC2020 Inf. 14.

12. To achieve this result, we believe that the CoP18 Decisions on totoaba should be renewed and updated to reflect the recommendations from the Secretariat's report to SC74 (paragraph 53) and outcomes of that meeting. We also believe that the updated Decisions should take into consideration relevant outcomes from the Secretariat's assessment mission to Mexico) as well as the outcomes of the online *Meeting of Range, Transit and Consumer States of Totoaba* held in October 2021.
13. While the Standing Committee invited the Secretariat to propose to CoP19 revisions to Decisions 18.292 to 18.295, those proposed revisions have not been made available in advance of the deadline for submission of documents to CoP19. To assist in the development of those revised Decisions, the United States has prepared proposed updates to Decisions 18.292-18.295, which are presented in Annex 1 to the present document. Our proposed amendments align with the suite of actions recommended by the Secretariat in Document SC74 Doc. 28.5 Paragraph 53 a) ii)-vii) and the outcomes of the Standing Committee at SC74 as well as additional recommendations from the United States at SC74. (see Document SC74 Sum. 4 (Rev. 1).
14. We also note the draft decisions recommended by SC74, which would direct the Secretariat to update the Terms of Reference to the proposed totoaba/vaquita study. It is our view that any such study would benefit from inclusion of an analysis of what impacts legal commercial trade in captive-bred totoaba from the newly registered operation included in the Register of operations that breed Appendix-I animal species in captivity for commercial purposes will have on the wild totoaba population. Additionally, we recommend including a review of demand-reduction strategies, building on the guidance provided in Resolution Conf. 17.4 on *Demand reduction strategies to combat illegal trade in CITES-listed species*, and the draft *CITES guidance on demand reduction strategies to combat illegal trade in CITES-listed species* presented in Annex 3 to Document SC74 Doc. 34.

#### Recommendations

15. The Conference of the Parties is invited to adopt the renewed and updated Decisions 18.292-18.295 on *Totoaba* (*Totoaba macdonaldi*) included in Annex 1 to the present document, which reflect the amendments outlined in paragraph 13 above. A clean version of the Decisions is included in Annex 2 to the present document for ease of reference.

#### COMMENTS OF THE SECRETARIAT

- A. The Secretariat recommends that the Conference of the Parties not adopt the renewed and updated Decisions 18.292 to 18.295 proposed in Annex 1 to document CoP19 Doc. 29.2.2, because they are to a large extent duplicative of the revisions to Decisions 18.292 to 18.295 and the new draft decisions proposed in Annex 2 to document CoP19 Doc. 29.2.1
- B. At its 74th meeting (SC74, Lyon, March 2022), the Standing Committee requested the Secretariat to undertake a second mission to Mexico to evaluate progress on the implementation of Decision 18.293. The Committee further invited the Secretariat, in consultation with the Standing Committee through its Chair, following the mission and taking into consideration the 30 April 2022 report by Mexico, to propose revisions to Decisions 18.292 to 18.295 for consideration at the present meeting. Document CoP19 Doc. 29.2.1, prepared by the Secretariat, elaborates in detail on the work undertaken in this regard, based on which revisions to Decisions 18.292 to 18.295 and new draft decisions are proposed in Annex 2 to document CoP19 Doc. 29.2.1. The Secretariat considers that these address sufficiently what is intended by the revised draft decisions in document CoP19 Doc. 29.2.2.

PROPOSED RENEWED AND UPDATED TOTOABA (*TOTOABA MACDONALDI*)  
DECISIONS 18.292-18.295 (REV. COP19)

[Amendments to CoP18 Decisions noted in underline and ~~strike through~~]

**18.292 (Rev. CoP19) Directed to Parties**

Parties, in collaboration with relevant stakeholders, are encouraged to:

- a) communicate to the Secretariat and the CITES Authorities of relevant Parties information on seizures of specimens of totoaba, arrests of those engaged in illegal take and trade, results of any prosecutions, and actions taken to implement this Decision;
- b) engage in awareness-raising activities on the illegal trade in totoaba, and its severe implications for the conservation of vaquita (*Phocoena sinus*), including demand-reduction campaigns;
- c) eliminate supply of and demand for illegally sourced specimens of totoaba, and strengthen national policies and law enforcement measures to prevent and address their illegal trade;
- d) support efforts related to the recovery and monitoring of wild populations of totoaba and vaquita; and
- e) support Mexico in the implementation of Decision 18.293 (Rev. CoP19), including support for gillnet retrieval programmes; ~~and~~
- f) ~~provide financial and in-kind support for the implementation of the study called for in Decision 18.294, paragraph e) to be presented before the 73rd meeting of the Standing Committee.~~

**18.293 (Rev. CoP19) Directed to Parties**

Mexico is urged to:

- a) take immediate and effective actions ~~by 1 November 2019~~ in response to the threats to totoaba and vaquita posed by illegal trade by:
  - i) as a matter of urgency, implementing all aspects of the *Agreement regulating gear, systems, methods, techniques and schedules for carrying out fishing activities with smaller and larger vessels in Mexican Marine Zones in the Northern Gulf of California and establish landing sites as well as monitoring systems for such vessels*;
  - ii) deploying governmental authorities with legal powers of seizure and arrest, together with the Navy, to effectively prevent fishers and vessels from fishing with prohibited gear in the ~~entering the~~ Vaquita Refuge area and from entering the Zero Tolerance Area, and invite the Secretariat to assess the effectiveness and impact of these measures ~~before the end of 2019~~ in advance of the 77th meeting of the Standing Committee;
  - iii) strengthening measures to ensure that a “zero tolerance policy” is strictly applied for fishers and vessels entering the Zero Tolerance Area and that consistent measures are taken, and strict penalties imposed against fishers that are found operating in areas where fishing is prohibited;
  - iv) further scaling up and expanding surveillance and patrol activities in the Vaquita Refuge, Zero-Tolerance Area, and on land to ensure that authorities are present on a full-time basis to prevent fishers from engaging in illegal activities in these areas and take action to address any illegal activities detected;
  - ii v) collecting and analysing information on organized crime groups involved in the illegal trade in totoaba, convening multi-disciplinary investigative teams to work in close collaboration with local authorities in

key areas of concern, and undertaking intelligence-driven operations and investigations for addressing illegal trade in totoaba;

iii) providing regular (every six months) updates on these actions and their results to the Secretariat to be reviewed and shared in timely fashion (no more than 60 days after receipt) with Parties affected by illegal trade in totoaba; and

iv) establishing and operationalizing, together with relevant Parties, the trilateral totoaba enforcement contact group consistent with the outcomes of the online *Meeting of Range, Transit and Consumer States of Totoaba* (October 2021) as presented in Annex 4 of Document SC74 Doc. 28.5 called for in the outcomes of the 2017 “Trilateral Meeting China/United States/Mexico On The Combat Against Illegal Traffic Of Totoaba Fish (*Totoaba macdonaldi*) August 23-25, Ensenada, Mexico”;

- b) ~~intensify efforts and to secure resources to expand~~ remove all gillnets in removal efforts to maintain the Vaquita Refuge area and Zero Tolerance Area to maintain them as a net-free zone, and take all necessary measures to protect net removal teams and, in accordance with Mexico's national laws, destroy both confiscated and abandoned nets;
- c) adhere to the implementation of Decision 43 COM 7B.26, adopted at the 43rd session of the World Heritage Committee (Baku, 2019) and all subsequent decisions; and
- d) submit a comprehensive report on the implementation of Decision 18.293 (Rev. CoP19), paragraphs a) to c) above, as well as the information requested in Decision 18.292 (Rev. CoP19), paragraph a), to the Secretariat in time for it ~~the Secretariat~~ to convey this to the Standing Committee at its ~~77th-73rd~~ meeting, together with any recommendations it may have.

#### **18.294 (Rev. CoP19) Directed to the Secretariat**

The Secretariat shall:

- ~~a) subject to external resources and measurable progress made in implementing actions identified in Decisions 18.292 and 18.293, consider convening before the end of 2019 a meeting of range, transit and consumer States of totoaba, and selected organizations and stakeholders, to evaluate progress made in combating illegal fishing of totoaba, eliminating supply and demand for illegally sourced specimens of totoaba, and strengthening law enforcement measures to prevent and address their illegal trade;~~
- ab) engage with partner agencies of the International Consortium on Combating Wildlife Crime (ICWC) in support of activities that could facilitate the initiation of targeted joint investigations and enforcement action from source to destination across the entire illegal trade chain;
- ~~e) subject to the availability of external resources and in consultation with organizations with relevant expertise, study on vaquita and totoaba outlined in Annex 2 to document CoP18 Doc. 89 (Rev. 1); and~~
- bd) analyze report the information communicated by Parties and Mexico in accordance with Decisions 18.292 (Rev. CoP19) and 18.293 (Rev. CoP19), as well as the outcomes of the meeting convened in accordance with paragraph a) above, and prepare a report, including its own observations, with recommendations for further actions for consideration of the Standing Committee at its 73rd 77th meeting together with any recommendations it may have.

#### **18.295 (Rev. CoP19) Directed to the Standing Committee**

The Standing Committee shall:

- a) review and assess any information and recommendations submitted by the Secretariat in accordance with Decision 18.294 (Rev. CoP19); and
- b) based on its assessment, and if not satisfied with timely progress in the implementation of Decisions 18.292 (Rev. CoP19) and 18.293 (Rev. CoP19), make any appropriate recommendations within the mandate of the Standing Committee in accordance with Resolution Conf. 14.3 (Rev. CoP18) on *CITES compliance procedures*.

PROPOSED RENEWED AND UPDATED TOTOABA (*TOTOABA MACDONALDI*)  
DECISIONS 18.292-18.295

[Amendments to CoP18 Decisions CLEAN]

**18.292 (Rev. CoP19) Directed to Parties**

Parties, in collaboration with relevant stakeholders, are encouraged to:

- a) communicate to the Secretariat and the CITES Authorities of relevant Parties information on seizures of specimens of totoaba, arrests of those engaged in illegal take and trade, results of any prosecutions, and actions taken to implement this Decision;
- b) engage in awareness-raising activities on the illegal trade in totoaba, and its severe implications for the conservation of vaquita (*Phocoena sinus*), including demand-reduction campaigns;
- c) eliminate supply of and demand for illegally sourced specimens of totoaba, and strengthen national policies and law enforcement measures to prevent and address their illegal trade;
- d) support efforts related to the recovery and monitoring of wild populations of totoaba and vaquita; and
- e) support Mexico in the implementation of Decision 18.293 (Rev. CoP19), including support for gillnet retrieval programmes.

**18.293 (Rev. CoP19) Directed to Parties**

Mexico is urged to:

- a) take immediate and effective actions in response to the threats to totoaba and vaquita posed by illegal trade by:
  - i) as a matter of urgency, implementing all aspects of the Agreement regulating gear, systems, methods, techniques and schedules for carrying out fishing activities with smaller and larger vessels in Mexican Marine Zones in the Northern Gulf of California and establish landing sites as well as monitoring systems for such vessels;
  - ii) deploying governmental authorities with legal powers of seizure and arrest, together with the Navy, to effectively prevent fishers and vessels from fishing with prohibited gear in the Vaquita Refuge area and from entering the Zero Tolerance Area, and invite the Secretariat to assess the effectiveness and impact of these measures by the 77th meeting of the Standing Committee;
  - iii) strengthening measures to ensure that a “zero tolerance policy” is strictly applied for fishers and vessels entering the Zero Tolerance Area and that consistent measures are taken, and strict penalties imposed against fishers that are found operating in areas where fishing is prohibited;
  - iv) further scaling up and expanding surveillance and patrol activities in the Vaquita Refuge, Zero-Tolerance Area, and on land to ensure that authorities are present on a full-time basis to prevent fishers from engaging in illegal activities in these areas and take action to address any illegal activities detected;
  - v) collecting and analysing information on organized crime groups involved in the illegal trade in totoaba, convening multi-disciplinary investigative teams to work in close collaboration with local authorities in key areas of concern, and undertaking intelligence-driven operations and investigations for addressing illegal trade in totoaba;

- vi) providing regular (every six months) updates on these actions and their results to the Secretariat to be reviewed and shared in timely (no more than 60 days after receipt) with Parties affected by illegal trade in totoaba; and
  - vii) establishing and operationalizing, together with relevant Parties, the totoaba enforcement contact group consistent with the outcomes of the online Meeting of Range, Transit and Consumer States of Totoaba (October 2021) as presented in Annex 4 of Document SC74 Doc. 28.5;
- b) remove all gillnets in the Vaquita Refuge area and Zero Tolerance Area to maintain them as a net-free zone, and take all necessary measures to protect net removal teams and, in accordance with Mexico's national laws, destroy both confiscated and abandoned nets;
  - c) adhere to the implementation of Decision 43 COM 7B.26, adopted at the 43rd session of the World Heritage Committee (Baku, 2019) and all subsequent decisions; and
  - d) submit a comprehensive report on the implementation of Decision 18.293 (Rev. CoP19), paragraphs a) to c) above, as well as the information requested in Decision 18.292 (Rev. CoP19), paragraph a), to the Secretariat in time for the Secretariat to convey this to the Standing Committee at its 77th meeting, together with any recommendations it may have.

**18.294 (Rev. CoP19) Directed to the Secretariat**

The Secretariat shall:

- a) engage with partner agencies of the International Consortium on Combating Wildlife Crime (ICWC) in support of activities that could facilitate the initiation of targeted joint investigations and enforcement action from source to destination across the entire illegal trade chain;
- b) analyze the information communicated in accordance with Decisions 18.292 (Rev. CoP19) and 18.293 (Rev. CoP19) and prepare a report, including its own observations, with recommendations for further actions for consideration of the Standing Committee at its 77th meeting.

**18.295 (Rev. CoP19) Directed to the Standing Committee**

The Standing Committee shall:

- a) review and assess any information and recommendations submitted by the Secretariat in accordance with Decision 18.294 (Rev. CoP19); and
- b) based on its assessment, and if not satisfied with timely progress in the implementation of Decisions 18.292 (Rev. CoP19) and 18.293 (Rev. CoP19), make any appropriate recommendations within the mandate of the Standing Committee in accordance with Resolution Conf. 14.3 (Rev. CoP18) on *CITES compliance procedures*.

TENTATIVE BUDGET AND SOURCE OF FUNDING  
FOR THE IMPLEMENTATION OF DRAFT RESOLUTIONS OR DECISIONS

According to Resolution Conf. 4.6 (Rev. CoP18) on *Submission of draft resolutions, draft decisions and other documents for meetings of the Conference of the Parties*, the Conference of the Parties decided that any draft resolutions or decisions submitted for consideration at a meeting of the Conference of the Parties that have budgetary and workload implications for the Secretariat or permanent committees must contain or be accompanied by a budget for the work involved and an indication of the source of funding. The Secretariat proposes the following tentative budget and source of funding.

The authors anticipate that the implementation of the draft decisions 18.294 (Rev. CoP19) and 18.295 (Rev. CoP19) contained in the present document can be accommodated within the work of existing Secretariat staff.